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THE CLASSIFICATION OF THE CIVIL CONTRACTS FROM THE NEW CIVIL CODE

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Abstract

In this paper ,we are debating the problem of the relationship between the civil juristic document and the contract .The civil juristic document was defined as ... „a manifestation of will with the intention of producing juristic effects, meaning the birth, change and cancel of an concrete civil juristic relation" or … "the manifestation of will occurred for the realization of juristic effects materialized in the creation, the change, the transfer or the canceling of an concrete civil juristic relation" (Art.1166 C.civ.).

The contract was defined [1]in the doctrine as the agreement of a will between two or more persons for the purpose of producing juristic effects, in other words giving birth, changing, transferring or canceling juristic relations. The contract is the main form of the juristic act, and the new civil code made the classification from more points of view (art.1171-1177) in synallagmatic and unilateral contracts, contracts with onerous title and contracts with costless title, contracts with immediate or successive fulfillment, named or no-named contracts, consensual, solemn and real contracts, etc.

Keywords: *the synallagmatic and unilateral contracts, contracts with onerous title and contracts with costless title, contracts with immediate or successive fulfillment ,named or no-named contracts, consensual, solemn and real contracts.*

Introduction

The contracts can be classified from more points of view. Each one of the classifications made by the doctrine has a theoretical and practical interest. Most frequently, the classification of a contract included in a certain category obligates the contract to produce certain juristic consequences that are different from the ones that are created by the contracts that belong to other categories.

The new civil code regulates deliberately some of them, for example: sale and purchase, location, society, mandate, bailment, transaction etc. As we will see some classifications of the contracts are enumerated in the texts of code (art. 1171-1177), other classifications are the result of the juristic doctrine activity.

I. The civil juristic document was defined as „a manifestation of will with the intention of producing juristic effects, meaning the birth, change and cancel of an concrete civil juristic relation" or "the manifestation of will occurred for the realization of juristic effects materialized in the creation, the change, the transfer or the canceling of an concrete civil juristic relation" (Art.1166 C.civ.).

[1] See art.1166 from the New civil code

The contract was defined in the doctrine as the agreement of a will between two or more persons for the purpose of producing juristic effects, in other words giving birth, changing, transferring or canceling juristic relations.

The comprehension domain. As it may be observed from the analysis of the two juristic categories – the juristic act and the contract – results:

a) the civil juristic act is a manifestation of will occurred in the purpose of producing juristic effects, while the contract is an agreement (agreement of will) occurred to produce juristic effects;
b) the manifestation of will in the case of the civil juristic act is non circumstantiated under the aspect of the number of the civil right subjects, which means that, in this case, the will can be unilateral (manifested by only one person) or we can find ourselves in the presence of an agreement of will (a will that is manifested by two or more persons that, together, create the agreement of their will);
c) in the case of the contracts we discuss only the agreement of a will that occurs between two or more persons in the purpose of …;
d) According these elements, results that civil juristic act has a bigger comprehensive domain than the contract, because between the civil juristic act and the contract exists a gender (a whole) – species (party) relation, the whole namely the gender is the civil juristic act and the species, the party is the contract.

The main form of the civil juristic act is the contract. This results from the following specifications:

a) as a domain of comprehension, the contract almost covers the comprehension domain of the civil juristic act;
b) the bilateral juristic acts (the contracts) have a much bigger frequency in the daily juristic life than the unilateral civil juristic acts; people may realize or not what they do, but they are concluding every day an impressive number of contracts. For example, every day people buy the necessary things nourishment and we have, through extrapolation to all of his needs, the approximate image of the impressive number of the contracts that he concludes;
c) among the civil juristic acts, the contract represents the juristic category of civil right without which the juristic operations between the civil right subjects cannot be conceived;[2]
d) a large number of legal texts are assigned for the contract, this is why there is a much wider domain of juristic rules in comparison with the other civil juristic acts.

