Withholding performance of contract

KEYWORD

Civil liability, defaults, creditor, debtor, terminate the contract, right of retention, as potestativ, assignment of debt, compensation, contracting parts, others, in title, withholding performance, ratios reciprocal obligation, means of defense, warranty, good faith, equity, connection between legal.

SUMMARY

Exception of non-performance issue was not systematically researched Romanian legal doctrine since before the new Romanian Civil Code has not received specific regulation, but instead had a large practical applications due to the ease with which it can be invoked between the Contracting Parties . We can say that the plea of breach of contract jurisprudence is more fruit than of doctrine, situation that has made it difficult to attempt to systematize the elements of this legal mechanism. The new legal context imposed by the Romanian Civil Code, with the entry into force on 1 October 2011, we offered the possibility of failure exception analysis, this time provided by law, in relation to contracts reciprocal obligations.

Withholding performance is treated generally as a specific effect of reciprocal obligations of contracts, with contract termination and contractual risk theory. As for us, we share the view that the plea of non-performance remedies fall within the non contract, with additional time execution, enforcement in nature, terminate the contract, performance by the contract equivalent and risk theory. Withholding performance is an option of the contractor in good faith to non-contractual obligations of the debtor in a mutually binding contract, which consists of suspension Excipient's own obligations, until the debtor intends to proceed with the execution of obligations-incumbent or, where that is not done, proceed to terminate the contract.

In the first chapter we tried to identify the origin and legal basis of the plea of non-performance and analyze art.1556 definition of the New Civil Code.

Regarding the origin of the exception, we have shown that, although it was used in Roman law the seller may not be required to surrender the property without having received payment of the price, its origin is in canon law, was originally conceived as a moral sanction.

Later in the fourteenth and fifteenth centuries, the evolution theory of relations based on reciprocal obligations content of the contract led to the adoption of a distinction between reciprocal obligations and onerous contracts on the one hand and unilateral contracts and free on the other. Recital moral objection to admission of failure determined the contract was the principle of "*non Servanti fidem non est fides servanda*", claiming that the performance of a contract was not entitled to it, as long as he himself does not respect word.

Then, the development of trade in the sixteenth century the advancement and recognition of non-enforcement practice exception. French authors show that in 1560 was used for the first time called exceptio non adimpleti contractus, and generality of the exception for non-performance in the contract of sale specifically leave already been effective distinction between the role of the plea of non-performance suspension and resolution. In this period were raised uncertainties about the procedure of the exception and, in particular, the burden of proof.

Recognition express objection of failure during the sixteenth and seventeenth centuries was due to the principle of innominate contracts consensualisului and acceptance. The economic developments have created new needs such as the need for a guarantee for performance. Diversity studies on the plea of non-performance has resulted in a multitude of legal foundation, but there was a common element of these theories, so that the legal nature and basis of the plea of non-performance were still undetermined.
On the other hand, legal doctrine is unanimous regarding the plea of non-performance effects due to its practical applications, showing that it has a temporary effect and the means of defense except those who exercise as a proportionate response to " attack "other contractor.

In modern law, except the default is universally acknowledged but is still controversy on its basis. Thus, continental law is invoked as grounds, reciprocity and interdependence of obligations in contracts reciprocal obligations of the parties, while in commom law, except for non-performance is analyzed with termination of the contract, but does not change the causal exception under execution, tied to the same interdependence.

The Romanian law, legal doctrine and jurisprudence have taken theories French law the admission of the possibility of invoking the exception for non-performance in all contracts reciprocal obligations, although the Civil Code of 1865 did not contain any general provision in this regard. Instead, art.1556 the New Romanian Civil Code expressly regulates the exception of failure, but consider that this legislative approach is extremely useful because it circumscribes the application of this mechanism incomplete contracts only perfect reciprocal obligations.

Since the contract is the core around which the exception of failure, we started from the definition of mutually binding contract, indicating that unduly restricts the scope of the exception for non-performance, although it must be recognized in all legal relationships reciprocal obligations, including reciprocal obligations imperfect contracts. As shown in the literature, legal connection between justified by the exception for non-performance under contracts reciprocal obligations, explains its application in any other situation where mutual obligations have a common origin.

I pointed out that in paragraph 2 art.1556 New Civil Code makes express reference to the principle of good faith which must govern the execution of all contractual obligations and contract formation, which is rather a principle of the binding force of contract extension than a limit set by the creditor.

We have shown that rule enforcement obligations simultaneity explained except as a means of execution in the hands of the legal defense contractor who is required perform its obligations when the other contractor, requesting the execution did not meet or is not ready to meet its own mutual obligations.

We analyzed the data definitions in the legal literature, the plea of non-performance, which was presented as a defense contractor's good faith if the performance of the obligation is claiming that lies by the contractor who has fulfilled it on his own, and he was regarded as a direct consequence of the principle of interdependence, mutual obligations of the parties in contracts reciprocal obligations.

