

## THE INSTITUTION OF REPRESENTATION IN MEDIATION ACTIVITY

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### **Abstract**

*This work addresses a theme with deep roots in law history. The representation appeared for the first time in Romanian Era, and with the development of economy and multiplication and diversification of trade acts, the representation known an increasingly obvious importance.*

**Key words:** contracts, representation, substitution, roman law, legal effects

### **INTRODUCTION**

In the old Roman law, obligation was understood as a strictly material and exclusive connection *ob-ligatio* between the contracting parties, producing no effect nor to the benefit and to the detriment of third parties. Romanian obligation has been concluded, in the old age, using a ritual by the use of gestures, and sacramental words, would have to be parties to the contract, and obligation effects reflected splendidly with exclusive rights to them. Because of this mindset, the right old Romanian representation principle did not know, but the unrepresentation.[6]

From the most ancient times, the head of the family could become creditor by persons under its power as well as through its slaves. This rule is explained not as an exception to the principle of unrepresentation, but also as a consequence of the organization of roman family, focussed around the power of ritual of the head of the family, which under the conditions of production of primitive epoch would be able to call up the situation better by means of those under its power. Development of the economy, demanded, in order to facilitate trade relationships that the heads of the family did to become debtors by the acts concluded by those under their power, since most acts of economic life, being comutative acts, based on two mutual benefits, rigorous contracting parties to become simultaneously debtors and creditors by conventions concluded. With a view to the completion of this possibility, the Pretor created by the end of the Republic, the so-called

*action adiecticiae qualitatis* with which third parties what cramped with those under his power paterfamilias could sue the latter. *Actions adiecticiae qualitatis* born from contracts concluded by the rulers have been so designated by Roman law commentators, as the quality of the contractor's son to be added to that of the head of the family who has to deal with the legal consequences of act concluded with third parties. These actions shall be granted against the head of the family in the following cases: where paterfamilias has authorized the son to conclude a specific legal act - *quod iussu*; when he made an trade terrestrial administrator - *institoria* or *maritim - exercitoria* and when his son was a peculin in respect of which he was doing acts of commerce; paterfamilias might be followed by a third party within the limits of defended acquired and the assets of that peculin - *peculio et de in rem back*. [6]

At the beginning of the twentieth century III a.d. under the influence of Papinian jurist, it was admitted that any third party contractors may sue any owner- as if who has contracted with them by an administrator - procurator of him, within the limits of administration to which he had been authorized. This action to ensure the representation, was called *actio quasi institoria*, but this representation was not perfect, however because therepresentative remained also obligated in front of the represented. [5]

## **MATERIAL AND METHODS**

Materials used for compiling this paperwork are composed by manuals of expertise, specialized courses, treatyes in commercial law and international trade law, internet sites. Methods used are legal, namely formal method, the method historical, comparative methodology, sociological method, the logic method and analytical methods, which have affected systematic analysis of information extracted from the studied sources in order to develop their views and conclusions.

## **RESULTS AND DISCUSSION**

Legal acts are intended to produce legal effects on the persons who took part in their conclusion, so that, all other persons who have not attended their conclusion are third parties against concerned acts who, having no connection with them, will not produce any legal effect on their account. In dealings with third parties, legal acts are *res inter alios acta*, and as such, aliis nequeneque prodesse potest- theory of relativity of legal act: legal act shall take effect only between the contracting parties. Some practical considerations and legal requirements imposed on the need for admission of other persons from committing legal acts, so that by their

statement of the will to produce effects for the account of the person they work for. The means of achieving that purpose is the representation, meaning "making legal act with the intent and with the result that the act to be looked as it had been committed by another, legal effects of the act having regard to materialise exclusively and directly in person of represented.[2]

The representation is defined as that correspond to the technical and legal process by which a person, the so-called representative, shall conclude a legal act in the name and on behalf of another person, called represented, the legal effects of this act so concluded in accordance to occur directly on the person of representative.[9]

The representative shall be a staff member who enters into legal acts with third parties on behalf of another person called represented. In the operations of commerce, a company producing or trading company sends his representative task had freed his products, and may carry out more operations of commerce. So, for the performance of his duties, the representative may rent means of transport, organize service, may be able to resolve customer complaints, can safeguard the rights of patent, patents and trade name. In the event that his representative shall be agrees exclusivity, he shall be subject to monopoly in a given sector of activity, on a specified territory and to a certain clients.[7]

One of the principles which governs the legal effects of acts is relativity principle. According to this principle a legal act shall take effect only from the author or its authors, giving rise to subjective rights and obligations only for the benefit, or under contracting parties load and not to be able to take advantage or harm third parties - *res inter alios acta, aliis nequere nocere, neque prodesse potest*. [4]

However, there are some cases in which legal act has the power to produce effects both from the author or its authors, as well as to third persons, who have not participated in an effective way to the conclusion of that act, not personal, and not even by proxy. Such situations are called as exceptions to the principle of relativity effects of legal act, and shall designate hypothesis in the act in question would give rise to subjective rights directly in favor of the other persons other than those who participated at the end of the document, or, as the case may be, give rise to civil obligations under load persons other than its parts. Exceptions to the principle of relativity effects of legal act have been classified into two categories: actual (real) exceptions and apparently exceptions. Specialized doctrine did not express unanimous opinions in this respect, but majority opinion is within the meaning of as the sole exception to the principle of the actual effects of relativity civil legal act represents the stipulation for each other, because only in this case, even under the contract of stipulation, are

born rights directly and immediately by in a third party's heritage (patrimony).[9]

