

## Delimitation Of Nullity Compared to Other Civil Law Sanctions

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**Abstract:** The civil legal act represents the legal facts that serve as the basis for the emergence of civil rights and obligations or, as follows from the legal definition of the civil legal act, the civil legal act is the manifestation by natural and legal persons of the will directed to the birth, modification or extinction civil rights and obligations. Of course, even from the given notion, the fact of the parties' manifestation of will can be observed in the mentioned cases, but the legal act can be unilateral, bilateral and multilateral, which means that even in the given cases there must be the agreement of the parties or of a party, which can give rise to obligations for third parties only under the conditions provided by law. Otherwise, if the validity conditions of the legal act are not respected, its nullity will obviously be reached. Nullity is a sanction of civil law, but this sanction is also found in the matter of other legal acts, of substantive or procedural law, depending on the case knowing a specific legal regime and in some respects derogating from the nullity of common law. It consists in the abolition of the act which is considered to have never been concluded, so the nullity, unlike other civil sanctions, operates, in principle, *ex tunc* and not *ex nunc*, as in the case of termination, impossibility.

**Keywords:** : nullity, resolution, revocation, termination, expiration, reduction, unenforceability, civil legal act.

### INTRODUCTION

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 also other causes, subsequent to the conclusion of the act, such as: resolution, termination, expiration, revocation, unenforceability. In the doctrine, it is emphasized that the delimitation of nullity compared to 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 to prevent their confusion. It is important to remember that each of these notions - nullity, resolution, termination, expiration, revocation, unenforceability - is an independent legal concept, each having its own legal regime.

The notion of ineffectiveness of the legal act includes all cases in which the production of the normal effects of the act is prevented, limited or disturbed. The concept of ineffectiveness can have several meanings. From a general point of view, we call an ineffective act a legal act, which is deprived of its effects.

Ineffectiveness also designates a legal act valid in principle, but unenforceable to third parties. We also call ineffective a legal act that lacks one of the essential extrinsic or intrinsic elements. In a broad sense, ineffectiveness concerns null or annulled acts, acts rendered ineffective by their valid revocation by the parties or as a result of resolution or termination, acts affected by a condition (Lupan, 2007).

In a narrow sense, ineffectiveness only considers the situation in which the legal act, although validly concluded, does not produce effects at all or produces them partially due to causes independent of the will of the parties.

Nullity of the legal act means the sanction that occurs if, at the conclusion of the civil legal act, the legal provisions regarding the conditions of validity of the legal act were not respected, abolishing it. The moment in relation to which the compliance of the legal act with the law is assessed is that of the conclusion of the legal act. It should be noted that nullity has a wide range of action, it can invalidate all legal acts (unilateral, bilateral and multilateral acts). We note that the matter of nullity does not have a unitary, compact seat, the regulation of nullity being dispersed.

### BASIC CONTENT

Over time, the concept of the nullity of the legal act has experienced a certain evolution. Thus, in Roman law, the conception of nullity was crystallized in two adages: *qui contra lege agit, nihil agit* (he who does an act against the law, does nothing), as well as *quod nullum est, nullum producit efectum*. From this it follows that

the nullity was total and irremediable, or, in other words, the legal act was abolished in its entirety, there being no possibility of its partial maintenance, with the removal of the clauses by which the law was violated (Dogaru, 2017).

In the classical conception, under the influence of Roman law, nullity was assimilated to the ineffectiveness of the legal act in its entirety, being treated as an organic state of it, because it ended with disregarding the legal provisions. Nullity had the effect of abolishing the legal act in its entirety and, as a result, as in Roman law, the nullity was total and irremediable.

In the modern conception, the theory of the proportionality of the effects of nullity in relation to those causes that determined it was formulated, the consequences of nullity being limited only to those effects that contravene the law, the other effects of the act remaining valid. The finality of nullity, pursued in this conception, was the defense of the legal act, by maintaining it, after the effects that contravene the law have been removed.

Currently, it is accepted that the nullity is, in principle, partial and remediable, as it aims to suppress only the effects that contravene the legal provisions violated at the conclusion of the act, leaving the other effects untouched. Within this concept, total nullity intervenes only when the clauses that contravene the law constituted the "main and determining cause" of the conclusion of the legal act (Belei, 2001).