We learned the definition of failure exception as to each part of a mutually binding contract to refuse performance of the contract on which the employee does not receive benefits as long as what is due from the other party. We believe that this definition best expresses the

essence of the objection of failure mechanism, highlighting its position as a defense of the party invoking and active component, comminatory, which assumes the obligations correlative, as an indirect means to obtain enforcement in nature of the contract. We also showed that exceptio non adimpleti contractus are representative of a means of effective pressure to determine correlative execution without invoking the risk of exposure to the final execution or insolvency of the other Contracting Party, it has the advantage that it can be taken on its own initiative by the claimant, without judicial intervention.

We consider, along with other authors, that the applicability of the exception for non-performance is not limited to the sphere of reciprocal obligations of contracts, it is possible to be raised in all the legal reciprocal obligations. Withholding performance consists of a refusal of enforcement, worth private instrument to achieve justice, as operating without the prior intervention of a judge and without formal notice to the other Party.

In determining the legal basis for the plea of breach of contract, we started from the theory of the case, it considers that the plea of breach of contract basis is the reciprocity and interdependence of obligations arising from contracts reciprocal obligations, so the idea of those seen not only as an element of validity the contract, but as a condition of its continuation, the present case is required throughout the contract.

In essence, according to this theory, the contracts reciprocal obligations, because the obligation of either party resides in carrying out the other parts, if an obligation is not performed when missing due execution of mutual obligation; therefore cause no performance obligation one party entitles the debtor to its failure . The idea of performing the contract concerned the land explains reciprocity and interdependence obligations of the parties in contracts reciprocal obligations.

Although shared by law, this theory has been criticized by some doctrinariapreciindu being that there is a shift in terms of the concept of cause and execution of the contract: if one party does not bring out the performance of the incumbent's obligation runs the other concerned , which justifies the refusal to execute them, reciprocity and interdependence of obligations, the fact that each of them is legal because the other involves their simultaneous execution, so the possibility of invoking the exception for non-performance if it is not respected because it

represents the will contract. The situation in which a party is required to fulfill the obligations before other amounts to a modification of the contract. Therefore, the temporary suspension of the implementation of the contract is just the means to achieve its performance as intended by the parties to the agreement.

On the other hand, other authors have argued that the plea of non-performance basis would be the principle of good faith and equity, according to which any Contracting Party may request the other performance of its obligations without implement its own obligations. Criticism of these legal principles argue that it is too vague to substantiate an institution in themselves, and on the other hand, they are the foundation of all other legal institutions.

Other authors have considered except as a means of execution analog lien, which gives a good school detention creditor belonging to his debtor, refuse to surrender as long as the debt is paid not born good about that. We consider that the solution is objectionable because, although we are in the presence of two mechanisms for achieving justice private, they are not identical and the analogy between them is misleading; lien can only be exercised on a fixed by a person who is in custody, and between claim retentorului and that good must be a connection between objects, materials, which is usually accompanied by legal connection. Retention of title is a real right, legal, accessories and indivisible. Conversely, if the plea of non-performance between the two mutual obligations is necessary to have legal connection; Excipient may refuse to execute any positive obligations, even if is not in remission or surrender of property. The right of retention only occurs when a material connection, when retention is based on legal connection, it is only a manifestation of the plea of non-performance.

However, except for non-performance was based on the same basis as the rescission of the contract, which took shape in the Roman law, but in canon law. They also deduced the rule that the contractor who does not keep his promise, he loses the right to request enforcement of what is owed by the other Contracting - East frangenti fidem non servanda fides. So, that Contracting Party may not get the performance of the contract which is due to be entitled not to execute its obligation citing exceptio non adimpleti contractus, or require rescission of the contract by the court.

In our case, we learn the theoretical view that the plea of non-performance is legal nexus exists between the mutual obligations of the parties to a mutually binding legal relationship.

Legal connection between the mutual obligations exist when they have a common origin, being born in the same legal relationship, in which mutual obligations are interdependent, which makes their execution to be simultaneous, meaning that in the event that one of them is executed, the other party may refuse legitimately pay their debts, except the execution grounds. We have shown that this solution does not contradict the idea of reciprocal obligations and contracts on the land question, moreover, explains the exception of non-performance of contracts reciprocal obligations not only perfect sphere, but also to contracts imperfect reciprocal obligations and legitimate legal actions and relationships resulting from the annihilation of legal contracts that were not executed reciprocal obligations. However, the community of origin of two mutually binding legal translate very idea of the connection.

For all these reasons, we consider that the plea of breach of contract basis is predominantly legal connection between the mutual obligations of the parties arising directly or indirectly from their will contract to the underlying principles of good faith and fairness.

Based on these legal foundations, we have shown that the plea of non-performance functions are: a defense of the party invoking a way to pressure the other party and also a guarantee of fulfillment of the obligations correlative.

As a means of preventive defense by invoking this exception does to protect Contracting Party to fulfill its contractual obligations in good faith or is ready to execute them. This defense may be invoked as a defense in a civil lawsuit fund and extrajudicial directly between the contracting parties, as we have developed in the chapter dedicated to exercise procedural rules execution exception.

As a means of pressure on the other Contracting Party except for non-performance has a very effective character Comin, was an important means of constrângereasupra contractors to bad faith. As far as the latter needs the other correlative performance, it can be obtained, it will be forced to immediately proceed to the execution of the service or services to which it is indebted, thus excluding defensive is not only a means, made provide a report of either sinalagmatic but private means pressure for performance of the other Party to this legally.