All the other situations in which certain effects of concluded legal act occur on persons other than the parties to act constitute simple apparent exceptions to the principle of relativity, as well as promise someone else's deeds, the representation, simulation, direct action, the cession of debt instruments, the management of another person interests, collective legal acts.[3]

Characteristic element of representation is that it allows transmission of effects arising from legal act concluded by the representative, directly and immediately on the represented person, while the representative, empowered to act in the representative interests, disappears in the same time with the performance of its tasks.[1]

Characteristic for representation, it is first that the representative will not work in his own name but in the name and on account of another person, acting with their intention to work for each other and make known his intention in this one by which concluded legal act and, secondly, the representative shall be empowered with a view to the conclusion of legal acts on behalf of another person.[2]

As regards the legal and judicial representation, this may not be considered as an exception to the principle of relativity effects of legal acts, especially due to the fact that the agent becomes the holder of rights and obligations stemming from legal acts concluded by the dealer under the law or of a judicial decision, and not on the expressed demands based by one of the parties. Therefore, only if the effects would have occurred in a heritage, not by virtue of the law, but under the contract between legal or judicial representative and the third party, we would have found out in front of a real exceptions to the principle of relativity effects of legal act.[10]

The representation in the domain of trade and commerce it have like the main effect "transporting" legal act, concluded by representative in person of represented without it to have taken part in the preparation. This operation will be explained by a fiction of the law, because the agent is the one that is contracting, not the representative, expressing so the result of representation but not the cause to. As long as the representative shall act within the limits of powers conferred upon him, he shall not be binding upon itself but also obliged the represented. The decisive factor which binds represented by a third party is aware that a third party have that the representative is working on behalf of another person.[8]

## CONCLUSIONS

Expansion and diversification of legal relations under private law offers subjects of law the opportunity to participate more actively in such activities and have the ability to choose with whom, where and when to conclude certain legal acts. As a general rule, the conclusion of the contract shall be made directly by the interested subjects, resulting in a direct connection between legal person which decides to conclude a specific legal act and other subjects of law. Also, there may be some situations brought about by reason of law or of fact which prevents a legal relationship directly between subjects, which emphasizes the utility of representation institution.

The representation has occurred both in the need of concluding contracts between persons who are at a distance, as well as to make up the skills and inequality of opportunities between people, as recourse to the institution of representation, to others services, in order to achieve what subjects of law cannot be achieved alone. The representation provides the ability of substitution or replacement a person by another person, substitution on which the law may require, in the case of legal representation and allows conventional representation in the case, and, thanks to whom act concluded by a person shall take effect directly into another person's assets. It may be deemed and one of the reasons for which the representation plays an important role and has a particular importance in legal relations. So we can assume that it constitutes a technical means for the exercise of their rights and to assume the obligations by reassessing the legal acts by a person in the name and on behalf another person. Scope of representation is an extremely varied and diverse. In this way, by dynamically analyzing institution of representation in its development we have seen that in modern times it has suffered some conversions mainly by the emergence and development of trade. This creates the representation in the field of trade which subsequently has developed the institution of mediation.

The point of departure in analysing a specific concept, or a certain juridical institutions is retrospective in due time, in order to determine the origin of it and its fundamentals. An opportunity to such ways of gaining knowledge is determined by identifying important classical principles on the basis of which it has established a specific institution, as well as the way and the level of production of the right in that direction.

Roman law constitute in this respect, both a standard of the beginning of a multitude of legal concepts which have known appearance in the framework of such a system of law, and which subsequently maintained existence over many centuries, as well as a pillar of private law.

The representation, represents a philosophical-judicial-civil significance, because: ► constitute a legal key institution of the private law

from which other institutions and subinstitutions of this branch (the mandate, the commission, the conveyance, the agency, the mediation)

► indicate the concrete variety of legal relationship between involved subjects which participate in that kind of relationship

The concern of doctrine to tackle the most various aspects of representation goes back a long time ago. Thus, one of the first famous authors who have dealt with the institution of representation were Dimitrie Alexandresco, Matei B. Cantacuzino, Constantin Hamangiu, I. Rosetti-Balanescu and Al. Baicoianu.

By analysing the literature in the field, we have found a different approach to representation concepts. Thus, its definition has been made taking into account the fact that the representation may be regarded: that process techno-legal, i.e. that a judicial mechanism that allows for a person named representative to conclude legal acts in the name and on account of another person called represented, in such a way that the legal act concluded representative shall take effect directly and immediately influenced by heritage in person and representative; as an institution legal status is a group of legal rules which are homogeneous which by their special features are distinguished by other legal rules and regarded as a whole form the institution of representation.

An important role in the analysis of representation concept has the Romanian scholar Roman Paul Vasilescu, which emphasizes two elements which confer a legal distinct to representation, namely "*in the name*" and "*on account*", elements which constitute the most efficient criterion for the interpretation of a legal relationship as being an representation relationship.

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