In our law of the Republic of Moldova, there is no legal definition of the nullity of the civil legal act, the doctrine being the one that tried to elaborate some definitions. The opinion was imposed according to which nullity is the civil law sanction that deprives the civil legal act of the effects contrary to the legal norms decreed for its valid conclusion (Boroi, 2001).

From this definition, the characteristic features of the nullity of the civil legal act can be derived, namely:

- the nullity of the legal act is a civil law sanction;
- affects only legal documents, not legal facts strictly speaking;;
- intervenes when the legal norms regulating the validity conditions of the legal act are violated;
- has the consequence of depriving the legal act of the effects that contravene the legal norms decreed for the valid conclusion of the legal act and, as a result, does not affect the legal act in its entirety;
- to establish the consistency or inconsistency with the law of the effects of the legal act, recourse is made to the finality of the law, in the sense that the legal act is deprived only of those effects that contradict the purpose pursued by the violated legal provision;
- the moment in relation to which the compliance of the legal act with the law is assessed, is that of the conclusion of the legal act (Dogaru, 2007).

### **Nullity and Resolution**

By resolution is meant the judicial or conventional dissolution of the synalagmatic contract with *uno actu* execution, in case the obligations assumed by the convention are not fulfilled in a culpable manner, dissolution that produces retroactive effects.

Between nullity and resolution there are the following similarities:

- ✓ the nullity, like the resolution, annuls the legal act with retroactive effect;
- ✓ both the nullity and the resolution operate through a judicial decision
- ✓ However, there are also important differences between nullity and resolution:
- ✓ in terms of scope: the nullity applies to all categories of legal acts, the resolution applies only to synalagmatic contracts,
- ✓ under the aspect of the causes that determine them: the nullity intervenes for non-compliance with some validity conditions, while the resolution is caused by the culpable non-execution of the obligations by one of the parties to the synalagmatic contract, when the other party has executed its obligations.
- ✓ in terms of the date of the causes: the causes of nullity exist at the conclusion of the legal act, while the cause of resolution is subsequent to the conclusion of the contract: here is also a difference from the hypothesis: nullity presupposes an invalid act, while resolution presupposes a valid act concluded.

Although the principle of freedom of will is a fundamental one in civil law, the parties' freedom to contract is always subordinated to the imperative provisions of art. 5 of the Civil Code, according to which it is not possible to derogate through conventions or unilateral legal acts from the laws that concern public order and good morals.

### **Nullity and termination**

Termination is the civil law sanction that consists in the termination of a synalagmatic contract with successive execution, for the culpable non-execution of the obligations by one of the parties. (Stoica, 1997)

If the resolution acts by canceling the contract for the past, the termination produces effects only for the future, the successive services performed cannot be returned.

As a specific element of this latter comparison, we note that, although the effects of nullity are produced in principle retroactively, and the termination operates only for the future, however, in the case of acts with successive execution, the nullity produces effects only for the future, not for the past.

### **Nullity and revocation**

Revocation as a civil law sanction consists in removing the effects of the civil legal act due to the ingratitude of the recipient, example: revoking the donation for ingratitude, according to art.1210 Civil Code of the Republic of Moldova, of the culpable non-execution of the task, for example: conditional donation, according to art. 1204 Civil Code of the Republic of Moldova.

Regarding the comparison with nullity, revocation is similar to it, because it also represents a cause of ineffectiveness of the legal act. But there are also important differences between the two civil sanctions:

- difference in assumptions: while nullity implies causes contemporaneous with the moment of the conclusion of the act, revocation implies causes subsequent to the conclusion of the legal act;
- difference in scope: if the nullity is applicable to any legal act, the revocation applies, in principle, to acts with a free title (liberalities);

### **Nullity and inapplicability**

Unenforceability in the narrow sense is the civil sanction that causes a legal act or a legal situation created by this act to produce effects and impose itself on the respect of third parties as a result of the party's non-compliance with the forms of publicity required by law because the act to be against third parties.

