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THE LIBERAL ACT

N. CRĂCIUN[1] A.C. MANEA[1]

Abstract: *In reference books, according to the number of parties, the civil legal acts are classified as unilateral, bilateral and multilateral. The unilateral legal act is the result of the will of only one party. The bilateral legal act represents the consensus between the two parties. The multilateral legal act is the result of the agreement of will of three or more parties (for example, the contracts of association). Note that the classification of civil legal acts in unilateral and bilateral should not be confused with the classification of civil contracts in unilateral contracts and bilateral contracts.*

Key words: *the unilateral act, the bilateral act, the multilateral act, the contract, obligations.*

1. Introduction

The unilateral legal act is the result of the will of only one party.

The category above includes: the will, the acceptance of inheritance, the termination of a contract etc.

As the wording or the production of the effects imposes or not the communication of the manifestation of will directly to the consignee of the act, unilateral legal acts are subclassified in acts subjected to communication (the supply, the public promise of reward, the unilateral withdrawal of mandate etc.) and acts not subjected to communication (e.g. wills) [3].

The bilateral legal act represents the consensus between the two parties.

This category includes the sale, the exchange, the donation, etc. (contracts).

The multilateral legal act is the result of the agreement of will of three or more parties (for example, the contracts of association).

The category of plurilateral legal acts also includes the partition convention, when there are three or more communicants, the transaction contract completed by at least three parties, the contract of game or bet among three or more parties.

2. The liberal legal act - of unilateral formation

The liberality is primarily a legal act.

The term "unilateral legal act" is dedicated and used whenever we refer to a legal act that expresses the unique will of its author [1].

According to art. 1324 of the New Civil Code, "it is unilateral the legal act that involves only the manifestation of its author's will."

According to art. 1325 of the New Civil Code, "If the law does not provide otherwise, the laws relating to contracts apply accordingly to unilateral acts."

[1] Law Department, *Transilvania* University of Braşov.

It follows from the foregoing that the unilateral legal act is a manifestation of a will to produce legal effects [4].

As a result of a single legal will, the unilateral act is likely to produce legal effects in itself, not being subject to the consent of another person.

The unilateral act is likely to produce legal effects in itself, unconditioned by the consent of another person [7].

As regarding the matter of its quality of source of legal obligations that the unilateral act has, at doctrinal and jurisprudential level, two tendencies have arisen:

- first, one which considers the unilateral legal act a source of obligations only in the cases provisioned by law;
- a more recent second one, which includes the legal unilateral act in the category of sources of obligations whenever there is a firm promise which does not imply acceptance for the arising of the obligation, and also if all the conditions of validity are met simultaneously and cumulatively under the provisions of art.1179 of the Civil Code.

More recently, it was considered that the unilateral legal act falls into the category of sources of obligations whenever there is a firm promise that does not involve acceptance for the birth of the obligation.

Unlike Romanian doctrine, the French doctrine distinguishes between the legal unilateral act and the unilateral commitment, putting the two concepts in a relationship similar to that of convention-contract [2].

Please note that, according to art. 1101 of the French Civil Code, the contract is defined as a "convention generating obligations" in relation to the unilateral commitment which is a kind of legal unilateral act [7].

In our law, the unilateral legal act is defined as "a unilateral declaration of intent issued to either generate, modify or extinguish a civil institution or in order to find acceptance" [3].

In the above context, unilateral legal acts are likely to be classified according to the need in order to produce specific effects, of an acceptance from another person in statutory unilateral acts and non-statutory unilateral acts.

It is worth adding that the classical doctrine expressed a view in the sense of the impossibility of unilateral will to generate an obligation on the promissory and in the benefit of another person.

However, in principle, the classical legal literature unilaterally rules the inability of the unilateral will to generate an obligation on the promissory and for the benefit of another person [9].

The thesis departs from the principle of the symmetry of civil legal acts, under which a legal act may be revoked or modified under the same conditions in which it was concluded [10].

The unilateral legal act has its source in the definition of the legal act in general and is based on the will of the legal subjects that seek to create certain legal effects.

According to art. 1325 of the New Civil Code, "If the law does not provide otherwise, the legal provisions of the law regarding contracts properly apply to unilateral acts."

In our view, in the theory of the civil legal act, a particular importance is given to the classification of legal actions according to their volitional nature, in events or natural facts and actions, or voluntary acts, because only in case of the latter the law gives legal relevance to the will.

