LIBERTIES - LEGAL ACT OF UNILATERAL OR BILATERAL TRAINING

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Abstract
We analyzed liberality, special institution of civil law substantially in two particular aspects: legal document formation legal act unilaterally and bilaterally band.
Every human life is a complex and irreversible phenomenon, which they flow, limited in time, involve many connections with other beings, interfering various rights and obligations, concessions and compromises in the most varied forms.
Within this complex phenomenon are inherent and legal operations are intertwined in the thread everyday life, day after day.
Legal acts are governed by common rules, essential and generally applicable, on unilateral expression of will, the conditions of formation of the agreement will, in respect of conditions of life imperative, the form you need to put the act .
Human freedom is expressed through law. But what is really important, lies in the fact that human beings can not be taken away freedom of choice to discern between good and evil, between normal and abnormal. Each person in relation to choice of law can have consequences.

Keywords: *liberality, will, unilateral, bilateral, civil act.*

Introduction

Liberality is primarily a legal act.

In the following we intend to analyze this special institution of civil law substantial under two particular aspects: the legal act formation legal act unilaterally and bilaterally formation.

In the general context of the study we specify that the Civil Code of 1864 was not true of general rules of civil act. A indirect regulation of legal act concept could be found in Title III of Book III of the Civil Code, "About contracts or agreements".

In doctrine, civil act has been defined generally as a manifestation of the will made with the intention to produce legal effects, that is, born, modify or extinguish a specific legal relationship[1]

A) Juridical act - manifestation of will

In addition to the classical definition of the legal act, pointing out that "the legal act is a manifestation of will - unilateral, bilateral or multilateral committed with intent to establish, modify or extinguish, according to objective law, legal relations, provided that the existence of this intention to produce legal effects depend on itself (sn) [2]".

The civil legal act, has the following elements:

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[1] See G. Boroi, *op, cit*., p. 185; see V.V. Popa, *op. cit.,* p. 62.

[2] See M. Mureşan, *Civil Law. General part,* Cordial Publishing, Cluj-Napoca, 1994, p. 106.

- a manifestation of the will (which may come from one or more individual or legal entities)[3]

- manifestation of will is expressed with the intention to produce legal civil effects[4]

- the pursued legal effects may consist in giving birth, modify or extinguish a specific civil legal relationship

We mention that the term "act" can have two meanings: legal operation (*negotium iuris*) or document acknowledging the manifestation of will, meaning the material support notifiying or rendering the legal operation (*instrumentum probationis*)[5].

In relationship with the planned, existence of this effect, particularly on the one hand, acts committed with intent to produce legal effects, that is civil legal acts and on the other hand, acts committed without intention to produce legal effects, but shall take effect under the law, that is legal acts *(stricto sensu)*[6].

We mention that particular importance present the classification of legal acts according to their volitional nature in the events, or natural facts, and actions, or voluntary acts, "because only if the latter, law will assign legal relevance to the will."

Events are those surrounding reality changes that occur beyond the control of the individual, but born, alter or extinguish concrete legal relations under the law[7].

Therefore, civil acts include actions which manifest the intention of the author, in the meaning of birth, alteration or extinction of specific civil legal relations.

Consequently, the volitional character, different legal acts (events and actions) committed without intention to produce legal effects[8].

In the national doctrine of legal act is studied in the two forms already established (unilateral legal act and contract), unlike the French theory that divides legal documents: contracts, unilateral legal acts and legal acts of collective[9].

The category of collective legal acts consists of : collective unilateral acts (such as majority decisions - acts of will that precede a common final) and collective agreements (eg collective agreements)[10]. Unilateral legal act is a manifestation of a (single) will, in order to produce legal effects[11]. As the result of a single legal will, unilateral act is likely to produce legal effects in itself, not being conditioned by the consent of another person[12].

As regards the issue concerning the quality source of obligations of the unilateral act, in doctrinal and jurisprudential plan, have emerged two tendencies:

- first, he deems the unilateral legal act a source of obligations only in cases prescribed by law;

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[3] See Şt. Răuschi, Civil law. The general part. Individual. Legal person, Foundation House "Chemarea" Publishing , Iaşi, 1993, p. 75.