We showed that the plea of non-performance may be opposed to both other parties and all persons whose claims are based on the contract, but it can not be the opposite of those parties who claim a personal right and absolutely distinct, born of the contract, by direct action.

Another effect of the plea of non-performance is to compel the contractor to immediately execute obligations. The exception is raised against whom, the private party invoking the benefits will be determined to perform its own obligations, in order to benefit from the effects of the contract, which he had in mind at the time of its conclusion. We also noted that the position of warranty with the exception of neexecutareestease mănătoare fulfilled lien because the competition avoids invoking other creditors or the risk of possible insolvency of the debtor.

I pointed out that the plea of good faith requires execution of an alleged or, alternatively, a certain degree of seriousness of that non-performance and the need for a balance between non-performance of contractual obligations because of failure assumed except that invoking is effectively a borrower's outstanding obligations and that he has no other reason for refusing to execute their obligations than other party refusing to perform its correlative obligation.

In Chapter II dedicated the scope of the exception for non-performance, I tried its analysis to other institutions in its vicinity: rescission and termination, retention of title, rights potestative, assignment and compensation related liabilities.

For an accurate analysis of the exception for non-performance and termination explained the legal meaning of terms and concepts used in this paper: rescission / termination and explained their common legal basis is the reciprocity and interdependence obligations of the Contracting Parties, the fact that each of the mutual obligations of the other legal causes.

We have shown that, except as execution and termination and cancellation of the same legal grounds: the idea of purpose (in the sense bivalent: both at the contracting as during its execution), the principle of the binding force of the contract and the idea of guilt, because these concepts are based on all the specific effects of reciprocal obligations of contracts. In addition to these items, except for non-enforcement to customize the simultaneous fulfillment of the obligations arising from agreements reciprocal obligations.

According art.1516 the New Civil Code, in case of non-contractual obligations voluntarily by the debtor, the creditor has the right to choose between several possible remedies: enforcement in nature, accurately and timely implementation of duty, the nature of enforcement duty, rescission, termination or reduction of benefit. The termination occurs as a last resort, which is used only if the remedy fails additional period of execution.

A true innovation of the new Civil Code in relation to the old regulation, a creditor is entitled not only to choose between possible remedies for a breach of contract, but also his right to choose between two types of termination: terminate the unilateral rescission of judicial and extrajudicial, art.1550 according to paragraph 1 of the new Civil Code.

We showed that, unlike the resolution, except for non-performance can not be classified as a civil penalty, as it is a means of preventive defense party to fulfill its contractual obligations in good faith, a guarantee and also a leverage with the other contractor. Aim at invoking the exception for non-performance is not canceling the contract and to cover the damage that was caused, but rather continue the existence of the contract, the fulfillment of the obligations undertaken by the parties. Therefore, except for execution appears as a real remedy the breach of contract by the debtor.

I also highlighted another difference between the two legal institutions: rescission does not apply in the case of imperfect reciprocal obligations as the obligation arises during the execution of the contract unilaterally is not because of other legal obligations, but has a contractual basis which springs a legal fact strict sense (eg unjust enrichment). Instead, except for non-performance of such contracts may apply reciprocal obligations imperfect form lien.

I mentioned the similarity between the two institutions, in that action rescission may be exercised only "in respect of which the commitment was not executed." So debtor executed will not ever require termination. Similarly, the exception may be invoked only execution that has executed the duties in good faith and is ready to execute them.

Another similarity is that the failure of certain benefits may attract terminate the contract if it is a matter of determining termination by the lender, a condition which is necessary to invoke the plea of non-performance, but without requiring the debtor to be put in delay.

On the other hand, invoking execution exception occurs directly between the parties, without the need to rule the court. From this point of view, except for non-performance resembles unilateral extrajudicial rescission regulated art.1550 premiere paragraph 1 of the New Civil Code, which requires the possibility for the creditor to claim rescission of the contract for non-performance, even in the absence of an express termination pact without recourse to the court or to any outside authority.

Without making any distinction between the rescission of judicial and conventional, its essential effect is the retroactive cancellation of the contract. In contrast, the effect of the plea of non-performance is, as I pointed out in suspension binding force of the contract, which remains temporarily unenforceable similar situation where he would be given a deadline. The contractor in good faith, which was entitled to refuse to perform its obligations, it can not be forced to pay damages because default would have delayed implementation of benefits owed to other parties as required to contract and force continues, as in the case of termination being only suspended.

The analysis lien we started from its definition as subjective as that which gives the holder civil - creditor liabilities arising in connection with the asset - the power to detain and deny return of a debtor will go until the obligation to born in the task related to the object. The Romanian legislation before the new Civil Code, the legal institution of lien was not regulated only in some special applications in different subjects of civil law, but was recognized by both legal practice and doctrine, so that was the subject of broad discussion in the legal literature, giving rise to many controversies. In the current code, has a lien regulation explicitly specify the provisions art.2495-2499 of the New Civil Code, and the various incidents of the lien in different subjects of civil law.