It is worth pointing out that the events are those changes of the surrounding reality that occur beyond the control of the individual, but which give birth, amend or extinguish concrete legal relations under the law [12].

For example, in the above category, the following are included: the human birth, resulting in the emergence of a new subject of law; coming of age and acquiring full legal capacity; the passage of time with the consequence of acquiring or extinguishing certain rights; catastrophes and natural disasters with legal effects associated to them.

The human actions are omissive deeds committed with or without the intention of producing legal effects, stated by the doctrine and by the concept of legal acts *stricto sensu.*

Human actions involve a subdivision according to the licit or illicit character of the action.

Lawful acts, which do not affect law and order and social values that produce legal effect in the power of a legal rule are: business management, overpayments and unjust enrichment.

Illegal acts, offenses and quasi-offenses, although voluntary acts, do not produce legal effects in the power of their authors' will, but under the law.

The scope of civil legal acts includes actions in which the author's will occurs for the purposes of birth, modification or extinguishment of specific civil legal relations.

The volitional nature is what distinguishes the civil legal act from other legal acts committed without the intent to produce legal effects.

It is noteworthy that most of the doctrine defined the civil legal act as the manifestation of will clearly intended to produce legal effects, i.e. to give birth, modify or extinguish a specific legal relationship.

The doctrine analysed the report between the unilateral act ant the theory of potestative rights.

Thus, the exercising of the potestative right only depends on the unilateral will of its owner, by exercising this right, will obtain new legal effects in relation to a particular new legal situation, which represents an exception from the principle *res inter alios acta, aliis neque nocere, neque prodesse potest* [6].

It turns out that the foundation of the unilateral legal act is *its volitional character*. So, the civil legal act is "the favourite instrument available to the participants in the legal circuit to achieve their subjective rights and the interests protected by law."

The unilateral act is therefore likely to produce legal effects by itself, unconditioned by the consent of another person.

More specifically, the unilateral legal act is the manifestation of a will aimed at producing legal effects.

We would also like to draw attention to the fact that the French doctrine distinguishes between the unilateral legal act and unilateral commitment by putting the two concepts in a relationship similar to that of agreement - contract.

The unilateral commitment is a kind of unilateral legal act which results in the birth of an obligation in the responsibility of its author [8].

According to art. 1326 of the New Civil Code, "the unilateral act is subjected to communication when it represents, modifies or extinguishes a right of the consignee and whenever it is required to inform the consignee, according to the nature of the act.

If the law does not provide otherwise, the communication can be done in any suitable way, according to circumstances.

The unilateral act takes effect once the communication reaches the consignee, even if s/he is not aware of it for reasons beyond her/his control. "

3. The liberal legal act - of bilateral formation

The study of free will can not be complete without taking into account the particularities of the liberal manifestation in bilateral legal acts.

It is therefore necessary to present certain considerations regarding the implications in the matter of contracts [6].

The above are supported also because the new Civil Code has common provisions both for donation and for the will (art.984-1010).

Thus, the new Civil Code equally regulates institutions such as: the capacity in terms of liberalities (art. 987-992); trust substitutions (art. 993-1000); residual liberalities (art. 1001-1005); reviewing the conditions and obligations (art. 1006-1008) etc.

According to art. 985 of the New Civil Code, "The donation is a contract by which, with the intent to gratify, a part called donor, irrevocably rules an asset in favour of the other party, called the donee."

The contract is based on the principle of autonomy of will, according to which the contractual obligation is based solely on the will of the parties, the will which is in its turn the source and the extent of rights created and of the obligations assumed precisely by its very free and conscious manifestation.

Thus, the individual is not bound by the obligations s/he has not assumed, especially since they may be unjust, but instead is bound to perform all the obligations that she/he freely consented to [13].

Natural liberty, a fundamental attribute of any human being and her/his own will was the main source of rights and obligations, thus acknowledging the ability of the individual to be bound by her/his own will, and only to the extent desired, did not contravene to the idea of natural freedom of the human being.

According to the concept, being free means, above all, limiting our freedom through the contracts that we sign without any constraints or external influence.

It is to be noted, however, that the freedom of contract (outlined above) should not be confused with the liberal act. In this context, the manifestation of free will is distinct and special.

The liberal contract allows for the establishment of fair and useful relationships between community members.

Likewise, any obligation imposed thus becomes unjust by disregarding the interests of the debtor (but the state only adopts a policy of providing the necessary framework to satisfy individual interests, the market forces, supply and demand, regulating the production of goods) and therefore, the contract is above the law, which plays a secondary role, a complementary one, covering only those issues which the parties had not considered.

