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HARDSHIP. COMPARATIVE LAW

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Abstract: *The new Civil Code brings important innovations with regard to the effects of a contract, as some of them are regulated for the first time in our legislation, such as the doctrine of hardship or unilateral termination of a contract. Below we will deal with one of these exceptions from the principle of a relative contract by referring to the sources of comparative law and highlighting especially the unusual aspects that are worth special attention in legal literature; certainly, we expect that the case-law have a decisive contribution to the clarification of the aspects in question by the resolutions to be passed.*

Key words: *- principle of binding effects of contracts, exceptions from principle of the binding effects of contract, hardship, excessively onerous obligations, contract renegotiation.*

1. Defining the principle

Article 1.270 of the new Civil Code rules on the binding force of a contract, expressly stipulating that a contract validly concluded has the force of law for the parties.

Furthermore, a validly concluded contract binds only as to what is expressly stipulated, as well as to all consequences that established practices between the parties, usage, law or equity given to the contract according to its nature (art. 1.272 NCC, art. 970 Civil Code of 1864; the text of the new Civil Code repeats the provisions of the Civil Code of Québec, art. 1.434 C.C.Q., called *Binding force and content of contract*, „a *contract validly formed binds the parties who have entered into it not only as to what they have expressed in it but also as to what is incident to it* ***according to its nature and in conformity with usage, equity or law***"), and the usual clauses of a contract are inferred, although not expressly stated (art. 1.272 NCC, art. 981 Civil Code of 1864), „The novelty" brought forth by the new Civil Code is the obligation of the contracting parties to abide by the implicit clauses of a contract which the *usage* (and not *custom*, which is less comprehensive and more confusing, in our opinion) established between the parties require.

On the other hand, it is worth noting that the current Civil Code brings nothing new in comparison with the old code which ceased its force and applicability in October 2011 (which is absolutely natural, as the binding force of a contract is an essential rule, taken over from Roman law). Thus, in terms of the definition of the binding principle, the same

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provisions of the old Civil Code are repeated, but it has also been taken into considerations that they be in compliance with the newest rulings in the matter of contracts passed in the European private law (*Principles, Definitions and Model Rules of European Private Law – Draft Common Frame of Reference* (DCFR) stipulates the obligation of the contracting parties to abide by the content of the contract in terms not only of the legal provisions, but also of the established usage: „*The terms of a contract may be derived from the express or tacit agreement of the parties, from rules of law or from practices established*" [art. II – 9:101:(1) – *Terms of a contract*]); furthermore, another source of inspiration was the Civil Code of the Canadian province of Québec.

As it has been often emphasized, many articles of the Civil Code of the Canadian province of Québec, which is considered a model by several European and Non-European states, are taken over by the Romanian Civil Code that entered into force in 2011. However, it should be mentioned that the Civil Code of Québec does not rule on some legal institutions present in our Code, although they did not exist previously –such as hardship in contracts (taken over from the UNIDROIT Principles applicable to international commercial contracts and from the DCFR Rules), as it does not rule on other new legal institutions which we will deal with on other occasions.

2. Exceptions to the Binding Principle of Contracts. General Remarks

Evidently, a validly concluded contract may be altered or may cease in two cases: when the parties agree on the change or ceasing of the contract or when the law requires or allows for it expressly. The change or termination of a contract following the agreement of the parties is natural, as it is logical that the parties may decide on an agreement as long as such parties have decided on its formation. This is not a situation derogating from the binding principle in itself or which represents an exception from the binding force of a contract. In fact, a legal dualism applies here, according to which, if the parties have consented to the conclusion of a contract (*mutuum consensus*), same parties may consent to its change or termination (*mutuum dissensus*). In our opinion, the agreement of the parties on the change or cancellation of the contract is not subject to any formal condition, as long as the agreement on the formation of such contract is not subject to such condition; moreover, as stated in the French judicial practice, such agreement may be tacit or may result from circumstances, according to the judge analysing the grounds of contractual rapports, and it does not have to be made in writing (Civ. I., 22 nov. 1960, Bull. Civ. I, no. 510, D 1961 and other similar resolutions in *Code Civil Dalloz*, Ed. 2005, p. 974, see also Com., 27 fevr. 1996, Bull. Civ. IV no. 69, RTD Civ. 1996, 909).

