CONTRACT ASSIGNMENT – THEORETICAL ASPECTS

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Abstract

This project aims to study in detail the theoretical aspects concerning the contract assignment, as provided by the relevant regulation, and the doctrine corresponding to old and current regulations. In this respect, this project aims to give the reader a comprehensive look on the institution in question, the regulation offered by the current Civil Code is reviewed taking into account the national and international doctrine.

Keywords: *assignment, contract, Civil Code, Assignor, Assignee, Contracting Party, Assigned party.*

1. Introduction[1].

The concept of *contract assignment* has been first regulated by entry into force of the current Civil Code, and appears as an operation whereby a Contracting Party shall transfer to another person its rights and obligations earned and assumed, respectively, according to a contract.

In other words, the contract assignment may be deemed to constitute a legal operation by which it is transferred the contractual position the *Assignor* holds in the contract.

Given that, although not expressly regulated before 2011, the doctrine corresponding to former regulations was not uniform regarding the concept of contract assignment.

Thus, the authors who would admit the existence of contract assignment have never approached in a uniform manner the mechanism of this concept, a number of definitions being also issued in this respect. Thus, according to an opinion, contract assignment consists of „replacement of a contracting party by a third party during the performance of a contract"[2], emphasizing the financial dimension of the relationship between parties, and allowing contract survival even if one party is replaced[3].

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[1] For details concerning the evolution and opinions on contract assisgnment, please see L. POP, I.-F. POPA, S. I. VIDU, *Basic principles of civil law. Obligations according to Civil Code*, Universul Juridic, 2012, Bucharest, page 670 et seq.; I. F. POPA, *Contract assignment according to New Civil Code*, Revista Romana de Drept al Afacerilor nr. 2/2003, page 83 et. seq.; A.-I. DANILA, *Contract assignment*, Hamangiu Printing House, Bucharest, 2010, page 2 et seq.

[2] P. MALAURIE, L. AYNES, P. STOFFEL-MUNCK, *Civil Law. Obligation*, Third edition translation from French, Wolters Kluwer Printing House, Bucharest, 2010, page 501.

[3] It is mentioned that „contract assignment ensures the contract survival even if one of the parties is replaced. If the party is no longer able or no longer wishes to perform a contract, then the contract should be terminated. Its assignment makes it possible the performance with a different partner (a third party) who becomes party of the contract; that is especially useful when the contract is a contractor instrument or the legal support of an wealth that

Another approach to contract assignment stated the impossibility of transferring an agreement between parties, this operation consisting of a transfer of contractual position itself, as a complex, homogeneous whole, including rights, obligations, prerogatives and claims[4].

On the other hand, given the personal nature of the relationship based on obligation, it is considered that the transfer of rights and obligations arising from a contract create a whole new legally binding relationship, and not a replacement of a pre-existing part of the relationship[5].

Apart from doctrinal differences, European legislators have recognized and regulated the contract assignment, the common ground of all these doctrines being that almost all require the consent of the assigned party as a precondition of the assignment validity.

2. Regulation. Definition.

§ 1. Regulation

Civil Code regulates the contract assignment at the Volume V, *About obligations*, Title II, *Sources of obligations*, Chapter I, *Contract*, sections 1315 -1320.

In addition to the provisions which establish the general framework of the contract assignment, the Civil Code also provides express regulations on contract assignment, and we dedicated a special section of this work to such regulations.

§ 2. Definition

The legal definition of the assignment contract is provided by section 1315 of the Civil Code, which stipulates that "a Party may substitute a third party in relations arising out of a contract only if obligations have not yet been fully performed and the other party agrees with such substitution."

It can be noticed therefore that the above legal text is not exactly the definition of the contract assignment, the provisions emphasizing the effect of the contract assignment and the requirements to be met for the assignment to be effective.

Having the definition at the section 1315 above a starting point, the literature defined[6] contract assignment as "an agreement (*assignment contract*) between one party (*Assignor contracting party*) of a contract whose performance is in progress

must circulate or merely a subzistence instrument", P. MALAURIE, L. AYNES, P. STOFFEL-MUNCK, *quoted text*, page 501.

