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THE EFFECTS OF THE CONTRACT ON THIRD PARTIES

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SUMMARY

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CONCEPTUAL BENCHMARKS OF THE RESEARCH PAPER

The actuality and importance of the topic proposed for research. The effects of the contract in particular and the contact in general were one of the basic institutions of the civil law, which had a special implication in the civil law relations, which directed the activity of the human every day and at every turn. Due to the fact that such institution was one of the most valuable and mobile institutions of the civil law, of special importance were its effects. Its effects extended to both the contracting parties and to other persons who did not have a direct involvement in the contract, but due to the legal provisions, due to events and, in certain situations, due to the agreement of will of parties, the third parties were assigned with certain rights and obligations in connection with the contract. The actuality of the topic also resided in the fact of a less pronounced research in the Republic of Moldova of such a topic, especially after the modernization of the Civil Code of the Republic of Moldova, which did not leave untouched even that aspect, the aspect of the effects of the contract.

At the present stage, after the modernization of the Civil Code, there was a lack of both doctrinal basis and judicial practice in such a field, a practice that just started to be formed, through the disputes that follow to occur regarding the effects of contracts, namely towards third parties. It was absolutely important to research that field in order to create a correct legal foundation. The legislative evolution in the Republic of Moldova was not a particular phenomenon, but was catalysed by the legislative changes made at the international and regional levels, thus, the actuality of the topic would be special in such a field and during the current period of time of transition and adaptation to legislative changes.

Description of the situation in the field of research. The field of research of contracts' effects towards third parties has been the least explored by the doctrinaires of civil law of the Republic of Moldova. After the modernization of the Civil Code of the Republic of Moldova it was even less analysed through the amendments that entered into force on 01.03.2019.

The field of research of herein paperwork was absolutely outstanding but unfortunately unexplored by the national doctrine. Thus, on the territory of the Republic of Moldova, no monographic researches in such field have been carried out. At the same time, it was noted the achievement of broad and complete approaches in the works of Mr. Baies Sergiu, Mitu Gheorghe, Cazac Octavian, Mrs. Tabuncic Tatiana co-authored with Mrs. Puica Viorca, Cimil Dorin, Chibac Gheorghe co-authored with Bruma Sorin, Robu Oxana and Chibac Natalia.

In the Romanian doctrine, influenced by the French doctrine, the researchers debated the given issue through different approaches. Thus, starting with the classics C. Hamangiu, I.

Rosetti-Balanescu, Al. Baicoianu, Gh. Beleiu and to date, the researchers have expressed various theses and ideas on the given topic. From the doctrinaires who determined the aspect of research of the effects of the contract, there were noted the monographic studies of two researchers, namely Vasilescu Paul, Deleanu Ion. Important ideas in the field were also determined by Mr. Popa Ionut-Florin, Mr. Marina Nicolae, Valeriu Stoica, Flavius A. Baias.

In the Russian doctrine there were remarkable studies in the field of the notion of a third party, but also in the field of contact for the benefit of a third party; in this respect worthy to be noted were works of Mr. Braghinski M. I., Kroz M. K., Kiseli I. V.

The various aspects of herein topic, have served, and surely shall serve, as a subject of discussions, at times, extremely hard, between the researchers, thus, need to study and deepen the information in the field researched, namely in terms of effects of contracts towards third parties, was demonstrated.

The general purpose of the thesis was to determine the dynamic nature of the effects of contracts towards third parties within the effects of contracts, also a complex and multi-faceted approach to the topic of contracts' effects on third parties, through the prism of a multitude of doctrinal opinions. Likewise, a basic purpose was to carry out a theoretical study of the effects of contracts towards third parties to be used for elucidating various disputes or problems related to the application of legal provisions, of contracts' effects principles in general, but also of contracts' effects towards third parties in particular and their guiding principles.

Main objectives of research were the following:

- to establish the degree of research of contracts' effects in general, but also of contracts' effects towards third parties in particular. Likewise, it was aimed to bring clarity in determination of contracts' effects principles and marking the beneficial legislative change in the light of the new regulations, but also identification of some systemic deficiencies of principles' location within the Civil Code, after modernization;

- to determine the principles that guided the effects of contracts in general, but also the effects towards third parties in particular through a deep analysis;

- to highlight the category of party of the contract, an aspect of particular importance for identifying the generic notion of the topic in question, namely the notion of third party, a notion that was dominant throughout the research;

- to highlight the category of third party of the contract, a notion of an impressive multivalence, which required a synthetic approach in order to create clarity in herein research;

- to make an evolutionary examination of the contract for the benefit of a third party, as an exception to the principle of relativity of contracts' effects, an exception that has been absolutely denied since ancient times, claiming the violation of public order and of decency and morality in

this regard, but which created its path of development through the prism of jurisprudence that hastened and catalysed its express regulation;

- to identify and elucidate the characteristic features of the contract for the benefit of a third party, by identifying the problem of legislative and practical approach of the aspect of acceptance of the benefit granted by the stipulator, established in the task of the promising;

- to determine the effects of acceptance, by the beneficiary third party, of the stipulation according to the contract for the benefit of a third party;

- to study the issue of execution of the contract for the benefit of a third party, to determine the creditor and the debtor of the contract for the benefit of a third party;

- to analyse certain named civil contracts on which the legislator directly or indirectly determines the possibility of applying the provisions of the contract for the benefit of a third party;

- to determine the problematic aspects of some named contracts which imply in themselves the clause on the third party or the aspects of the contract for the benefit of a third party.

The settled scientific issue consisted in a broad approach to the effects of the contract towards third parties. In such a context, it was worth mentioning that, through the present paperwork, the aspects concerning a party and third parties were determined. It was also determined the mobility of the notion of third parties, the third parties were classified and their multi-aspect character was established. The status of the beneficiary third-party of the contract, for the benefit of a third party, was also researched and noted, an approach that was not found in the national civil doctrine and determined the quality of the lender and of the borrower in the contract for the benefit of a third party; it was found the place of the legal construction of the contract for the benefit of a third party in the framework of certain contracts for determining the applicability of such a type of contract in legal and civil relations.

Research methods. For the research, several techniques and methods that comprised a set of ideas and concepts based on analysis methods were used, among them were:

- the logical method that represented the process of learning the effects of contracts towards third parties through categories and logical legalities (deduction, induction, synthesis, analysis), through deep analysis, by deducing correct conclusions and by synthesizing the matter found in the doctrine in the field of contracts' effects towards third parties.

- the systemic method, carried out by researching deeply the national legislative basis, but also the international one, by making a complex examination of the material and procedural norms, an aspect that shall determine a high quality result.

- the historical method, which determined the historical evolution of contracts' effects in order to deeply understand the aspects investigated in herein paperwork.

- the comparative method, a method that created a comparative determination of the research field through the globalist aspects of the topic under research, which influenced the changes in social relations, which in their turn created perspectives in various legislative changes at national level.

- the synthetic method, which consisted in generalizing the aspects of contracts' effects towards third parties in the realization of the deep and multilateral research of the topic proposed.

Scientific novelty of the results obtained resulted from the fact that herein paperwork represented one of the few works from the Republic of Moldova on the contracts' effects towards third parties, but especially after the modernization of the Civil Code of the Republic of Moldova, it was one of the first in the field of research proposed. The present study was not a purely theoretical one, but it involved aspects of practical research of the problems invoked as well. Likewise, herein paperwork aimed at presenting certain theses that have not been researched in a multi-faceted way by the national doctrine.

The novelty of the research proposed was guided and materialized by the following suggestions:

- the principle of the binding force of the contract was the principle that determined the effects of the contracts towards parties;
- the principles of effects' relativity and opposability were the principles that guided the effects of contracts towards third parties;
- the effects of contracts in the subjective aspect were guided by two notions - that of parties and that of third parties. To determine the existence of intermediate notions was not seen as appropriate and necessary as in the case of successors, moreover, this notion was not approved by our legislature either;
- the notion of third parties was one of the most mobile entities of the civil law, a notion that could" miraculously change its mask" and had the possibility to become, in certain circumstances, a party to the contract concluded by its authors;
- it was invoked with certainty that the existence of the principle of relativity of the contracts' effects could not be denied longer, just as it could not be denied the existence of the principle of opposability. At the same time, they gained absolute independence and it is the belief that they cannot be treated like the two sides of a single medal;
- it was strongly stated that the contract to the benefit of a third party was a real exception of the principle of relativity of contracts, which created a special status in the positive field of the beneficiary third party, namely that category of third party which remained faithful to its place,

and it did not change the order within parties but with a precise and tangible character and an absolute share in the contract that assigned a benefit.

In the paperwork there was provided a number of *de lege ferenda* proposals in the given area of research, proposals that aimed at improving the legislative provisions and at determining with clarity the situation of parties and third parties within the civil contract.

The theoretical importance and applicative value of the paperwork were determined by the great importance of the contract in the framework of civil legal relations, and the effects of such contract were absolutely phenomenal. Determination of contracts' effects towards third parties was generated by the mobile nature of the third party entity in the field of contracts' institution of the contract but, at the same time, it was generated by the contractual freedom that provided guidance in the defining aspect of invoking a benefit for the third party.