The termination of a contract by the agreement of the parties has similar effects to the rescission/cancellation of the contract, that is, in principle, the parties shall be restored to the circumstances prior to the contract (in case of a contract with one-off performance) or the agreement shall become effective only for the future (in case of contracts of successive performance); obviously the difference lies in that fact that, in case of termination by mutual agreement of the parties, no damages are owed (as for rescission/cancellation), for it is not termination by fault of a party, but the parties' agreement of will freely expressed.

On the contrary, the change or termination of a contract „*by causes authorized by law*" [a phrasing used in the second paragraph of art. 1.270 NCC, identical in form with that provided by the old Civil Code, art. 969 par. (2)] should be regarded as an actual exception, as it may be done provided the law allows it. And the law– the new Civil Code – allows for the breach of the binding force of a contract in two circumstances: the *unilateral termination* of a contract (an apparent exception from the binding principle) and the change (or cessation) of a contract as a result of *hardship* (also known as *rebus sic stantibus*).

3. Hardship (Rebus Sic Stantibus Rule)

3.1. Location of the Matter

We begin the approach of hardship by quoting the entire legal text for a simple reason: hardship is absolutely new in the Romanian law, so that it is necessary, in our opinion, to know the manner in which the Civil Code ruled about it. On the other hand, the judicial institution under discussion below is regulated by a single article, namely art. 1.271 NCC, which stipulates the following under the heading *Hardship*:

„(1) The parties are held to perform their obligations even if performance has become more onerous whether because the cost of performance has increased or because the value of what is to be received in return has diminished.

(2) If, however, performance of a contract has become so onerous because of an extraordinary change of circumstances that would be manifestly unjust to hold the debtor to the obligation, the court may:

a) vary the contract in order to distribute fairly to the parties the losses and benefits as a result of changing circumstances;

b) terminate the contract at a date and on the terms to be determined by the court.

(3) The provisions of par. (2) shall apply provided that:

a) the change of circumstances occurred after the contract was formed;

b) the debtor did not at the time of contract conclusion take into account and could not reasonably be expected to have taken into account the possibility and scale of change of circumstances;

c) the debtor did not assume and could not be reasonably regarded as having assumed the risk of change of circumstances;

d) the debtor has attempted reasonably and in good faith to achieve by negotiation a reasonable and equitable adjustment of the contract".

3.2. Concept. History. Comparative Law

For the first time in our legislation, the new Civil Code rules on the doctrine of hardship. The law is based on the principle of the binding effects of a contract which is reiterated more rigorously so that it is clear that hardship is a strict exception from the binding nature of a contract. The theory of hardship, although regulated by a single article, is sufficiently legislated in our opinion; it is the responsibility of case-law to put it into practice and define actual circumstances of hardship that will be claimed in practice.

A hardship circumstance may arise in contracts of successive performance (whose performance takes a long time), as well as in contracts affected by a suspensive term sufficiently far removed. Due to this element (time), a major imbalance may arise during the performance of the contract between the mutual prestations owed by the contracting parties. As a rule, this imbalance is related to the obligation of paying certain amounts, when a creditor, by virtue of the contractual provisions, should receive an amount of money that is much under the actual value of his counter-prestation. Nevertheless, the debtor may find himself in the same situation when, by virtue of the contract, he must pay a very high amount as compared to the actual value of the purchased goods. Certainly, in practice, hardship may apply only if the prestations or obligations for the parties under the contract have not been performed. If, on the contrary, the contract has been performed in full, neither party may claim the increase of his costs for the performance of obligation or the diminishing of the value of the counter-prestation for the following reason: once the obligation could be executed, it means that such obligation represented, for the debtor, the appropriate and proportional equivalent of the relating obligation. If, however, the obligation was *partially* performed, we believe that hardship may be claimed for the obligations to be performed.

The doctrine of hardship was taken over from the old Roman law, where the compliance with the assumed obligations was required in principle (just as for the binding force of a contract in our law) but only provided that the circumstances at the time of contract formation remained unchanged during the entire performance of the contract or, in other words, if „*things stay the same*" (the translation form Latin of *rebus sic stantibus*). The doctrine of hardship was not recognized by our domestic legislation, it was a creation of the legal literature - based on the principles of Roman law, on the rules applying to international commercial contracts and on the laws of other states.