[4] F. TERRÉ, P. SIMLER, Y. LEQUETTE, *Droit civil. Les obligations*, Ediția a 10-a, Editura Dalloz, 2009, Paris, page 1300.

[5] L. POP, I.-F. POPA, S. I. VIDU, *quoted text*, page 671.

[6] Among the definitions of contract assignment in the doctrine, we include also. a) „In a modern definition, contract assignment is the legal operation by which one of the contracting parties is replaced by a third person during the performance of that contract, occurring a contractual position transfer, together with all the rights and obligations according to that contract" – L. POP, *Principles of civil law. Obligations. Volume I. General legal regime*, C.H. Beck Printing House, 2006, Bucharest, page 290. b) „[…] contract assignment may be defined as the legal operation by which one of the contraqcting parties (*assignor*), is replaced by a third person (*assignee*), based on a new agreement, during the perfformance of the original contract, between Assignor and Assignee with the with the assigned contract party's consent" – A.-I. DĂNILĂ, *quoted text*, page 93. c) „[…] may be defined as the assignment contract entered into between a party of a contract whose performance is in progress, called the *Assignor contracting party*, and a third person to the assigned contract, called the *Assignee contracting party*, by this new contract being transferred the rights and obligations of the original contracting party, called the *assigned contracting party;* the result of this new contract is not only the assignment of rights and obligations, but the release of *Assignor contracting party*, provided that the *Assigned contracting party* agrees to such assignment" – I. ADAM, *Civil law. General theory of obligations. 2nd edition*, C.H. Beck Printing House, Bucharest, 2014, page 654.

(*assigned contract*) and a third party (*Assignee contracting party*) by which the parties agree to the assignment of all rights and obligations upon and of contracting party in the original contract (*Assigned contracting party*), which has the effect of both the assignment of these rights and obligations, and the Assignor's release, provided that the assigned contracting party agrees to this assignment”[7].

Another recent definition given by legal doctrine is that the contract assignment is "the agreement by which a contracting party (*Assignor contracting party*) transfers to a third party (Assignee contracting party) its rights and obligations under a contract which has not been yet fully performed, subject to its acceptance by the other party (*Assigned contracting party*)“[8].

3. Elements of contract assignment. Parties. Scope.

§ 1. Parties of a contract assignment

As it results from the provisions of section 1315 par. (1) of the Civil Code, contract assignment involves three parties:

a) *Assignor contracting party* or simply *Assignor*, the party who assigns their position held in the original contract (assigned contract);

b) *Assignee contracting party* or simply *Assignee*, the party who replaces the Assignor being transferred all the Assignor’s rights and obligations according to the assigned contract;

c) *Assigned contracting party* or simply *Assigned party*, the party whose contractual position in the assigned contract is not changed as a result of assignment.

Legal nature of contract assignment is determined by participation of assigned party to the conclusion of the instrument by which the contract is assigned, given that its consent is, when the law does not provides otherwise, a precondition for the assignment effectiveness.

Thus, we can speak of a *bilateral agreement* concluded between the assignor and assignee or a *tripartite* or *multilateral agreement*, where conclusion of assignment occurs simultaneously with the assigned party consent, expressed in the content of the same instrument. Also, nothing prevents the assignor to give its consent in advance of the contract assignment; this is done usually by an express clause in the assigned contract.

It was established that the contract assignment should not be confused with the sub-contracting. In this regard it should be noted that subcontracting implies the conclusion of a subsequent contract with another person does not have the effect of releasing the contractor who sub-contracts from its initial obligations[9].

Regarded as a legal operation, it is beyond doubt that the contract assignment is a tripartite transaction, involving three persons who must give their consent to such operation.

§ 2. Scope of contract assignment

The scope of contract assignment consists of a complex mix of rights and obligations arising from contracts to which the assignor is a party.

The lawmakers establish by section 1315 of the Civil Code that the contracts

[7] L. POP, I.-F. POPA, S. I. VIDU, *quoted text*, page 676, I.-F. POPA, *Contract assignment from the perspective of the New Civil Code*, in Revista Română de Drept al Afacerilor nr. 2/2003, page 89-90.