[4] See P.M. Cosmovici, Civil law. Introduction to Civil Law, All Publishing House, Bucharest, 1994, p. 95.

[5] See Pop, Gh. Beleiu, *op. cit.*, p. 187.

[6] *Stricto sensu,* legal fact only means individual actions that produce legal consequences by effect of law against the will of the perpetrator, and natural facts, see RI Motic, Mihai Gheorghe, Introduction to the study of law, Alma Mater Publishing House, Timisoara, 1995, p 201 et seq.

[7] See E. Lupan, M. Răchită, D. Popescu, Civil law. General Theory, Babes-Bolyai University, Cluj-Napoca, 1992, p. 114.

[8] Volitional nature it is of essence of civil act in an area where "right it is a world of finalities, the civil act it is set to reach participants predilect instrument to legal circuit realization of subjective interests protected by the law" see St.. Rausch, op. cit., p 75, T. Pop, Romanian Civil Law. General Theory, Lumina Lex, Bucharest, 1993, p 119.

[9] According to the art. 1166 of the New Civil Code, "contract is the agreement of wills between two or more persons intended to constitute, modify or extinguish a legal relationship."

[10] See J. Four, J.L. Aubert, E. Savaux, *op. cit.,* (2006), and 416 and seq..

[11] See E. Chelaru, *op. cit.,* p. 100.

[12] See N. Popa, General Theory of Law, All Beck Publishing House, Bucharest, 2002, p 276 et seq.

- the second most recent, which includes the unilateral legal act, part of obligations sources category whenever there is a firm promise that does not require acceptance for.birth.

Between civil legal act and manifestation of will can be establish the following correlation: if any legal act is a manifestation of will, "not every manifestation of will is a legal act"[13].

Consequence of individual action and beyond its, legal acts take effect in the classification of concrete material situation, in the general and abstract pattern of law.

Legal facts, broadly, are situations which the rule of law assigns in precisely defined circumstances, legal relevance, for the purposes of generation, variation or settlement of legal relations[14]. The concept of legal fact is identical with the source of the legal ground. In the limited sense, the legal fact means only individual actions that produce legal consequences by effect of law against the will of the perpetrator, and natural facts[15].

B) Legal will in unilateral legal acts

The term "unilateral act" is established and used whenever it is a legal document expressing the unique will of its author's[16]. Therefore, unilateral legal act is a manifestation of a will to produce legal effects[17]. In the the above conditions, is likely that unilateral legal act to produce legal effects itself unconditionally by consent of another person. Worth mentioning that french doctrine distinguishes between unilateral legal act and unilateral commitment, placing the two concepts in a similar relationship to that of agreement - contract. Therefore, in the accordance with art. 1101 of French Civil Code, the contract is defined as a "generating convention obligations" unilateral commitment is a specie of unilateral legal act which results in the birth of obligations on its author[18]. National doctrine, has an original vision of the unilateral legal act institution. As "a specific procedure for creating private norm" unilateral legal act is defined as "a unilateral declaration will be issued for the purpose to generate, modify or extinguish a civil institution, or in order to find acceptance"[19]. It follows that unilateral legal acts are susceptible of classification as they have or do not need to produce specific effects of an acceptance from another person unilateral acts statute and non statutory unilateral acts. Statuary unilateral act is characterized by that "manifestation of will is sufficient to generate a set of legal relationships, which will apply to the issuer"s will, act being born valid and effective without the need for acceptance from another entity "[20]. In terms of potestative rights theory, the doctrine considers that exercise of the potestativ right only depend on unilateral will of its owner, who, by the exercise of this right, will get new legal effects in the relation to a specific new legal situation[21]. Similarly, the classical doctrine has opined for the impossibility of unilateral will of generating an obligation on the promissory and benefit of the others. In support of the above

[13] See I. Dogaru, *op. cit.*, 2005, p. 6.

[14] See R.I. Motica, Gh. Mihai, Introduction to study law, Alma Mater Publishing House, Timisoara, 1995, p 201.

[15] See G. Boroi, *op. cit*., p. 43; E. Chelaru, *op. cit.,* p. 100.

[16] See M. Avram, Unilateral act in private law Hamangiu Publishing, 2006, p 18.