Herein paperwork represented the first complex study of the effects of the contract for the benefit of a third party on the territory of the Republic of Moldova and it was believed to be a starting point for conducting other researches in the field given by the doctrinaires. At the same time, through the present paperwork, a large research was carried out regarding the contract for the benefit of a third party, a research that was missing in this field on the territory of the Republic of Moldova. The subject was tackled in the paperwork both from a systemic and a historical point of view for examining its essence more deeply.

Main scientific results proposed to be taken:

1. The effects of the contract could be viewed in two aspects. The first, as a (sub)institution of the civil law - the integral part of the contract's institution that encompassed in itself the totality of rules applied to the rules of civil law regarding the effects of contracts. The second sense - the totality of rights and obligations determined by the parties in the contract, identified with the norm of conduct created by the parties through the contract negotiated by the parties that should guide them and which shall show off a subjective civil right, but also the aspects related to the limitations of the imperative norm, of the principle of good faith, equity and practices applied between parties[1].

2. The principles of contracts' effects shall be delimited, in a principle manner, according to the criterion for whom such are produced. Namely, there were delimited the effects of contracts in effects regarding parties, and the latter effect was assigned *the principle of the binding force of the contract* and - the effects of contracts towards third parties to which the *principle of relativity of effects and principle of effects' opposability*[2] are characteristic.

[1] Beliban-Ratoi, Ludmila, *Dimensiunea doctrinar-teoretică și valențele practice ale efectelor contractelor în lumina modernizării codului civil al Republicii Moldova.* In*:* Studia Universitas 2021.

[2] Beliban-Ratoi Ludmila, *Caracteristica bidimensională a efectelor contractului față de terți*. National Conference of doctoral students dedicated to the 75th anniversary of the SUM "Metodologii contemporane de cercetare a evaluării" Chisinau, Moldova, April 22-23, 2021.

3. The contract for the benefit of a third party shall be concluded in compliance with the conditions of validity of the legal act. In addition to the general conditions of validity of any contract (capacity of the parties, consent, subject matter and case), the contract for the benefit of a third party shall also meet some specific conditions[3] namely: - the will to stipulate in favour of a third person shall be definite, undeniable and the person of the beneficiary shall be determined or, at least, determinable.

Implementation of the scientific results: Herein paperwork generated important scientific results that shall serve as a basis for enriching the national doctrine in the field of civil law. Likewise, in the paperwork there were provided a series of proposals de lege ferenda in order to improve the national legislation in the field and a series of theses from the doctrine that shall create new perceptions on the topic of research, and shall have practical utility in the educational process within higher education institutions with legal profile.

Approval of research results. The study conducted and the tendencies regarding the effects of the contract on third parties were carefully discussed at the Doctoral School of Legal Sciences of the State University of Moldova. The results of the research were approved by the Guidance Committee of the Doctoral School. The theses invoked in herein paper have been presented in order to be informed within various international conferences, with international participation, and the results have been published in various scientific articles. Regarding this aspect, the author made various presentations and studies to practitioners that were prepared as a trainer within the Notary Chamber, where the opinions and results of research were provided to the members of the notary community.

Publications on the topic of the thesis – The results were reflected in 7 conference communiques at conferences and 3 scientific publications.

The volume and structure of the thesis. The present paperwork was structured as follows: annotations, introduction, three chapters, conclusions and recommendations, bibliography and CV. The paperwork was made up of 217 basic text sheets with a bibliographic list of 190 titles. All parts of the thesis were developed in accordance with the requirements in the field characteristic to such type of paperwork.

Keywords: contract, legal act, effect of the contract, effect of the contract towards third parties, party, third parties, relativity, opposability, simulation, contract for the benefit of a third party, stipulating, promissor , beneficiary.

[3] Beliban-Ratoi, Ludmila, *Evoluția istorică a contractului în favoarea unui terț*. National scientific conference with international participation. Integration through research and innovation, 8-9 November 2018, Chisinau 2018, p. 151.

CONTENT OF THE THESIS

Introduction. This compartment displayed an analysis of all theses invoked in the present paperwork, the purpose and objectives of research have been determined, the methods used in herein research have been pointed out and a description of the situation in the field of research has been conducted, there was also invoked the settled scientific issue and the theoretical significance and the practical value of the work have been presented.

Chapter 1 The doctrinal and theoretical dimension of contracts' effects issue, with the following structure: **1.1.** Analysis of the national and international framework on the contract's effects. 1.2. The notion of contract's effects. 1.3. General characteristic of contract's effects principles.

The field of research of contracts' effects towards third parties has been the least explored by the doctrinaires of civil law in the Republic of Moldova. This field was even less analysed after the modernization of the Civil Code of the Republic of Moldova[4], amendments that came into force on 01.03.2019. The modernization of the Civil Code of the Republic of Moldova did not overshadow the field of contracts' effects. Thus, there were made important changes that were guided by the new international practices in the field, but in particular, they were influenced by the wave of changes of the last decade in the field of civil law that were made in the civil codifications of the European states of the continental system[5]. Thus, as a support for the modernization of the Civil Code of the Republic of Moldova were:

- The Draft Common Frame of Reference of the European Union[6], developed by the academic environment of Europe, published in 2008; - German Civil Code[7];- French Civil Code[8], including the amendments made by Ordinance No. 2016-131 as of 10th of February 2016 of reforming the law of contracts, the general regime and obligations' proof (Ordonnance n° 2016-131 du 10 février 2016 portant réforme du droit des contrats, du régime général et de la preuve des obligations); Civil Code of Italy[9]; Civil Code of the Netherlands[10]; the private law laws of

[4] *Civil Code of the Republic of Moldova*, adopted by law no. 1107 as of 06.06.2002, published on 22.06.2002 in the Official Gazette No. 82-86.

[5] *Informative note to the draft Law on amendment and supplement of some legislative acts*, available on: http://www.justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/aprilie/Nota_informativ_proiect_amendare_Cod_civil_xxxxxxx.pdf

[6] *Draft Common Frame of Reference DCFR* available on:https://www.law.kuleuven.be/personal/mstorme/DCFR.html
[7] *Burgerliches Gesetzbuch Deutschlands* (Гражданское Уложение Германии). М.: Вольтер-Клувер, 2008
[8] *French civil code*, available on https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721
[9] *Italian civil Code*, available on http://www.jus.unitn.it/cardozo/obiter_dictum/codciv/codciv.htm
[10] *Dutch civil code*, available on http://www.dutchcivillaw.com/civilcodebook066.htm

Estonia; the new Civil Code of Romania[11] in force since October 1, 2011; Civil Code of the Russian Federation[12], with the amendments made by the reform implemented between 2013 and 2015.

The observations on the topic of research of the present paperwork, on the evolution of contracts' effects were dominated by several problematic aspects regarding them. The first was to determine the very notion of the effects of contracts. The second was that of determining the principles of effects of contracts towards the parties and those towards third parties. A third problem to which the doctrinaires have not found a common denominator was that related to the aspect of researching the notion of parties and that of third party. These two notions were interconnected and could only be seen in the multitude of approaches of each. A fourth problem to which the researchers in the field have not found a common starting point was that of contracts' effects principles towards third parties and respectively the fifth problem was the approach related to the exceptions of principles governing the effects of contracts towards third parties.

Thus the effects of the contract represented a subject of research for many doctrinaires internationally, moreover, it was often the realm of many struggles of competing ideas. The national doctrine, was not so rich with works in the field. One of the works with a very broad and complete approach in the field of research of the present paperwork was carried out by Mr. Mitu Gheorghe within the work of co-authorship - Civil Law. General theory of obligations. Chisinau 2015[13], only that the latter work was prepared before the modernization of the civil code, a modification that changed in some respects the valences in researching the given subject. Likewise, the same author has conducted a research in the field of representation and intermediation in the private law, a work that shall help to determine and identify the party of the civil contract. Regarding the aspect of contracts' effects, through another perspective, Mr Cazac Octavian in the PhD thesis named "The institution of resolution and termination of contracts, method of settling pathogenic contractual relations" examined it.

In the field of contractual obligations, Mrs. Tabuncic Tatiana also conducted researches in co-authorship with Mrs. Puica Viorca, through the article Execution of contractual obligations[14], where an efficient examination regarding the oblique and Paulian actions in the execution of contractual obligations was carried out, a paperwork published in the Judge's Manual, second edition, Chisinau, 2013. In the field of good faith, as a presumption and principle of binding law,

[11] *Civil Code of Romania*, available on http://legislatie.just.ro/Public/DetaliiDocument/175630
[12] *Гражданский кодекс Российской Федерации* от 30.11.1994 г. № 51-ФЗ // «Собрание законодательства РФ». - 05.12.1994. - № 32
[13] Mitu, Gheorghe *Drept Civil. Teoria generală a obligațiilor*, Chisinau 2016, p. 273.
[14] Tabuncic, Tatiana, Puica, Viorca, *Executarea obligațiilor contractuale*, Manualul Judecatorului Ediția a II-a, Chisinau, 2013, p. 1181-1197.

a significant research was conducted by Mr. Baiesu Sergiu[15], in the scientific article – Application of good faith in the binding law. That principle shall inevitably provide guidance in examining the effects of the contract, more recently, also the express regulations on that principle and art. 1082, para. (1), (d) Civil Code of the Republic of Moldova.

