

EXCEPTIONS TO THE PRINCIPLES GOVERNING CONSEQUENCES OF NULLITY

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Abstract

In our civil law there is no legal definition of nullity of the act, so that in the legal literature there are many attempts to define this institution. Even if different states, all these definitions that the nullity is nothing but a civil penalty of missing the effects of the civil legal act contrary to legal norms valid for signing edicts. The characteristic features of nullity, which can be drawn from existing definitions in the legal literature are the following: compliance with the law is verified legal act related to the birth of the legal act and not a moment later, occurs only if legal rules are violated edicts available for its completion, only the effects of missing legal document that contrary to legal norms valid for signing edicts (in principle) the legal document in its entirety.

Key words: nullity, sanction, invalidity, legal effects

INTRODUCTION

Specialized legal doctrine identified the functions of nullity, as it is about them from legal texts mentioned where: preventive sanctionatory, means of guaranteeing the principle of legality. Preventive function is to attract attention to the consequences of failure to comply with valid legal requirements for the completion of an act. Sanctionatory function consists of the legal act of depriving its effects against the law, intervening only when it was not the purpose of preventive function mentioned above. The function of ensuring the principle of legality obviously derive from the fact that lack legal document opposite effects of legal rules was available for signing edicts.

RESULTS AND DISCUSSION

Consequences of invalidity civil act is nothing more than the legal consequences of applying the penalty of nullity, or dissolution proceedings in respect of all or part of a juridical act which was done in violation of legal provisions relating to conditions of its validity. Overall, the abolition of the legal invalidity is born of the civil juridical act that sanction. Concret hit but the effects differ invalid, first, as is total or partial nullity, and, secondly, depending on what what happened after the civil act void, namely, as the

document was executed or not and as they were completed or future legal acts in connection with the same title.

Under the second aspect mentioned above, the following special situations:

- if the legal document was not executed until it is canceled, the sanction of invalidity means that the act can not be executed even after this time, so the or parts of the legal act in the situation where no legal act that would have made. Consequently, for whom the legal document should be followed to give rise to subjective civil rights will not be able to exercise these rights, which are considered as not they were born, and for whom the act would not give rise to civil obligations will be taken to bring them out
- if the legal act was executed, in whole or in part, until the declaration of nullity, invalidity means the abolition of retroactive application of the legal act, and restitution, mutual or, if necessary, unilaterally, the services provided under that act
- if the legal act was executed, and, until declared invalid, one of his parties entered into a legal act with a third person that sent right to be born of the act void, either up or to a law passed in close born right about the act void, nullity sanction involves retroactive abolition of the legal act performed (primary legal act), the repayment of benefits made under this act and subsequent abolition of the legal act

Assumptions set out some principles that have allowed the governing effects of invalidity retroactivity, reinstatement and cancellation of the previous situation underlying the effect of canceling the main act. Rollback of invalidity means that the effects occur even when the conclusion of the legal act, regardless of the date on which it was found or has been ordered sanction of nullity. Restoring the state before the refund is made by the legal services provided under the act void, each party being obligated to return all received on the basis of the act and entitled to be returned and gave everything. Annul the effect of subsequent cancellation of the main act is a logical result of another rule of law under which no one can give property that does not have.

Effect of nullity lies in the abolition of the legal act since its conclusion, which leads to restoring the rule of law violated. Ineffective legal document can not take effect in the future and past effects are abolished retroactively. So not only operates invalid for the future (*ex nunc*), but for the past (*ex tunc*). The effects of the retroactive nullity cases there are some exceptions that concern the legal effects of the act declared invalid or void is maintained for the past (*ex tunc*), invalid operand only for the future (*ex nunc*).

They are:

- maintenance of effects in the past with successive execution contracts - the effects of marriage, even if it was declared void in respect of children of that marriage

- bonafide acquirer of a property does not return frugifer picked fruit

Abolition Act retrospective effect should lead to a full refund and mutual benefits from the conclusion made by the parties to act and declaration of nullity or cancellation. - Inability (minor or prohibited) is not bound to repay benefits received under the Civil Code art.1164 than the extent of his enrichment. - A legal act of the parties void can not claim repayment benefits made if his own turpitude (immorality) "*nemo auditur propriam turpitudinem alegans*" (nobody is allowed to rely on his own immorality in court to obtain protection of a right)

- heir who has made a voluntary donation or a null linked to defects of form, can no longer claim the refund benefits

Nullity and may alter the effects on third parties, to the extent that they have acquired rights to the guilty of nullity. Since nobody can transmit more rights than he has himself, it is natural that with the suppression of rights acquired through the legal act by one party, to be suppressed and owner right. In this case, however invalidity operates as a resolution, based on the maxim "*resoluto jure dantis resolvitur jus accipientis*".

