

Causes And Legal Status Of The Absolute Nullity Of The Civil Legal Act

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ABSTRACT

The significance of invalidity as a civil law institution is quite clear and concise, namely it is that sanction of civil law that affects the legal act in the case of non-compliance with the legal provisions governing its validity. Therefore, the legal act is not valid due to non-observance of its essential conditions. Nullity is also a legal institution applicable to all legal acts and, as a consequence, to all contracts, the contract being the main source of civil liability.

In order to have a more precise idea of the institution of nullity of the civil legal act, it must be mentioned that it also involves an operation to delimitate it from other causes of ineffectiveness of the civil legal act. Such a delimitation also contributes to avoiding the confusion of the civil legal act with other sanctions of civil law, which is not admissible, because it is a different legal concept, each with its own legal regime.

Regarding the legal regime of absolute nullity, it must be emphasized that it refers to the rules governing this legal institution. Both the doctrine and the jurisprudence specifically provide for the absolute nullity of the civil legal act.

Keywords: absolute nullity, legal status, civil legal act

INTRODUCTION

In current legislation there is no unanimously accepted definition of the notion of nullity, and in the literature there are divergences in defining this concept. Thus, Tr. Ionașcu and E. Barrasch define the nullity as "the sanction of the violation by legal act, violation at the time when the act was made, of a provision of the law".

Ionascu defines the nullity of the law, the sanction that intervenes after the defeat of the legal provision, lacking the civil legal act of the effects in respect of which he was terminated.

In doctrine and jurisprudence, the following causes are considered to be the sanction of the absolute nullity of the civil legal act (Pop & Beleiu, 1975, p. 362-365; Beleiu, 2001, p. 220-221; Pop, 1993, p. 188; Boroi, 2001, p. 232; Dogaru, 2000, p. 230):

- Infringement of the legal provisions on civil capacity, but only in the case of non-observance of a special incapacity of use of the natural person established for the protection of a general interest by the lack of capacity of the legal person or by the non-observance of the specialty principle of the legal person without lucrative purpose [art. 206 par. (2) and (3) of the new Civil Code];
- total lack of consent (for example, when the manifestation of will was expressed without the intent to produce legal effects), unless the law provides for the sanction of relative nullity;
- the invalidity of the object of the civil legal act or of the object of the obligation;
- the invalidity of the cause (s) of the civil legal act, but only when the cause is unlawful (including in the case of law fraud) or immoral cause, unless otherwise provided by law;
- non-compliance with the form required by law for validity;

- non-observance of the pre-emptive right in the express (and limitative) cases stipulated by the law, namely the non-observance of the preemptive right of the state in the case provided by art. 45 par. (5) of the Law on Forestry Code no. 46/2008, as subsequently amended and supplemented, in the case provided by art. 36 par. (5) of the Law no. 182/2000 on the protection of the mobile national cultural heritage, republished, as subsequently amended and supplemented, as well as in the case provided by art. 4 par. (4) of the Law no. 422/2001 on the protection of historical monuments, art. 9 par. (2) of the Law no. 379/2003 on the regime of graves and war memorial works, with subsequent amendments (with the mention that in the latter two cases there is a pre-emptive right of the state in favor of the administrative-territorial units).

LEGAL REGIME OF NULLITY

Regarding the legal regime of absolute nullity, it is governed by three aspects:

- Persons who can invoke the nullity;
- the prescription of the right to action;
- The possibility of covering the nullity by confirming the legal act.

The first aspect of the legal regime shows that absolute nullity protects a general interest, so this civil law sanction can be invoked by any interested person. Therefore, absolute nullity may be invoked by the parties of the legal act, the advancing cause of the parties (the persons who are successors to the rights of the parties) and, last but not least, third parties who justify their own interest.

It has been pointed out that the sanction of civil law, namely absolute nullity, cannot be invoked by a person completely foreign of the legal act, because it would not justify its own interest.

Also, absolute nullity can be invoked *ex officio* by the court, the prosecutor, and by other bodies provided by law. Law no. 18/1991 on the land fund contains prohibitions of alienation sanctioned with absolute nullity, thus Art. 32 par. 1 and 2 stipulating that: "The land assigned according to art. 19 para. (1), art. 21 and art. 43 cannot be alienated by acts between live for 10 years, counted from the beginning of the year following that in which the registration of the property was made under the sanction of the absolute nullity of the act of alienation.

A declaration of invalidity may be brought to justice by the City Hall, the Prefecture, the Prosecutor, and any interested person. "

The second aspect of the legal regime refers to the fact that absolute nullity is not to be affected by limitation period. According to this feature, this sanction of civil law can be invoked at any time, unlike the relative nullity that can be invoked within the period of limitation.

