

THE PRINCIPAL'S RELATIONS WITH THIRD PARTY CONTRACTORS

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ABSTRACT

This paper aims to bring attention to a typology of contract that is as old as it is current. Today, more than ever, the mandate contract proves its usefulness, not only as a traditional means of concluding free acts, selfless and friendly service, but especially as a legal mechanism that allows the deployment of numerous professional activities. As trade has gained huge territorial expansion and diversification, business intermediaries have become increasingly important, even vital, and the mandate, in its various manifestations, provides a highly flexible legal framework for achieving business.

In this article, we focus on the principal's relations with third party contractors, especially on the exceptional situations in which the agent's excessive acts are opposable to the principal, namely the ratification and the apparent mandate, making a brief review of the doctrine and jurisprudence on the matter and expressing our own opinions regarding the liability of the principal towards third party contractors in such situations.

KEYWORDS: *mandate, representation, principal, agent, third party contractor, ratification*

1. THE ACTS CARRIED OUT BY THE AGENT WITHIN THE LIMITS OF THE MANDATE

According to art. 1296 of the Civil Code, *“the contract concluded by the representative, within the limits of the power of attorney, in the name of the represented, produces direct effects between the represented and the other party.”*

Therefore, the principal will have to execute the obligations derived from the acts concluded by the agent on his behalf, as long as they are within the limits of the mandate conferred and the agent worked in the name of the principal, showing the third party his status of representative, or the latter at least should have known that the agent was acting as a representative (art. 1297 par. 1 of the Civil Code).

The operations concluded by the agent with third party contractors in these conditions give rise to direct legal relations of contractual nature between the principal and the third parties involved. As legal doctrine¹ has stated, *“in fact, the third party deals with the agent, but in law, they contract with the principal.”* Therefore, all active or passive effects of the acts concluded by the agent with the third party contractor will occur directly upon the person and patrimony of the principal, who thus becomes the creditor, respectively debtor of the third party contractor.

¹ Fr. Deak, *Civil Law Treaty. Special Contracts*, 2nd ed., Ed. Actami, Bucharest, 1999, p. 354

As regards the agent, he does not, in principle, establish direct legal relations with the contracting third party, since he remains a third party in regard to the act that he concludes on behalf of the principal and which shall not produce effects upon the trustee, in accordance with the principle of the relativity of the effects of contracts (*“res inter alios acta, neque nocere neque prodesse potest”*). This means that the trustee will not, in principle, be held liable towards the principal, for the performance of the obligations assumed towards the principal by third party contractors. Thus, art. 2021 of the Civil Code provides: *“Unless otherwise agreed, the agent who has fulfilled his mandate shall not be liable to the principal for the performance of the obligations assumed by the persons with whom he contracted, unless their insolvency was or should have been known to him at the time of the conclusion of the contract with those persons.”* However, the parties may stipulate in their contract express clauses by which they increase the trustee's responsibility for the performance of the obligations assumed by third party contractors.

Jurisprudence has also shown that *“by virtue of the effect of representation in legal acts, the contract concluded by the agent, within the limits of his legal or conventional powers, obliges the principal for the entire duration of the contract concluded by the agent, and not only for the trustee's term of office, this for the safety of the third party, who is dealing with a representative.”*²

It should also be noted that the effects of the act concluded by the agent in the name of the principal and within the limits of his mandate will have direct effects on the principal whether it is a contract or an unilateral act (eg an act interrupting the limitation period carried out by the trustee on behalf of the principal, or the acceptance of a succession) and regardless of the nature of these effects, namely that they are personal or real (for example, the purchase of a good by trustee transfers ownership directly to the patrimony of the principal), or that they are constituent, translational or extinctive of rights (eg the payment received by the agent extinguishes the claim of the principal).³

2. THE ACTS CARRIED OUT BY THE AGENT OUTSIDE THE LIMITS OF THE MANDATE

In principle, the acts performed by the agent outside the limits of the mandate do not produce any effects between the principal and third party contractors. However, it is not excluded that these acts may be opposed to the principal on the basis of the existence of an apparent mandate, or that the principal himself voluntarily assumes the consequences of the agent's excessive acts, by ratification.

2.1 The principle of non-applicability to the principal of the excessive acts of the agent

“The agent may not exceed the limits established by the mandate”, the legislator states in art. 2017 par. (1) of the Civil Code.