Exceptions to the principle of legal acts subsequent cancellation:

- keep good faith owner mobile asset acquired for consideration of the transmitter whose title was declared void or annulled

- bonafide third party acquirer who has acquired the property from the heirs declared dead, a cancellation of declarative decision of death.

CONCLUSIONS

Certain principles of law justify maintaining the situation created by the legal act void, or maintenance of part or all of its effects: the principle of protection of good faith, the apparent validity of the principle in law (*communis error facit jus*), the principle of conversion of the legal act, the principle of civil liability in tort . According to this last principle listed, if the minor guilty because of invalidity (declare major) would require the cancellation of civil, although as a result of cancellation, the other party would suffer a minor injury which would have to pay damages, the believe that the best compensation is to maintain as valid legal document. Conversion principle, covered in future civil code, express the idea that a contract null and void will occur, however, the legal effects of the act for which the conditions for substantive and formal requirements of the law. Protection principle of good faith for consideration owners allow third

parties to enjoy the validity of their contracts with the owners apparently provided the appearance to be public knowledge.

REFERENCES

1. Gh. Beleiu, „Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil”, ediția a X-a, revăzută și adăugită de M. Nicolae și P. Trușcă, Editura Universul Juridic, București, 2005
2. G. Boroi, “Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil”, Editura Universul Juridic, București, 2005
3. Petrică Trușcă, „Drept civil. Introducere în dreptul civil. Persoana fizică. Persoana juridică”, Editura Universul Juridic, București, 2005;
4. Giosan Lucia, Florea Măgureanu, „Drept civil”, Editura Universul Juridic, București, 2004;
5. Ovidiu Ungureanu, „Drept civil. Introducere”, ediția a VII-a, Editura Rosetti, București, 2005
6. Ovidiu Ungureanu, „Drept civil. Introducere”, Editura All Beck, București, 2000; de scos și din lucrare
7. Aspazia Cojocaru, „Drept civil. Partea generală”, Editura Lumina Lex, București, 2000.
8. Mircea Mureșan, „Drept civil. Partea generală”, Editura Cordial-Lex, Cluj-Napoca, 1996.
9. Cristiana Turianu „Curs de drept civil. Partea generală”, Editura Fundația „România de Măine”, București, 2002
10. Dănuț Cornoio, „Drept civil. Partea generală”, Editura Fundației România de Măine, București 2006;
11. E. Lupan, I. Sabău-Pop, „Tratat de drept civil român”, vol. I - Partea generală, Editura C.H. Beck, București, 2006
12. C. Hamangiu, Rosetti Bălănescu, Al. Băicoianu, Tratat de drept civil român, Vol. I, Editura Națională, București 1929.
13. M. Costin, Marile instituții ale dreptului civil, Editura Dacia, Cluj Napoca, 1982.
14. D. Alexandresco, Explicațiune teoretică și practică a dreptului civil român în comparație cu legile vechi și cu principalele legislațiuni străine, Tipografia Națională, Iași, 1900.
15. Cristian Jora, „Culegere de practică judiciară”, Editura Lumina lex, București, 2005
16. Cristian Jora, Ingrid Mocanu-Popa, Eugen Iosivoiu, Lucia Uța „Culegere de practică judiciară pe anul 2006”, Editura Lumina lex, București, 2007
17. P. Perju, „Sinteză teoretică a jurisprudenței instanțelor din circumscripția Curții de Apel Suceava în materie civilă”, în Revista Dreptul nr. 5 din 1995.
18. D. Cosma, „Teoria generală a actului juridic civil”, Editura Științifică, București 1969;
19. Iosif R.Urs, Smaranda Angheni, Drept civil, Vol. I, Editura Oscar Prinț, București, 1997
20. Octavian Căpățână, Nulitatea actului juridic civil, în Tratat de drept civil, Vol. I. Partea generală, Editura Academiei R.S.R., București, 1989