In the international doctrine, the field of research was extremely vast and the researchers with each work put forward new theses, debated and combated ideas and proposals to that aspect. Thus, starting with the Romanian classics Hamangiu, Rosetti, Baicoianu, Beliu, it was expressed their opinion on the effects of contracts. Out of the doctrinaires who determined the research aspect there could be outlined the monographic studies -Vasilescu Paul, with the monographic work - Relativity with the civil legal act. Highlights for a new general theory of the private legal act, 2013[16], a study that later shall be adapted to the new Civil Code of Romania through the work - Civil Law. Obligations, second edition revised, 2017. Another researcher of the notion of party and third parties was Mr. Deleanu Ion, through his paperwork Parties and Third parties. Relativity and opposability of legal effects, 2002[17], revolutionized the classical doctrine by determining a new approach to the notion of party and third party. Important ideas in the field were also determined by Mr. Popa Ionut-Florin, a doctrinaire who presented a different approach to the subjective criterion of effects of the contract.

The one who criticized both the opinion of Mr Vasilecu and Mr Deleanu was Mr Marian Nicolae, who regarded sceptically the modernist ideas, taken up by the Romanian doctrinaires from the French researchers, namely Ghestin J.[18]. Mr. Marian Nicolae defended the classical doctrine in the field of determination and identification of parties and third parties. In the impressive article with an absolutely poetic name - Do the third parties have a common logical garment in the Civil Code?, published on 28.02.2020[19] the Romanian doctrinaire, Mr. Valeriu Stoica studied deeply the third parties, moreover, he made an inventory of the notion of third parties within the Romanian Civil Code.

In the Russian doctrine, there could be found works researching specifically the field of the notion of third party, but also the field of contact for the benefit of a third party. The work of Mr. Braghinski M. I., - Влияние других (третьих) лиц на социалистические гражданские

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[15] Baiesu, Sergiu, *Aplicarea principiului bunei-credințe în dreptul obligational*.Conferinta Internațională Stiintifico-practica. Recent developments in the law of obligations, Chisinau, 4-5 October 2018, Chisinau 2020, p. 7.

[16] Vasilescu, Paul, *Relativitatea actului juridic civil. Repere pentru o nouă teorie generală a actului de drept privat*. Monograph, Rosetti Publishing House, Bucharest 2003, p. 177.

[17] Deleanu, Ion, *Părțile și Terții. Relativitatea și opozabilitatea efectelor juridice*, Editura Rosetti, Bucharest 2002, p. 127.

[18] Ghestin Jacques, Jamin Christophe, Billiau Marc, *Traité de droit civil: Les Effets du contrat*, Paris 2001, p. 756.

[19] Stoica, Valeriu, *Au terții un veşmânt logic comun în Codul civil?* Publication: Romanian Journal of Private Law 1 of February 28, 2020, p. 20

правоотношения: Дисертация на соискание степени д-ра юрид. наук. Л., 1962[20] shall be also noted. Newer works in the field regarding third parties were prepared by Kroz M. K.-Третье лицо в обязательстве: Дисертация канд. юрид. наук. Саратов, 2001[21], the field of third parties was also researched and by Kiseli I. V. in the doctoral work - Обязательства с участием третьих лиц: Дисертация на соискание степени канд. юрид. наук. Москва, 2002[22].

An issued examined from the point of view of value in Chapter 1 of the paperwork was the determination of the notion of contract's effects in general and the establishment of their principles, guiding ideas that guided the effects of contracts.

Thus, according to the opinion of the Romanian doctrinaires Constantin Statescu and Corneliu Birsan - the immediate effect of any contract was to give rise to rights and obligations.[23]

In a customary definition, which has become classical "through the effect of civil legal act there were meant the subjective rights and civil obligations to which it gives rise, where such a document modifies or extinguishes them"[24] . Of course, the effect of obligation shall be fully produced through the exact execution of service undertaken by the debtor and which was meant by the parties, a thing which represented the direct execution or in nature of the obligation[25].

Likewise, it appeared the need to differentiate the notion of effects of the legal act from the content of the civil legal report. With regard to the content of the legal report, Mr Marian Nicolae had also expressed his view – that elements that for the civil legal report represent its content, for the legal act that generates that report constituted precisely its effects and, ultimately, its legal content.[26]

In the light of the foregoing, Ovidiu Ungureanu mentioned that the effects of the civil legal act consist, as appropriate, in the creation, modification, transmission or termination of civil legal relations, and implicitly, the rights and obligations that make up the content of such relations[27].

In this respect, Mr. Paul Vasilescu mentioned very poetically[28] - "we are witnessing a kind of imperialism of relationships of obligations that tend to invade the effects of contracts".

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[20] Брагинский, М.И. *Влияние других (третьих) лиц на социалистические гражданские правоотношения*: автореф. Дисертация на соискание степени д-ра юрид. наук. Л., 1962.

[21] Кроз, М.К. *Третье лицо в обязательстве*: Дисертация канд. юрид. наук. Саратов, 2001

[22] Кисель, И.В. *Обязательства с участием третьих лиц*: Дисертация на соискание степени канд. юрид. наук. Москва, 2002

[23] Statescu, Constantin, Birsan, Corneliu, *Drept Civil. Teoria generală a obligaţiilor*, edition III, All Beck, Bucharest 2000, p. 54

[24] Marian, Nicolae, *Drept civil. Teoria generală. Vol. II. Teoria drepturilor subiective civile*, Solomon publishing house, Bucharest 2018, p. 473.

[25] Ghita, Daniel, *Consideraţii privind legătura dintre principiul forţei obligatorii a contractelor şi principiul executării în natură a obligaţiilor*, Journal of Legal Science Craiova, no. 9, as of 2005.

[26] Marian, Nicolae, *op.cit*, p. 473

[27] Ungureanu, Ovidiu, Munteanu Cornelia, *Drept civil. Partea Generală, în reglementarea noului Cod Civil*, Universul Juridic Publishing House, Bucharest 2013, p. 288.

[28] Statescu, Constantin, Birsan Corneliu, *op.cit*, p. 614.

Such a situation should be avoided because the effects of contracts are not limited only to the rights and obligations of parties, but there may appear a number of other effects that do not fall within such aspect. For example, such effects were identified in the case of acts that terminate the pre-existing legal situations or only transform them, in the case of acts that do not have a patrimonial content.

In the light of the above invoked arguments, there exist also new regulations of the Civil Code of the Republic of Moldova in art. 1082 Civil Code of the Republic of Moldova, thus, the legislature did not limit itself to the rights and obligations of the parties only, but also identified other expressly stipulated effects. One of the limitations would be the imperative regulation but also the dispositive one, if it was not derogated from it. Also, the legislator ruled as effects the stable practices between the parties, the customary practices, but also the principle of good faith and equity. So, through these provisions, the legislator has combined both the normative and non-normative aspects, which are essential to civil legal relations and create the freedom of parties, but at the same time restrict, in order to not violate the regulations of public order, decency and morality and the imperative regulations.

Summing up these notions invoked by the doctrinaires there could be delineated two meanings of the effects of civil legal acts:

- in a first sense, through such an expression there are determined the civil rights and obligations born, modified or extinguished through the civil legal act, regardless of its character or object that are guided by the generated private regulation, by portraying the appearance of determining subjective rights.

- in a second meaning, in a generic and normative way the effects of the contract, also designated the (sub)legal institution by bearing this name, which grouped all the rules of civil law applicable to the effects of the civil legal act.[29]

Any institution and / or (sub)institution of law shall be guided by certain principles. Thus, the effects of contracts are guided also by certain specific institutional principles.

If in the Civil Code of the Republic of Moldova before the modernization 01.03.2019, the principle of effects of the contract was regulated by the principle of the binding force of the contract only, and the principle of relativity of contract's effects was an integral part of it, then the new regulations made a number of changes and made a clear distinction of those two principles. The principle of the binding force of the contract was regulated in art. 996 Civil Code

[29] Marian, Nicolae, *op. cit.* p. 474.

of the Republic of Moldova, and the principle of relativity of contracts was regulated in art. 1086 Civil Code of the Republic of Moldova.

In conclusion, it was invoked with certainty that the effects of the contract could be classified, according to the criterion towards whom they reflect upon, in the effects of the contract towards parties and the effects of the contract towards third parties. In the case of effects towards the parties, they were guided by the principle of binding force of the contract, and effects towards third parties were guided by the principle of relativity of effects and the principle of opposability.