However, hardship was and has been applied effectively in sale contracts or in international supply contracts. The principles applying to international commercial contracts codified by the International Institute for the Unification of Private Law in 1994 (UNIDROIT Principles) expressly rule on hardship, which is called *hardship clause* (The hardship clause is regulated by articles 6.2.1 - -6.2.3 of Unidroit Principles applying to international commercial contracts., Along with the DCFR Rules, such texts constituted the source of inspiration for the Romanian legislators, for the Civil Code of Québec does not have any regulation on hardship in contracts), that is that extraordinary circumstance fundamentally changing the contractual balance. Nevertheless, even law systems that have no regulations on the concept of *hardship* (for instance, the USA) know of a similar circumstance, called *frustration of purpose* or *frustration of contract* (frequently found in commercial law under the name of *commercial frustration*), a hypothesis that lies somewhere between hardship and fortuitous impossibility of performance. *Frustration of contract* arises when an unforeseeable event ruins the grounds or purpose for which a person entered into the contract; This is the difference (of meaning) from impossibility of performance (either fortuitous or as a result of hardship), as a fortuitous impossibility is related to a specific obligation and not to the purpose of contract formation, as it is the case with *frustration of contract*. We believe

that the direct and main source of inspiration for the legislators of the new Romanian Civil code are the DCFR Rules, which, in paragraph III-1:110, called *Variation or termination by court on a change of circumstances*, rule on the doctrine of hardship almost identically with art. 1.271 NCC (the only significant difference between the two legal texts is that the DCFR Rules provide the possibility of claiming hardship by a person who has assumed his obligations by virtue of a unilateral legal transaction).

The Civil Code of Québec does not have a regulation on the possibility of a contracting party of claiming hardship, and in this matter, in our opinion, the Canadian law is influenced by the French private law, which, after the famous resolution of 1876 regarding the Craponne Channel, refused any discussion on this topic. Therefore, the Canadian case-law, just as the French case-law, stated as a principle that the adjustment of a contract by a legal court is not possible, not even when a law changes essential elements of a contract subject to revision. For this purpose, of particular relevance is the decision of the Supreme Court of Justice in the case of Churchill Falls (Labrador) vs. PG De Terre Neuve (Tancelin, Gardner, 2017, p. 246), where there was a contract concluded in 1969, whereby the Canadian province of Terra Nova undertook to supply energy produced at the Churchill Falls to a trade company (Hydro Québec) for 65 years, at a given price. The province of Terra Nova passed a regulating bill – Reversion Act – changing this contract, which is however considered by the court as „a disguised attempt of changing the energy supply contract and of damaging the right of Hydro Québec to receive an agreed amount of energy at an agreed price". Consequently, „Reversion Act cannot bear effects, the more so that this is an ultra vires document to Hydro Québec, which is not governed by the law of the Province of Terra Nova, adds the judge W.R. McIntyre in his rationale. In the same case, another judge ruled peremptorily that „the doctrine of hardship is not recognized by our law", adding that there is a trend of fighting this theory both in case-law and doctrine (Juge Monet).

3.3. Conditions of Hardship. List of Conditions

As stated before, we cannot fully understand the theory of hardship if we fail to take into consideration the binding effects of a contract; the law itself acts in this manner and emphasizes and reiterates from the setoff the binding force of a contract:

„(1) The parties are held to perform their obligations even if performance has become ***more*** *onerous whether because the cost of performance has increased or because the value of what is to be received in return has diminished.*

(2) If, however, performance of a contract has become ***so*** *onerous because of an extraordinary change of circumstances that would be manifestly unjust to hold the debtor to the obligation, the court may: (…)*" (emphasis added).

We will deal with the solutions that a court may provide below; firstly, we will discuss the conditions required to claim hardship.

There are two core elements for hardship to arise:

– an imbalance between performances, caused by an excessively onerous obligation;

– the contractual imbalance should be unforeseeable and inopportune.

In our opinion, this manner of ruling on hardship is both complicated (for this purpose see our considerations above) and accurate, because the law gives full freedom to judges (who have some criteria) to decide on a contract for which hardship has been claimed. Therefore, we do not agree with other opinions formulated in the legal literature, according to which the regulation of our new Civil Code is too vague and does not provide sufficient landmarks to distinguish between the two concepts (Ionescu, 2011, p. 129). On the contrary, we believe that, given this matter is to be decided upon by a judge's expertise and experience, a „mathematical" regulation (as the quoted author states) could not cover all the possible circumstances leading to a contractual imbalance and, eventually, would hinder a judge in his decision of accurately assessing whether or not he is faced with actual hardship.