Then we presented legal characters lien: validity against unsecured creditors and work holder, preferential creditors and mortgage to the work and to subacquirer that work (the original holder of the work) retention of title does not confer privilege prosecution work in the hands of another person, the creditor retention do not enjoy the prerogative of preference on the price of work, but the creditor retention will be paid before other creditors, which basically amounts to preference right, right of retention is indivisible; gives the holder a simple poor detention , retention of title does not confer any opportunity to sell work to be paid from the price obtained, as can the pledgee, as an attribute of the lien, retention presents some peculiarities: it applies only

to personal property, does not require a connection between quality and scope pledged claim, is incidental and agreements involving collateral notary registration, assumes the right of pursuit and preference.

We analyzed the doctrinal controversies on the legal nature of liens, showing that the majority of authors considered that this is a real guarantee as imperfect, because none of the attributes of a real right (right tracking preference and right) characterizes not right retention. For this reason, some authors have argued that the lien is simply exceptional defense and security. In this regard, the retention rule appears precarious work and conservative and the only right which may be asserted regulator with is to refuse the refund work until his claim is satisfied.

In conclusion, we found that the lien has in all cases the same purpose, although it is built on different foundations, namely: a lien based conventional situation where there are two groups: a) where reciprocal obligations resulting from contracts, the right retention can be considered as a variant of the objection of failure need not be expressly Dedication legal and b) when grafted on a legally binding contract, the lien is a manifestation of privilege itself, legally established as Therefore, a conventional liens without support (art.598, the new Civil Code Article 1154) the effect of a de jure facto privilege.

We highlighted the differences between lien and execution except that: the retention applies not only contracts but also in contractual situations, whenever there is a connection between good and objective debt while under the exception for non-performance is not necessarily material having a wider field of application, as it may be to to give, to do or not do something.

We presented the requirements for lien by the court, in addition to physical or legal nexus between the creditor's claim and the good retention (condition was described in the literature as essential) retentorului claim to be certain , liquid and payable, the lien is claimed against current and exclusive owner of the property, meaning that the debtor retentorului amounts to be repaid and the property owner is the same person, the thing that is subject to the lien to be a good tangible, movable or immovable, the good to be in detention retentorului; retentorului good faith, meaning that it has not acquired the work through illicit means, not generated or increased his claim by abuse, good body (mobile or property) must be civil circuit.

Another important difference between the two institutions is that the lien is indivisible, that extends over the whole thing until the full payment of the debt in relation to work and is opposable erga ceexcepţia omnesîn time of execution is divisible or indivisible (as performance may or may not legally split up) and apply only to the contracting parties, the principle of relativity of contract.

We presented the advantages of invoking execution exception: avoid the risk of insolvency of the other party and therefore a default by it, constitute a means of pressure against the other, to cause it to execute, in turn, commitment, is an indirect means to get the kind of contract execution, the exception is not only a defensive means, made available a report of a party sinalagmatic but private means of pressure to meet the obligations of the other Party to this legally.

We also had the disadvantage that lies in the possibility of misuse of execution exception when invoking the so evade performance of its obligations or the object, in bad faith, this exception to a default minimum contractual partner. In these situations it is necessary to exercise judicial review in relation to raising the exception, which leads to the punishment of abusive exercising this right.

For these reasons, we concluded that the plea of non-performance as a temporary defensive measure and must meet two conditions: the existence of mutual obligations due and good faith of the person who invokes it.

Another essential difference is that the lien is exercised under objective connected claims of workers detained and creditor's claim, while except for breach of contract requires volitional connection, intellect between mutual obligations arising from the same legal relationship as it is based on the theory of the case (in the sense that each of the mutual obligations is the legal cause of the other, according to the reciprocity and interdependence of the contracts obligations reciprocal obligations).

We have shown that the concept of connection with the work of the debt is interpreted broadly, considering that the link exists not only when the claim was born in direct connection with the work, and the correlative claim ownership work and are dedicated to the same legal relationship, the usually a mutually binding contract.

We believe that assimilation lien except for non-performance is justified as retention goes beyond the scope of this exception. Perform a function similar to the plea of non-performance, the lien may be exercised not only when the obligations of the parties arising out of a mutually binding contract, but when that right arises as a re debitum junctum, as mentioned . Instead, except for non-performance of obligations is the result report. The two obligations will be executed exactly at the same time, if the lender did not give a deadline for the execution of his debtor, since the time the contract each party seeks not only secure the commitment of the other, but rather, the realization of the correlative obligation. Therefore, the temporary suspension of the implementation of the contract is just the means to achieve its performance as intended by the parties to the agreement.

For these reasons we considered, along with other authors that the lien and execution exception may coexist in relations between the same people, but were mistaken. Withholding performance, by its nature, tends to suspend contractual creditor claimed before to fulfill its obligation. So except for non-performance of the contract requires the existence between creditor and debtor, when the lien has another source and may also act outside the contractual relations between the parties.

In the analysis we showed that potestative rights and real rights claims to not cover the whole sphere of subjective civil rights because there are rights which, due to their characteristics can not be included in any of these categories: potestative rights that were defined as "give the holder the power, natural or legal, to influence the unilateral and discretionary, a pre-existing legal situation, changing it, extinguishing it or creating in its place a new legal situation."