[17] According to the art. 1324 of the New Civil Code, "is the legal document that requires only unilateral expression of will of its author." According to the art. 1325 of the New Civil Code, "If not otherwise provided by law, the laws relating to contracts are properly applied unilateral acts".

[18] See M. Avram, Some theoretical and practical aspects of unilateral voluntary act Romanian law and Community law, Annals of University of Bucharest: Rosetti, 2003, p 49.

[19] See M Avram, *op. cit.*, p. 18.

[20] See P. Vasilescu, *op. cit*., p. 155.

[21] See L. Pop, *op. cit.,* p. 136; I. Deleanu, Parties and third parties. legal effect and enforceability of relativity, Rosetti House, Bucharest, 2002, p 212.

has argued with the symmetry principle of civil legal acts, whereby a legal act may be revoked or modified under similar conditions it was concluded[22]

C) Foundations of unilateral act in the private law

Unilateral legal act has its source in the definition of the legal act in general and it is based on will"s subjects, which aim to create certain legal effects[23]. In the doctrine, will"s role within legal act was the subject of controversy, since "you can not ignore the fact that positive law determine to what extent, this will create subjective rights and obligations"[24].

In this context we show that, in civil act theory a particular importance has the classification of legal acts according to their volitional nature in the events, or natural facts, and actions, or voluntary acts, "because only in the latter case the law assigns legal relevance to the will ". We remind that the events are those changes of surrounding reality that occur beyond the control of the individual, but born, alter or extinguish concrete legal relations under the law[25].

For example, are included in the category above: human birth, resulting in the appearance of a new entity; reaching the age majority and gaining full legal capacity; passage of time in consequence of acquisition or extinction of rights, natural catastrophes and disasters, legal with the effects related[26]. Human actions are omission or commission facts, committed with or without the intention of producing legal effects, appointed in the doctrine and the notion of legal facts stricto sensu.

Human action involves a subset depending on the legality or illegality of the action. Lawful facts, which do not affect the rule of law and social values, and enforceable in the power of legal rules are: business management, undue payment or unjustified enrichment[27].

Illegal acts, offenses and quasidelictele, although voluntary acts, it will take effect from the power of their author, but by law.Note that the scope of civil legal acts include actions which the author will be manifested in the sense of birth, alteration or extinction of specific civil legal relations. Volitional nature is what distinguishes civil legal act other legal acts committed without intention to produce legal effects[28]. In this context, we remind that the majority of the doctrine has civil legal act defined as the manifestation of will made with the intention to produce legal effects, that is, born, modify or extinguish a specific legal relationship[29]. Note in conclusion that the foundation the unilateral legal act is his volitional character. In other words, the civil act is "the predilect instrument offered to the participants to achieve their subjective rights and interests protected by law"[30].

As a result of a single legal will, unilateral act is susceptible to produce legal effects itself unconditioned by the consent of another person. More precisely, unilateral legal act is a manifestation of a will in order to produce legal effects[31].

The recognition of unilateral legal act as a source of civil obligations meets the draft of European Code of Contracts which stipulates that the promise made with intent to be bound linking

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[22] Therefore, those original author will unilateral legal act may thus be revoked the discretion of it at any moment.

[23] According to the art. 1325 of the New Civil Code, "If not otherwise provided by law, the laws relating to contracts are properly applied to unilateral acts".

[24] The foundation of the legal act under private law is different in comparison with public law, see M. Avram, op. cit., (2006), p 12.

[25] See O. Ungureanu, *op. cit.,* p. 103.

[26] See E. Poenaru, Introduction to civil law. General Theory. People, Publishing Dacia Nova Europe, Lugoj, 2001, p 93.

[27] See P.M. Cosmovici, Civil. Introduction to Civil Law, All Publishing House, Bucharest, 1999, p 68.

[28] See M. Muresan, Civil. Part general, Cordial House, Cluj-Napoca, 1994, p 106.

[29]See Tr Ionaşcu, legal elements will, in the Treaty of civil law, vol I, Part General, Publishing House, Bucharest, 1967, p 258.

[30] See T. Pop, Romanian Civil Law. General Theory, Lumina Lex, Bucharest, 1993, p 119.