3.4. Imbalance between Performances and Excessively Onerous Obligations.

Firstly, there should be a major and obvious *imbalance* between the prestations that the parties are held to perform, namely that such imbalance should be so conspicuous that the debtor of such obligations be put in a very serious and disadvantageous situation if he were to perform it.

As one can see, the law refers to an obligation that has become *excessively onerous*, this being the only circumstance when a party may claim hardship. In order to emphasize this concept, the law expressly states that an obligation that has become *more* onerous (and not *excessively* onerous) cannot be a ground for a contracting party of claiming hardship.

We believe that this regulation, although potentially ambiguous, reflects the efforts of the legislators to define the more or less onerous nature of contractual obligations (which is extremely difficult) and in this way to strengthen the binding force of a contract (because, obviously, this is the purpose of using these two potentially confusing concepts). We may acknowledge that such attempt is to be praised, unfortunately, however, we believe that it will give rise to many discussions in practice, as the following question will arise naturally: when does an obligation become *more* onerous and when does it become *excessively* onerous?

It is interesting that the Principles applying to international commercial contracts (UNIDROIT Principles) unlike our new Civil code, do not use both concepts. As mentioned earlier, there are three articles dealing with the *hardship* clause by the Unidroit Convention. Art. 6.2.1, graphically called *Contract to be observed*, states from the very beginning that **"***Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship***"** (our italics). Therefore, we find that, unlike the new Romanian Civil code, there are not two concepts, *more onerous* and *excessively onerous,* but only one, i.e. *more onerous* (*More onerous, plus onereuse*, in the original versions, English and French of the text), in order to clear any confusion. The remaining text has the same meaning and hypothesis, namely: if an obligation becomes more onerous, it should be observed, unless there is a circumstance of hardship. The second article of the Unidroit Convestion dealing with hardship (art. 6.2.2) actually shows what circumstances may be deemed as hardship, that is **"***where the occurrence of events*

fundamentally alters the equilibrium of the contract *either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished****"*** (emphasis added).

Consequently, we notice here the essential criterion of defining hardship as it is seen by international commercial law, which seems to us more accurate, clearer and energetic than the word onerous, as used in its two comparatives (*more* onerous and *excessively* onerous).

Therefore, we believe that what needs to be proved is the event *fundamentally* altering the balance of a contract, which can manifest itself in two ways: either by the augmentation (increase) of the costs needed by the debtor to perform his obligations or by the actual diminishing of the performance received by the creditor. These are the two situations mentioned by art. 1.271 par. (1) NCC, which have been transposed *mutatis mutandis* in our law from art. 6.2.2 of UNIDROIT Principles. According to our new Civil Code, it seems that hardship may be claimed only by the debtor. For this purpose, let us quote the provisions of art. 1.271 par. (2) NCC, according to which a court may intervene to restore the balance of a contract provided that „*the performance of the contract has become excessively onerous because of an extraordinary change of circumstances that would be manifestly* ***unjust to hold the debtor to the obligation***" (emphasis added).

This limitation is strange, as the first paragraph of the same article refers both to the performance to be carried out by the debtor and to the performance to be received by the creditor. In other words, by reading article 1.271 NCC we infer that the parties must perform their obligations „ *even if performance has become more onerous whether because the cost of performance has increased or because the value of* ***what is to be received in return*** *has diminished*" [par. (1)], but hardship may be claimed only if in extraordinary circumstances „ *would be manifestly unjust to hold the* ***debtor*** *to the obligation*" [par. (2)]. Why this difference? In our opinion, it is an overlook or confusion of the legislators. The UNIDROIT Principles (one of our sources in terms of hardship) make no distinction (just as the DCFR Rules, the other source of inspiration in the matter), therefore the creditor too is entitled to an adjustment of the contract, such creditor being forced to accept a performance that is much diminished as compared to its actual value under the contract. Consequently, the UNIDROIT Principles refer to the *disadvantaged party*, and not to the *debtor*, as the new Romanian Civil Code does. We are firm in our belief in taking into consideration the right of either contracting party – either a debtor or a creditor – to being able to claim hardship when they are in a disadvantageous situation.