Given the fact that the rights potestative up a heterogeneous group because some are economic rights and other non-property, some are related to certain real rights and other related rights instruments are so common traits we analyzed potestative rights: it is an object of rights potestative legal situation (present or future) that turns off after exercise or change their exercise of rights potestative is through a unilateral act of will because it gives their holder (called potential) ability to act unilaterally and discretion to extinguish, modifying or creating a legal situation under their exercise of an interference potestativ always mean "legal sphere" of another person potestative rights associated with a specific obligation of the passive subject who is not

obliged to give, to do or not do something, as if rights instruments, but is obliged to bear the consequences of action not subject to actively oppose.

We highlighted the similarity law of failure potestativ except in the sense that for its exercise, the holder does not need competition judecată.Cu court, however, is not excluded ivirii litigation where would claim that the exercise of this as was made fraudulently or in bad faith abusive, the court can verify that this was done in compliance with the legal or conventional. On the other hand, court intervention may be necessary to terminate any unlawful acts that would prevent potential to manifest the will.

Based on these features, we have shown that the right potestativ their legal structure and character: his subject is the legal situation and not a good or a service, such as when real rights or claim, as the active subject and the liability is determined, but the latter was in a special position of subordination to the right holder.

From this analysis it follows that though, as a whole, potestative rights constitute a special category of civil individual rights, they do not form a homogeneous and well-defined category (such rights is debt) because each of them has its own physiognomy determined, inter alia, particular features of the object (a legal situation that may be present future possibly uncertain asset, non-patrimonial), specific mode of exercise (which may be a physical act, a unilateral act, an action and so on).

However, they may be included in the same category, thanks to their common traits: they concern a legal situation, it will unilaterally exercised by the holder, their pursuit is an interference in the sphere of legal interests of another person can not stand passive subject to the right by its holder potestativ, which means that from this point of view, he must submit to the active subject.

Given the specific characteristics, structure, how to exercise and effects potestative rights, might appreciate that the plea of non-performance may be included in this category of subjective civil rights. However, consider that the exceptio non adimpleti contractusnu can be regarded as a right potestativ because it has a strong Comin, was an important means of pressure on the other contractor because, since the latter requires correlating performance of the other , so you can get will be forced to immediately proceed to bound the performance of the contract. Moreover, if the

plea of non-performance, the parties are in a relationship of subordination of the subject to the contractor passive invoking the exception, but on a legal footing. Under these conditions, except for non-performance occurs as a means of protection and ensure the correct balance between the nature of the contracting parties.

In conclusion, we found that the foundation plea of breach of contract is the legal connection between the mutual obligations of the parties arising directly or indirectly from their will contract to the underlying principles of good faith and fairness.
Furthermore, analyzing the assignment of receivables, we started from its definition as a contract whereby, for a consideration or free of charge, the lender sends his right to claim another person. Thus, the assignment of debt has the effect of a new credit sequence in the legal position of the assignor creditor, ie the right to claim, with all its accessories and warranties, in the same legal enforceability of all exceptions with the transferor, even personal ones.

We presented voluntary assignment functions: function translation, which is broadcast by contract a debt from one person to another; function instrumentde payment as through voluntary assignment may turn off a debt of the debtor to the creditor (the transferor to the transferee) credit instrument function is that, through the assignment of a standstill period of execution of the assigned claim, the claim is made mobilization before executing corresponding debt claim; function guarantee of voluntary assignment, which in French law called fiduciary assignment consists in restraining the transferee to claim the heritage of the execution of certain obligations of the transferor to it.

The mentioned forms of enforceability of voluntary assignment, then we examined the effects of voluntary assignment, in order to identify the role of nonperformance exception is the assignment of receivables. The main effect of the transfer is the transfer of the right to claim from the transferor to the transferee. The contract also includes the assignment of receivables, can be a complex act, produces legal effects of the concentration is achieved through her sale, exchange, loan, donation, etc..

Effects of voluntary assignment I analyzed as follows: the parties (between assignor and assignee), to third parties and between the parties (for successive assignments of the same claim or multiple assignments of the same claims).

The parties, the effects of voluntary assignment consisting of the transmission of the claim together with its accessories and warranty obligation of the transferor, the transfer occurs from completion, according to the principle of the binding force of the contract and not subject to the disclosure requirements of the voluntary assignment which achieved only transfer effects on third parties. These are: the transfer of the transmission right debt creanţeiconstă ut singuli of heritage assets transferor to the transferee, as it existed. As a result of the effect of translational transfer contract for the transferor creates a specific obligation: the teaching that is done, according art.1574 of the New Civil Code, by title transfer confirming the claim, that the authentic or under private signature has been recorded contract that generated the claim failed.

If the transferor fails to fulfill the contractual obligation which puts transferee unable to assert their rights and the assignment was made by a mutually binding contract, the transferee has the right to refuse to perform their benefits (payment of the price of the claim), citing exceptio non adimpleti contractus or voluntary assignment rescinded.

However, transmission of the claim as found in heritage assignor and transmission results in all actions resulting from that claim, and the exceptions that the obligor may claim, including the nullity action and prescription.