In addition to the principles, the theory of invalidity abolishes the effects of the legal act arising from a legal will altered by vices of consent, because "the freedom of contract is the legal corollary of freedom understood as the product of conscious and free will, a social reverberation of this will" [13].

The contract will has to be *self-conscious and rational* and therefore a source of law (consent as an element of externalized will must not be corrupted and must be expressed knowingly) [5].

The altered contractual will is considered null when consent appears. The indifference regarding the reason of the contract essentially expresses that the product of autonomous will cannot be censored [9].

We point out that the only contractual liberality known (real and recognized by the New Civil Code) is donation.

In this context we must ask a question that has troubled the minds of many law researchers: does the legacy contained in a will mean *manifestation of liberal will or substitution of individual (objectively imposed)?* [7].

4. Liberties in the common provisions of the New Civil Code

According to art. 984 para. 1 civ. C, the liberality is the legal act whereby a person freely disposes of her/his assets, in whole or in part, in favour of another person.

Liberalities can be done only by donation or by legacy comprised in the will.

The donation is a contract by which, with the intent to gratify a party, called the donor, irrevocably disposes of an asset in favour of the other party called the donee (art. 984 para.1 C. civ.).

*The legacy is the testamentary disposition whereby the testator stipulates that at her/his death, one or more legatees are to acquire her/his whole patrimony, a fraction of it, or certain specific assets (art. 984 para.*1 C. civ.).

Any person can make and receive liberalities, in abidance to the rules on capacity (art. 987 para.1 C. civ.).

The condition for the ability to dispose through liberalities must be fulfilled when the ruler expresses her/his consent.

The condition for being able to receive a donation must be met at the date when the donee accepts the donation.

The condition for being able to receive a legacy must be fulfilled when opening the testator's inheritance.

One who lacks legal capacity or with limited legal capacity cannot dispose of her/his property by donation, except for the cases provisioned by law (article 988 para. 1 C. civ.).

Under relative nullity, even after obtaining full legal competence, the person cannot benefit through liberalities in favour of the one who acted as his/her representative or legal guardian, before having received from the guardianship court the discharge for his/her administration. An exception is when the representative or, as the case may be, the legal guardian is the ruler's ascendant.

Under the penalty of nullity, the ruler must determine the beneficiary of the liberality or at least to provide the criteria according to which the respective beneficiary can be determined at the date when the liberality produces legal effect (art. 989 para.1 C. civ.).

The person who does not exist at the date when the liberality comes into being can benefit from a liberality if it is made in favour of a capable person, with the task for the latter that the beneficiary should transmit the object of liberality to the client as soon as possible.

Under the penalty of nullity, the ruler cannot give a third party the right to assign the beneficiary of the liberality to establish its objectives.

However, the allocation of the assets transferred by legacy to certain people appointed by the testator can be left at the discretion of a third party.

The liberality made to a person appointed by the ruler is valid, with a task in favour of another person chosen either by the gratified, or by a third party, in its turn, also appointed by the ruler.

The liberalities made to doctors, pharmacists or other people in the period in which, directly or indirectly, they had given the ruler special treatment for a disease which was the cause of death are cancellable (art. 990 para. 1 C. civ.).

Notwithstanding with the above provisions:

a) the liberalities made to the husband, to direct relatives or privileged collaterals;

b) the liberalities made to other relatives up to the fourth degree included, if at the time of the liberality, the ruler had no spouse and no direct relatives or privileged collaterals.

The above provisions shall also apply with respect to priests or other religious people, who had assisted the ruler during the illness that was the cause of death.

If the ruler dies from the disease, the limitation of the right to action for annulment runs from the date on which the heirs become aware of the liberality.

If the ruler's health is restored, the legacy becomes valid again, and the action for annulment of the donation may be brought within three years from the date on which the ruler got well.

According to art. 991 of the Civil Code., the legacies concluded in favour of the following are cancellable:

a) the notary public who certified the will;

b) the interpreter who attended the authentication of the will;

c) witnesses (in the cases provisioned by law);

d) inquiry agents (where required by law);

e) the people who have provided legal assistance in drafting the will.

Nullity applies to the liberalities disguised under the form of a contract for consideration or made to an interlocutor (art. 992 para. 1 C. civ.).

Until proven otherwise, the ascendants, the descendants and the person's spouse incapable of receiving liberalities are presumed to be intermediaries, as well as the ascendants and descendants of this person's spouse (art. 992 para.2 C. civ.).