As stated in French doctrine, *“when we say that the principal gives the power of attorney to the trustee, we mean that he gives an order. This is not an advice, nor a recommendation, but an order.”*⁴ Therefore, regardless of whether the mandate conferred is a general or a special one, it has an imperative character and implicitly a limiting one: the agent only has those powers that were given to him by the principal. The consequence of non-compliance with this imperative comes natural: any act concluded by the trustee outside the limits of the powers conferred by the principal does not oblige the agent; it does not create any direct legal relationship of contractual nature between the contracting third party and the

² Bucharest Court of Appeal, s. IV, dec. no. 100/1924, cited in C. Hamangiu, N. Georgean, *The Civil Code Annotated*, vol. IV, “Universala” Alcalay&Co. Bookstore Publishing House, Bucharest, 1926, p. 31

³ In this regard, see also Ph. Pétel, *Le contrat de mandat*, Dalloz, Paris, 1994, p. 79

⁴ F. C. Dutilleul, Ph. Delebecque, *Contrats civils et commerciaux*, 4e éd., Dalloz, Paris, 1998, p. 480

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principal, as the latter's consent for the conclusion of the act is lacking; the so called "*principal*", in this case, has not expressed his willingness to contract with the third party either directly or by representation, as the power to represent does not exist outside its limits; the "*principal*" will have practically the quality of a third party towards the excessive act.

However, par. (2) of art. 2017 of the Civil Code brings to the limits of the mandate a corrective imposed by the practical realities of mandate relations development. Thus, the Civil Code stipulates the possibility for the agent to deviate from the instructions drawn up by the principal for the fulfillment of the mandate. This possibility is granted to the trustee only when the circumstances justifying such conduct would have led to its approval by the principal and, in addition, the trustee must have been unable to notify the principal in advance in order to obtain his consent. In addition, as soon as it becomes possible, the agent is obliged to notify the principal of any changes to the performance of the contract.

In this context of legal regulation, one might ask the question whether the trustee can deviate from the instructions received only as regards the manner of execution of the acts with which he was empowered or also with regard to the acts that he can perform themselves? We believe that the legislator's intention, that can also be seen from the way in which the mentioned legal text was formulated (it explicitly refers only to the "*changes brought to the execution of the mandate*"), was to give the agent a more permissive legal framework of exercising the attributions conferred by the principal, but without being able to substitute his will regarding the acts that would be concluded on his behalf. Thus, even in these circumstances, the principal remains protected against the agent's excessive acts, the consequences of which he will not have to assume in any case.

The inapplicability to the principal of the act performed by the agent may derive either from the fact that the trustee acted without power of attorney, which did not exist in the first place or it was withdrawn, or from exceeding the limits within which the agent is authorized to act for the principal.

Nevertheless, there is nothing to prevent the principal from voluntarily assuming the effects of the agent's excessive act, by ratifying it. At the same time, the act may also be opposed against his will, should there be an apparent mandate.

2.2 Exceptional situations in which the agent's excessive acts are opposable to the principal

2.2.1 Ratification

In case the trustee is acting outside the limits of his power of attorney, the contract thus concluded will not produce effects between the principal and the third party contractor.⁵

From the interpretation of the provisions in art. 1311 par. (1) and art. 1312 of the Civil Code, it results that the principal will be able to ratify the act that was concluded by the agent exceeding the limits of his power of attorney, the effects of ratification occurring retroactively, without affecting the rights acquired by third parties in the meantime. Practically, as stated, "*ratification has the value of a valid mandate.*"

Thus, for example, in one case, the agent did not conclude the mortgage contract with bank Y, as authorized by the principals, but with bank X, thus exceeding the limits of the mandate by contracting with a third party other than the one indicated in the power of attorney. However, given that the principals tacitly ratified the acts concluded beyond the

⁵ Art. 1309 par. (1) of the Civil Code: "*The contract concluded by the person who acts as a representative, without having power of attorney or exceeding the powers conferred, shall not produce effects between the represented person and the third party contractor.*"

limits of the mandate, the court decided that the ratification stood for a valid mandate, so the principals were bound to the third party contractor within the limits of the ratified mandate. Their lack of consent cannot be retained, as such consent was subsequently given by ratification, tacitly, but unequivocally.⁶

In another case-law ruling revealing the retroactive effects of ratification, the court held that, although at the time the claim was brought (which stands for an act of disposition), the plaintiffs' agent had only a general power of attorney for the administration of the property, the action in court would not be rejected as being done outside the mandate, but it would be granted if, in the meantime, the principals confirmed the act of disposition (the action in claim).⁷