[31] See D. Cosma, General theory of civil act, Scientific Publishing House, Bucharest, 1969, p 14.

its author[32]. As already mentioned, the french doctrine distinguishes between unilateral legal act and unilateral commitment, placing the two concepts in a similar relationship agreement - contract. Therefore, unilateral commitment is a specie of unilateral legal act which has results in the birth of obligations on its author[33]. In conclusion, having the origin in unilateral will of the author, the obligations of the legal act could be revoked at its sole discretion at any moment. Similarly, after the death or incapacity of its author, the commitment will become null and void by suppressing the will that is "the only support of the obligation"[34].

D) The particularities of will in legal acts of bilateral formation

The study of free will can not be complete without taking into account the particularities of liberal manifestation in bilateral legal acts. Therefore we consider it necessary to present some considerations on the implications of subject-domain analysis of contracts. In support of the above, we consider the fact that the New Civil Code has provisions common to both donation and will (art. 984-1010). Therefore, are covered with institutions such as: capacity in the liberalities area (art. 987-992) fideicomisare substitutions (Art. 993-1000); liberties treatment (Art. 1001 to 1005), reviewing the conditions and tasks (articles 1006 - 1008) etc[35]. Classical, the contract is based on the principle of autonomy, that contractual obligation is based exclusively on the will of the parties, the will that is the source and dimension of all rights and obligations created by the very expression of its free and aware manifestation[36]. Principle is based on natural liberty, fundamental attribute of every human being and the will was the main source of rights and obligations, recognizing thus the ability of individuals to be bound by the will, and only to the extent they wish, no contradiction idea of man's natural liberty[37].

In the above context, the individual is not bound by the obligations he did not assumed, especially since those might be injust, but instead he is bound to execute all obligations to which he has subscribed freely. According to the concept, to be free means, first and foremost, all self-limitation of our freedom by the contracts we have concluded in the absence of constraints or external influence. Therefore, the contract has become the main source of law, drawing on the strength from the agreement of will necesarry to its conclusion[38]. According to this, marriage is not the result of law, but a tacit agreement between the spouses, legal succession reflects a silent testament of the deceased, citizenship is in turn the result of a contract between individual and state.

Source of rights and freedoms in the state, liberal contract allows individual setting of fair and useful relationships between community members.According to the ideas of the great french thinker,

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[32] See M. Abram, Some theoretical and practical aspects of unilateral voluntary act Romanian law and Community law, Annals of University of Bucharest: Rosetti, 2003, p 49.

[33] See H., L. and J. Mazeaud and F. Chabas, Lessons of civil law. Obligations. General theory, Montchrestien, Paris, 1991, p. 359.

[34] See St.. Rausch, Civil. The general part. Individual. Legal person, Chemarea Publishing, Iasi, 1993, p 75.

[35] According to the art. 985 of the New Civil Code, "The donation contract through which, with the intent to gratify a party, named donor dispose irrevocably by the a good in favor of the other party, called the donee."

[36] See P. Vasilescu, Relativity civil act. Highlights for a new general theory of private law act, Rosetti House, Bucharest, 2003, p 15.

[37] According to art. 989 of the New Civil Code, "Under penalty of absolute nullity, the person who dispose need to determine the beneficiary of the liberality or at least provide criteria for the beneficiary to be determined after the liberality void. Person which do not exist at the date of liberality can receive a gift if it is made to someone able, with the latter task to give to the client object of the liberality soon as possible. Under penalty of absolute nullity, the person who dispose can not let a third party, beneficiary right to appoint or establish the liberality its subject. However, distribution of assets transferred by related persons designated by the testator may be left to the third party. It is valid the liberality made by the person who dispose of an designated person, with a task on behalf of a person chosen either gratified or a designated third party, itself, also by the the person who dispose ".

[38] See J.J. Rousseau, *Du contrat social,* Editura Flamarion, Paris, 1992, p. 34.

the individual is the best judge of his needs, and since he can manifest freely his will, he will conclude only those contracts that protect his interests. Likewise, any obligation imposed is unjust, disregarding the interests of the debtor (State lead but only one insurance policy frameworks needed to satisfy individual interests, market forces, supply and demand by adjusting production of goods) and therefore the contract is above the law, which plays a secondary, complementary, covering only those issues which the parties have not considered.

