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OBJECT OF THE CONTRACT FROM THE PERSPECTIVE OF THE CURRENT CIVIL CODE

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Abstract

An indispensable element of social relations, primarily the contract governs our existence. Virtually anything in our lives is governed by contracts. Any move we make, school, work performed, marriage, holidays, a house or a new car, will lead to the acceptance of a contract, or are a consequence of their existence. In the light of the codifications set forth in the current Civil Code, which regularly follows the modern proposals for contract rules, the legislator gives us a clear perspective on its essential conditions of validity. Thus, along with the ability to contract and the consent of the parties, as essential conditions of validity of the contract, the cause and object of the contract also arise. The purpose of this study is therefore to reflect upon the meaning of some terms such as "the object of the contract", "the object of the obligation" or "the object of the benefit" in agreement with the regulations contained in the current Civil Code, especially because in practice but sometimes also in legal doctrine, sufficient attention is not given to the legal sense of each of them, the current rule bringing clarifying regulations.

The influence of contracts in the context of social relationships, either of a generally commercial nature or only in our private life, is incontestable. The very birth was considered, through the effect of citizenship, a contract with the state in which we were born, our entire existence being under the effect of the contracts or only as a consequence thereof. The schools we are attending, ourselves or our children, the work performed, the goods that belong to us, our holidays, the services we offer or receive are under the influence of the contracts, thus we are born, we live and die under the influence of the effects of the contracts.

Defined as the materialization of the will of two or more individuals (natural or legal) to produce, modify or terminate a legal relationship, contracts undoubtedly have an impact on our existence, as they are found in our daily lives.

The essential factor of the contract is the agreement of the parties, the conclusion of any contract being in principle free, and in relation to the principle of contractual freedom, it is stated that *"when people assume contractual obligations, they limit their freedom by their own will ... that is why the individual will draws its obligation creative power from itself, not from the law, and in this sense it is creative." (*Pop L. – *Teoria Generală a Obligaţiilor*, Tratat, Ed. Chemarea, Iaşi, 1994, pg. 31*)*. The principle of the parties' freedom of will therefore lies at the basis of the conclusion of any contract, but it will not function in the sense of a perfect free will, but only within the general limits represented by public order and good morals. If the notion of public order has been established unanimously, it consists of: the political, moral, social and economic order, the freedom of contract being limited by the imperative norm of the law, the notion of good morals still holds conceptual deepening.

In order to produce the effects desired by the parties, the contract, as well as any other legal act in general, will have to comply with the conditions of validity imperatively specified in the rule of common law.

The manifestation of concurrent will of two or more persons that materializes in a contract will only produce legal effects when it is concluded within the imperative limits of the legal norms.

Art. 1.179 of current Civil Code, lists the essential conditions, necessary for the validity of a contract, respectively:

1. capacity to contract;
2. agreement of the parties;
3. a determined and licit object;
4. a licit and moral cause.

The ability to contract, according to art. 1180 of the current Civil Code, is a benefit that can be "available to any person who is not declared incompetent by law or not allowed to conclude certain contracts".

The manifestation of the concurrent will of the parties shall be externalized by the agreement of the parties, which will only acquire legal value when emanating from a person with discernment, being expressed with the intention of producing legal effects, and shall not be altered by any vice of consensus.

The cause of the contract will answer to the question "why is the contract concluded?" (Boroi Gabriel, Anghelescu C.A., *Curs de drept civil.Parte generală*, Ed.Hamagiu 2012, pag.172), so the answer is given by the content of art. 1235 Civil Code stating: "The cause is the reason that determines each party to conclude the contract". Without being confused with the subject matter of the civil legal act or the actual civil legal relationship, in order to be valid, the cause will have to meet cumulatively the following requirements: to exist, to be licit and moral.

The essential and substantive condition of the validity of the contract, together with the ability of the parties to contract, the ability of consent or cause, we find the object of the contract, which will have to be determined and licit.

The object of the contract is a notion that is part of the Roman civil liability construction, evoked *in illo tempore* by the phrase *solvendae rei* found in the definition of the civil obligation given by Justinian's Institutes, which designated the commitment to pay (*solvere*) what was owed (*eius quod debeatur*).

What the Roman legal advisers understood by do *ut des, facio ut facias, facio ut des, do ut facias*, was later theoretically systematized by the French jurist Robert Joseph Pothier (Pothier, *Traité des obligations, selon les règles tant du for de la conscience que du for extérieur, Part. I, Chap. I, Sect. I, art. V: "De ce qui peut faire l'objet des contrats*, Paris, Orleans, 1764, Tome I), and according to him "the conventions bear on something that must be given, on something that must be done or something that should not be done", an expression later taken over in the French Civil Code, which stipulates in art. 1126 that "any contract has as its object a thing which the parties are bound to give, to do or not to do."

The Romanian Civil Code from 1864, elaborated according to the model of the Napoleonic Civil Code, referred to the object of the conventions, in the art. 962 specifying that "the object of the contract is that to which the parties or only one party undertakes", and later, in its subsequent provisions of art. 963-965 Civil Code, it has imperatively enacted as a condition of its validity, that the thing must be determined with reference also to future things.