We have shown that voluntary assignment gives the assignee of a creditor, becoming part occurred in the original contract concluded between the assignor and the debtor failed. As a result, the transferee acquires all shares which have original creditor who is the transferor. We dare to say that, in this situation, the transferee is entitled to invoke the exception for non-performance of the contract, if the ratio of obligations originally sprang from a mutually binding contract and the contractual partner refuses to meet performance that was required. It is obvious that the invocation of exceptio non adimpleti contractus does not lead to the abolition of the legal relationship of obligations, but only suspended him as a means of coercing the debtor to meet its obligations.

Analysis of the effects of voluntary assignment to third parties and between the parties pointed out that according art.1578 of the New Civil Code, the voluntary assignment becomes enforceable against the debtor or transferred only upon acceptance of the assignment by this communication. In these circumstances, I consider that, in the event that the assigned

receivables, resulting in a mutually binding contract and assignor lender does not perform the obligation that lies, except the assigned debtor may claim breach of contract against the assignor prior to acceptance or communication assignment because it still can be invoked against.

We have shown that the effects of notice or acceptance are set art.1582 of the New Civil Code: in this moment, only the assigned debtor becomes the debtor and the transferee can not pay the assignor. As assignee of the debt acquired as found it the patrimony of assignor, the debtor may oppose accepting the same exceptions and defenses that could stand and original creditor, including breach of contract except where the transferor has not made allowance of mutually binding contract, as it was initially established in the legal, according to the principle nemo plus juris ad alium quam ipse habet Transferri Potesta.

Withholding performance compared Analyzing compensation governed by art.1616-1623 of the New Civil Code, it was defined as a means of fighting two of the same kind of mutual obligations between the two, so that each is simultaneously creditor and debtor of the other. Then we presented the characteristics and conditions of exercise of the three forms of compensation: legal, judicial and conventional.

In this context, we showed that French jurisprudence has established and receivables and payables related compensation, which is analyzed in the French legal doctrine as compensation une renforcée it can operate without having met all the conditions set by law for legal compensation. It is common in the area of business law and obligational relations is allowed on the idea of a connection between certain receivables and payables. The parties seek to obtain compensation which owe each other, ie payment.
In contrast, except for breach of contract does not extinguish the obligations of the contracting parties intended, as in the case of compensation claims and liabilities related, but rather coercion other contracting party to perform its obligations that it undertook in order to obtain the benefit considered in making the contract, from the non-execution invoking the exception. So it is evident purpose of the two different legal institutions.

Analyzing the French case, we observed that total compensation compensation related derogate from the legal and judicial branches, which can be relied upon and accepted in many common situations when compensation is not possible, such as after the opening of collective

proceedings or insolvency. From this point of view, compensation claims and related liabilities for non-performance is similar except that requires no special procedural formalities but relies directly between the contracting parties, without the need for court intervention. Instead, it is sufficient that the two mutual obligations to flow in the same mutually binding contract, but have met the other requirements related to: non-performance obligations of the contracting partner to be of a certain severity, the mutual obligations are both due, discharging the obligations neexcutarea be simultaneous and not to the fact itself of the invoking the exception. So except for breach of contract alleged is easier, but requires the fulfillment of several conditions of exercise, unlike compensation claims and related liabilities that is possible without mutual obligations of the parties to be simultaneous and claims to be liquid and due and delivery of compensation is mandatory for the court.

Another similarity between the two exceptions is the guarantee function that satisfies each: in case of connection between the duty of each party is affected, from birth to ensure payment of their claims against the other party, if execution exception, temporary suspension of the execution is the means to obtain performance of the contract under the terms of the agreement. The exception is an indirect non-performance by the party to whom the obligation is not performed, a compel the other party to fulfill this obligation.

In Chapter III of this paper we analyzed the substantive and procedural requirements of the plea of non-performance exercise.

We have shown that, in order to invoke the exception of breach of contract, material must meet the following terms: mutual obligations of the parties to be mutually binding contract under the same, to be a default, even partial, but significant enough, the other contractor, mutually binding legal relationship by its nature must involve simultaneous execution rule the mutual obligations of the two parties mutual obligations to be both outstanding, failure is not because of who invokes itself exception.

The condition on the nature of the obligations enforced stresses that in order to invoke the exception for non-performance, in addition to two people must have each other both as creditor and the debtor, it is necessary that the mutual obligations between them have their source and

under the same legal relationship sinalagmatic because it can be explained only legal connection between the mutual obligations existing between the two parties.

Art.1556 provisions of paragraph 1 of the New Civil Code provided deduce that, for invoking this exception must be a non-performance, even partial, but significant enough, the other contractor.

Party seeking exceptio non adimpleti contractus is not required to prove that the failure is due to the fault of the debtor, it is sufficient to prove only that non-performance.

I pointed out that it is absolutely beneficial art.1556 express regulation of para 2 of the New Civil Code, which introduces a legal criterion of proportionality ie failure to be sufficiently important to give the right of Excipient to use this remedy. This is unjustified invocation exception for non-small matter as between the failure of the two requirements need to be balanced.