Chapter 2. Two-dimensional feature of contract's effects towards third parties, with the following structure: 2.1. The two-dimensional nature of contract's effects 2.2. The notion and significance of the principle of relativity of contracts'effects. *2.2.1. Theoretical and practical aspects of contract's* ***PARTIES*** *in the light of the principle of relativity of contract's effects. 2.2.2. Theoretical and practical aspects on* ***THIRD PARTIES*** *in the light of the principle of relativity of contract's effects. 2.3.* General characteristic of contract's effects towards third parties. The principle of opposability of contract's effects.

In the relations with third parties, the contract was relative, in the meaning that third parties to the contract were not mandatorily bounded to the contract (principle of relativity). Thus, it could not be deduced from this that the third parties are not required to comply with the legal situation generated by the contract. On the contrary, such legal reality shall be respected by those who are aware of it (the principle of opposability)[30]. A valuable consequence of those exposed was that the effects of contracts towards third parties were generated by two basic principles, namely:

- the principle of relativity of contract's effects

- the principle of opposability.

These two principles shall be determined by symmetrically opposite actions that involve negative and active actions. The negative one emerged from the phrase ***are not mandatorily bounded*** to the contract and appeared from the principle of relativity of contract's effects. The positive one -***shall comply with the legal situation*** generated by the contract.

In the second chapter the essence of the principle of relativity of contract's effects and that of opposability was determined. The principle of relativity of effects was an express principle regulated by law. However, the principle of opposability had no such regulation. It could be found in various regulations of the Civil Code of the Republic of Moldova, but which absolutely

[30] Pop, Liviu, Popa, Ionuț Florin, Vidu, Stelian Ioan, *Curs de drept civil. Obligațiile,* Universul juridic Publishing House, Bucharest 2015, p. 132.

required a legal regulation, because it was the criterion that determined the attitude of the third party regarding the contract concluded by parties.

Principle of relativity of civil legal act's effects was the rule of law according to which the civil legal Act produced effects only towards its author or authors, without being able to take advantage from or harm other persons. That principle was also enshrined by **Article 1086 of the Civil Code of the Republic of Moldova.**

It appeared the need to find out the exact meaning of Article 1086 of the **Civil Code of the Republic of Moldova**, in order to be able to measure the innovations in the interpretation of the text that resulted from the application of the evolutionary method of interpreting the legal texts. The principle of relativity of effects had a double protective effect: first of all it protected third parties from being bounded by obligations they have not contracted, where the things agreed between some could not harm or benefit others, and, only in the subsidiary, it limited the effects of the contract only to the contracting parties it defended against a possible interference of third parties in the contract.[31]

The most interesting and spectacular aspect of the principle of relativity of contract's effects was the subjective criterion of determination which consisted of parties and third parties and other intermediate categories that, at a certain stage, joined either one or another category.

In simplistic meaning - the parties were the authors of a legal act concluded personally or by representation. By party there were designated both the author of a unilateral legal act and one of the parties of a bilateral or multilateral legal act. The term Party denoted lato senso one of the bi - or multilateral parties as well as the author of the unilateral act, this statement was determined by the aspect of applicability of principles previously invoked and with regard to the unilateral acts. The party was not only the person who directly, personally, by physical presence, concluded a certain legal act, but also the one who concluded the act through its representative (legal or conventional) and the one who, in some cases, has adhered to the contract, and the one who has ratified it in the case of art. 370 Civil Code of the Republic of Moldova (conclusion of the legal act without powers of representation) and art. 358 Civil Code of the Republic of Moldova (effects of the legal act of provision of the mistreated one).

One of the legal entities in the subjective field of relativity of effects were the successors in rights of parties, that category which, at the initial stage of formation of the civil legal act, is third party but which, as a result of death of the natural person or reorganization of the legal person, shall take on the status of party with all its aspects and consequences. The universal and

[31] Mitu, Gheorghe, *op. cit.*, p. 273.

universally entitled successors were indisputably the continuers of the legal personality of the deceased or the dissolved legal person. At the same time, from the point of view of statute, the successors with particular title, in essence, belong to the category of third parties, but after acquiring an asset shall obtain all contractual guarantees of material and legal defects, as well as rights in close connection with the asset, in the form that the transmitter had. Under such conditions, therein shall get the effects of those contracts. So, the successor with particular title either replaces itself with the position of a party to the contract, in relation to certain rights and, possibly, certain obligations, or simply remains a third party. The most controversial category was that of the unsecured creditor, which is neither party nor successors, yet being a genuine third party.

The first definite assertion regarding "third parties" seemed to be the uncertainty of the notion of "third party", derived or maintained in large part by the mobility and multiformity of the category under question. The polysemy of the term "third party", cultivated to a considerable extent by the very regulations of law could justify, in isolation, the conclusion that the development of a comprehensive and homogeneous theory regarding third parties would be an attempt doomed to failure[32].

In different countries the notion of a third party was qualified differently. Thus in the Russian doctrine, the third parties were participants in the civil circuit, who had a certain status with respect to other participants, and another person – was any participant in the civil circuit who was not a party to the initial legal relationship, at the same time a third person was not a party to the initial obligation, but was always legally associated[33]. Thus, the ***absolute form of the third party*** was the notion ***another person.***

In some sources of the French doctrine [34]it was toned up that third parties were all the persons who did not have the quality of party, namely: penitus extranei (absolute or perfect third parties); unsecured creditors; successors with specific title (successors with specific title) of one of the parties. In other sources[35], the third party was assigned with a negative part - if the parties designated a positively defined category - through the fact that they participate in the birth of the contract and (or only) willingly bear its effects - the third parties impose themselves as an

[32] Deleanu, Ion, *op. cit*, p. 127

[33] Брагинский, М.И. *Влияние других (третьих) лиц на социалистические гражданские правоотношения*: автореф. Дисертация на соискание степени д-ра юрид. наук. Л., 1962, p. 3–6.

[34] Ghestin, J, *op. cit*, p. 756.
[35] Ph. Delmas Saint-Hilaire, *Le tiers a l acte juridique*, Ed. LGDJ, Paris, 2000, p. 46.

antithetical category, defined negatively: they do not suffer any effect of the contact, being unknown to it. Out of those invoked to the third party it was determined its absolute quality.

In the Romanian doctrine there were identified two currents that determined the aspects of the third party, namely, the classical doctrine[36] which mentioned that third parties were the persons alien to the legal act-penitus extranei, and in the variant of non-participants upon conclusion of the civil legal act, but with an interest in the contract determined them the name of successors. They mentioned, that, between successors and third parties there may be a transfer, in the sense that, the same person may be successor in relation to a certain civil legal act of its author and be a third party in relation to another legal act, concluded by the same author.

In the national doctrine[37] there were also identified two categories of third parties – perfect and interested. The latter included the persons who, although without the status of a contracting party, held a right in the contract or were required to respect it beyond the limit of the simple opposability of the contract. There were included: - the third party beneficiary of a contract for the benefit of a third party (also called stipulation for another); - the holder of a direct action, when the law recognized the third party's right to act against a party of a contract, in the absence of cause in favour of the third party; - the subsequent acquirer of the asset in relation to its accessories, that could get rights or obligations strongly related to the asset (proter rem).

In conclusion, it could be stated that third parties were the persons who have not participated in the conclusion of a legal act, neither personally nor through representation, being alien to the concluded legal act. At the same time, since at the stage of conclusion of the act the third parties were the universal and with universal title successors, equally the private ones, creditors third parties could be:

- 1. Third parties that could become parties (successors, those who ratify, adherents);
- 2. Beneficiary third parties (the beneficiary third party to the contract for the benefit of a third party) and
- 3. Absolute third parties, those third parties to whom no rights and obligations could be assigned, but who have the obligation to comply with the contract concluded by the parties.

Another principle that guided the effects of contracts towards third parties was the principle of opposability. Opposability shall be understood and accepted as a general principle of the legal

[36] Beleiu, Gheorghe, *Drept civil român, Introducere în drept civil. Subiectele. Ediție revăzută și adăugită*. Publishing House Șansa, Bucharest, 1995, p. 174.
[37] Mitu, Gheorghe, *op. cit.*, p. 276.

act, a general rule then the effect of the legal act shall be recognized as having absolute social resonance[38].

The content of the principle of opposability towards third parties of the contract was composed of two sides: the active and the passive ones. In the active sense, under such principle, the parties could claim third parties to comply with the act, in the sense of avoiding the infringement, in any way or otherwise, of the rights and obligations born, modified or extinguished by the act[39]. In the passive sense, under the mentioned principle, third parties shall have the general duty not to harm, in any way, the rights of the parties born through contract.

If to refer to the scope of the principle of opposability of the contract, it could be determined that such principle shall apply to all third parties, regardless of their type either absolute or specific and with respect to any legal act whether unilateral, bi or multilateral.

In case if there is no special procedure applicable, there would be the rule of opposability erga omnes and completely righteous of legal transactions[40]. Out of that statement it was determined that right from the moment of conclusion of the act in the form provided by law for that contract, those shall have effects towards third parties related to the obligation of the third party to respect the effects of the contract. That opposability operated like a simple presumption, which created certainty within civil legal relations. But the presumption shall go down if the legislator creates any advertising obligations to be opposable. Thus, if the law provided for the obligation to comply with the publicity, the automatism of opposability goes down. Mr Paul Vasilescu[41] determined in this respect two types of opposability: organized and spontaneous opposability. ***Spontaneous opposability*** shall operate through the presumption of instant opposability of the contract from the moment of its conclusion, opposability that is countered by the legal provisions on publicity, which occurs in the case of organized opposability.