[8] G. BOROI, M.-M. PIVNICERU, C.A. ANGHELESCU, D.-N. DUMITRU, B. NAZAT, I. NICOLAE, T. RĂDULESCU, T.-V. RĂDULESCU, *Civil law abstracts. General part. Person. Main real rights. Obligations. Contracts. Successions. Family*, Hamangiu Printing House, 2016, page 144.

[9] For details please see I. ADAM, *quoted text*, page 655.

fully performed and the obligations fulfilled may not be assigned under any circumstances.

As far as the categories of contracts that can be assigned is concerned, given the absence of an express provision to that effect, we can draw the conclusion that any kind of contract can be assigned, in principle, including unilateral agreements, call-off contracts etc[10].

4. Ways a contract assignment can by performed.

Contract assignment may be performed as follows[11]:

a) *as main contract*, in the form of agreements detailed at point 3 above;

b) *as an accessory*[12], as a result of transferring the goods which constitute the object of the contract. For example, contracts of lease or insurance policies, in these cases the assignment operating de jure.

Also, there is an accessory assignment when we deal with the employees' rights protection if the company, a unit or a part of the company is transferred, this procedure being provided by Labor Code[13]. According to section 173 of the Labor Code[14], if such transfer occurs, the employees' rights shall be protected, „the Assignor's rights and obligations according to a contract or existing labor relationship at the time of assignment shall be transferred in full to the Assignee". Thus, in such case, individual employment contracts of all employees shall be transferred to Assignee as an effect of transferring the company, a certain unit or parts of the company.

We could also say that the contract assignment may be perfumed as follows:

a) *conventionally*, through a bilateral or multilateral agreement;

b) *legally*, when it is expressly provided by law (section 1811 – 1813 of the Civil Code for contracts of lease, section 2220 of the Civil Code insurance policies against damage or loss of goods, section 1733 of the Civil Code for the pre-emptive right).

5. Validity of contract assignment - requirements.

§ 1. Substantive requirements

Since the contract assignment is a contract concluded usually between the

[10] For details concerning the scope of the contract assignment, please see A.-I. DĂNILĂ, *quoted text*, page 36 et. seq..

[11] L. POP, I.-F. POPA, S. I. VIDU, *quoted text*, page 677.

[12] Court of Cassation in France stated the following: „even if, willingly entered into the rightful agreement for the purpose of obtaining profit, he shall comply with requirement arising from this agreements; he who subrogates in the rights of other shall also perform the obligations attached to such rights" – Cass. civ. 16th November 1857 in P. MALAURIE, L. AYNES, P. STOFFEL-MUNCK, *quoted text*, page 502. According to authors, this case is about two owners with coparcenary shares of a sugar factory who leased a sugarcane plantation; hey sold the factory to certain buyers who continued to use the plantation; one of the buyers refused to pay the rent for the plantation and invoked the sales contract for thefactory by which buyers stated expressly that do not assume any obligations towards the sellers; the court ruled that the buyers should pay the debt resulted from the contract of lease, the grounds being that the buyers received the rights resulting from this contract.

[13] Law no. 53/2003 concerning Labor Code was republished in the Romanian Official Gazzette no. 345/2011 and subsequently amended.

[14] Section 173 of the Labor Code: The employees shall enjoy the protection of their rights in case of transfer of the undertaking, establishment or parts thereof to other employer, according to the law. (2) The rights and obligations of the assignor, arising from an employment contract or relation existing at the date of the transfer, shall be entirely transferred to the assignee. (3) The transfer of the undertaking, establishment or parts of it may not be a reason of individual dismissal or collective redundancy for the assignor or the assignee.".

Assignor and Assignee, the substantive requirements of contracts validity must be complied with [section 1179 par. (1) of the Civil Code], namely the capacity to enter into a contract, parties' agreement, the object is determined and legal and the cause is lawful and moral.

Where, by the assignment of the contract they are also performed other operations, the specific validity requirement for such operation must be also met, may they be substantive or formal requirements.

§ 2. Formal requirements

According to section 1316 of the Civil Code, „contract assignment and acceptance by the assigned contracting party of such assignment must be concluded in the form required by law for the validity of the assigned contract".

Therefore, the formal requirements a contract assignment must meet are determined by reference to the requirements imposed by law for the validity of the assigned contract. Therefore, if for the validity of the assigned contract the law requires authentication, its assignment contract shall in its turn be authenticated, otherwise the new contract shall be subject to absolute nullity[15].

