

## **INTERMEDIATION EFFECTS IN THE LEGAL RELATIONSHIP OF MANDATE OF REPRESENTATION**

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### ***Abstract***

*About the contract of mandate was told that is the origin of all contracts. A contract of mandate in commerce is recognized by its characters , unilatera , consensual, intuitu personae and untranslated property. The contract of mandate with representation in commerce has experienced over time a number of changes due to global economic sector development, in the sense of increasing business volume and geographically wider expansion of companies. This expansion resulted in an increase in the number of persons, whether natural or legal, who brokered between companies.*

**Key words:** contract of mandate, intermediation, representation, agreement, mandatary

### **INTRODUCTION**

Professor Dumitru Mazilu considers that the origin of the mandate agreement was in Roman law. Term contract through which carries civil law relations, contains similarities to commercial relations structure but differ in function and purpose of such qualification is given a mandate by the nature of the object, the object of international trade mandate to treat commercial business. (6, p. 494)

### **MATERIAL AND METHOD**

The material used for the realization of the paper work is composed of monographs, handbooks, courses and internet addresses. The methods used are legal formal method, historical method, comparative method, sociological method, the method logical and analytical methods that were aimed at the systematic analysis of information extracted from the sources studied in order to develop opinions and conclusions.

## RESULTS AND DISSCUSIONS

International contract of mandate is primarily a brokerage contract. This type of contract has occurred due to the fact that the complexity and frequency of international transactions and large geographical area in which the menus, determined using intermediaries to expedite, facilitate and carry out contracts under more effective. The concept of mediation is an activity done by a person other than the holder of the interest, being interposed between the holder and the third person. Thus brokerage operations were performed by first mandate in civil law, which was adapted gradually commercial requirements of life, becoming in time, one of the legal instruments able to facilitate the conduct of trade becoming more complex, especially international.

The doctrine stated that the mandate is the origin of all contracts. The mandate have a particular importance because, through his conclusion facilitates trade or other civil contracts are streamlined and private legal relations. From the legal point of view, the mandate is a form of representation of a subject of law by another law subject to completion of various legal documents. Without confine the generally term consists in committing representation by a person appointed representative in the name and on behalf of another person, as represented, a legal act or several legal acts whose effects are produced directly in person and and its heritage. (13)

Any trade activity presupposes the existence and pursuit of ancillary activities involving the trade or other persons outside of the holder trade, people with whom he comes in various legal relations specialist (7, p.191). The categories of persons participating employer as auxiliary activity trader or company can be grouped into three categories: 1. employees who are bound by the employer under a contract of employment or services; 2. persons who have powers independent intermediary, such as commissioners or trustees without representation; 3. aids related to employer trader company under a contract of mandate with or without representation, often combined with a service contract .( 10, p.108)

The contract of mandate shows a special practical applications in trade activity, given that more and more operations are conducted through intermediaries such mandate is a tool that meets the need to facilitate the conclusion of legal relations in trade and meets the desire for speed in this field. (12, p. 35)

Usually a legal act is done to produce legal effects at the expense of people who took part in the negotiation and conclusion of it. Other people who did not participate in the conclusion of that act, are parties or third persons to that legal act, so this act has no legal effects on their behalf. Generally a person who negotiate and conclude a contract makes for itself,

so therefore has another contract on account of an exceptional character (8, p.228). This is due to the fact that a contract on behalf of others gives rise to certain effects which are intended for a person absent conclusion. Thus, the ownership transfer effect and binding force of these contracts concern a person who has expressed willingness in this contract. Involved in this operation are three persons, namely: a contractor, contracting party who acts as an intermediary and a third person who has entered into a legal intermediary act. (8, p.228)

The mandate has a specific object which consists of treating by the principal business expense account. The documents must be both commercially for the third person and for the principal too. (4, p.38)

The mandate is a contract whereby one party, called the mandatary is obliged to conclude one or more legal acts on behalf of the other person, called the principal. Specifics commercial contract of mandate, is that the mandate is to mediation by business professionals. The mandate given to acts of exercise of a professional activity is presumed to be a consideration, resulting in onerous nature of the specific contract term trade activity undertaken professional nature concluded by professionals.