According to the current enactment of the Civil Code, the object of the contract is the legal transaction, such as sale, lease, loan and similar, as agreed by the parties, as it is evidenced by all contractual rights and obligations.

But often in the legal doctrine, and especially in the commercial practice, we have been given the opportunity to meet ample debates or simple references to the object of the contract as the material, determined good, which in fact, according to the current enactment of the Civil Code, it is the subject of the benefit (a house, a car, a holiday, etc.).

This confusion was attributed to the regulations introduced in the 1864 Civil Code, which, as we have seen, took over to a certain extent the content of art. 1126 ("*obiectului contractului este acela la care una dintre părți se obligă să dea sau una dintre părți se obligă să facă sau să nu facă*") of the French Civil Code and for more than 100 years it promoted the codification of the principle according to which *"The object of the conventions is that to which the parties or only one party undertakes"* (art. 962), thus combining the object of the convention with the object of the obligation, which certainly creates a different perspective than that we find in the current regulation.

This principle was also supported by the subsequent amendments contained in the same act, namely by the content of art. 963, which specifies imperatively that *"only the things that are on sale may be the object of a contract"*, and by art. 964 it mentioned that *"the obligation must have a determined object, at least in its species."* The amount of the object could, however, be *uncertain, if its determination is possible*.

The use of the words *"things that are on sale"* or *"a determined thing"* only cast any doubt on the object of the "contract" which, by the regulations of those times, was a determined thing which was on sale. In other words, in the case of a contract, its object could be just one **thing** on sale, on which the parties or only one of the parties would undertake, and the obligation in its turn will be on one **thing**, under the imperative condition that it shall be determined, at least in its species.

From a lexical point of view, the word "thing", as defined by explanatory dictionaries, is *"everything that exists (apart from beings) and which is conceived as a stand-alone unit; object"*.

Therefore, without any doubt, the old enactment certainly and quite clearly stated that the object of the conventions was an object, which was determined and on sale.

From this perspective, as stated above, both the literature and especially the commercial contracts, when referring to the object of the contract, specify or discuss a good as a material object, present or future, determined or determinable. Generically called good (house, apartment, car) it is later individualized by its features.

The current Civil Code, however, inspired by the codification provided by the Quebec Civil Code, partly takes over the enactment contained in its art. 1412 (Textul art. 1412 Cod Civil Quebec prevede că *"obiectul contractului este operaţiunea juridică avută în vedere de părţi la momentul încheierii sale, aşa cum rezultă din ansamblul drepturilor şi obligaţiilor pe care contractul le naşte")* and which defines the object of the contract as the legal operation envisaged by the parties, thus radically changing the perspective on it, which is probably the justification of the determination of our legislator who resorts to the exemplifications inserted in art. 1225 (Art.1225, Cod Civil specifică la alin.(1) că*: "Obiectul contractului îl reprezintă operaţiunea juridică, precum vânzarea, locaţiunea, împrumutul şi altele asemenea, convenită de părţi, astfel cum aceasta reiese din ansamblul drepturilor şi obligaţiilor contractuale"),* "such as selling, leasing, lending and similar ...".

However, without desiring an exhaustive enumeration, the legislator only refers to a few of the named contracts, with the obvious intention of providing as much as possible a clear and predictable norm, since, according to the freedom of contract codified in Art. 1169 NCC, "the parties are free to conclude any contracts and determine their content within the limits imposed by law, public order and morality", which shows that the parties will have the opportunity to imagine any other legal transactions not regulated by Law, but under its imperative rule.

Therefore, clearly and objectively, this time the legislator states that the object of the manifestation of will materialized in the object of the contract is a legal operation, referring to the conduct of the parties, as it results from all the rights and obligations assumed by the parties by concluding the contract. Although the wording of the current regulation seems to refer to the effects of the contract and not to what the parties intended at the time of the conclusion of the contract (as quoted in the Quebec Civil Code), it is impetuously necessary to distinguish between the object of the contract, which is a legal transaction, whether or not named by law and the content of the contract, which quantifies all rights and obligations agreed by the parties. There are major differences between the object of the manifestation of will (object of the contract) and the object of the obligation (arisen from the contract), and therefore (on the merits) they are considered to be distinct notions (Stănciulescu Liviu, *Curs de drept civil. Contracte*, Ed.Hamangiu București, 2012, pag.43).

In order to eliminate any confusion, the current regulation of common law specifies later in art. 1226, that the object of the obligation, which arises from the contract, is this time "the debt to which the

debtor is engaged", and in the end, we find the good, as a material object, which constitutes the object of the benefit, a derivative object of the obligation.

The Civil Code of Quebec inserts in art. 1373 the principle according to which the object of the obligation is the benefit on which the debtor is held to the creditor and which consists of an action (to do or not to do something), under the condition of paragraph 2 which states that "the benefit must be possible, determined or determinable; it must not be prohibited by law or contrary to public order". The Catala Project (Ante-proiectul francez de reformă a dreptului obligaţiilor şi a dreptului prescripţiei (*Avant-projet de réforme du droit des obligations et du droit de la prescription*), redactat de cunoscuţi teoreticieni ai dreptului sub conducerea profesorului Pierre Catala) enacts in art. 1121 that the object of the contract is the action of giving, giving to use, doing or not doing something, to which a part is bound, and in art. 1121-2, the terms of the thing are mentioned, which means that it is about the conditions of the benefit and not of the object of the obligation (Neculaescu Sache, *Discuţii privind conceptul de obiect al contractului*, Facultatea de Drept şi Ştiinţe Social-Politice, Universitatea "Valahia" din Târgovişte).