The main differences between nullity and indefeasibility are the following:

- difference in assumptions: nullity presupposes an invalid deed, while unenforceability presupposes a valid concluded deed;
- difference in effects: in case of nullity, the effects concern both the parties and third parties, and in the case of unenforceability, the effects are produced against the parties, but only against third parties;
- difference between causes: in the case of nullity, the causes are contemporaneous with the conclusion of the act, while unenforceability presupposes the non-fulfilment of some formalities subsequent to the conclusion of the act.
- a difference regarding the remedial methods: the relative nullity can be confirmed, while the unenforceability can be removed by ratification.

### **Nullity and expiration**

Expiration is that cause of ineffectiveness that consists in the lack of effects of a valid civil legal act concluded, due to the intervention of a circumstance subsequent to its conclusion and which is independent of the will of the author (Dogaru, 2007).

As examples of lapsing, we can list: the valid will becomes lapsed, if the asset forming the object of the transmission perishes, or the testator alienates the tested asset, after drawing up the will, these determining the lapsing of this will.

There are the following differences between nullity and expiration:

- difference in hypotheses: nullity presupposes an invalid act, while caducity presupposes a valid concluded act, i.e. nullity affects the very validity of the civil legal act, and caducity only affects its effectiveness, the act being valid, but by virtue of certain circumstances it does not produce effects;
- the way of producing the effects: if the nullity is retroactive, the invalidity produces effects only for the future, i.e. - the invalidity does not operate retroactively, but only for the future, and the invalidity abolishes the legal act with retroactive effect, from the moment of its conclusion
- difference regarding the date of the causes: if the nullity implies causes contemporaneous with the conclusion of the act, the caducity implies a cause subsequent to its conclusion, foreign to the will of the author of the act.

### **Nullity and reduction**

The reduction is a civil sanction applicable in the case of the legal act concluded with the disregard of some prohibitions established by law for the protection of some persons or for the restoration of the balance of consideration in a onerous and commutative contract. (Boro,

Consequently, we distinguish, on the one hand, the reduction of excessive liberalities, i.e. of legacies and donations made by the person who leaves the inheritance ( *de cuius* ) and violates the inheritance reserve, and on the other hand, the reduction of an injury benefit (Ungureanu, 2017; Beleiu , 2001), or in certain circumstances, for indifferent error, as well as in cases where the theory of unpredictability would find application.

The main differences between nullity and reduction are:

- different from hypotheses: the nullity is applicable to all legal acts, while the reduction is applied either to excessive liberalities or to onerous and commutative contracts
- nullity implies an invalid act concluded, while in the case of the reduction of excessive liberties and the application of the theory of unpredictability, the legal acts were validly made, but later the total or partial ineffectiveness intervenes, due to the violation of the succession reserve or due to the occurrence of circumstances not foreseen by the parties at the time of concluding the act, which lead to breaking the contractual balance.
- The cause of the nullity consists in the non-compliance with some legal provisions regarding the valid conclusion of the deed, and the reduction is determined either by the violation of the inheritance reserve (exceeding the available quota), or by the existence, from this date at the very moment of the deed's conclusion, of visible disproportions between the consideration .

The reduction of excessive liberties can only be requested by the heirs of the reservation, who are third parties in relation to the act whose reduction they request, the reduction of the benefit for the injury can only be requested by the minor with limited executive capacity who concluded administrative acts without the authorization of the parents, while relative nullity can be invoked only by those protected who are parties to the voidable legal act, and absolute nullity can be invoked by any interested person.

### **Nullity and Non-existence**

In the civil law literature, the non-existent was defined as the sanction that declares the invalidity of a civil legal act performed without observing the essential conditions provided by law for its existence. (Ungureanu, 2017).

From this definition results a first and essential difference between nullity and non-existence: while nullity concerns the conditions of validity of the legal act, non-existence concerns the conditions of its existence.

Other differences between nullity and non-existence:

- nullity presupposes an imperfectly concluded legal act that determines its invalidation, non-existence presupposes an act that does not exist as a legal reality and has only a material physical existence;
- the nullity act will produce the specific effects until its declaration as such, the non-existent act is devoid of any legal effects right from its conclusion;
- the void legal act is sometimes susceptible to restoration, remediation, while the non-existent act can be subject to such operations;
- the effects of nullity consist in the annulment of the act declared null by the judicial body, the effects of the non-existence of the act operate by law.