Contract of mandate is used in the business of brokering agents. They are traders, exercising mediation independently and professionally. Their own individualized configuration elements in the trade office are: the mandate may be only conventional arising from agreement of the contracting parties; representation is the nature of the contract and not its essence, the mandatary may act in his own name but on behalf of his principal; mandate on trade is always a contract for pecuniary interest, the mandatary is paid by an amount specified in the contract; mandatary is authorized to do all acts necessary for enforcement operation that was in charge, even if not expressly mentioned; freedom of action and independence granted to the mandatary and principal employment permit for an apparent representation; commercial mandate is revoked only for reasons. (4, p.38)

Contract of mandate is a bilateral, commutative, onerous, consensual, intuitu personae, means (or diligence) contract. This contract is a contract to trade on the ground that the characteristic performance of the contract is the deed of trade, treating commercial business on behalf of the principal. (11, p. 443)

According to art . 2013 Civil Code , the mandate may be concluded in writing, authentic or under private signature or verbal. Accepting the mandate may result from the execution of the trustee. The mandate given to the conclusion of a legal act subject, by law, must follow a certain format that form under the applicable sanction act itself. The provision does not apply when the form is only required to act

enforceability against third persons, unless the law provides otherwise. The new regulation does not resume the art. 1533 of the old Civil Code regarding explicit recognition of two types of mandate, the tacit and express. The question is whether under the new arrangements can be tacitly recognized mandate, the more that code expressly refers only to the tacit acceptance of the mandatary, while maintaining silence on offer tacit contract. We have tacit authorization when a person does an act in the name and on behalf of another, who consents in silence. Even if it is not expressed, the principal will be deducted from the circumstances. French jurisprudence has acknowledged mandates silent even in the absence of an express provision in the Code, circumscribing an administration acts. Doctrine stressed that tacit admission office is dangerous, because the mandate should not be given easily. It occurs especially when we have community life and interests. Tacit mandate should not be confused with the mandate apparently missing in this case although the principal will be represented by absence, termination or exceeding empowerment, contracts with third person excusable and legitimate belief that the agent apparently has powers of representation. (3, p. 370-371; 5, p. 291)

Effects of the mandate must be analyzed from two perspectives, namely: on the one hand the relationship between agent and principal, which means between the parties, on the other hand the relationship between the principal and third parties, signifying relations to third trustee ending legal document, so between the contracting parties, the contract gives rise to obligations and rights in pregnancy and in favor of the trustee and the principal (9, p. 40). The conclusion of the legal relations representative will arise in which content will be no direct rights and obligations between the principal and the third party contractor. The mandate of representation generates certain obligations as trustee in charge and the principal task. Thus mandatary must: ► mandatary shall not exceed the limits set by the mandate, ► mandatary is held to execute the mandate with diligence of a good owner, ► mandatary is obliged to notify the principal of circumstances occurring after the conclusion of the contract and can result in the revocation or modification thereof, ► mandatary is obliged to give account of its management, mandatary ► interest on any sums due employed in his service; and the principal shall: ► principal is obliged to provide the necessary means representative performance of the contract, ► principal is required to repay the expenses incurred in the performance mandate and to repair the damage suffered by the trustee in the execution of the warrant, the principal is obliged ► payment of remuneration.

In French law, in the Commercial Code doesn't exist special provisions for mandate in commercial trade. Not being provided separately from other provisions for trade mandate, the provisions of the Civil Code

regarding the mandate. What governs the French Commercial Code in Title III, are brokers, forwarders, transporters and traders. Of these only commercial agents are considered, according to the established and according to the Law no.91 / 593 of 25 June 1991 professional agents. Mandatary 's obligations are more important than those of the principal, so the trustee has two obligations, namely a primary obligation which is to serve their mission and duty to account .(1, p. 361)

Principal shall: reimbursement of expenditures and advances, payment of remuneration and compensation of losses. In the name of fair execution of the contract is accepted as the principal representative is obliged to provide the information necessary to execute the mandate. Compared to the third person, the principal is obliged to fulfill the obligations arising from contracts concluded within the proxy agent received. (1, p. 367)