The third condition for the exercise of the exception requires that the contractual non-performance by its nature must involve simultaneous rule enforcement obligations of both parties. For the exception of failure to be effective, it is necessary that the performance obligations of the parties to take place at the same time or one after the other the more immediate

Also, the mutual obligations to be both outstanding: the art.1556 paragraph 1 of the New Civil Code execution is inferred that the exception may be invoked only if the mutual obligations are matured or be executed immediately after the rules laid down by art.1495 paragraph 1 of the New Civil Code on term payment obligations without. If the parties have set a deadline for the execution of one of the obligations stipulated in favor of whom the can plead art.1413 term under the provisions of the New Civil Code., But they have not gone insolvent or not be reduced guarantees given by its creditor agreement. If you are in one of these situations, the debtor will be deprived of the benefit period, according art.1417 paragraph 1 of the New Civil Code and, as such, will be able to successfully oppose the plea of breach of contract.

We have also shown that remedy exception anticipated execution which is frequent in comparative law is fully allowable under the new Romanian Civil Code: if additional period of performance, if the debtor declares, before it expires, it will not perform its obligations creditor is

entitled to invoke any remedies deemed appropriate advance according art.1522 paragraph 4 of the New Civil Code, the same reason for the standstill continue and execution, similar regulation suspensive term and forfeiture of benefit of the term, according art.1417 of the New Civil Code entitle the creditor to invoke an exception anticipated execution.

Another necessary condition for invoking the exception is that failure is not because of themselves except those who exercise, which prevented the other contractor to perform the obligation. This view is expressly governed by the provisions of the New Civil Code art.1517.

Thus, we concluded that the plea of non-performance can not be relied on by Excipient of whose fault the debtor could not fulfill the obligation I came back, but contrary to the principle of good faith in performing its obligations.

After analyzing the material conditions for exercising the exception of failure, we present to invoke its procedural rules, both as a substantive defense in civil proceedings and out of court, direct the parties.

We showed that in civil cases, except for non-performance by aims dismiss filed by the counterparty in court. The exception does not dispute the claim invoking his partner but, this defense is an acknowledgment of that claim and also an implicit acknowledgment of the judgment debtor to perform its own obligations when and the contractor will fulfill its commitments.

We presented due process is a fundamental distinction and induce multiple requirements for a fair trial, and an independent right derived from parag.1 requirements of Article 6 of the European Convention on Human Rights, arguing that encompasses both fund defense right (proper defenses, background, involving herself whether or not his right) and its formal side: Defence related formal conditions of demand or judgment summons, court, judicial organization (exceptions).

Once you have defined defenses substantive and procedural exceptions, we analyzed each category, concluding that the plea of non-compliance is a defense fund at the disposal of a party who, by simply invoking its legal can block the request made by the other party (the not fulfilled

its commitment) for the order of invoking the exception to the performance of the obligation that lies.

Another reason for the exception of execution is considered as a substantive defense as an exception rather than formal law procedural feature, is that it is an institution substantially its own right as a means of defense available to the party who is required the obligations arising from a contract by the party sinalagmatic not performed their obligations. However, the plea of breach of contract invocation calls into question the very individual right, depriving it of rationality.

The plan extrajudicial, starting from reciprocity and interdependence of obligations in contracts reciprocal obligations (which makes each of the mutual obligations to be legal because the other) have shown that a specific effect of these contracts is the exception of breach of contract, as a defense available to the party seeking enforcement of the obligation to which that lies without the claimant to fulfill their obligations.

I said it a specific penalty claiming that the performance by the contractor has not fulfilled its obligations. In this case, the exception is raised by the parties, without the participation of the court so that it can exist outside of a trial. Thus, except for non-performance, with the resolution and enforcement in nature, is a breach of contract remedies consisting means they have at hand the lender in the event of failure by the debtor (creditor rights in case of failure).

Concluding, we have shown that the concept of "exception" only procedural law is not specific, but it can be seen in the right material, as used with multiple meanings in different branches of law. It is also possible that the court does not get to rule on when the execution of a mutually binding contract invokes, but the other party notifies the court claiming that her invocation abused. For these reasons, the case law and doctrine is clear that the exception for non-performance as temporary defensive measure and must meet two conditions: the existence of mutual obligations due and good faith of the person who invokes, as I mentioned earlier in this paper.

The execution exception can be invoked between the contracting parties by the party entitled to the power of its own, without the intervention of a judge and without formal notice to

the debtor, as required in this situation dissolution (termination) of the contract, but shall only suspension of its effects. Therefore, it takes effect by the parties without the need to rule the court, is sufficient to opposite party claiming performance of the contract.

I mentioned that its exercise is not subject to any formality of formal notice to the debtor because the exception is the simplest and most effective means of preventive defense party invoking it being also a means of pressure on the other părți.De also who uses the exception of breach of contract may not be required to pay damages for delay in performance of the services the default owes the other party; between the contracting parties, the main effect of the plea of non-performance is the suspension of obligations by Excipient up at the date of the obligations of the other contractor, which is not in any way a delayed execution of these obligations.