Therefore, promoting individual interest could only lead to satisfying the public interest, perceived as the sum of individual needs[39]. We mention that all civil laws are based on inspired napoleonic principle of autonomy of individual will.

In addition to the principles, theory of nullity abolishes the effects of the legal act arising from a legal will altered by vices of consent, as "freedom of contract is the legal corollary of freedom understood as the product of conscious and free will, a social reverberation of this will"[40].Note that the drafters of the Civil Code of 1864 only partially joined the independent nature of individual will.From the analysis of art. 969 Civil Code, conventions are viewed as private law of the parties, but only subject to compliance with state law. Therefore, the contract draws its binding force from the outside of the norm. Therefore, the parties will, through conditioning, receives a secondary role[41].

To the theory of "justice and equality", opposes the reality of social inequality. Therefore, meeting individual free wills on contractual plan will oppose the need of the accumulation and appropriation for human beings, seeking the social utility and profitability of the legal documents that adhere. Contract will be self-conscious and rational and therefore a source of law (consent, as an externalized the will must not be expressed flawed and knowingly)[42].

The corrupted contractual will is considered that there is no occurrence at the time of consent. The indifference of ground of the contract, essentially expresses that the product of independent will can not be censored [43]. We remind in this context that internal will (of each contracting party) creates rights and thus "externalizing will is logic condition of delivery of the contract, as long as it remains in itself, will not disclosing valences nomothete"[44].

In unilateral legal acts (will) the liberal intention can not be based than the one will of the person who dispose..In donation agreement araises the question: liberal intention animus donandi is only the will of a partie (the donor) or donee too (for the contract is an agreement of wills)?On the question above, we will make several considerations.

The liberal Intention is born of donor initiative and after the contract is concluded, it becomes irrevocable.Therefore liberal intention is characterized first and foremost by manifestation of the will of the donor, without which that would not exist. It is defined as the donor intended to confer to the donee without seeking or obtaining the equivalent of consideration he made.

But because it is expressed in a donation contract, the agreement of the parties is essential for the valid formation of the contract. The agreement of wills, involves two distinct persons which have mutual intention to make or accept a liberality. The valid conclusion a donation requires the acceptance from the gratified. As a consequence, for liberal intention to take effect, it is subordinated to the act of acceptance of the gratified. According to the art. 1013 of the New Civil Code, "Offer of donation may be revoked while bidder was unaware by the acceptance address. Incapacity or death of tender attracts caducity of.acceptance Offer can not be accepted after the death of her recipient. But inheritors can communicate the acceptance address made it. Offer of donation made to a person

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[39] See J. Goicovici, Formalism and substantial freedom of contract, in Studia Babes-Bolyai University, Cluj-Napoca, no. 2-4/2002, p 111 et seq.

[40] See P. Vasilescu, *op. cit.*, p. 34.

[41] See O. Ungureanu, *op. cit.*, p. 114.

[42] See D. Chirica, Principle of contractual freedom and its limits in terms of the sale, in DRC no. 6/1999, p 45-49.

[43] See I. Albu, contract and contractual liability, Dacia Publishing House, Cluj-Napoca, 1994, p 27

[44] See P. Vasilescu, *op. cit.*, p. 35.

without legal capacity will be to accepted by legal guardian. Offer of donation made to a person with limited legal capacity may be accepted by the latter, with the consent of legal protector ".

"The liberal intention has not such existence on legal stage, unless the donation it is accepted by the donor without his consent it has no legal a value.Only through acceptance by the beneficiary, will give legal value to the *animus donandi* of the donor.

Study of donation agreement, concerning the wills of the parties is interesting because it raises a problem relatively overlooked by specialists: the intention *animus donandi* belongs exclusively to donor? and if so, when the donor and donee are concurring wills?

Conclusion

In conclusion of the analysis of particularities of liberal will, generally and mortis causa especially we appreciate that a clear dissociation between the will for the cause of death - generosity and willingness to cause of death - substitute a person can not be achieved, for which it follows to take into account under both aspects.

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