However, if the form of the assigned contract was priorly determined by the Contracting Parties in the original contract, the assignment is valid even if it fails to comply with the authentication requirement[16].

There are, however, exceptions to these special formal requirements, among which are the following[17]:

a) section 1805 thesis II of the Civil Code stipulates that, even the contract of lease is not a formal contract; acceptance of the assignment of a movable good lease shall be in written form;

b) according to section 1833 of the Civil Code, acceptance of the assignment of a contract of lease shall be in written form.

Also, it was established that[18], if the law requires for the original contract the fulfillment of certain formalities *ad probationem* or for purposes of opposability, then the assignment shall meet the same requirements.

6. Effectiveness of contract assignment - requirements.

§ 1. Assigned contracting party's consent

a) Consent, effectiveness requirement.

Concerning the assigned contracting party's consent, the doctrine has not reached a unanimous opinion on categorizing it as a validity or effectiveness requirement for the contract assignment.

As far as we are concerned, the acceptance of assignment by the assigned contracting party is an effectiveness requirement of contract assignment[19]. In defending this opinion, we consider that the

[15] According to section 1242 par. (1) of the Civil Code „it is subject to abosulte nullity the contract concluded by not observing the form required beyond doubt by law for its valid conclusion".

[16] Section 1242 par. (2) of the Civil Code stipulates that „if the parties agreed that a contract is concluded in a certain form, which tha law does not require, the contract is deemed valid even if the respective form is not observed".

[17] For details please see G. BOROI, M.-M. PIVNICERU, C.A. ANGHELESCU, D.-N. DUMITRU, B. NAZAT, I. NICOLAE, T. RADULESCU, T.-V. RADULESCU, *quoted text*, page 145.

[18] A.-I. DANILA, *quoted text*, page 60.

[19] In defending this opinion, we shall refer laso to the Principles of UNIDROIT in 2010 which, at Section 3, „Assignment of contracts", stipulates on article 9.3.3. the requirement of other party's consent for the contract assignment („The assignment of a contract requires the consent of the other party"). The comments on this article

way the lawmaker elaborated the section 1315 par. (1) of the Civil Code should be taken into consideration („a Party may substitute a third party in relations arising out of a contract only if obligations have not yet been fully performed and the other party agrees with such substitution"). As we explained above, the section in question refers, in an attempt to define the contract assignment, to two essential elements of the concept: effects and requirements.

Therefore, be reference to other texts in the Civil Code which regulate similar situations, as section 1605 of the Civil Code („undertaking the debt agreed with the debtor shall take effect if the creditor consents to such transfer only"), we consider that the section 1315 par. (1) of the Civil Code does not treat the validity of operation, but the fact that the effects of this transfer shall occur only and when the two effectiveness requirements are met.

French doctrine[20] connected the assigned contracting party's consent mostly to two requirements for contract validity, namely the cause and the scope of the contract. Therefore, since the cause and scope of the contract remain unchanged after the transfer of the contract, the assigned contracting party has no legitimate reason to object to the transfer and if it does, shall violate the principle of binding force of the contract. Moreover, it was established that the assigned contracting party's consent is in itself an authorization, which is the reason that it can be anticipated.

b) The method of giving the consent.

Regarding the manner of giving the consent, section 1316 of the Civil Code requires this to take the form imposed by law for the validity of the assigned contract. Also, as we have previously mentioned, the consent can be given in the contract of assignment, or by participating in the conclusion of the assignment agreement by the assigned contracting party or separately, before or after the assignment agreement. If consent is given after the assignment agreement, it may take the form of an affidavit subject to the formal requirement imposed by section 1316 of the Civil Code.

As far as the consent given before the assignment agreement is concerned, this consent may be expressed by inserting a special clause in the contract that is to be transferred or by means of a separate instrument. This separate instrument may be concluded after the assigned contract, but mandatorily before the or at the date of, assignment agreement.

