

The Opposability of the Effects of the Contract on Third Parties

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Abstract

The principle of relativity of the contract's effects means that a contract can generate rights and obligations only in favor of, or regarding the obligation of the contracting parties, as well as of persons who became parties after closing the contract or assimilated to the parties. On the other hand, the contract and the legal situations it gives rise to are social realities that must be respected by third parties, as the contract is not an isolated element, but it is integrated into the legal order, bringing about changes to social life. Thus, a contract is opposable to everyone, including third parties, who have the general obligation to abide by the legal situation generated by the contract, even if for them, this reality is presented as a legal fact.

The purpose of this paper is to examine the way in which third parties must observe the effects of a contract according to the opposability principle regarding the effects of the contract.

Key words: contract, parties, third parties, opposability, obligation.

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1. Introduction

A contract cannot, in principle, generate subjective rights and obligations for a third party. Nevertheless, the rights and obligations of the parties must also be respected by third parties, that is why the contract can be invoked by one of the parties in relation to a third party, as a title of acquirement of a right or debt.

Concretely, the opposability of the contract to third parties means the right of the party to invoke that legal act against the third party that would submit claims in relation to a subjective right acquired by the party under the respective contract, and the unopposability of the contract to third parties means the lack of such a right. As a rule, the opposability to third parties of a contract is conditioned upon the compliance with the formalities of advertising or, as the case may be, upon the ascertainment of a legal act in a document with a certified date (Pop *et al*, 2012, p.186; Deleanu, 2002, p.78).

2. Theoretical background

The theoretical concepts used in the paper are the following: the relativity principle regarding the effects of the contract and the opposability of the contract to third parties.

The relativity principle regarding the effects of the contract is that rule of law under which the contract only affects its authors without being able to take advantage of or harm third parties.

If a contract can not give rise to rights and obligations other than to the contracting parties, this does not mean that third parties may ignore or disregard it. On the contrary, this civil legal act, as a social reality, is also opposable to persons outside it, and the rights and obligations of the contracting parties must also be observed by third parties.

The opposability principle regarding the effects of the contract is that rule of law under which the contract is opposable to third parties, which can not affect the rights and obligations arising from the contract. Third parties may stand on the effects of the contract, but without the right to request its enforcement, except in the cases provided for by law (Art.1281 New Civil Code).

3. Research methodology

There were a few general scientific research methods that were used in this research and methods of legal interpretation; it is based on analysis of legislation and scientific literature. The following methods were used : comparative and legal, analytical, logical and legal.

4. The principle of opposability of the contract to third parties

Unlike the previous Civil Code, the new regulation for the first time sanctions at the legislative level the principle of opposability, in the provisions of art.1281 of the new Civil Code ("The contract is opposable to third parties, who cannot affect the rights and obligations arising out of a contract. Third parties may take advantage of the contract, but without the right to request its enforcement, except for the statutory cases"). This legal provision underlines the fact that opposability is not an exception to the principle of relativity, but it appears as a general principle of the civil legal act, a general rule, according to which the effects of a contract must be recognized as having absolute social relevance. Moreover, the new Romanian Civil Code not only states the principle of opposability, but it outlines the fact that the principle *res inter alios acta* is susceptible to exceptions, as in the cases provided by law, third parties may request the enforcement of the contract (According to art. 1284 paragraph 2 of the New Civil Code, in the case of stipulation for another, the beneficiary acquires the right to ask the promisor directly to fulfill the benefit).

Thus, in principle, a legal act cannot give rise to subjective rights and obligations for a third party; on the other hand, the rights and obligations of the parties must also be respected by third parties. Therefore, the legal act may be invoked by one party against a third party as a title for the acquirement of a real right/property or claim. In particular, the opposability of the civil legal act to third parties means the party's right to invoke the respective legal act against a third party that claims a subjective right acquired by the party in the legal act. The inability to use the opposability of the act to third parties is represented by the lack of such a right. As a rule, the opposability of a legal act to third parties is subject to compliance with advertising formalities or, as the case may be, with the ascertainment of a legal act in a written document with a certain date.

In this respect, we argue that the principle of relativity of the contract's effects and the principle of opposability interact and complete each other, building together the basis of the civil contract. That is why the legal literature has shown that the opposability of the contract's effects is nothing more than the expression for the third parties of the principle of the contract's binding force (Pop *et al*, 2012, p.187, Vasilescu, 2008, p.322).

In the French legal literature, it is considered that "a contract may be relative to the parties when it is directly generating rights and obligations, but its opposability can be acknowledged *erga omnes*, as it is an element of the legal order, whose existence can indirectly benefit the parties (Pineau *et al*, 2001, p.541). Thus, we can argue that the principle of relativity of the contract's effects exonerates third parties from the obligation to enforce contractual rights and obligations, while opposability generates the obligation of the third parties to abide by the respective legal status.

The legal doctrine contains several definitions of the opposability of the contract's effects. Thus, according to an opinion, opposability is the quality of a civil legal act to produce legal effects *vis-à-vis* the parties of that respective legal relation, as well as to command respect from third parties.

According to another opinion, opposability is considered to be the ability of a right, an act or a legal situation, whether *de jure* or *de facto*, to extend its effects to third parties, however, not by their direct compliance with the obligations generated by those elements, which would be an exception from the principle of the relativity of legal effects, but by binding them to acknowledge the effects of that right or act or of that legal situation and to respect it as an element of legal order, accepting its effects, but reserving the right to appeal, when the law provides for such a possibility (Deleanu, 2002, p.18).

According to another author's view, the contracts are opposable to third parties as such only as legal situations, as social-legal realities; for them, the effects of the contracts consist only of the negative obligation to abide by the legal situations generated by the contracts; this opposability does not arise from the will of the parties, but from the objective right, from everyone's obligation

to respect the subjective rights of others (Albu, 1994, p.104).