Once related to those two types of contractual opposability, it is important to determine the way of taking knowledge about the contract by third parties in the case of spontaneous opposability. Because in the case of organized opposability the registries shall ensure the aspect of knowledge through their publicity according to art. 419 Civil Code of the Republic of Moldova. In the case of spontaneous opposability, it shall operate in the case of other contracts that were not subjected to the form of publicity. Thus any method of informing the third party could be applied for that purpose. The third party could become aware by simply contacting the

[38] Deleanu, Ion, *op. cit.*, p. 127
[39]Marian, Nicolae, *op. cit*., p. 526.
[40] Vasilescu, Paul, *Drept civil. Obligații, ediția a 2-a revizuită*, Hamangiu Publishing House, București 2017, p. 507.
[41]Vasilescu, Paul, *op. cit*, p. 508.

contracting parties, through various newspaper announcements, in some cases possession might be a means of knowledge, for example according to art. 1276 Civil Code of the Republic of Moldova - para. (2) the Lease shall be opposable to the third party who acquired the right of ownership or other real right over the leased property if, at the time of acquisition, the third party knew or should have known the existence of the lease or if the leased property was in the possession of the lessee. In such sense the unenforceability should not be regarded as a sanction of spontaneous opposability, but it is rather a sanction of the organized one. Although in some sources unenforceability could be determined as an exception to the principle of opposability[42], the position in herein paperwork is to invoke that unenforceability is a sanction.

So, uneforceability shall be a sanction that intervenes in the cases expressly provided by law in case of fraud on behalf of the parties, to defend the rights of the third party, more if the interests of the third party interfere with the interests of one of the contracting parties. As a legal argument of the thesis invoked it could be determined the art. 895, para. (1) Civil Code of the Republic of Moldova - the creditor may request to declare the legal acts concluded by the debtor to the detriment of the creditor as unenforceable to him, manifested through the prevention of full satisfaction of the creditor's rights towards the debtor, if the debtor knew or should have known that the legal act would harm the creditor or, if the legal act was concluded before the appearance of the creditor's right, it was concluded by the debtor with the intention of harming the creditor in general.

An exception to the principle of opposability is the simulation. **Simulation** - the legal operation by virtue of which through a public legal act, apparently, but simulated, creates a legal situation different from the real one, established by the secret legal act, but corresponding to the truth. In the presentation of the present thesis the starting point was the idea that the simulation could be understood – in the most general way – as the voluntary creation of a deceptive appearance; a legal lie, fruit of understanding of some participants in the civil circuit, whose purpose was to mislead other participants[43].

The new provisions of the Civil Code of the Republic of Moldova regulated the simulation in art. 1089-1095 Civil Code of the Republic of Moldova. A classification of the types of simulation could be found in art.1089 para.(1) Civil Code of the Republic of Moldova classifying the Simulation as follows: absolute or relative simulation:

[42] Marian, Nicolae, *op. cit.,* p. 527.
[43] Vasilescu, Paul, *Relativitatea actului juridic civil. Repere pentru o nouă teorie generală a actului de drept privat*. Monographie, Editura Rosetti, București 2003, p. 177.

The simulation shall be absolute when the parties conclude the contract without the intention of producing legal effects.

The simulation shall be relative when the parties conclude the contract with the intention that the apparent one produces legal effects different from the effects really desired by the parties (secret contract). In essence, the relative simulation could be objective (when objective elements are concealed, such as the nature of the contract, its object), respectively subjective (when the subjective element of the contract is concealed – that is, the parties)[44].

In the part related to the purpose of simulation it was believed that such could be different, thus some of them would be to avoid or circumvent the application of mandatory legal regulations (donation made by a spouse to an interposed of the donating spouse, in order to circumvent the provisions on revocation of donation between spouses – art. 1212 Civil Code of the Republic of Moldova), circumvention of the law in the event that an inability for certain persons to receive a liberality was instituted (for example, the donation of an asset to a person interposed to the medical caregiver at the last illness), selling to an interposed person the disputed rights of persons shall be a legal interdiction on that, defrauding the heirs obliged in report (donation in disguise through selling), defrauding of unsecured creditor's interests (fictional selling for the purpose of movement of the general pledge and for shirking the asset from the forced execution) as well as good purposes such as donation by interposed person, in order to preserve the anonymity of the donor or who have a neutral purpose, also by interposing persons to obtain an asset which would not sell it to the true acquirer because of the relationship with the seller. As noted from the above, the goals were very different, from those that violate imperative regulations, to neutral goals, and sometimes even noble ones. Certainly from such records of situations the effects could not be homogeneous, because it is impossible to treat similarly the situation of violation of the imperative regulation with that guided by great goals, such as charity, so in this sense Popa Ionut-Florin[45] determined rightly a number of effects of the simulation, namely:

- ***neutrality of simulation***. In essence, the lie in the civil law should not be tolerated, but certainly it should not be encouraged in any way. In a certain respect as if by the provisions of simulation and by the lack of clear sanctions of simulation, the legislator shall create prerequisites to encourage the simulative characters of the acts. Such encouragement derived from art. 1090 Civil Code of the Republic of Moldova, through which it was determined that the secret agreement produces effects towards parties, without any applying any sanctions for lies. In such perspective, the legislature recognized to the parties a certain right to simulate. Such right to

[44] Popa, Ionut-Florin, *op. cit*, p. 167.
[45] Popa, Ionuț-Florin, *op. cit*, p. 173

simulate, however, shall be exercised in good faith, for maintaining the neutral nature of the simulation[46].

- ***Unenforceability of the simulation***. As it was mentioned about the violation of the limit of good faith the parties shall be sanctioned. Thus according to art. 1091, para. (2) Civil Code of the Republic of Moldova – the third parties may invoke against the parties the existence of the secret contract, if it violates their rights (for example, fictitious alienation may be declared unenforceable against the prospective buyer whose rights have been disregarded; the unsecured creditor may request notes that ascertain the unenforceability of the acts concluded to the detriment of its interests, at this point the common interests of the simulation and action of revocation intersect each other[47].

- one of the most serious effects, which could not be avoided if an imperative regulation is violated, a natural fact such as ***nullity***. In this respect, how tolerant the legislator would be about a certain fact, however, prohibitive norms that prohibit the conclusion of acts cannot be ignored, thus, it was instantly mentioned that the nullity would be in the capacity of sanction. Paul Vasilescu[48] also mentioned - It should be emphasized that the sanction applied is nullity, operating erga omnes, and not the unenforceability. The unenforceability does not have the legal power to abolish the fictitious act, just as it does not extend its effects to all. In this sense it could be given the example with the conclusion by simulating a donation if the secret act would violate an imperative regulation, for example the conclusion of a donation contract by interposing persons where the beneficiary is a medical assistant who took care of the donor in the last period, violating the provisions of art. 1203, b) Civil Code of the Republic of Moldova.

In conclusion it could be mentioned that the effects of the contract towards third parties are guided by the principles of relativity and opposability, principles that determine the place of the third party within the contract concluded between the parties.

Chapter 3 Contract for the benefit of a third-party - Real exception of the principle of relativity of contracts' effects has the following structure

3.1. **History of appearance of the contract for the benefit of a third-party.** 3.1.1. *The contract for the benefit of a third party in the Roman private law. German and French doctrine in the XVII-XVIII century. 3.1.2. Stage of implementation of the contract for the benefit of a third-party in different states as an effect of case law. 3.1.3. Historical evolution of the contract*

[46] Baias, Flavius A., *Simulația. Studiu de doctrină și jurisprudență*, Rosetti Publishing House, Bucharest 2003, p. 165.

[47] Popa, Ionuț-Florin, *op. cit*, p. 173

[48] Vasielscu, Paul, *Acțiunea în simulație- câte ceva despre neatârnarea sa juridică*, article published in Drepturi, liberati si puteri la inceputul mileniului al III-lea In honorem Valeriu Stoica, Universul Juridic, Bucharest 2018, p. 716.

*for the benefit of a third-party in the Republic of Moldova. 3.2. The l***egal nature of the contract for the benefit of a third-party,** 3.2.1. *The notion of the contract for the benefit a third party. 3.2.2. The legal status of the creditor in the contract for the benefit of a third-party. 3.2.3. The debitor and his obligations within the contract for the benefit of a third party.* **3.3 Some special applications of the contract for the benefit of a third-party;** *3.3.1. The donation contract and the contract for the benefit of a third-party. 3.3.2. The annuity contract and the contract for the benefit of a third-party. 3.3.3. The contract of property administration and the contract for the benefit of a third party. 3.3.4 The contract of insurance and the contract for the benefit of a third party.*

This chapter was exclusively intended for the exception of the principle of relativity of the effects of contracts – the contract for the benefit of a third party. In the structure of this chapter it was determined the history and judicial practice that determined the appearance of this contractual construction which had a fulminant evolution from the categorical denial, to the acceptance and express regulation of it within the laws of most states. At the present stage, the contract for the benefit of a third party has individualized its own characteristics, was regulated in most European codifications.

