

# Considerations on the Vices of Consent at the Conclusion of the Civil Legal Act in Romania

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**ABSTRACT:** Any civil patrimonial report born, modified or extinguished and of great value is concluded by one person, in the case of unilateral acts, or several persons in the case of bilateral or multilateral acts. The legal act, however, in order to be valid, ends with the observance of the essential conditions to produce its effects in exactly as the parties agreed at the time of their manifestation of will. However, even with the best of intentions, there are situations where the act is affected by certain vices of consent such as error, and other times when at least one of the parties pursues a hidden interest and uses certain malicious maneuvers or even violence to cause the other party to conclude a legal report. In these circumstances, if the vice is proved, the act thus concluded entails the sanction of relative nullity. The paper aims to analyze each of the vices of consent to the conclusion of legal acts from the perspective of civil law related to the legislation in force in Romania and the fundamental law of the Romanian state, viewed from the perspective of other branches of law closely related to civil law. Some conclusions at the end of the paper will aim to combine the four vices of consent and explain its entire content.

**KEYWORDS:** civil law, violence, deceit, error, injury, vice of consent, civil legal act, administrative act, manifestation of will, relative nullity

## **The need to conclude civil legal acts**

During its evolution, the human being has diversified its activity, in order to support and develop life. Thus, if at the beginning of his development man could satisfy his primary needs only by performing solitary and long-term activities, in time, this way of existence was not enough. In this way the need arises for the relationship between the members of the species and, therefore, the tribal population begins to create primitive legal relationships within the community (Marr A. 2012, 68).

Some of them are still found today in exactly the form in which they appeared, such as mutual aid, low-value community loans that do not require the conclusion of a contract in this regard, and the performance of charitable services and so on far away. Other such relationships have undergone changes over time, reaching to be concluded only after the express expression of the will between the addressees of the respective act.

Thus, in Rome, in the classical period, civil legal acts are attested in incipient form. These consisted of a simple question and an answer, and their conclusion was made in a solemn setting using solemn formulas that had to be known by the parties concluding such relations (Molcuț and Cernea 2013, 186).

At that time, the legal acts were concluded bilaterally, namely the manifestation of will had to come from two natural persons who expressed their desire to conclude the legal relationship in the form and framework required at that time.

During the evolution, other forms of legal acts appeared that required the observance of other norms that regulate the valid conclusion of civil relations. Thus, nowadays there are contracts that can be concluded unilaterally, bilaterally or multilaterally.

In addition to legal relations born between individuals, in our era there is also the possibility of manifestation of will that comes from legal entities, communities of people formed on the basis of a purpose and pursuing certain common goals.

However, not every person who concludes civil acts in the form and conditions provided by law does so in good faith. In these situations there is a discrepancy between the manifestation of will of one party and that of the other party or parties. These dissociations are called consent vices and are sanctioned by law (Trușcă and Trușcă 2016, 165).

### **Essential elements in conclusion of civil legal acts**

Any Romanian civil legal act that is validly concluded must comply with certain conditions in order to produce its effects. The elements that such an act must comply with are the ability to conclude the civil act, the consent of the person or persons concluding the act, its object must be determined and lawful and the purpose for which it is concluded must be moral and lawful (Boroi and Angheliescu 2012, 114).

The ability to conclude such an act refers to the discernment of persons who express their express will in this regard. In Romania, the civil law stipulates that the person can conclude any kind of act from the age of 18 when he acquires full capacity to exercise, except in cases where the documents are of little value, in which case they can be concluded by the person who has only usability or acts that can be concluded by minors with limited exercise capacity, but only with the consent of guardians or guardianship courts (Truşcă and Truşcă 2017, 112).

The object of the civil legal relations concluded in solemn forms represents the basis of the manifestation of will of the parties in relation to the conduct that the parties must adopt in the relation between them. It must comply with the legal norms in force and must not seek to violate the freedom and rights of citizens or any other harmful form from a legal point of view, and the conditions for its fulfillment must be determined (Chelaru 2012, 137).

The purpose for which the civil relationship is born between the parties that express their will to form such acts is the material basis, namely what is sought to be obtained from the conduct of the parties. He must be in full agreement with the legal norms, with good morals and must not prejudice any of the parties to the act or other persons who are not involved either directly or through representation at the conclusion of the civil relationship (Păiuşescu 2016).

Last but not least, consent is one of the most important elements of the validity of the civil legal act. If there is no room for interpretation as to the legal validity of such an act in respect of the others unless all the parties either did not know the illegality of the object or purpose of the conclusion or were in bad faith at the time of the birth of the will, in the case of consent there are certain means by which it can be obtained by using means called vices of consent and which are usually known by one or more of the parties and used against the other party or parties (Ungureanu and Munteanu 2013, 151).

### **Vices of consent on the valid conclusion of civil legal acts**

There are certain situations in which a person's consent to his expression of will at the conclusion of civil legal acts may be constrained to be given by certain illegal means such as violence, malice, injury or error. In these cases, the person manipulated to form such civil relations is violated his freedom to dispose of his own discernment and his civil rights as they are enunciated in the Romanian Constitution (The Constitution of Romania, The European Convention for Human Rights, The Chart of Fundamental Right of the European Union, Edition 10th 2018, Chapter II, Article 22).

Violence, when uttered, is subject to violation of civil law. In Romania, the threat of harm to the person in order to persuade him to consent to the formation of a legal relationship is prohibited by law, and the Civil Code expressly provides for this fact and the sanction in case of non-compliance (Truşcă and Truşcă 2016, 171 ).

This vice of consent can be of several kinds depending on the direction in which the threat is heading. Thus we can talk about physical violence, when a person is promised that his health and physical integrity will be affected or with moral violence if the promise of action is directed towards the image, honor or honor of the person.