In another author's opinion, opposability means the aptitude of a contracting party to take advantage of the existence of a contract and the legal effects it entails for the persons who have not participated in its closure.

In the French doctrine, opposability is understood as a general phenomenon that tends to advertise the existence of a contract involving third parties, for if the third parties disobey the contract, it could no longer, in fact, reach efficiency even between its parties. Thus, it was argued that opposability is a consequence of the principle *pacta sunt servanda*, in the sense that it translates the obligation of obeying the norm itself, and not the binding character of the specific content of the norm. However, opposability is not a simple mandatory enforcement, as these two principles are in fact similar: they act as two complementary mechanisms so as to ensure the efficiency of the contract, through binding force between parties and opposability to third parties (Ghestin, 2001, p.79).

Lato sensu, the notion of contract's opposability means that it produces effects between its parties and their successors in title, as well as the reality that the legal fact of the contract's existence must be respected by everyone, therefore also by the third parties as such.

The legal doctrine has shown that the opposability of the contract has the value of a principle governing its legal effects and consequences on third parties; the principle of opposability is a reflection on the social use of the contract, of the private norm generated by it and is quantified in the respect due by all to a legal status; respect - in itself, can be understood as a type of general negative obligation, an *erga omnes* duty materialized in a respectful attitude toward the private norm generated by the legal operation under discussion (Vasilescu, 2012, pp.482-483)

From these definitions we bear in mind that, viewed as a social reality, the contract is opposable to anyone, even to those who did not enter into a contract, these having the negative obligation to respect the legal situation created by the contract. The parties cannot become obligees or debtors through a contract in which they do not have the status of parties. Therefore, for the third parties the internal, binding effects of the legal relation that arises between the parties do not happen. However, the contract also has external legal effects, which, in fact, represent a legal situation that third parties cannot ignore, disrespect or disregard, even if they are not personally bound by that contract. The contract and the legal situation created as its result are opposable to third parties as existing factual realities, as the contract is not only an isolated element, the result of the wills that create it, but must also be regarded as an element integrated into the legal order (Fircă, 2013, p.61)

Third parties, unlike the parties, are not obliged to fulfill the benefits from the contract, but they must engage in a certain conduct that does not hinder the fulfillment of the obligations. The obligations of the parties are positive obligations to give or do something, while the obligations of third parties are negative obligations to not do, to abstain from. The only third parties' obligation is to respect the legal situation resulted from a contract.

The opposability of the contract to third parties can be represented as a private norm generated by the contract, a mandatory norm for third parties, which requires them to comply with the concluded legal deal. Failure to comply, disregard or violation by third parties of the legal situation arising from the contract means the violation of the private legal norm established by the will of the contracting parties in compliance with the objective legal norms (Pop, 2009, p.576; Căzănel, 2017, p.23).

If a third party breaks this legal norm, civil delinquency liability is involved, that does not arise from the contract, but from the fault that the third party committed when not respecting a right about whose existence he knew.

In order to explain the principle of contract's opposability, a distinction must be made from the principle of relativity of the contract's effects, a problem causing numerous controversies in the legal doctrine, in order to achieve a more thorough understanding of contractual opposability (Vasilescu, 2008, p.340, Pop *et al*, 2012, pp.190-191). Thus, the relativity of a contract's effects is different from the opposability of the contract to third parties in the following aspects:

- as for the parties, the contract is regarded as a legal act (*negotium*), representing the manifestation of the will of the contracting parties, whereas for the third parties, the contract is regarded as a legal fact;

- in accordance with the principle of relativity, the contract will have a direct effect on the parties and, exceptionally, it will also extend its effects directly to third parties (for example, in the case of the stipulation for another); in accordance with the principle of opposability, the effects of the contract extend indirectly, i.e. third parties will indirectly abide by the situation generated by the act and its content, having only the general obligation to not infringe upon those rights;

- the parties have the possibility to ensure themselves in the event of a non-execution of the contract, whereas in relation to third parties, the existence of the contract does not provide for the right to grant such a possibility;

- when one party causes damage to the other party, contractual liability will be involved, however, when a third party infringes upon a right acquired by contract by one of the parties, causing it damage, or if a third party hinders one of the contracting parties to perform a contractual obligation, delinquency liability will be involved on the basis of the illicit deed causing damage, according to art. 1357 et seq. of the New Civil Code. Furthermore, if when fulfilling the contract the parties cause damages to third parties, delinquency liability will be involved;

- in the event of litigation between the parties, proof of the contract will be made according to the norms regarding the proof of legal acts, while third parties will be able to prove the existence and content of the contract by any means of proof, including witnesses and presumptions, as the proof of the legal fact is free.

5. Conclusions

When it comes to the issue of opposability to third parties of the contract, from their point of view, the legal act appears only as a legal situation, i.e. a strictly legal fact *stricto sensu*.

From this circumstance at least two important consequences are born: if a third party breaks a right belonging to a party in a contract or if it prevents one of the contracting parties from performing its contractual obligation, then the third party's delinquency liability will be involved, and not contractual liability, as the latter only pertains to the contracting parties; when the third party is interested to take advantage of a contract to which they have not been a party, the third party may use any means of proof in order to prove it, the restrictive rules provided by art. 1191, paragraphs 1 and 2 of the Civil Code 1865 not applying in their case.

In doctrine and jurisprudence, sometimes the notion of opposability (respectively, unopposability) is also used for legal relations either between the contracting parties, or between one of the contracting parties and the successors of the other party, or the successors of the contracting parties. For such legal relations, the notion of opposability means the right to invoke the respective legal act in order to demand the fulfillment of the obligation arisen from the contract, and unopposability means the lack of such a right.

6. References

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