Classification of Contracts according to the New Civil Code

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Abstract

An understanding of the notion of obligation refers to the legal relationship obligational content" legal relationship" which has an obligation to its contents. The obligation in terms of the legal relationship is a link obligational law under which the debtor is required to obtain a benefit to the creditor, and he is entitled to benefit due (art. 1164 Civil Code). According to art. 1165 Civil Code, springs obligations are: the contract, the legal act unilaterally, business management, unjust enrichment, overpayments unlawful act and any other act or fact of law binds the birth of an obligation.

Key words: *agreement, legal advice, sources of obligations, performance, user will, power sharing.*

1. The concept of contract

According to art. 1166 Civil Code, the contract is defined as the agreement of wills between two or more persons with the intention to establish, modify, transmit or extinguish a legal relationship. In Romanian law concepts of contract and agreement are used with the same meaning.

2. Classification of contracts

1. After the formation, the contract may be consensual, solemn or real (art. 1174 Civil Code).

In Romanian law training contract is governed by the mutual consent that the rule in this matter. According to this principle,, contract is consensual when formed by simple agreement of the parties,, (art. 1174 par. 2 Civil Code). The contract is solemn when its validity is subject to the fulfillment of formalities prescribed by law (art. 1174 par. 3 of the Civil

Code). Solemn contract is an exception to the rule consensualismului. For valid conclusion solemn contract is required, in addition to the manifestation of will, and compliance with formal requirements prescribed by law. The contract is real when, for its validity requires good teaching a debtor (art. 1174 par. 4 of the Civil Code). The actual contract is an exception to the principle of mutual consent as to its valid conclusion is necessary in addition to the manifestation of will and teaching, ie, remission property.

2. When the number of obligations to which it gives rise may be mutually binding agreement or unilateral. The contract is mutually binding obligations arising therefrom when reciprocal and interdependent. Otherwise, even if the contract is unilateral enforcement of obligations assumed by both parties (art. 1171 Civil Code).

Mutually binding contract gives rise to obligations for both parties, so that each part has the same time mutual rights and obligations, at the same time and creditor and debtor from the time of conclusion. Reciprocity implies that these rights and obligations are obligations that same common source contract. If, unilateral contract only one party undertakes, the other party does not, therefore, no obligation.

Unilateral character is retained even when performing the contract obligations are born and borne other party, in this case, the creditor task.

3. After the aim of the parties at the conclusion of the contract can be against payment or free of charge (art. 1172 Civil Code).

Agreement whereby each party seeks to procure an advantage in exchange for obligations is for consideration. The advantage pursued mainly consists of a patrimony follow each other, so that the benefit of one party corresponds to the consideration for the other party. Contract by which one party seeks to procure a benefit to the other Party without any benefit in return is free of charge. Purchase a patrimony times, committing a service free of charge, without any contraechivalent pursue, is a contract free of charge.

4. As the rights and obligations (ie benefits) at the contracting parties or not known, or their scope is determined or determinable or not, the contract may be commutative or random (art. 1173 Civil Code). Is commutative contract, at the time of its conclusion that there is definite rights and obligations of the parties (known) and their scope is fixed or determinable. The contract is random by nature or by will of the parties, at least one of the parties gives the chance for a win and also exposes the risk of loss, which depends on a future and uncertain event.

5. After the relationship between them can be contratele principal and accessories. The main contract that has independent existence, independent legal fate does not depend on the fate of another contract. The vast majority of contracts are key. The accessory contract which by its nature has no independent existence, depending on the fate of another contract principal.

6. Depending on how their conclusion, contracts may be strictly personal and ending contracts and representation. It is strictly personal contract can not be concluded only personally. In this category we include contract consulting - engineering, or the warrant. Strictly personal contracts are an exception to contracts ending by representation. The vast majority of contracts ending by representation (by proxy) they are the norm in the matter of conclusion.

7. After regulation and their legal name may be typical contracts (called) or atypical (unnamed). The typical contract that has a name established by law and regulation text. The atypical contract that has no specific regulatory and personal name.

8. By way of executing contracts may be executing at once (uno ictu) and successive performance. The execution of a contract whose execution time is involving a single supply from the one who commits (a debtor). This type of contract is called with instant execution.

With successive performance contract is its execution involves several benefits staggered in time.

9. After its completion method based on negotiation, or contracts can be negotiated, adhesion and binding. Contracts are negotiated outcome of the talks, the negotiations between the parties eventual agreement on its terms without anything being imposed from outside. Adhesion contract is essential when its terms are required or are drafted by one of the parties to it or following his instructions, the other one has only to accept them as such (art. 1175 Civil Code). with all the terms.

For the conclusion of the contract binding conditions are required by law, the public authorities or for professional bodies. The characteristic of this type of contract is that the parties have no option on the establishment or their non-closure.

10. Once the structure of the contract can be simple or complex. Complex contract agreement is called the Civil Code - frame.

Simple contract consists of a single legal operation agreement - framework is achieved through several legal operations.

Contract - frame is agreement whereby the parties agree to negotiate to enter into contractual relationships or to maintain the essential elements of which are determined by it (art. 1176 par. 1 Civil Code).

The manner of execution of the contract - framework, in particular the term and amount of benefits and, where appropriate, their prices are set by subsequent conventions (art. 1176 par. 2 Civil Code).

Both in pre-contract phase, in negotiation and closure, and also during its enforcement, the contract is governed by two principles: the freedom to contract and the good faith.

☞ "Contractual freedom consists in the possibility that physical and legal persons have, according to law, the possilbility to create contracts and to set up their contents".

The civil code consecrates the contractual freedom as "parties are free to conclude contracts and determine their contents, within the limits established by law, by public order and good morals",.

The only enclosures of contractual freedom are: public orded and good morals, which are not to be trespassed by any subject of law.

☞ Good faith governs not only the entire matter of the Civil code, but also the matter of contracts. Thus, "parties must act in good faith, both in the negotiation and conclusion of the contract, and during its enforcement. They cannot sweep away or limit this obligation". This is the general norm applicable to the matter of contracts. The special norm regards the mechanism of contract closure, in art. 1183, which details the obligation of good faith during negotiations and provisions sanction for bad faith conduct, that is the obligation to repair the prejudice thus caused to the other part. Parties cannot remove or limit this obligation.

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