Effects of execution of mandate with representation contract circumscribed to produce effects as regards third person since the execution of the representation to the conclusion of legal acts by the trustee, as the representative, the third person in the name and on behalf of the principal. Because the document signed by a representative within the proxy on behalf representative direct effect between the representative and the other party, and the trustee may not exceed the limits set by money, that the trustee has a role as intermediary between the principal and the third party. Following the third person, mandatary acts concluded between the principal and third party direct legal relationship is created. This effect of execution of the warrant is the fact that under the principal empowered representative, legal documents are signed by the trustee in the name and on behalf of the principal *nomine alieno* . (2, p. 525)

(8, p. 243-244) Principal being represented by the mandatary, who contracted for and on behalf of the principal, shall bear all the effects of the act done by a third party trustee unless acted within the powers that have been granted by proxy. Mandatary acts concluded empowerment exceeding limits shall not render the principal provided that they have ratified or acquiescence *ratihabitio mandato equiparatur*. Thus, in the absence of ratification, excessive acts of the mandatary requires the principal only in case of business management or unjust enrichment.

Contracting with third persons and on behalf of the principal, between third persons and the mandatary shall not create legal relations. But if the acts they ended empowered limits have been exceeded , the agent will respond directly to third persons, unless the third person knew mandatary powers, so that they assumed the risks conclusion.

Since the execution of the direct legal relationship be established between the principal and the third person mandate no legal effect in the

relationship between the agent and the third person. The mandatary is reduced to signing legal documents with third parties based on a proxy representation. Once fulfill this role, the mandatary remains alien to legal documents concluded *inter alios acta res* third persons. (2, p. 526)

## CONCLUSIONS

Intermediation, in classical sense is the activity performed by a person other than the holder of economic interests at the expense of the latter, whether working on its behalf or on its own behalf. The Explanatory Dictionary of the Romanian language, the intermediary is defined as the person or legal power to provide intermediation between parties to a transaction, person who intermediates an agreement between two persons or parties, and that, in exchange for a monetary advantage link between seller and buyer, or a transaction between two persons or parties, therefore the person who intermediates the conclusion of an operation.

In the literature, there are authors who qualifies as intermediary identical to that of intercession. Thus, brokers or intermediators can also carry the name of brokers or middlemen, and play an important role in the economic life because they are the ones who put in about supply and demand. Thus, intermediation or intercession is regarded as an operation whereby a person appointed intermediary is interposed between two people for carrying out a business and due diligence and specific activity causes such persons to close the deal or contract. Therefore, the concept of intermediation can be seen both in economic and legal aspect. Economically, intermediation is an activity that takes place within the limits of the law by a person appointed, intermediary to determine others to enter. Juridically, intermediation institution takes the form of mediation contract, governed by the Civil Code art. 2003-2102, along with other similar service contracts such as commission, agency, consignment, expedition, warehouse.

If from the economic point of view, intermediation provides ease of connection between supply and demand, in legal terms, mediation is a legal instrument governing the relations between the intermediary and the person on whose behalf it carries out the function of mediation. In the situation in which the intermediary has no entitlement to represent the parties, he will be able to act in relation to his client, and in relation to third parties only in its own name.

In this situation, the services provided by it will be deployed without being reported to the person of another subject of law, the agent in this case being a participant of the reports made, the conditions being put to bear the consequences of its acts in his own person.

By facilitating the work of concluding the contracts, it does not intervene in any way in as a contracting party thereto and as a result does not bear any liability with regard to the execution or non-execution of the contract whose closing has brokered it.

In doctrine were highlighted two senses of the concept of intermediation, one comprising small traditional sense of this notion, and one that includes broader and modern forms of trade relations.

The meaning of the stipulation, mediation is an operation that is performed on behalf of a person, who holds an interest, by another person as an object of its specialized mediation activity the conclusion of trade transactions between the two partners in exchange for remuneration.

In this respect, in most cases involve mediation representation of the holder of the interest of the group, whether working on behalf of the person for whom it acts either on its own behalf.

For the purposes of mediation, limited presents itself in the form of contracts such as terms of reference, the Commission in the continental system or agency in common law.

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