Under art. 1096 CC, para. 1 the contract for the benefit of a third party is that contract by which – "The parties to a contract may agree that the debtor (the promissor) performs the service not to the creditor (the stipulator), but to the third party (beneficiary), indicated or not indicated in the contract, who directly obtains the right to claim the service for his benefit".

In the theory of civil law, another definition of the contract for the benefit of a third party has been established: The contract for the benefit of a third party is a contract or a clause in a contract by which a party, named promissor , undertakes to execute a benefit in favour of a third party, called the beneficiary [49]. From these definitions there could be derived the following features of the contract for the benefit of a third party, the existence of which were mandatory for qualifying it as the contract for the benefit of a third party:

1. execution of the contract shall be carried out not to the contractor, but to the third person;
2. the third person shall be endowed with the right to demand the execution of the contract.

[49] Baies, S., Volcinschi, V., Baieșu, A., Cebotari, V., Crețu, I., *Drept civil, Drepturi reale. Teoria generală a obligațiilor*, second volume, Chisinau 2005, p. 365

In essence, the contract for the benefit of a third party has no difference from any other contract that may be concluded by the parties. It shall be concluded in compliance with the conditions of validity of the legal act. In addition to the general conditions of validity of any contract (capacity of the parties, consent, subject matter and cause), the contract for the benefit of a third party shall also meet some specific conditions[50] namely: - the will to stipulate in favour of a third person shall be definite, undeniable and - the beneficiary person shall be determined or, at least, determinable.

In this chapter, the legal nature of the contract for the benefit of a third party was determined and the binding structure of the contractual relationship for the benefit of a third party was identified. A structure with a triangular shape, consisting of: promissor , stipulator and beneficiary.

Taking into account the innovations provided above it is worthy to point out the quality of each entity in such legal construction. Through the *promissor* it was meant the part of the contract which is for the benefit of a third party who undertook to perform a service not / or not only to the other party to the contract but also to a person who did not participate in the conclusion of the contract either personally or through a representative. The *stipulator* shall be the person who stipulated the benefit within the contract for the benefit of the third party. The *beneficiary* shall be the person who acquired his/her own right under a contract in which he/she did not participate either personally or through a representative.

In order to determine the legal nature of the contract for the benefit of a third party, the art. 1096 provided some essential elements:

- the third person shall always be the creditor of one of the parties to the original contract, so the beneficiary third party would have the right to demand the performance of the service in its own favour.

- The contract for the benefit of a third party shall create for the beneficiary third party, only rights, not obligations, (for example-the right to accept the service, the right to demand the performance of the service from the promissor),

[50] Beliban-Ratoi, Ludmila, *Evoluția istorică a contractului în favoarea unui terț*. National Sceintific conference with international participation. Integration through research and innovation, 8-9 November 2018, Chisinau 2018, p. 151.

- in case of refusal of the beneficiary to the right conferred, the stipulator may request the execution in his favour, only if it did not contravene the contractual provisions, or otherwise results from the nature of the obligation (contracte intuitu personae).

A remarkable aspect of the work was the determination of the status of the third-party beneficiary's right. Thus, if it did not accept the stipulation, it is considered that his/her right did not even exist. The stipulator shall be the only one entitled to revoke such stipulation for his benefit, the stipulation could be revoked only as long as the acceptance of the beneficiary has not reached the stipulator or the promissor . The right of the stipulator to demand execution for its benefit shall be excluded if such clause was established in the contract and if, by the nature of the obligation, it resulted that the service could or should have been performed only towards the beneficiary.

Regulated in the general part of the Civil Code, the contract for the benefit of a third party shall have a multitude of aspects that also shall include the provisions of the special part of the Civil Code of the Republic of Moldova. Those rules of the special part did not limit the parties to determine the aspects of a contract for the benefit of a third party. I. S. Pereterskii classified the types of the contract for the benefit of a third party into two categories:

- based on the special personal relationship of the contracting parties and the third person, from the point of view of economic significance, the contract shall be close to the donation contract;

- the contract, when the conclusion of such an agreement is an effects of the debt of a party (creditor) to a third party[51].

Such a legal mechanism, namely the contract for the benefit of a third party could be applied in any type of contract and as an effect of any relationship between the parties, but generally the classification indicated above could be taken as a basis. In the first category it was not only the donation contract but within the present paperwork it was made reference to the annuity contract, which of course according to art. 1222 Civil Code of the Republic of Moldova stated that to the annuity with title of free of charge the rules donation shall be applied, also it could not be neglected the indirect donation, which is a consistent category that could often be met through any contract, such as sale-purchase, bank deposit, etc.

[51] Перетерский И.С. "*ГК РСФСР: научный комментарий*", Москва, 1929, с. 70

Being undeniably an example of indirect donation in terms of relationship between the third party and the depositor[52], the deposit contract for the benefit of a third party could be viewed from a two-dimensional perspective. Thus the first example of such construction was that regulated by the art. 1741, para. (1) of the Civil Code of the Republic of Moldova which provided that - by bank deposit agreement, the bank or another financial institution (bank), licensed according to law, receives from its client (depositor) or from a third party for the benefit of the depositor an amount of money, entered in the balance of the deposit account opened in the name of the depositor, which he/she undertakes to return to the depositor after a certain period (term deposit) or on request (sight deposit). So, from such legal provision the configuration of the contract for the benefit of a third party of this type of contract was strictly determined.

One of the clearest and most expressly regulated categories of contract for the benefit of a third party was the situation of managing the assets of another which was usually done in the interest of the owner of the property over those assets, the owner of the estate or the owner, which was entrusted to the administrator. The legislation allowed this administration to be carried out in the interest of a third party art. 1503, para. (2) Civil Code of the Republic of Moldova.

In the case of the insurance contract, the indemnity may be paid, if the insured risk is produced, either to the insured or to a third party, as beneficiary of the insurance or as a damaged third party, respectively doubts regarding the attribution of the contract to the category of contract for the benefit of a third party should not exist.

In addition to these practical applications, generated by the interests of the contracting parties and their legal imagination, there are several special applications of the stipulation for another, which were regulated even in the Civil Code of the Republic of Moldova. Without making an exhaustive inventory of those special applications, a few examples are relevant[53].

In the same way, the present paper identified some special contracts where the aspects of the contract for the benefit of a third party could be found, also the nature of the contracts in general in the light of the new modernizations has been determined, and the nature of contract for the benefit of the third party within this complex legal construction. It was identified the controversy of the belonging of some types of contracts to the category of contract for the benefit of a third party. Thus, in conclusion, the contract for the benefit of a third party could be applied to different types of contracts without limitations to a specific category, because in this regard,

[52] Baeşu, Aurel, Slutu, Nicolae, in *Drept bancar. Note de curs, Chisinau 2013*, p. 11.

[53] Stoica, Valeriu, *Au terţii un veşmânt logic comun în Codul civil?* In: Roman Journal of Private Law, nr.1, as of 28 February 2020, p. 19.

there are no imperative provisions that would prohibit that. Thus, some examples of practical applicability would be the donation contract, the annuity contract, the insurance contract, the fiduciary management contract, the bank deposit contract.

The last section of the paper - **general conclusions and recommendations** included all the conclusions drawn up in the paperwork, which were reached through hard work in identifying doctrinal views on the researched field, as well as on the theses invoked by the author in the aspect of the paper presented. A number of legislative recommendations have also been made to improve the rules on the effects of contracts towards third parties.

In the bibliography it was included the list of works that were used in the present research, which helped the author to make conclusions and recommendations on the given topic through the research methods previously invoked.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

1. The effects of the contract may be regarded under two aspects, the first, as a (sub) institution of civil law, an integral part of the institution of the contract, which encompassed all rules of civil law regarding the effects of contracts and the second - in the direct sense are all the rights and obligations determined by the parties to the contract , which was identified with the rule of conduct created by the parties through the contract negotiated by them, which they must be guided by, and which depicted a subjective civil law, but also by the limitations of the imperative regulation, provisions, principle of good faith, equity, practices applicable between the parties.

2. The principles of contracts' effects shall be defined, in principle, according to the criterion against whom they are produced. Namely, there are delimited the effects of contracts in effects on parties, to this effect being attributed *the principle of binding force of the contract and*-the effects of contracts towards third parties, which were characterized by the *principle of relativity of effects and the principle of opposability of effects.*

3. The principle of relativity of effects of the civil legal act was one of the principles governing the effects of contracts towards third parties. It created the rule of law according to which the civil legal act produced effects only towards its parties, without being able to profit or harm other persons, which symmetrically contradicted the denial - third parties have neither rights nor obligations in the light of the contract concluded by the parties, with the exceptions provided for by law. The exception that determined the principle of relativity of effects is the third party beneficiary contract.