The third party contractor may grant, by notification, a “reasonable time” for ratification, after the fulfillment of which the contract can no longer be ratified (art. 1311 par. 2 of the Civil Code); this notification is in fact a contract offer from the third party contractor, which, once accepted, produces the retroactive effect of the conclusion of the contract directly in the person of the third party contractor and of the “represented” person. If the third party contractor wishes to establish contractual relationship with the one with whom he believed he was contracting, then ratification may occur and have retroactive effects, the rights and obligations arising from the business thus concluded being considered acquired in the person and property of the so-called “represented”, from the very moment the operation was concluded between the third party contractor and the alleged representative (art. 1312 of the Civil Code). The latter, as we see, cannot oppose ratification, except in agreement with the third contracting party, by abolishing the business concluded before ratification and only in the absence of a term conferred by the third party to the “represented” person, for the purpose of ratification. Thus, even if the “representative”, wishes to assume in his own name the effects of the act concluded on the basis of his alleged capacity as representative, he will not be able to do so against the will of the third party (who could invoke the annulment of the act, for fraud) or of the “represented” person, who, in turn, although has the quality of a third party of that act, can justify a legitimate interest in requesting the absolute nullity of the act concluded by the “representative”, with fraudulent cause.

Regarding the formal conditions of ratification, art. 1311 par. (1) of the Civil Code shows that it can be made by the one in whose name the excessive act was concluded in compliance with the forms required by law for its valid conclusion. It is a reiteration of the principle of symmetry of forms, which we also find in the special matter of the mandate contract, in art. 2013 par. (2) of the Civil Code. Therefore, the ratification will have to take the same form as the act that is its object, but only if it is the subject by law to a requirement of an *ad validitatem* form.

In conclusion, ratification can be carried out under the same conditions as the mandate; that means that, in principle, it is a consensual act, the requirement of symmetry of forms operating only if the act performed by the agent is a solemn one, *ad validitatem*.

⁶ Bucharest Court of Appeal, civil section IV, dec. no. 1890/2003. cited in *Bucharest Court of Appeal, Collection of Civil Judicial Practice 2003-2004*, no. 46, p. 155 and by L. C. Stoica, *The Mandate. Judicial Representation. Case Law*, 2nd ed., Ed. Hamangiu, Bucharest, 2010, no. 8, p. 38-39

⁷ High Court of Cassation and Justice, civil and intellectual property section, dec. no. 2330/2005, in *Dreptul* no. 8/2006, p. 214 and in V. Terzea, *The New Civil Code Annotated with Doctrine and Case Law*, 2nd vol (art. 1164-2664), Ed. Universul Juridic, Bucharest, 2011, p. 923

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This nature, consensual as a principle, of ratification, was moreover confirmed by a rich jurisprudence, as well as by doctrine.

Thus, Bacău Court, in decision no. 246/1915⁸ decides that the ratification by the principal of the acts concluded by the agent beyond the limits of the mandate is valid, even if it didn't meet the conditions requested by art. 1190⁹ of the Civil Code of 1864, being sufficient to have been made in awareness of the situation. In the same sense, Ilfov Court made the decision no. 696/1914¹⁰: the ratification provided by art. 1546 of the 1864 Civil Code may result from any facts or circumstances that clearly show the will of the principal to approve the acts concluded by the trustee beyond the limits of the mandate.

Tacit ratification results from the intention of the contracting party deduced from the circumstances of the case assessed by the court and especially from the voluntary execution in whole or in part of the obligation, knowingly made by the person against whom the contract is invoked.¹¹

Currently, the regime of confirmation of annulable legal acts is more permissive itself, the new Civil Code stating that this confirmation may also result from the tacit will to waive the right to invoke the nullity of the person entitled in this regard, provided that the will to waive is certain.¹² Moreover, in the absence of express confirmation, tacit confirmation may also result from the voluntary execution of the obligation at the time when it could be validly confirmed by the interested party.¹³ Thus, we believe that the principal's will to assume the legal consequences of an act concluded with exceeding the limits of the empowerment conferred to the agent may result not only from an explicit act formulated in this respect, but also from material deeds of execution of the obligations derived from the excessive act. Moreover, art. 2013 par. (1)¹⁴ of the Civil Code explicitly regulates the possibility of tacit acceptance of the mandate by the agent, by its voluntary execution; we believe that similarly, the principal who executes an act concluded by the agent on behalf of the principal, but without his authorization or by exceeding the limits of the empowerment received, achieves a tacit acceptance of both the mandate within its new limits, and the act derived from it. Of course, the freedom to choose the form of the act of ratification is restricted, as we have shown, by the need to comply with the form required by law for the valid conclusion of the ratified act, where such legal requirements exist.