It can be observed that the juristic regulations concerning the contract, trough extrapolation, are applied in some cases to the civil juristic act. Even from the way of defining the civil juristic act by the specialized literature – the definition, on one side, of his various species, and on the other side, the general definition of this act – results that in the outlining of the civil juristic act, we start from the consecrated juristic regulations of his most important species – the convention (the contract) – and other species as the offer, the testament etc.

II. The classification of the contracts

The importance of the classification. The contracts can be classified from more points of view. Each one of the classifications made by the doctrine has a theoretical and practical interest. Most frequently, the classification of a contract included in a certain category obligates the contract to produce certain juristic consequences that are different from the ones that are created by the contracts that belong to other categories.

The new civil code regulates deliberately some of them, for example: sale and purchase, location, society, mandate, bailment, transaction etc. As we will see some

[2] See Liviu Pop " *Treaty of the civil law"*, "Universul Juridic" Publishing House, Bucharest 2011, p.122.

classifications of the contracts are enumerated in the texts of code (art. 1171-1177), other classifications are the result of the juristic doctrine activity.

II. 1. Synallagmatic contracts and unilateral contracts

Depending of their content, the contracts are classified in synallagmatic contracts and unilateral contracts.

The synallagmatic contracts. The synallagmatic contracts are the contracts that give birth to some mutual obligations between the parties. Every party of the contract assumes obligations and of course, and receives rights as well.

The specific of the synallagmatic contract is the mutual and interdependent character of the party's obligations. This means that every party has at the same time the quality of creditor and the quality of debtor. In comparison with the other party: the obligation that costs one of the parties has a juristic cause in the mutual obligation of the other party; they cannot exist one without the other, they are interdependent.[3] The idea of cause, that explains the interdependency of the obligations in the synallagmatic contracts, must be understood in a bivalent way, as a manifestation of the idea of the purpose when the contract is concluded and during the existence and the execution of the contract.

The most relevant example of the synallagmatic contracts is the sell – purchase contract. The seller takes the responsibility to transfer the right of propriety of the soled object and to hand it over, and the buyer has the obligation to pay the price. This example demonstrates that in the synallagmatic contracts:

- parties assume obligations, but they also earn rights;
- the obligations of the parties are mutual, meaning that all the parties from this type of contract have obligations;

the obligations of the parties are in connection, meaning that to one obligation of one party it corresponds a certain obligation of another party; for example, to the obligation of the seller to transfer the right of propriety of the soled good corresponds the obligation of the buyer to pay the price or to the obligation of the seller to hand over the soled good corresponds the obligation of the buyer to receive the soled good.

The unilateral contracts. The unilateral contracts are the contracts that born obligations only for one of the parties, the other party is the holder of some correlative rights. The new Civil Code in the article 1171 stipulates: "The contract is unilateral when one or more persons have obligations towards one or more persons, without the last one to have obligations". One party is only debtor and one party is only creditor. Thus in a donation contract the giver is only a debtor and the acceptor is only a creditor.

II. 2. Contracts with onerous title and contracts with costless title

This is the classification of the contracts that considers the purpose of the parties in the moment of their conclusion.

Contracts with onerous title. These contracts are those ones in which each of the parties intends an advantage, a conscription in exchange, meaning the creation of an own patrimonial interest. The head quarter for this is the article 1172, new Civil Code, that stipulates „The onerous contract is the contract in which every party wants to receive an advantage". This includes the location contract, the change contract, life annuity contract etc. There are two types of onerous contracts: commutative and aleatory.

The onerous title contract is commutative when the obligation of one party is the equivalent of the obligation of the other party. It is characterized through the fact that the mutual labor conscriptions to which the parties obligate themselves are equivalent, and the dimension of the owed labor conscriptions by the parties is sure and their value is known from the moment of the contract's conclusion. We can observe that the contracts with onerous title have a commutative character[4].