4. The party shall be not only the person who directly, personally, by physical presence, concludes a certain legal act, but also the one who concludes the act through its representative (legal or conventional) and the one who, in some cases, has adhered to such contract, the one who has ratified it according to art. 370 Civil Code of the Republic of Moldova (conclusion of the legal act without powers of representation) and according to art. 358 Civil Code of the Republic of Moldova (effects of the legal act of disposition of the wrongful one);

5. Third parties shall be the most mobile entities of the contract, being persons who did not participate in the conclusion of a legal act, neither personally nor through representation, aliens to the concluded contract. At the same time, because third parties at the stage of concluding the act are both universal and universal successors, as well as private individuals, creditors, the third parties were classified as follows: 1. Third parties who may become parties (successors, those who ratify, adherents), 2. Beneficiary third parties (beneficiary third party to

the contract for the benefit of a third party) and 3. Absolute third parties, those third parties to whom no rights, and even more, contractual obligations cannot be assigned, but who are obliged to comply with the contract concluded by the parties.

6. The binding legal principle, but also that principle with guiding power of the activity of the third party within the opposability of the effects of the contract is a principle that determines the place of the third party within the relationship of effects of the civil contract. Thus it implies in itself two aspects - one active and the other passive. The active element consisted in the fact that the parties could claim to respect the act and not to harm it, and the passive one, under this principle, determined that the third parties have a general duty not to harm, in any way, the rights of the parties born by contract.

7. In the sense of opposability of the contracts towards third parties, it would be opportune to create the electronic register of matrimonial contracts, the register that would create certainty of the matrimonial regime chosen by the spouses during the marriage for their creditors and interested third parties.

8. In the history of appearance of the contract for the benefit of a third party, the Romanian private law vehemently denied the third party beneficiary contract. The negation of the third party beneficiary contract has started to be recognized only at the end of the XIX century, when the French and German jurisprudence determined the possibility of the creditor's interest in concluding the third party beneficiary contract and the need to include this legal construction in the civil circuit, guided in particular by the principle of contractual freedom, principle that made it possible to achieve this exception of the relativity of the effects of contracts..

9. The legislation applied on the territory of the Republic of Moldova in the XIX-XX centuries, in the field of this institution of civil law had clear regulations on the contract for the benefit of a third party, which established the existence of such institution within the framework of civil law. Thus, it was expressly regulated both according to the civil codes of 1922 and 1964.

10. The contract for the benefit of a third party was an absolutely impressive legal construction that has taken place in the civil circuit not by legal norm, but by necessity and, as a result, by judicial practice. Such an approach was found in the legislation and jurisprudence of most states. The legislator in this sense was only a regulator who ruled only what was already known by practitioners and needed to be regulated.

11. There is a contract for the benefit of a third party if: - the will to stipulate in favor of a third person is certain, undeniable. - the person of the beneficiary is determined or, at least, determinable.

12. If the third party beneficiary does not accept the stipulation, it is considered that his/her right did not even exist.

13. The revocation of the stipulation could only be carried out by the stipulator who is the only one entitled to revoke it, his/her creditors or heirs unable to do so. The revocation of the stipulation will take full effect from the moment it reaches promissor . The stipulator must notify the promissor about the revocation. The stipulator may revoke a stipulation in favor of a third party, only as long as the acceptance of the beneficiary has not reached the stipulator or the promissor.

14. As a creditor of the claim established by the contract for the benefit of a third party can be both the beneficiary third party of the contract and even the stipulator, because if the third party refuses the benefit the right shall become the patrimony of the stipulator without any additional actions on his behalf.

15. The promissor may oppose to the beneficiary's exceptions based on the contract from which the beneficiary has obtained its right, but without the exceptions based on other relations between the promissor and the stipulator. Even if the request for execution in favor of the beneficiary would be made by the stipulator, the promissor can only raise the exceptions resulting from the contract under which the beneficiary's right was born, because once accepted the benefit passes directly to the beneficiary and not to the stipulator.

16. The stipulation made to the heirs could be both part of the succession mass and delimited by the succession mass and assigned to the heir as a distinct right of inheritance. In this sense, the intention of the stipulator when enunciating the stipulation is very important.

17. The debtor of the obligation, according to the contract for the benefit of a third party, is the promissor but at the same time it could have a double quality - as debtor in relation to the third party and as debtor in relation to the stipulator, in the case of synalagmatic contracts. The obligation of his/her stipulation would not lapse in the event of renunciation of the beneficiary to accept the benefit, this renunciation would mean, in principle, the passage of this right into the patrimony of the stipulator.

18. In the case of a donation contract for the benefit of a third party, if it is qualified as a conditional donation, the gratuitous nature of this contract shall be questioned, since it would constitute a donation only on the surplus part. A large proportion of third-party beneficiary contracts, however, qualify as indirect donations.

19. Revocation in case of donation contract shall also be viewed under two aspects - revocation of the stipulation and revocation of the donation. It should be noted that there were some effects related to the revocation of the stipulation, which referred to art. 1096-1099 Civil Code of the Republic of Moldova and the revocation of such stipulation could only be carried

out until the beneficiary accepts the stipulation. At the same time, when revoking the donation in general, the rules of art. 1207-1212 CC of RM shall be applied. The revocation, modification of the contract shall be the responsibility of the parties and the third party beneficiary shall bear its consequences.

20. The annuity is one of the contracts in which, expressly, the possibility of the legislator to have included the effect of the contract for the benefit of the third party is provided. That aspect could be achieved through two ways: - the free lease contract and in this sense the rules of donation shall apply;- the onerous lease contract, which is also the classic form of it.

21. The third party under the annuity contract may be involved in determining the term of the contract. In this way, the lifelong character coulf be determined not only by the life of the credit holder but also by that of the third party.

22. The designation of a third party in the insurance contract shall not necessarily mean that it was concluded for the benefit of a third party. It is worth noting that the existence of the beneficiary under such contract shall not be mandatory, except for the civil liability contract in which the beneficiary shall be predetermined by the legislator as the injured third party. In the case of the civil liability insurance contract, the aspect of contract for the benefit of a third party shall be offered to him by the triangle of relations in the event of occurrence of the insured case.

23. Fiduciary administration contract with the appointment of a beneficiary should be recognized as a contract for the benefit of a third party, according to the regulations of art. 1096-1099 Civil Code of the Republic of Moldova. However, due to the fact that the legislator did not expressly establish the rights and obligations of the founder and beneficiary under such a contract, as well as due to the specific content of the beneficiary's interest, the parties should agree on appropriate conditions of the text of the contract to avoid possible conflicts.

24. Highlighting the legal regime of the effects of contracts towards third parties, there were made proposals for the lex ferenda, as follows:

- It was believed as appropriate to make some corrections to the legislation, namely Chapter VI, Title II, the Third Book of the Civil Code of the Republic of Moldova by delimiting the effects of contracts in two sections: first section - effects towards parties in which the principle of binding force of contracts is to be set; second section - effects towards third parties, in which the principle of relativity of effects and the principle of opposability shall be set. That change would create clarity for practitioners as well as make the clear distinction between effects towards parties and those towards third parties. Accordingly, it was proposed to include in the text of the norm of the Civil Code of the Republic of Moldova the principle of opposability of the contracts' effects towards third parties with the following text – *The effects of the contract are opposable to third parties. Third parties may benefit from the effects of the contract, but*

without having the right to demand performance for their benefit unless the law or the contract provides otherwise.

- amendment of art. 1086, paragraph 2 Civil Code of the Republic of Moldova as follows – *The contract also produces effects for the universal or universal successors if the law, the agreement of the parties or the nature of the obligation does not result otherwise.*

- due to a more procedural nature of the norm established in art. 1201 Civil Code of the Republic of Moldova, it was believed as inappropriate to find the legal provisions of art. 1201 in the text of the Civil Code of the Republic of Moldova, and this article should rather be found in a procedural rule, namely it is proposed to exclude it from the text of the Civil Code of the Republic of Moldova and include it in the norms of Law No. 246 of 15-11-2018 **on the notarial procedure, namely to supplement the Chapter III of the Law with an article titled - *Authentication of the donation on the immovable properties for residential use,* where such a norm would find its place.**

ADNOTARE

Date de identificare: Beliban-Rațoi Ludmila, autorul tezei cu denumirea "Efectele contractului față de terți". Teză de doctor în drept. Școala Doctorală Științe Juridice a Universității de Stat din Moldova. Chișinău 2021

Structura tezei, prezenta lucrare a fost elaborată în perioada anilor 2019-2021, și are următoarea structură: introducere, patru capitole, concluzii generale și recomandări, 217 de pagini text de bază, bibliografie cu 190 de titluri. Rezultatele sunt reflectate în 7 lucrări științifice.

Cuvinte Cheie: contract, act juridic, efect al contractului, efect al contractul față de terți, parte, terți, relativitate, opozabilitate, simulație, contract în folosul unui terț, stipulant, promitent, beneficiar.