Successional substitution. The provision whereby a person called appointee is instructed to manage the property or assets that are the subject of the liberality and transmit them to a third party, called substitute, appointed by the ruler, produces effects only if provisioned by law (article.993 of the Civil Code).

Trust substitution. A liberality may be encumbered by a task consisting in the obligation of the appointee, donee or legatee to manage the property representing the object of the liberality and to leave it upon her/his death, to the substitute appointed by the ruler (art. 994 para.1 C. civ.).

The provisions of the present Code related to trust apply properly to the appointee.

The inabilities to rule are assessed in relation to the ruler and those to receive, in relation to the substituted and the appointee.

The encumbrance only has effect on assets that were the subject of the liberality and which, at the date of the appointee's death, can be identified and are in his/her heritage. (art. 995 para. 1 C. civ.).

When the liberality covers securities, the encumbrance produces effects on the securities they replace.

If the object of the liberality is related to rights subjected to advertising formalities, the encumbrance must be subjected to the same formalities.

In case of buildings, the encumbrance is subject to being marked in the Real Estate Register.

The substitute's rights enter into force at the appointee's death. (Art. 996 para. 1 c. Civ.).

The substituted person acquires the assets that represent the subject of the liberality as an effect of the ruler's will.

The substituted person cannot, in turn, be subject to the obligation to administer and to the conveyance of assets.

In order to execute the task, the ruler may require the appointee to establish a lien and to conclude an insurance contract (article.997 of the Civil Code.).

If the appointee is the ruler's forced heir, the encumbrance cannot violate his/her

successional reserve. (Art.998 of the Civil Code).

The offer of donation made to the substituted may be accepted by them after the ruler's death (art. 999 of the Civil Code.).

When the substituted dies before the appointee or waives on the benefit of the liberality, the asset returns to the appointee unless it is provided that the property should be taken by the substitute's heirs or a second substitute is appointed (art. 1000 par.1 C. civ.).

The ruler may stipulate that the substituted be gratified with what remains upon the death of the appointee, from the donations or bequests made in favour of the latter (art. 1001 of the Civil Code.).

The residual liberality does not prevent the appointee from concluding an act for consideration or retaining the assets or the amounts obtained after its conclusion (art. 1002 of the Civil Code).

The appointee may not dispose by will of the goods that were the subject of a residual liberality (art. 1003 par. 1 C. civ.).

The ruler may prohibit the appointee dispose of the assets by donation. However, when being the appointee's forced heir, the appointee keeps the right to dispose by acts *inter vivos* or upon death of the assets that were the subject of donations charged against her/his forced heir ship.

The appointee need not be held liable to the ruler or his/her heirs (article. 1,001 par. 1 C. civ.).

The corresponding provisions above apply to residual liberalities (Art. 1,001 par. 1 C. civ.).

Revisiting conditions and tasks. If, due to unpredictable situations, not attributable to the beneficiary, which occur regarding the acceptance of the liberality, meeting the requirements or completing the tasks affecting the liberality becomes extremely difficult or overly onerous for the beneficiary, s/he may require the revision of tasks or conditions (art.1006 of the Civil Code).

Respecting the ruler's will, as much as possible, the court to with the motion for revision is submitted, can make quantitative or qualitative changes in the conditions or tasks affecting the liberality or to group them with similar ones from other liberalities (art. 1007 par.1 C. civ.).

The court may authorize partial or total alienation of the object of the liberality, may set a price to be applied for purposes consistent with the ruler's will, as well as any other measures to maintain, as much as possible, the destination intended by them (art. 1,001 par.1 C. civ.).

If the reasons which prompted the revision of the conditions or tasks are no longer valid, the interested party may request for the removal of the revision's effects in the future (art.1008 of the Civil Code.).

Clauses deemed unwritten. It is deemed unwritten the clause that under the sanction of dissolution of the liberality or of returning its object, the beneficiary shall not challenge the validity of an inalienability clause nor seek a review of the conditions or tasks (art. 1009 par.1 C. civ.).

It is also deemed unwritten the testamentary disposition which provides disinheritance as a sanction for the breach of the obligations set out above or for contesting the provisions of the will that affect the rights of forced heirs or are contrary to public order or morality.

The confirmation of a liberality by the ruler's universal heirs or those with a universal title brings about the renunciation to the right to oppose the formal flaws or any other grounds for invalidity, without this waiver prejudicing the third parties' rights (art.1010 C. civ.) [11].

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