3.5. Unforeseeable Nature of a Contractual Imbalance

The second element is the actual hardship, entailing that the imbalance of performances should be unexpected, should occur in a completely *unforeseeable* manner, neither party being able to foresee what will happen in the future (the far future, by definition) with the performances the parties have undertaken. If this unforeseeable nature does not exist, then we cannot speak about hardship, as the party

being in a disadvantageous situation cannot claim the rule of *rebus sic stantibus*; therefore, in such case, if the party does not execute the contract which has become extremely onerous for reasons that have not been foreseen, the question of the failure of performance of obligations will arise, which requires a completely different solution, namely the applications of the rules for rescission/termination and, implicitly, of contractual liability. Moreover, there is no hardship when the performance of an obligation has become impossible because of force majeure and not as a result of such obligation having become extremely onerous; in such circumstance, we are dealing certainly with a contractual risk and not with hardship.

Taking into consideration all the above, it is worth noting that such an event (resulting in a contractual imbalance) must meet cumulatively three conditions in order to be accepted as a source of hardship:

– it must occur or become known to the disadvantaged party after the conclusion of the contract and it must reasonably be impossible to have been taken into account at the time of contract formation; therefore, on the one hand, it is important that the source of such event resulting in disproportionate performances should take place after the conclusion of a contract (and this is the main difference from lesion) and, on the other hand, it should be unknown to the contracting party or, in other words, according to art. 1.271 par. (3) letter b) NCC, the change of circumstances, as well as its scope, were not and could not have been reasonably taken into account by the debtor at the time the contract was concluded;

- it must be beyond the control of the disadvantaged party; if the respective party had been able to remove its effects, hardship cannot be claimed;

– the disadvantaged party should not have assumed the risk of events; in principle, assuming any risk is possible, in fact, in this case, we speak about a clause in the contract whereby a contracting party firmly and unequivocally undertakes to perform their obligations irrespective of the changes that might occur during the execution of the contract, even if such changes upset the contractual balance.

3.6. Necessary definitions

In our opinion, it is time we defined and understood correctly the concept of hardship by comparing it with other very similar legal institutions that it is often mistaken for: force majeure, lesion and contract price index clause.

Hardship is different from *force majeure*. Force majeure or a fortuitous event making performance impossible is an unavoidable, insurmountable and unforeseeable future event that makes *impossible* the performance of an obligation. Similar to force majeure, hardship is also an unavoidable, unforeseeable and insurmountable event which, unlike force majeure, makes the performance of an obligation *excessively onerous*, and not impossible. Therefore, the contracting party claiming an event that seriously upsets the obligations under contract may handle it in two ways: by claiming force majeure (impossibility of performing his obligations) or by claiming hardship (his obligations are extremely onerous). Consequently, for a better understanding of the two concepts, we note that the purpose of the two circumstances is different: for force majeure, the debtor should give evidence of a reason for the failure of performing his obligations (so

that he is *exempted* from liability), whereas with hardship, the debtor does not attempt to justify the failure of performing his obligations, but he tries to obtain an adjustment, a *renegotiation* of the contract, so that the agreement should become balanced again.

We should also emphasize here that hardship is different from *lesion*. Like hardship, lesion means an obvious disproportion between the performances undertaken by the signing parties of a contract, so, in this matter, the two legal circumstances are very similar. The essential difference is *the time* when such disproportion of performances occurs: with lesion, the disproportion occurs at the time of the formation of the agreement of wills, that is the time of contract *conclusion*, whereas with hardship, the disproportion arises *during the performance* of the contract. In other words, when we speak about hardship, there was no disproportion of performances at the time when the contract was concluded, it occurred during the performance of the contract.

Finally, we cannot have hardship when a contract includes certain *price index clauses*, based on which a contract will change. Such clause entitles the party having included it to index the price depending on certain indicators expressly provided for in the contract (so the price will rise). If the other party refuses to accept the indexed price, the court may set a new price for the contract, calculated based on the content of such price index clause; however, the court will carry out such action only in order to observe the binding force of a contract and not by virtue of hardship (Civ. res. no. 1246 of February 11, 2005, of the Court of Sector 1 Bucharest).

3.7. Consequences of Hardship. Petition for Renegotiation. Resolutions to be Passed by Courts

In case of hardship, the parties may resort to a legal court to solve a dispute if they cannot settle on the adjustment of the contract within reasonable equivalence.

As we will see, the contract shall be revised by the parties based on a petition for renegotiation formulated by the debtor. In our opinion, it is natural that the revision of performances in view of their weighing at a given time when one of the performances is potentially excessive as compared to the other be the duty of the parties; in fact, such a provision is a consequence of the principle called *pacta sunt servanda*, for, if there is a *mutuum consensus*, there could logically also be a *mutuum dissensus*.