However, not every threat is a vice of consent. In order for such an action to be possible, the promise of harm must be directed against the person or members of his family, it must be an essential factor in concluding the legal act without which it would no longer take place and be made with clear intention being able to prove this last aspect (Ungureanu 2013, 217).

It should be noted that in the case of violence, it is limited to the verbal threat without the actual action, and if it is carried out, the act falls outside the scope of Civil Law and enters the field of Criminal Law and will be sanctioned according to provisions of the Criminal Code (New Criminal Code. New Criminal Procedural Code, 2014, The Special Part, Title I, Chapter II, Article 194).

As regards deceit, it is characterized by the fact that one or more of the parties to the contract knowingly deceives the other party or parties by either misleading as to the object or purpose of the act or by concealing essential elements which, if any, known by the recipients, their consent would not have been given (Ungureanu 2013).

An example of such a vice is that a property owner who wants to sell that home proves to be in bad faith when he hides from the buyer the quality of the materials used or any problems the home has and which if known would be could cause the buyer to stop signing the sale-purchase contract.

The use of malicious maneuvers may not be called into question when either the party or parties accused of using such techniques is unaware of the circumstance in which the error occurred or the party or parties claiming to have been misled they knew right from the moment the report was drawn up all the details regarding the thing that is the object of signing the deed.

In these circumstances, the burden of proving the guilt falls on the person or persons who declare they to be the victims of malicious manipulation, and this fact must be proven thoroughly so that the legal act no longer produces its effects.

Another vice of consent is the injury which designates those situations in which, due to favorable circumstances, one of the parties to the legal act exaggerates its value, forcing the other party or parties to pay a much larger sum of money than would normally be required (Truşcă and Truşcă 2016, 168).

One can exemplify in this regard the situation in which the executor of a cyber assistance service, given the fact that the potential client is in a borderline situation where he urgently needs the repair of a certain computational error and knowing the lack of alternatives, asks for the provision of that service a certain amount of money which is the equivalent of three times the amount which would normally have been required for the performance of such a service. But the most common vice of consent invoked in civil proceedings for termination or termination of contracts is error. This is also due to the fact that all parts of the act may fall under its incidence, even if they were in good faith.

By mistake is meant a situation in which one of the parties believes that it is concluding a civil act, and the other party or parties believe that it is participating in the birth of a different legal relationship.

Depending on the essential element that is affected by the error, they fall into several categories. There is an error regarding the person when one of the parties believes that he concludes the legal act with a person, but in reality the rightful owner of the property is someone else, the situation in which a person believes that he will receive a certain thing by forming the legal relationship. in fact, it receives something completely different, if a person expresses his harsh consent to the purchase of a certain thing that proves to be of a questionable quality compared to his contract specifications and even circumstances in which a person believes that he concludes a certain type of legal act. , and in reality participates in the conclusion of another type of act (Boroi and Anghelescu 2012, 123).

Not only civil acts are affected by this vice of consent, but also administrative acts may be subject to error. A conclusive example would be where a public authority wants to hire a legal person to carry out works, following a public tender. When drafting the contract, the legal person stipulates the performance of a different work than the one for which the civil servant endowed with the contracting authority chose that legal person, in which case the error on the object of the act occurs (Cliza and Ştefan 2017, 135).

### **Sanctions in case of vices of consent**

In general, any vice in consent which is proved and which was knowingly made at the time of the conclusion of the legal act leads to the sanctioning of that act with its relative nullity. This means that the manifestation of will of the parties, initially externalized, continues to exist, and the legal relationship thus concluded continues to produce its effects, but only in the case of those objects of the contract that were not affected by that vice of consent (Cliza and Ștefan 2017, 137).

If one of the Contracting Parties considers that the act which it has signed has been affected by a vice, by addressing the civil courts having jurisdiction to rule in such situations, it may obtain the annulment of parts thereof. In order to be able to do this, it is necessary for the party that declares itself to be the victim of non-compliance with the essential conditions to prove what is stated (Chelaru 2012, 149).

The evidence brought in court must be conclusive, namely comply with all the necessary conditions for the existence of a vice in consent: be essential for the expression of the agreement of will, be a violation of the law, be determined and cause damage of any kind on the bona fide contractor.

### **Conclusions**

The evolution of society has felt the need for collaboration between members of the human species, by concluding legal relationships that have facilitated the evolution and support of life. These relationships have diversified according to the degree of technologicalization and development of the human being. Thus, the citizens of the communities began to conclude civil legal acts.

At the beginning of civilization such acts were concluded bilaterally, in a simplified form, in solemn processions and through specific formulas to be uttered by the parties and consisted only of question and answer.

Along the way, the simple solemn procession was no longer enough, so the manifestation of will expressed on material support appeared and which presupposed strict rules that had to be fulfilled in order for them to produce their legal effects.

Nowadays, legal acts can be concluded unilaterally, bilaterally or multilaterally and can be concluded by both individuals and legal entities, but not all those who express their will to form such civil relations are in good faith.

Of all the essential elements in concluding acts, capacity, consent, object and purpose, the second is frequently affected by the use of means which may be called vices of consent and which are violence, malice, injury and error.

Vices of consent, when proved before the courts which are competent to adjudicate such proceedings, are sanctioned with relative nullity, namely the annulment or exemption of the debtor from his obligation, only in the case of those elements which have been affected by the proven vice and the burden of proof falls on the person who claims to be the victim of the means used to determine him to conclude the act.

These vices are found not only in Civil Law, but also in Administrative Law when concluding acts between legal entities and public administration bodies and are closely related to constitutional rights and freedoms.

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