2.2.2 *The apparent mandate*

As we have already shown, if the “*representative*” concludes a legal act without power of attorney (for example, in the event that the proxy has been revoked and the empowered person knew or could have known the withdrawal of his power of representation) or if they exceed its limits, the contract thus concluded will not produce effects between the

⁸ Cited in *Curier Judiciar* 16/1916 and by C. Hamangiu, N. Georgean, *cit. op.*, no. 23, p. 30

⁹ Art. 1190 of the Romanian Civil Code from 1864 stated that: “*The act of confirmation or ratification of an obligation, against which the law admits the action for annulment, is valid only when it includes the object, cause and nature of the obligation, and when it mentions the reason for the action for annulment, as well as the intion to repair the defect on which that action was based.*”

¹⁰ Cited in *Curier Judiciar* 5/1915, p. 42 and by C. Hamangiu, N. Georgean, *cit. op.*, no. 23., p. 30

¹¹ Bucharest Court of Appeal, 1st section, dec. no. 1201/1920, cited by C. Hamangiu, N. Georgean, *cit. op.*, no. 28, p. 30

¹² Art. 1262 of the Civil Code

¹³ Art. 1263 par. (5) of the Civil Code

¹⁴ Art. 2013 par. (1) of the Civil Code: “*The mandate contract may be concluded in written form, authentic or under private signature, or verbally. Acceptance of the mandate may also result from its execution by the agent.*”

so-called “*represented*” person and the third party contractor¹⁵, since the “*representative*” (*falsus procurator*) is not the exponent of the will of the one for whom he claims to contract. The person “*represented*” will have the quality of a third party reported to the respective act, which will therefore not be able to benefit or oblige him, according to the principle of the relativity of the effects of the contract (art. 1280 of the Civil Code).

However, the legislator states that the contracting third party will be able to act against the “*represented*” one, by invoking the contract against them, if they can prove the existence of a lawful appearance (apparent or deceptive representation), more precisely if “*by his conduct, the represented has caused the third party contractor to reasonably believe that the representative has the power to represent him and to act within the limits of the powers conferred*” (art. 1309 par. 2 of the Civil Code).

In such cases, the contract will be enforceable against the “*represented*”, who is guilty of misleading the third party, most often by omission, for example, by the fact that the “*represented*” did not take any necessary measures to ensure that third parties will be able to acknowledge the revision of the power of attorney (in the sense of restricting its limits), its revocation¹⁶ or the occurrence of a cause of cessation of the power to represent.¹⁷

Thus, the third party who concludes the contract with the legitimate belief that the apparent representative has the power of representation, precisely because of the conduct of the alleged “*represented*”, may hold the latter to perform the obligations arising from this act, based on the principle of the appearance that creates law (*error communis facit jus*).

The represented may modify the power of attorney conferred, extending or restricting the limits within which the representative may contract on his account and he also has the right to revoke it, just as the representative may waive the power of attorney received (art. 1305 of the Civil Code).

Art. 1302 of the Civil Code provides that the third party contractor always has the right to require the person claiming to act on behalf of another one to prove the powers entrusted to him by the represented person and, if the power of attorney was conferred by a written document, to give him a copy of that act, signed for compliance. In this way, the representative will prove both the existence of his power of representation, and the limits within which it allows him to act on behalf of the represented.

Normally, the power of attorney is conferred before the representative concludes with the third party the act envisaged by the represented one, precisely in order to carry out the respective business. However, the power of attorney can be granted *post factum*, in the form of the ratification by the “*represented*” one of the acts concluded on his behalf by the person who did not have the power to represent him (according to art. 1311 par. 1 of the Civil Code). In this way, the effect of non-enforceability against the “*represented*” of the acts concluded

¹⁵Art. 1309 par. (1) of the Civil Code: “*The contract concluded by the person acting as a representative, but without having power of attorney or exceeding the powers conferred, shall not produce effects between the represented one and the third party.*”

¹⁶On this matter, art. 1306 of the Civil Code states that “*modification and revocation of the power of attorney must be notified to third parties by appropriate means. Otherwise, they are not enforceable against third parties unless it is proved that they knew or could have known them at the time of the conclusion of the contract.*”

¹⁷Art. 1307 of the Civil Code provides that: “*(1) The power to represent ceases by the death or incapacity of the representative or of the represented, if from the contract or the nature of the business does not result otherwise. (...) (3) In case of starting the insolvency procedure of the representative or the represented, the power to represent ceases under the conditions provided by law. (4) The termination of the power to represent shall not affect third parties who, at the time of the conclusion of the contract, were not and should not have been aware of this circumstance.*”

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on his behalf by the alleged “*representative*” is removed, as ratification has the value of a valid mandate.