From the above analysis, it follows that absolute nullity (not relative, which presupposes a voidable act, therefore provisionally valid) and non-existence are causes of independent ineffectiveness, the cases of non-existence not being able to simply overlap with the cases of nullity, as a rule absolutely

Hence the following main differences:

- from the point of view of the causes: non-existence implies the lack of natural conditions, without which the act cannot be conceived legally, theoretically and practically (consent, object, form ad substantiam, etc.), while nullity implies the absence or invalidity of the legal conditions (ability to use, lawful and moral object, lawful and moral cause, form ad solemnitatem, etc.);

- from the point of view of the applicable legal regime: non-existence can be invoked by any person, at any time, it cannot be confirmed and operates as a matter of law, while absolute nullity can be invoked by any interested person, it is only in principle imprescriptible, it can be confirmed in the specific cases provided by law and operate as a rule of law.

## EFFECTS OF NULLITY

By the effects of the nullity of the legal act shall be understood the legal consequences of the application of the nullity sanction, i.e. the consequences due to the dissolution in whole or in part of a civil legal act that was concluded in violation of the legal provisions regarding its validity conditions.

The effect of nullity consists in the dissolution of the civil legal relationship born from the civil legal act hit by this sanction, restoring legality. Concretely, however, the effects of nullity differ, first of all, according to whether the nullity is total or partial, and secondly, depending on what happened after the conclusion of the invalidated legal act, more precisely, according to whether or not the act was executed and according to whether or not subsequent legal acts were concluded in relation to the same rights.

If the legal act has not been executed until the moment when it is annulled, the application of the nullity penalty means that that act cannot be executed even after that moment, i.e. the parties to the legal act are in a situation where the agreement would not have been concluded and neither produced no effects.

## Conclusions

Any legal act concluded in violation of the conditions required by law for its valid conclusion is subject to nullity, unless another sanction is provided by law.

It follows that nullity is that civil law sanction that intervenes, unless the law provides otherwise, in the event that, at the conclusion of the civil legal act, the legal provisions relating to the validity conditions of the legal act are not respected, so that act does not will still produce (in whole or in part) the legal effects.

We are therefore talking about total nullity and partial nullity (depending on the extent of the effects of this civil law sanction). The total abolishes the act in its entirety, while the partial abolishes only part of the effects of that legal act, the others being maintained under the conditions in which they do not contravene the law. Partial nullity represents the rule and implies a legal act with a more complex content (an act that includes several clauses), because only in this case could it be about abolishing some effects and maintaining other effects of the said act.

We conclude that the nullity of the civil legal act has a sanctioning function.

sheoperates when the preventive function has not proven its effectiveness and consists in removing the effects that contravene the legal norms issued for the valid conclusion of the civil legal act.

We note that the nullity of the legal act is not confused with the nullity of the finding document. In order to prove certain legal acts, the law established the obligation to draw up a document that must meet certain conditions. The non-compliance with these conditions determines the ineffectiveness of the evidentiary document, which means that the document is devoid of its evidential effects, but does not affect the validity of the legal transaction, which can be proven, under the law, by other means of proof.

#### **BIBLIOGRAPHICAL REFERENCES**

1. Baies S., Baiesu A., etc. a. Civil law. Real rights. The general theory of obligations, Chisinau: Cartier, 2005.
2. Boroj, G., Civil law course. The general part. Bucharest: Hamangiu. 2012.
3. Belei, Gh., Romanian civil law. Bucharest: 2001.
4. Civil Code of the Republic of Moldova, Law no. 1107-XV. Official Gazette of the Republic of Moldova, no. 82-86 of 22.06.2002, art. 661.
5. Dogaru, I., Cercel, S., Civil law. The general part. Bucharest: CHBeck. 2007.
6. Lupan, E., Treaty of Romanian civil law, vol. II, Persons, 2007.
7. Marian, N., Civil law. Theory of civil law. Bucharest: Solomon. 2018.
8. Ungureanu, O., Munteanu, C., Civil law. The general part. Bucharest: Legal Universe. 2017.
9. Stoica, V., Resolution and termination of civil contracts. Ed. All, Bucharest, 1997.
10. Stoica V. Civil law. Main real rights. Edition 3. V. Stoica, Real rights 2009.