[3] See Valeriu Stoica ,"*The civil law and the civil contracts*", "Editas" Publishing House, Bucharest, 2011, p. 206.
[4] See Gabriel Boroi,"*The new civil code*", Hamangiu Publishing House, Bucharest, 2010, p. 238.

The aleatory contract. According to the regulations of article 1173, paragraph 2 of the new Civil Code, a contract is aleatory when the equivalent depends, for one of the parties, by an uncertain event. Thus the advantages that will be obtained are unknown because the parties have obligations, one towards the other, that depend on a future and uncertain event concerning the production or at least the moment of the production of it. The event represents for every party, at the same time a chance to win and a risk to lose. An example of this type of contract is the insurance contract, life annuity contract, the maintenance contract etc.

II. 3. The charity contracts or with onerous title

The new Civil Code, article 1172, paragraph 2, stipulates: "The costless contract or charity contract is the contract that in which one of the parties wants to obtain, without an equivalent, an advantage for the other". Thus, one of the parties has the obligation to obtain for the other a patrimonial advantage without receiving something in exchange. Are parts of this category: donation, bailment, mandate, guarantee etc.

These contracts are divided in: liberality and costless service contracts or disinterested contracts.

a) The liberalities are those onerous contracts through which one of the parties transfers a right from his patrimony in the patrimony of the other party without receiving an equivalent. One of the parts becomes poor and the other rich. The object of this type of contract is the labor conscription of giving. Through liberalities we mean the donation contracts. We want to mention that enter, in the wide category of liberties, some unilateral juristic acts, example the legatee.
b) Contracts of costless services or disinterested contracts are those contracts through which one party has the obligation to do a service without becoming poorer and neither in the purpose of the enrichment of the other party: costless mandate, the costless bailment, the costless loan.

At the base of the difference between these contracts with onerous title and those with costless title are two criteria: an objective and a subjective. The objective criteria consist in the existence of mutual advantages for both parties in the onerous contracts and the lack of any advantage for one of the parties in the costless contracts. The subjective criteria consist in the cause or the purpose of concluding the contract. In the onerous contracts, the parties give their consent for concluding the contract having the intention of obtaining an equivalent in exchange of the labor conscription that is obligated. On the contrary, in the contract with costless title, the party that has the obligation is doing it in the purpose or with the intention of obtaining an advantage for someone else, without claiming, under juristic aspect, nothing in exchange. Therefore, the subjective element consists in the intention of liberality.

II. 4. Contracts with immediate or successive fulfillment

These types of contracts are those classified according their execution.

Contracts with immediate execution (instantaneous) are those contracts whose execution is made immediately after their conclusion; normally the object of the obligation is labor conscription. Contracts with successive execution are those contracts whose execution takes place in time, as permanent labor conscription, for example the renting contract or as some successive labor conscriptions, for example the providing contracts. The importance of this classification consists in the followings:

- for the non execution from guilt of the contracts with immediate execution operates the resolution and therefore, is abolished with retroactive effect, while the non execution by guilt of the contracts with successive execution operates the annulment and are abolished only for the future[5];

[5] See Constantin Stătescu, Corneliu Bîrsan, *"The civil contracts"*, Hamangiu Publishing House, Bucharest 2010, p. 178.

- some contracts with successive execution can be annulled through the will of any party, for example the location contract without a term, or only through the will of one party, for example the renting contract or the bailment contract;
- normally, the suspension of the obligations is put only in the contracts with successive execution;
- this classification presents an importance even in the domain of supporting contractual risks, according to the rules that govern this domain.

II. 5. Named contracts and no-named contracts

Named contracts are the contracts that have a special regulation, that correspond to some economical operations. Ex: the selling contract, the location contract, the change contract etc. This category of contracts was known even in the roman law, it was called nova negotio (new juristic acts) containing:

- do ut des = I give you so you can give me;
- do ut facis = I give you so you make me;
- facio ut des = I make you so you can give me;
- facio ut facias = I make you so you can make me[6].