If the assigned contracting party did not give its anticipated consent for the assignment of contract, this contract shall be effective the date such assignment is notified

stress the following issues; a) „The first requirement for the assignment of a contract is that the assignor and the assignee agree on the operation" – thus, the first requirement that must be met for the assignment of the contract is the agreement between Assignor and Assignee; b) „This agreement does not however suffice to transfer the contract. It is also necessary for the other party to give its consent. If it were only for the assignment of the rights involved, such a consent would in principle not be needed (see Article 9.1.7). However, the assignment of a contract also involves a transfer of obligations, which cannot be effective without the obligee's consent (see Article 9.2.3). The assignment of a contract can thus only occur with the other party's consent" – however, the agreement between Assignor and Assignee does not suffice to transfer the contract; it is also required that the assigned contractimg party agrees to the transfer. If the transfer consists of rights only, the consent would not be, in principle, required. However, given that the contract assignment involves the transfer of certain obligations, the assignment canoot be performed without the creditor's consent. Therefore, the assignment of a contract may be performed with the other party's consent only; c) „With the other party's consent, the assignee becomes bound by the assignor's obligations under the assigned contract […]" – based on the assigned contracting party's consent, the Assignee undertakes the obligations of the Assignor in the assigned contract.

[20] P. MALAURIE, L. AYNES, P. STOFFEL-MUNCK, *quoted text*, page 510.

to assigned contracting party or accepted by it. In this respect, section 1317 par. (1) of the Civil Code stipulates that, „if a contracting party priorly consented to the other party's substitution by a third person in the relationship arising from the contract, the assignment shall be effective towards the party at the time the substitution is notified to it or at the time the party accepts the substitution, as the case may be".

Moreover, the parties may agree by express clauses in the assigned contract to a mechanism of transferring the contract by endorsement. Therefore, according to section 1317 par. (2) of the Civil Code, „if all the elements of the contract result from an instrument which contains the „endorsement" clause or other similar stipulation, if the law does not provide otherwise, the endorsement of instrument shall have the effect of endorsee's substitution in all the endorser's rights and obligations".

It is established that, if the law does not require a certain form for assignment validity, the consent may be implicit[21].

§ 2. Parties' obligations are not fully performed

From section 1315 par. (1) of the Civil Code it results that contract assignment is not effective if the parties' obligations are fully performed. This stipulation is logical, given the role of the contract assignment, namely to continue the performance of a contract when, for example, one of the parties is no longer able or does not wish to continue it. Therefore, we may say that in the case of contract assignment, the scope of the contract derives from a contract whose performance is still in progress, which has not been yet fully performed by parties. Otherwise, we no longer speak about transferring a contractual position, together with related rights and obligations, but the transfer of a right which has been previously earned.

This second requirement makes the contract assignment especially suitable for continuing contracts. However, as we have previously mentioned, assignment may also apply, for example, to unilateral contracts, call-off contracts (e.g., if performance is suspended).

By way of exception, it is established that the contract assignment may not apply to contracts whose nature is *intuitu personae*[22]. This limitation of contract assignment applicability is, in our opinion, not completely grounded. Therefore, having in view that, in the case of such contracts (for example, general contractor agreement, mandate agreement, legal services agreement), the creditor concludes the contract considering the skills and abilities of the other party, we do not see any impediment in assigning such contract if the creditor agrees to the assignment, and the consent is expressed considering the Assignee's skills and abilities[23].

7. Effects of contract assignment.

According to those mentioned above, the consent of the assigned contracting party is required for the effectiveness of contract assignment. If such consent is not obtained, the assignment is incomplete, and the effects are partial or non-existent.

Thus, we shall enumerate the following effects:

1. Effects of contract assignment before the assigned contracting party's consent or if such consent is not given.

[21] L. POP, I.-F. POPA, S. I. VIDU, *quoted text*, page 682.
[22] P. MALAURIE, L. AYNES, P. STOFFEL-MUNCK, *quoted text*, page 510.
[23] A.-I. DANILA, *quoted text*, page 38 – 39.

a) *Between parties*, contract assignment, given that it is an agreement shall be subject to mandatory provisions of section 1270 of the Civil Code, which establishes the principle of binding force of the contract.

According to section 1320 of the Civil Code, Assignor has towards the Assignee the guarantee obligation, and this obligation survives irrespective of the assigned contracting party's consent. Par. (1) of section 1320 of the Civil Code imposes a legal guarantee obligation, namely the Assignor guarantees that the assigned contract is valid.