In a case settled in 2009, the court pointed out that if a third party, based on erroneous beliefs, concludes an act with a person who did not have the power to perform it, the appearance thus created allows the recognition of the validity and enforceability of that act. If the conclusion of that contract exceeds the limits of the mandate granted to the agent, the contracts concluded with third parties acting in good faith are valid and therefore opposable to the principal, based on his fault in choosing a representative who abused the powers conferred on him.¹⁸

Therefore, the court supports the validity and opposability to the principal of the excessive acts of the agent, concluded by him with third parties acting in good faith, stating that the principal's liability is based on the presumption of fault *in eligendo*.

Such a position blatantly contradicts the provisions of art. 1309 par. (1) and art. 2017 par. (1) of the Civil Code. The principal's liability for the acts concluded on his behalf without the agent having power of attorney may be established, as shown in par. (2) of art. 1309 of the Civil Code, only on the existence of a lawful appearance, which presupposes a proven fault of the “*represented*”. The fault of the “*represented*” cannot be presumed from the simple fact of ignorance by the third party of the fact that the trustee is working outside the limits of his mandate. The liability of the “*represented*” could not in any case derive from the presumption of his guilt based simply on the fact that the agent proves to be a person of bad faith, who abuses the trust conferred by the principal.

Indeed, art. 1309 par. (2) of the Civil Code enshrines the responsibility of the represented person regarding the acts concluded by the representative with exceeded the limits of the conferred powers, but the fault of the represented one is in no case a presumed one, the legislator explicitly stating that “*the represented may not rely on the lack of power to represent in relation to the third party contractor*”, except for those situations in which he himself, “*by his conduct, has caused the third party to reasonably believe that the representative has the power to represent him and that he is acting within the limits of the powers conferred.*” Therefore, the civil responsibility of the represented can be related to his fault of misleading the third party acting in good faith, by creating a false appearance of the existence of a power of representation, a fault that is not only attributable to the false representative, but also to the so-called “*represented*”. Therefore, the guilt of the “*represented*” will have to be proven by the third party who wishes to enforce the excessive act on him, as it cannot be presumed. In fact, in general, the fault is not presumed, except for the cases where the law expressly establishes such a presumption.

In the same sense, an author stated: “*In the absence of a valid power of attorney or if the limits of the power granted are exceeded, the representation cannot have the effect of transmitting the power of representation, validly, to the intermediary, or producing the effects of the legal acts that he has concluded with third parties upon the patrimony of the allegedly represented person. Therefore, in the circumstances shown, the person in whose interest the legal operations are concluded will have the quality of a third party to those legal acts,*

¹⁸ The High Court of Cassation and Justice, Commercial section, dec. no. 1754/2009, cited in V. Terzea, *cit. op.*, p. 924

according to the principle of relativity of the effects of legal acts. Therefore, the acts in question will neither benefit, nor harm third parties."¹⁹

Therefore, in the absence of his proven guilt, the so-called "represented" cannot be held liable for those acts, in relation with which he has the position of a third party, and of course that he can neither claim any right derived from them. This is the interpretation of the principle provided by art. 1309 par. (1) of the Civil Code²⁰, from which par. (2) establishes a derogation, on the grounds of guilt from participating in the creation of a false but "reasonably" believable appearance, which gives rise to liability for the "represented" person.

In fact, case-law has repeatedly ruled in this regard. Thus, it has stated²¹ that if the trustee has not made known to the third party the extent of his power of attorney and the third party, acting in good faith, has been misled as to the quality which the agent has acquired by exceeding his mandate, the legal consequences arising from the act thus concluded cannot be enforced on the so-called "principal", who in this given situation has the position of a third party in relation to that legal operation.

The criticized judgement is by no means singular.