The importance of this classification consists in the fact that parties do not have to stipulate all the relation's implications in which they enter, because these are regulated by the law, only if they violate the regulations – suppletive of course – of the law, while, in the case of the no-named contracts, the parties have to stipulate the clauses the refer to all the implications of such relations.

II. 6. Consensual contracts, solemn contracts and real contracts

This classification has at it's base the criteria of their way of valid creation (art.1174, new code civil).

A. Consensual contracts. Are those contracts that are concluded through the simple agreement of the parties (solo consensu), without no other formality. In our law, the consent is a principle that has some exceptions to, deliberately stipulated by the law for some contracts. The existence of these exceptions is determined by the necessity of protecting the interests of the parties and of third parties and other times, for the defense of a public interest. Therefore, regarding the parties, the obligation of respecting some formal conditions is disposed by the law to win their attention on the importance of their decisions and offers them time to think; otherwise, the respect for a certain form, that consists, normally, in the writing of a document, means precision and clearness in the establishment of the contract's effects and of the parties responsibility, offering to the third parties, that want to contract one of them, the possibility to know for sure the existent juristic relation. Other times, the written form of the contract is to serve the public interest consisting in the necessity of knowing, by some authorities of the State, all the changes that have occurred in the juristic situation of some goods of great importance for the society, as the real estates.

B. The solemn contracts. The solemn contracts are those contracts for which for conclusion to be valid is needed that the will agreement of the parties to wear a certain form or to be enclosed by certain solemnities foreseen by the law. The simple will agreement is not sufficient to have the value of a contract. Not respecting the form or the formalities foreseen by the law is penalized with the absolute nullity of the contract. The solemn contracts are: the donation (art. 1011/1033 Civ. c), the mortgage contract (art. 1772 Civ. c), conventional subrogation agreed by the debtor (art. 1107 p. 2 Civ. c), the selling-buying of the lands (art. 46 from the Law nr. I8.1991). All these contracts must be concluded under the form of authentic document. Exception is the donation of mobile goods, when the solemnity that must be respected consists in the material handing of the good or the goods from the giver to the receiver.

[6] See Liviu Pop, " *Treaty of the civil law"*, "Universul Juridic" Publishing House, Bucharest, 2011, p. 336.

C. The real contracts. Are those contracts for which forming, besides the will agreement of the parties, the material handing of the thing that is the object of one of the party's carrying-out is also needed. The juridical doctrine includes in this category: the loan of consumption, storage, the mortgage contract and the transportation contract. All these contracts are considered concluded only from the moment of the handing of the good at which it refers. Considering those shown above, within the literature of specialty has been said that in reality we wouldn't find ourselves in front of the presence of different categories of civil contracts. This because the handing of the good, object of the contract, from a party to the other, would be a necessary solemnity for the conclusion of the contract. There for, the solemn contracts may be grouped in: authentic contracts and real contracts. For one, the solemnity consists in an authentic document, and for the other, in the material handing of the good, object of the contractual carrying-out.

Conclusions

Most frequently, the classification of a contract included in a certain category obligates the contract to produce certain juristic consequences that are different from the ones that are created by the contracts that belong to other categories.

The new civil code regulates deliberately some of them, for example: sale and purchase, location, society, mandate, bailment, transaction etc. As we will see some classifications of the contracts are enumerated in the texts of code (art. 1171-1177), other classifications are the result of the juristic doctrine activity. Depending of their content, the contracts are classified in synallagmatic contracts and unilateral contracts.

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The aleatory contract. According to the regulations of article 1173, paragraph 2 of the new Civil Code, a contract is aleatory when the equivalent depend, for one of the parties, by an uncertain event. Thus the advantages that will be obtained are unknown because the parties have obligations, one towards the other, that depend on a future and uncertain event concerning the production or at least the moment of the production of it.

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