Moreover, according to section 1320 par. (2) of the Civil Code, „when the Assignor guarantees the performance of contract, it shall be committed as a fidejussor (guarantor) for the obligations of the assigned contracting party", and this guarantee shall be conventional.

b) *To the assigned contracting party*, the contract assignment does not produce any effect if the party's consent is not given.

As we previously mentioned when detailing the matter assigned contracting party's consent, the active dimension of a legal obligation relation may be transferred irrespective of the existence of such consent. Thus, the doctrine[24] established that, if the assigned contracting party consent is not given, the contract assignment is incomplete, and may take the form of other legal operation, such as assignment of debt, provided that the opposability requirements are met, according to section 1578 of the Civil Code

Also, it could be taken into consideration the transfer of active side of the obligation relation between parties through the subrogation consented by creditor, as a result of payment by the assignor directly to assigned contracting party, payer being, by reference to the agreement with Assignee, the third person referred to at section 1594 par. (1) of the Civil Code[25].

We should mention here that the contract assignment must be construed by reference to the provisions applicable to legal operation by which the transfer of debt is performed.

2. The effects of contract assignment after the assigned contracting party's consent or if such consent is not given.

a) *The time of contract assignment* is critically important as this time marks the time when the contract assignment produces effects.

This time is determined, on one hand, by reference to the provisions of section 1317 of the Civil Code, detailed above when we described the ways the consent is given. Thus, if the consent is given before the contract assignment, according to section 1317 par. (1) of the Civil Code „the assignment produces effects for that party as of the date the substitution is notified or the date the party accepts such substitution, as the case may be".

On the contrary, when the contract is transferable as a result of certain clauses expressly stipulated in its content, section 1317 par. (2) of the Civil Code says that, „if the law does not provide otherwise, the endorsement of instrument shall have the effect of endorsee's substitution in all the endorser's rights and obligations".

Concerning the consent given after the contract assignment, we consider that the time of assignment is the time when assigned party's consent is delivered to Assignor or Assignee, the provisions of the

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[24] L. POP, I.-F. POPA, S. I. VIDU, *quoted text*, page 681.

[25] Section 1594 par. (1) of the Civil Code: „subrogation is consented by creditor when, receiving the payment from a third person, transfers to such third person, as of the time of payment, all its rights and obligations towards the debtor".

offer to contract being applied to the extent that they are not contrary to the special provisions applicable to contract assignment.

b) *Effect on the parties of the assignment agreement* are similar to those presented above, the principle of binding force of the contract being duly applied. Also, provisions of section 1320 of the Civil Code concerning the guarantee obligation, legal or conventional, are applicable also after the consent of assigned party.

c) *Effects between Assignor and assigned contracting party*. The main effect is that provided by section 1318 par. (1) of the Civil Code, namely the Assignor's release from „its obligations towards the assigned contracting party as of the time the substitution produces effects towards the latter".

Therefore, as a result of Assignor's release, the original parties of the assigned contract may not claim form each other the performance of obligations arising from this contract.

However, „if the assigned contracting party states that shall not release the assignor from its responsibilities according to the assigned contract, the assigned party may raise claims against assignor if the assignee fails to perform its obligations. In such case, the assigned party must, under the penalty of losing the right to recourse action against the assignor, the failure to perform the obligations by the assignee within 15 days from such failure or the date the assigned party knew about such failure, as the case may be" [section 1318 par. (2) of the Civil Code]. This 15 day term has the nature of a peremtive period; upon its expiration the assigned party looses the right to recourse action against the assignor.

d) *Effects between the assignee and assigned contracting party*[26]. As a result of assignment, the Assignee shall replace the Assignor and become a party of the assigned contract, together with assigned contracting party. Between them, in principle, the contract shall continue to produce the effects pursued by original parties at the time of its conclusion. Nothing prevents, indeed, the new parties from agreeing to modify the content of the contract after the assignment.

As far as the defending means provided by lawmakers to assigned party is concerned, the assigned party, „may raise against assignee all the exceptions resulting from the contract" (section 1319 thesis I of the Civil Code). Thus, the assigned party may claim against assignee the non-performance exception, limitation period, peremptive period, payment, nullity, termination etc.