Thus, in an earlier judgement of the Court of Cassation, it was considered that the principal would have to assume the effects of the acts concluded with third party contractors acting in good faith by the so-called "agent", even if the latter was acting in the name of the principal knowing that he no longer had the power to represent him. The Court stated that the liability of the "principal" was justified by his fault in the election of the agent: "(...) from combining art. 1558 and art. 1554 of the Civil Code (from 1864), it results that the contracts concluded with third parties of good faith are valid and therefore opposable to the principal, even if the agent would have known the cause of the mandate termination, because only the principal is guilty to have entrusted his powers to a person who abused them, whereas the third party contractors, not being aware of the cause of mandate termination, have no fault and therefore their interests cannot be damaged for other persons' fault."²²

A similar view, in the sense that the principal assumes the effects of the act concluded with third party contractors acting in good faith by the deceivable agent, was also supported by legal doctrine²³, the author stating that the principal's liability is based upon the same guilt regarding the entrusting of the power of representation to a person who abuses it. On the other hand, the doctrine cited argues that the opposability to the principal of the act thus concluded derives from the existence of an apparent mandate, namely from the fact that, "(...) although the will of the principal to be represented is lacking (...), third parties are contracting with the excusable and legitimate belief (so without any fault, but not necessarily common error) that the apparent trustee has powers of representation; as it was stated, <<legitimate belief has the value of a legal act>>. This happens, for example, in the case of the mandate revocation, which was not brought to the attention of third parties (art. 1554 of the 1864 Civil Code), regardless of the fact that the principal was guilty or not (but not completely

¹⁹ D. A. Sitaru, Considerations regarding representation in the new Romanian Civil Code, in *Revista Română de Drept Privat* no. 5/2010, p. 137-170

²⁰ Art. 1309 par. (1) of the Civil Code provides that "the contract concluded by the person acting as a representative, but without having power of attorney or exceeding the powers conferred, shall not produce effects between the represented and the third party."

²¹ Cas. I, dec. no. 212/1881, cited by C. Hamangiu, N. Georgean, *cit. op.*, no. 1, p. 25

²² Cas. II, dec. no. 544/1924, cited by C. Hamangiu, N. Georgean, *cit. op.*, no. 2, p. 42

²³ Fr. Deak, *cit. op.*, p. 361, 341

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foreign to the appearance created either). The good faith of the third party is presumed, according to general rules.” Therefore, in the opinion of the quoted author, the principal was sanctioned both for the mistake of choosing an agent not worthy of trust, and for failing to take the necessary steps to ensure that third parties were aware of the cause of mandate termination (for example, by notifying them, when required by law, as was the case of notifying the third party regarding the revocation of the mandate – art. 1554 of the Civil Code of 1864).

However, in the regulation of the new Civil Code, the legislator does not require the principal to communicate the termination of the mandate to third parties, it being opposable to third parties who knew or should have known this circumstance (art. 1307 par. 4 of the Civil Code), regardless of the means by which they may become aware of it. Therefore, the principal's responsibility towards third parties is reduced to making it possible for them to know about the termination of the mandate, by “*appropriate means*” (art. 1306 of the Civil Code).

As a consequence, the principal will not be bound by the act concluded by the trustee who, in bad faith, continues to act on behalf of the principal after the termination of his mandate, contracting with good-faith third parties, unless he failed to provide to third parties the possibility of acknowledging the cause of the mandate termination, or if by his behavior, he determined the third party contractor to reasonably believe that the agent had the power to represent the principal and that he was acting under and within the limits of this power of attorney (art. 1309 par. 2 of the Civil Code); therefore, under the rule of the current regulation, the apparent mandate will exist only if the third party who invokes it can prove the gulfity and deceptive conduct of the principal, as it does not exist in the absence of the fault of the “*represented*” person.

CONCLUSIONS

In conclusion, we believe that ratification of the agent's excessive acts can be made in the same form as the proxy itself, that is, in principle, a consensual act, since the requirement of symmetry of forms is operating only when the act concluded by the trustee is *ad validitatem* a solemn one. Tacit ratification may result from the intent of the party, inferred from the facts taken into consideration by the court and especially from voluntary execution of the obligation, either complete or partial, that has been done deliberately by the party on whom the contract is being enforced.

Regarding the apparent mandate, doctrine and jurisprudence sometimes stated that the principal's liability towards third parties acting in good faith for the acts concluded by the agent outside the limits of his powers was based on the presumption of an *in eligendo* fault. We cannot share this view. For purpose of enforcing the excessive acts of the trustee on the principal, the third party will have to prove the principal's fault, which may not be presumed. Thus, an apparent mandate will only exist if the third party claiming it can prove culpable and misleading conduct of the principal, since it cannot exist in the absence of the fault of the “*represented*” person.

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