According to art. 1249 of the Civil Code, "unless otherwise provided by law, absolute nullity may be invoked at any time, either by way of action or by way of exception. Relative nullity may be invoked by action only within the limitation period prescribed by law. However, the party required to execute the contract may at any time oppose the relative nullity of the contract even after the limitation period for the right of action in annulment has expired (Dogaru & Popa & Danisor & Cercel, 2008, p.1008)

There are exceptions to the rule that absolute nullity is not affected by the limitation period, in this sense art. 46 paragraph 5 of Law no. 10/2001 on the legal status of immovable properties abusively taken over from 6 March 1945 to 22 December 1989 providing that "by way of derogation from the common law, irrespective of the cause of nullity, the right of action shall be prescribed within one year starting from the moment of at the entry into force of the present law. "

The third aspect of the legal regime of absolute nullity points out that invalidity cannot be covered by confirmation.

According to the doctrine (Dogaru & Popa & Danisor & Cercel, 2008, p.1009), the confirmation is the legal act by which the party entitled to invoke the nullity waives the right to bring an action for nullity or the right to oppose the nullity exception.

Given that both express and tacit confirmation of absolute nullity is inadmissible by law, it results implicitly that a confirmatory act is also hit by absolute nullity.

It should also be pointed out that there should be no confusion between nullity as a civil law sanction and other causes of ineffectiveness of the legal act.

Thus, between inopportunity and nullity there are both similarities and essential differences. Inapplicability is the sanction that occurs in the case of non-disclosure of third party of publicity requirements for certain legal acts.

It is also considered a case of inopportunity the one regarding the conclusion of a legal act through the representation process, but with the lack or the overcoming of the power to represent.

The main differences between inopportunity and nullity are:

- nullity implies an invalid act, while inopportunity implies a validly concluded act;
- if in the case of nullity the effects concern both parties and third parties, in the event of unnecessary effects the act occurs against the parties, but the rights and obligations arising from the act cannot be opposed to third parties;
- to nullity, the causes are contemporaneous with the conclusion of the act, whereas inopportunity implies the inability to assume formalities after its conclusion;

- relative nullity can be covered by confirmation, while inopportunity can be removed in terms of representation by ratification.

Another important delimitation is the one between nullity and the sanction of the reduction which is the civil sanction applicable in the case of legal acts concluded with the non-obstruction of certain prohibitions established by law for protecting persons or for the restoration of the balance of the benefits in a synallagmatic contract concluded for pecuniary and commutative purposes.

The main differences between nullity and reduction refer to the following:

- the nullity is applicable to all legal effects whereas reduction applies to either excessive liberalities or contracts concluded for pecuniary and commutative purposes;
- the nullity implies an invalidated act, whereas the reduction involves a valid act;
- the cause of invalidity lies in the failure to comply with a legal provision on the validity of a legal act, whereas reduction is determined either by the breach of the right of reserved share of heirs or by the existence of a clear disproportion between contractual benefits, even if existing at the date of conclusion of the legal act.

CONCLUSION

In other words, nullity is the sanction of civil law that occurs if, at the conclusion of the civil legal act, the legal provisions regarding the substantive or formal conditions are not observed.

Nullity is not the only cause of ineffectiveness of the civil legal act, which leads to the deprivation of the civil legal act of the effects for which it was concluded, but there are other causes that appear after the conclusion of the act, such as revocation and inopportunity (Dogaru & Popa & Danisor & Cercel, 2008, p.996).

The doctrine emphasizes that the delimitation of nullity from these other causes of ineffectiveness of the legal act is important for a better configuration of the concept of "nullity of the civil legal act and for preventing their confusion (Beleiu, 2001, p. 213-216; Boroi, 2001, p. 223-226; Cosma, 1969, p. 415; Chelaru, 2003, p. 166-169; Dogaru, 2000, p. 315-319)

REFERENCES

- Beleiu, Gh., Drept civil roman, 2001.
- Beleiu, Gh., Pop, A., Drept civil, Bucuresti, 1975.
- Boroi, G., Drept civil. Parte generala. Persoanele, Ed All Beck, Bucuresti, 2001.
- Chelaru, E., Drept civil. Parte generala. Curs universitar, All Beck, Bucuresti, 2003.
- Cosma, D., Teoria generala a actului juridic civil, Ed. Stiintifica, Bucuresti, 1969.
- Dogaru, I., Drept civil roman, vol. I, Ed. Themis, Craiova, 2000.
- Dogaru, I., Popa, N., Danisor, D. C., Cercel, S., Bazele dreptului civil, Volum I. Teoria generala, Ed. C.H. Beck, Bucuresti, 2008.
- Ionașcu, Tr., Barrasch, E. – Tratat de drept civil, vol. I, Ed. Stiintifica, Bucuresti, 1967.
- Legea nr. 10/2001 privind regimul juridic al unor imobile preluate in mod abuziv.
- Legea nr. 18/1991 privind fondul funciar.
- Noul Cod Civil, Ed. Universul Juridic, Bucuresti, 2015.
- Pop, T., Drept civil roman. Teoria generala, Ed. Lumina Lex, Bucuresti, 1993.