In case of dispute, the court will be entitled to decide on the future of the contract.

Therefore, the necessary (mandatory) prerequisite of referring a hardship circumstance to a court is that the debtor should have attempted „*in reasonable time and in good faith, the negotiation of a reasonable and equitable adjustment of the contract*" [art. 1.271 par. (3) letter d) NCC]. Similarly, the UNIDROIT Principles entitle the disadvantaged party (and not only the debtor) to request negotiations *without delay* (the approximate equivalent of *reasonable* in our Civil Code) and to indicate the grounds for such renegotiation request [art. 6.2.3 par. (1)].

Once the renegotiation procedure has started, the parties shall observe the principle of good-faith (good-faith in negotiations), as well as confidentiality and cooperation. However, it is worth noting that a renegotiation request does not entitle the disadvantaged party to *suspend* the performance of the contract, as correctly provided by par. (2) of the same article 6.2.3 of the UNIDROIT Principles.

Unfortunately, this is another aspect that has been overlooked by our Civil Code, but we believe that the judicial practice will make the distinction between a renegotiation request and the right of the party to suspend the performance of the contract, as such an attitude (based on a subjective perception) would lead to frequent abuses by contracting parties. If the parties fail to agree on the renegotiation of the contract (such agreement should have occurred in *reasonable* time, according to art. 6.2.3 par. 3 of the UNIDROIT Principles), the court will analyse in detail all the factual circumstances of the case and decide appropriately.

Firstly, the court will decide on whether *all the „admissible" hardship conditions* are met (we mean the requirements of art. 1.271 par. (3) NCC, elaborated on earlier, namely: a disproportion between performances had to occur after the conclusion of the contract, the debtor's ignorance as to the hardship event, failure to assume the risk and attempt of amicable revision of contract by the parties). Then, the court will have to *specify* how onerous one of the performances has become as compared to the other and, based on it, to finally determine whether they are dealing with a doubtless hardship event.

Practically, this is the most difficult part of determining the elements of hardship, namely establishing the onerous nature or, more exactly and according to the law, the *excessively* onerous nature of a contract performance. It is even more difficult as, as we have already shown, the law uses two concepts with different purposes in this matter, namely an obligation *more* onerous (when the contract must be executed even under such circumstances, according to the first paragraph of art 1.271 NCC) and *excessively* onerous (when the contract may be adjusted by virtue of the *rebus sic stantibus* rule, according to the same paragraph of the same article).

When the court has determined there is a hardship event, two solutions are possible:

- *adjustment* of contract, in order to re-allocate fairly to the parties the losses and benefits resulting from the change of circumstances;

- *termination* of contract at a time and under the terms set by the court.

However, it is important to keep in mind that, even if the court determines there is a hardship event, it is not forced to choose one of the two solutions above. Consequently, although it may establish there is a hardship event, the court may not change in any manner the content of the contract and may not rule on its termination, believing that the disproportion between the performances is not so significant as to justify court intervention. We emphasize this aspect, for either of the solutions to be passed by the court will have to be *reasonable* (Art. 6.2.3 par. 4 of the UNIDROIT Principles); in our opinion, thus, if neither solution (adjustment or termination) is reasonable, the court will be under no obligation to reach a decision and will reject the petition of the disadvantaged party. There is more to be discussed on this matter, however, out of prudence, we will wait for concrete solutions of the legal courts.

4. Conclusions

From all the above, we may notice that our Current Civil Code actually repeats the provisions of art. 969 of the old Civil Code, which stipulated with the same words the

binding effects of a contract. The Principle was taken over from the Roman law, where it was called *pacta sunt servanda* and represented the need of observing one's promise; currently, such principle may be applied both in the domestic law and international law.

As compared to the Civil Code of Québec (which, as we know, was a source of inspiration for the Romanian legislators), the principle is similar, the Canadian law includes, on the one hand, a natural and fair rule, namely the observance of one's assumed contract obligations and, on the other hand, an exception, which means that one party may avoid this rule only in cases provided by law or when the parties have expressly consented to it (art. 1.439 Civil Code of Québec, art. 1.134 par 1 French Civil Code.). According to this essential principle of contract effects, each signing party is held to observe the provisions agreed upon in the contract, that is to ensure (according to some authors) the compliant performance of the assumed obligations (Pop, 2012, p. 143).

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