However, „the assigned party may not invoke against the assignee the consent flaws, as well as any defends or exceptions arising from its relation with assignor, unless the assigned party reserved this right when consenting to substitution" (section 1319 thesis II of the Civil Code).

e) *Effects to the third persons*[27]. In this category are included the creditors of the parties involved in the operation and the third-party guarantors of original parties' obligations.

The creditors of the parties involved in the assignment operation may promote either the derivative action or the revocatory action according to the pursued interest. Thus, the assignee's and assignor's creditors may bring action against the acceptance of fraudulent assignment of the contract through the revocatory action. The assignee's creditors may bring action against the assigned contracting party through

[26] G. BOROI, M.-M. PIVNICERU, C.A. ANGHELESCU, D.-N. DUMITRU, B. NAZAT, I. NICOLAE, T. RĂDULESCU, T.-V. RĂDULESCU, *quoted text*, page 146.

[27] For details please see L. POP, I.-F. POPA, S. I. VIDU, *quoted text*, page 684-686.

derivative action, while the assigned party's creditors may bring action against the acceptance of fraudulent assignment of the contract through the revocatory action. Also, the latter's creditors may promote derivative action against assignee and assignor, when the latter has not been released from its obligations according to contract, for non-performance of such obligations.

As far as the guarantees agreed by third persons for the performance of obligations by the original parties of the assigned contract is concerned, the following categories may be identified:

1. guarantees agreed for the performance of assigned contracting party's obligations; these guarantees shall survive to the benefit of the assignee;

2. guarantees agreed for the performance of assignor's obligations; these guarantees shall not survive if the assigned contracting party releases the assignor from responsibilities.

Concerning this situation, there were issued certain exceptions, the guarantees surviving when:

i. the guarantor consents expressly to the maintenance of guarantees or if the assignor is changed;

ii. legal guarantees (proprietary rights and legal mortgages) constituted on the assignor's assets;

iii. lack of assigned contracting party's consent to the assignment;

iv. assigned contracting party refusal to release the assignor from responsibility;

v. the guarantors agreed expressly to the maintenance of guarantees in case of contract assignment.

3. in the case provided by section 1318 par. (2) of the Civil Code, if the assigned contracting party fails to notify the assignor within 15 days the non-performance of obligations by the assignee, the loss of right to recourse action leads to the loss of all guarantees constituted for the performance of assignor's obligations, if the parties did not agree on the maintenance of such guarantees.

8. Legal assignment of the contract.

Legal assignment of the contract is the way of transferring the contract by way of law. Among the legal contract assignments, we mention:

a) the case provided by section 1811 of the Civil Code, namely the situation of the contract of lease opposable to acquirer if the parties failed to stipulate the sale of good as grounds for contract termination and the requirements provided by law for opposability were met;

b) the case of acquirer of an insured good, according to section 2220 of the Civil Code, shall comply with the provision of the insurance policy concluded between insurer and the previous owner of that good;

c) by exercising the preemptive right provided by section 1733 of the Civil Code;

d) in case of transfer of the company, a certain unit or parts of the company, the individual employment contracts of the employees shall be transferred to assignee as a result of the transfer of the company, a certain unit or parts of the company, according to section 173 of the Labor Code;

e) assignment of concession contract on a property (land), according to section 41 of the law on the authorization of building works no. 50/1991[28] („the right of concession on the land shall be transferred in case of succession or sale of the property for whose building the concession was created. The same conditions apply to the transfer of building permit").

[28] Law on authorization of building works no. 50/1991 has been republished in the Romanian Official Gazzette no. 933/2004 and subsequently amended.

9. Conclusions

As of the date of applying the current Civil Code, the assignment of debts has become a legislative success, the lawmaker responding by legislating it to the needs claimed by doctrine, case law and, not least, the participants in the legal obligation relations.

This institution may have beneficial effects in terms of special situation of a participant in legal obligation relations, being offered a new way of solving problems caused by the inability or refusal of the contracting party to perform its part of the contract.

Also, this mechanism may have a positive effect on the national economy by the mere fact that the parties are made available other ways of crediting than the traditional modalities.

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