Although the views on the current enactment of this case in the rule of common law are extremely controversial, there are undoubtedly essential differences between the notion of *object of the contract*, *the object of the obligation* and *the object of the benefit*, which the current Civil Code is, in a more or less inspired approach, trying to individualize, and even more I would say, it succeeds in highlighting it.

CONCLUSION

Unanimously promoted, the idea of harmonizing civil legal language in the European space has led to the proposal to develop a European Civil Code, as well as to the idea of codifying a set of European principles applicable to contracts, the European Commission setting it as a key objective in the operation of European common market.

The new projects for the European codification of contractual law retain this initiative, taking it into account in drafting the project Principles of European Contract Law (PECL) developed by the Lando Commission, but also in the version developed by the Study Group on a European Civil Code led by Professor Christian von Bar in the Common Framework of Reference (Draft Common Frame of Reference - DCFR). The Italian project of the European Code of Contracts, developed by a group of academics under the guidance of Professor Giuseppe Gandolfi, allocates under this perspective a chapter of this *contract content* project, also found in the Unidroit Principles applicable to international trade contracts, which constituted the main source of inspiration of our current Civil Code, and in which we find the same approach in Chapter 5, dealing with *"the content of the contract, the rights of third parties and the conditional obligations"*, which once again reveals the obvious concern of the lawyers to avoid as much as possible the shortcomings which could be involved by the use of different terms, in a matter so present in doctrine and jurisprudence.

Perhaps not in the most inspired form and of course without escaping the critics of the theoreticians found in the specialized legal literature, the current legislative norm comes to order this concept through a logical systematization of the notions. Thus, the good, as a material object, will therefore simply be the object of the benefit subject to the obligation, an obligation which the Roman law defines as: "*obligatio est juris vinculum quo necessitate adstringimur alicujus solvendae rei secundum nostrae civitatis jura*" (Stoicescu C., *Curs elementar de drept roman*, Ed. Universul Juridic, Bucureşti, 2009, pag. 219) *(the obligation is the juridical connection by virtue of which we are necessarily bound to pay for a thing, according to the law of our city)*.

The debates on this subject, which are extremely ample, could continue (and certainly will continue) endlessly, but the objective proposed by this article is to present the new vision promoted by the current Civil Code, which, unlike the old enactment that suggested a good as a material object as the object of the contract, and to which theoreticians have tried to find a justification, imperatively regulates a legal operation as an object of the contract.

The current Civil Code therefore introduces a new definition: the object of the contract is the legal operation; it also has an object, the obligation; the obligation, in its turn, has as object the benefit undertaken by the debtor, as provided by art. 1225 par. 1 Civil Code, and the object of the benefit, finally, is represented by the goods mentioned in art. 1228-1230.

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[2] Boroi Gabriel, Anghelescu C.A., Curs de drept civil.Parte generală, Ed.Hamagiu 2012, pag.172

[3] Pothier, Traité des obligations, selon les règles tant du for de la conscience que du for extérieur, Paris, Orleans, 1764, Tome I, Part. I, Chap. I, Sect. I, art. V: "De ce qui peut faire l'objet des contrats'. [4]Art.1126 Cod Civil Francez "*obiectului contractului este acela la*

care una dintre părți se obligă să dea sau una dintre părți se obligă să facă sau să nu facă"

[5] Textul art. 1412 Cod Civil Quebec prevede că *"obiectul contractului este operaţiunea juridică avută în vedere de părţi la momentul încheierii sale, aşa cum rezultă din ansamblul drepturilor şi obligaţiilor pe care contractul le naşte".*

[6] Art.1225, Cod Civil specifică la alin (1) că*: "Obiectul contractului îl reprezintă operaţiunea juridică, precum vânzarea, locaţiunea, împrumutul şi altele asemenea, convenită de părţi, astfel cum aceasta reiese din ansamblul drepturilor şi obligaţiilor contractuale".*

[7] Stănciulescu Liviu, Curs de drept civil. Contracte, Ed. Hamangiu București, 2012, pag.43;

[8] Ante-proiectul francez de reformă a dreptului obligaţiilor şi a dreptului prescripţiei (Avant-projet de réforme du droit des obligations et du droit de la prescription), redactat de cunoscuţi teoreticieni ai dreptului sub conducerea profesorului Pierre Catala. [9] For more details, see prof. univ. dr. Sache Neculaescu, Discuţii privind conceptul de obiect al contractului, Facultatea de Drept şi Ştiinţe Social-Politice, Universitatea "Valahia" din Târgovişte

[10] C. Stoicescu, Curs elementar de drept roman, Ed. Universul Juridic, Bucureşti, 2009, pag. 219;