Domeniul de studii: domeniul de cercetare al prezentei lucrări este domeniul dreptului civil și anume instituția contractului, cu precădere a efectelor contractului.

Scopul și obiectivele lucrării. Scopul tezei este de a determina caracterul dinamic al efectelor contractelor față de terți în cadrul efectelor contractelor, precum și abordarea complexă și multiaspectuală a temei efectelor contractelor față de terți, prin prisma multitudinii de opinii doctrinare, dar în special a celei internaționale. La fel, scopul de bază este de a realiza un studiu teoretico-practic cu privire la efectele contractelor față de terți, spre a fi folosită în elucidarea diferitelor litigii sau probleme ce țin de aplicarea prevederilor legale, a principiilor efectelor contractelor în general, dar și a efectelor contractelor față de terți în mod special. Obiectivele lucrării sunt- stabilirea gradului de cercetare a domeniului efectelor contractelor în general, dar și a efectelor contractului față de terți în mod special, determinarea principiilor ce dirijează efectele contractelor în general, dar și a efectelor față de terți în mod special și analiza profundă a acestora, evidențierea categoriei de parte a contractului, evidențierea categoriei de terț în raport cu contractul, examinarea evolutivă a contractului în folosul unui terț, identificarea și elucidarea trăsăturilor caracteristice ale contractului în folosul unui terț, determinarea aspectelor de problematică cu privire la unele contracte numite ce implică în sine clauza, sau aspecte ale contractului în folosul unui terț.

Noutatea și originalitatea științifică a rezultatelor obținute rezidă în faptul că prezenta lucrare este una de noutate, cu privire efectele contractelor față de terți, dar în mod special după modernizarea Codului Civil al RM aceasta este prima în domeniul de cercetare propus.

Problematica științifică soluționată constă în abordarea amplă a efectelor contractului față de terți. În această ordine de idei, ținem să menționăm că prin prezenta lucrare am realizat

determinarea aspectului cu privire la parte și terți. La fel, am determinat mobilitatea noțiunii de terți, am clasificat terții și le-am determinat caracterul multiaspectual, am punctat și determinat calitatea de creditor și debitor în cadrul contractului în folosul unui terț și am determinat locul construcției jurdice a contractului în folosul unui terț în cadrul unor contracte numite, pentru a determina aplicabilitatea practică a acestui tip de contract în relațiile juridico-civile.

Semnificația teoretică a lucrării este determinată de importanța deosebită a contractului în cadrul relațiilor juridice civile, iar efectele acestui contract sunt fenomenale. Determinarea efectelor contractelor față de terți este generată de caracterul mobil al entității de terți în domeniul instituției contractului dar, în același timp, este generată și de libertatea contractuală ce ne ghidează în aspectul definitoriu al invocării în folosul terțului a unui beneficiu.

Valoarea aplicativă a cercetării - această lucrare este primul studiu complex al efectelor contractului în folosul unui terț pe teritoriul Republicii Moldova, fiind un punct de plecare întru realizarea și altor cercetări în domeniul dat de către doctrinarii în domeniu.

АННОТАЦИЯ

Идентификационые данные: Белибан-Рацой Людмила, автор дисертации на тему Последствия договора по отношению к третьим лицам ». Докторская диссертация на соискание ученой степени доктор право. Докторская школа юридических наук Государственного Университета Молдовы. Кишинев 2021

Структура диссертации, данная дисетационная работа была разработана в течение 2019-2021 годов, и имеет следующую структуру: введение, четыре главы, общие выводы и рекомендации, 217 страниц основного текста, библиография со 190 названиями. Результаты отражены в 7 научных статьях.

Ключевые слова: договор, правовой акт, действие договора, влияние договора на третьих лицах, сторона, третъе лицо, относительность, противопоставимость, моделирование, договор в пользу третьего лица, стипулятор, обещатель, выгодопреобретатель.

Область исследования: область исследования данной дисетационной работа - это область гражданского права, а именно институт договора, в особености последствия договора.

Цель и задачи дисертации. Целью диссертации является определение динамического характера последствий договоров по отношению к третьим лицам в рамках последствий договоров, а также комплексный и многосторонний подход к теме последствий договоров по отношению к третьим лицам. Аналогичным образом, основная цель - провести теоретико-практическое исследование последствий договоров в пользу третьего литца, которое будет использоваться для разъяснения различных споров или вопросов, связанных с применением правовых положений, принципов действия договоров в целом, а также последствия договоров, в частности, в пользу третьего лица.

Цели работы - определение степени исследований в области последствий договоров в целом, а также и последствия договоров по отнащению к третьим лицам в частности, определение принципов, регулирующих последствия договора в целом, а также последствия для третьих лиц в частности, и их углубленный анализ с выделением категории части договора, выделением категории третьего лица по отношению к договору, эволюционным изучением договора в пользу третьего литца, выявлением и характеристика особенности договора в пользу третьего литца, определение вопросов, связанных с некоторыми договорами, или аспекты договора в пользу третьего литца.

Новизна и научная оригинальность полученных результатов: заключается в том, что эта работа является новинкой в отношении последствий договоров в отношении к третьим лицам, но особенно после модернизации Гражданского кодекса Республики Молдова.

Научная проблематика: она заключается в широком подходе к последствиям договора в пользу третьего лица. В связи с этим мы хотели бы упомянуть, что в этом документе мы определили аспект, касающийся стороны и третьиего лица. Мы также определили подвижность понятия третьих лиц, классифицировали третьи лица и определили их комплексный характер. Мы оценили и определили качество кредитора и должника в договоре в пользу третьего лица, и мы определили место юридического толкования договора в пользу третьего лица в названных договорах, чтобы определить практическую применимость этого типа договора.

Теоретическая значимость дисертации определяется особой значимостью договора в гражданско-правовых отношениях, а также его последствиям. Определение последствий договора в пользу третьего лица обусловлено мобильным характером третьего лица в области заключения договора, но в то же время обусловлено принципом свободе договора, которая делает возможной привлечения выгоды третьему литцу.

Практическая ценность дисертации: Данная работа является первым комплексным исследованием последствий договора в отношении к третьим лицам на территории Республики Молдова, и является отправной точкой для проведения других исследований в этой области.

ANNOTATION

Identification data: Beliban-Rațoi Ludmila, author of the thesis entitled "Effects of the contract on third parties". Doctoral thesis in law. Doctoral School of Legal Sciences of the Moldova State University. Chisinau 2021

The structure of the thesis: this thesis was developed during 2019-2021 and has the following structure: introduction, four chapters, general conclusions and recommendations 217 pages of basic text, bibliography with 190 titles. The results are reflected in 7 scientific researches.

Keywords: contract, legal act, effect of the contract, effect of the contract towards third parties, party, third parties, relativity, opposability, simulation, contract for the benefit of a third party, stipulator, promiser, beneficiary.

Field of study: the field of this research is the field of civil law, namely the institution of the contract, especially the effects of the contract.

The purpose and objectives of the thesis. The aim of the thesis is to determine the dynamic nature of the effects of contracts vis-à-vis third parties within the effects of contracts, as well as the complex and ample approach of the topic of the effects of contracts vis-à-vis third parties. Likewise, the basic purpose is to carry out a theoretical-practical study on the effects of contracts against third parties, to be used in elucidating various disputes or issues related to the application of legal provisions, the principles of contract effects in general, but also the effects of contracts vis-à-vis third parties in particular. The objectives of the thesis are - establishing the degree of research in the field of contract effects in general, but also the effects of the contract to third parties in particular, determining the principles governing the effects of contracts in general, but also the effects to third parties in particular and their in-depth analysis , highlighting the category of a party of the contract, highlighting the category of third person in relation to the contract, evolutionary examination of the contract for the benefit of a third person, identifying and circumventing the characteristic features of the contract for the benefit of a third person, determining issues related to some specific contracts and its clauses, or aspects of the contract for the benefit of a third person.

The novelty and scientific originality of the obtained results lies in the fact that this text is a novelty, regarding the effects of contracts to third parties, but especially after the modernization of the Civil Code of the Republic of Moldova, this is the first research in the mentioned-above field.

Scientific issue solved: it consists in the complex approach of the effects of the contract towards third parties. On this line, we would like to mention that through this thesis we have determined the aspect regarding the party and third persons. We also determined the flexibility of the notion of third person, we classified third persons and we determined their complex character. We have mentioned and determined the quality of creditor and debtor within the contract for the benefit of a third person, and we have determined the place of legal construction of the contract for the benefit of a third person within named contracts, to determine the practical use of this type of contract.

The theoretical significance of the thesis: it is determined by the special importance of the contract in civil legal relations, and the effects of this contract are absolutely phenomenal. Determining the effects of contracts vis-à-vis third persons is generated by the mobile nature of the third-person entity in the field of contracting, but at the same time it is generated by the contractual freedom that guides us in defining aspects regarding invoking a third person benefit.

The applicative value of the research: This thesis is the first complex analysis of the effects of the contract for the benefit of a third person on the territory of the Republic of Moldova, being a starting point for doing other researches in this domain by doctrinaires in the field.

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