As I mentioned, reciprocity and interdependence of obligations, the fact that each of the other legal obligation is due involves simultaneous execution of these obligations, so the possibility of invoking the exception of execution, where simultaneity is not met. So except the default is a defense to the party seeking enforcement of the obligation, although it intends to fulfill its contractual duties which it has undertaken.

Chapter Ivalice paper, we analized effects exception of execution between the parties and to third parties. The discussion of the issue of the scope of the principle of relativity effects of the contract, we were required to demarcate and clear notions of parties, third parties and those entitled notion that principle needs to be defined, and to establish the relationship they are within the contract.

Along with other authors, we defined the principle of relativity effects civil act as the rule of law that civil legal act shall take effect only from the author's and may not take advantage or harm others. The content of this principle is very precisely expressed by the adage res inter alios acta, aliis neque nocere, neque prodesse Potesta. He is justified in two ideas: on the one hand, volitional nature of the juridical act requires such a principle in the sense that if it is natural for a person to become a debtor or creditor for the expressed will of the this regard is as natural as the other person does not become unwittingly debtor or creditor, and, on the other hand, contrary solution would be likely to affect personal freedom. Exceptions to this principle, consisting of extension to be the meaning of the birth of rights or obligations within the meaning of birth are

not allowed except under conditions permitted by law, in accordance with paragraph 1 of the New Civil Code art.1270.

We also stressed the need to distinguish the effects of relativity principle civil act of enforcement against third issue of the legal act. The principle of enforceability effects art.1281 express contract is governed by the new Civil Code, which states that the contract is binding requires parties that gives rise to rights and obligations and he requires others to be respected as objective reality.

However, understanding the content of the principle of relativity requires accurate concepts of part, with cause-and third, whereas in relation to a particular civil legal act, all the subjects of civil law are placed into one of these notions. For this reason, in literature "Contracting Party" was defined as the person who consents either to generate, in proceedings conventional rule is that to be applied directly, or only to apply a pre-existing private time. In the first case it is the "original parts", and secondly "parties occurred."

This part is not only the person who participated in the conclusion, but one that has this quality as "assimilation" or identification (successors universal or universal) or who acquired it in the course of execution of the contract or time s (such as the assignee of a claim).

We have shown that third parties (penitus Extran) are foreigners of some legal act, which did not participate either directly or by proxy at the conclusion. Res inter alios acta rule requires that legal operation not produce any effect of obligations towards them because they did not participate in the conclusion of the. However, the third absolute (total foreign persons contract and its parts) are bound by the contract, its effects and rules generated by it. Respect due to the legal situation is reflected in their enforceability act towards them. Convention is enforceable erga omnes and the third will have to refrain from any action that would impede the normal course of the contract between the parties.

By having it cause (causa habentes) means the person who, although not involved in concluding the civil legal act, is nevertheless entitled or, if applicable, required to take or to the effects of the act, because its legal relationship with one of its parts. Production effects of a legal successors to the university and as universal successors and successors in title to the parties particularly justified by the principle that a right is transmitted as it appears in the transmitter

heritage, the latter can not give more rights than has: nemo plus iuris ad alium quam ipse habet transfere potest.

Along with other authors, we noted that the parties, the binding force of the contract requires that he be executed by them, with the relative effect that only parties to the contract are bound by its effects obligational, to third parties, subject to the effects of the legal act principle of enforceability. The contract is a social reality that can not be ignored by the other participants in the civil circuit so that third parties must comply with the effects of it. So enforceability of the contract is merely a special application of a broader principle.

Thus, there can be confusion between relativity and enforceability of civil legal act; relativity concerns only acts obligational and internal contractual relationships between the parties, while the legal enforceability shall apply to any act, describing how third parties should refer to it.

After establishing these rules, we analyzed the effect of suspension of obligations execution invocation exception. We showed that the obligations under the contract must be simultaneously reciprocal obligations on both sides, so the refusal of one of the contracting parties to perform its obligations under the contract upset the balance that must exist between the mutual benefits of reciprocal obligations contracts, and other party may, in turn, to stop the execution of their duties.

As shown, suspend performance of the contract except the execution of invoking and temporary contract remains unfulfilled. Therefore, we believe that after raising the exception of non-performance, the contract and its binding force does not cease being merely suspended.

So exceptio non adimpleti contractus is a means of pressure exerted by one contracting party to the other party, to cause it to execute obligation assigned. This means the pressure is manifested by cessation of the contract, which is a temporary measure, initiated by the creditor executed. The suspension lasts until the party seeking performance by Excipient without having served his own obligation, change their attitude and performance of the contract goes to what's involved.

The situation created by invoking default is temporary exception: either middle pressure is effective and, ultimately, each contractor will implement its obligations or failure is final and will reach termination for non-performance, in order to clarify the situation.

This is why Withholding performance when performance does not determine its obligation to the beneficiary, is only a preliminary measure of termination risk theory or application where failure was not caused by the fault of the debtor. Especially consider that Excipient may require only binding force suspension of the contract, as long as the other party does not perform correlative obligation.

We showed that, unlike termination for non-performance except not necessarily mean that the non-debtor to be due to negligence. It is sufficient to invoke the exception of execution may not be achieved correlative duty performance, less important reason for which it was executed. However, if the failure was due to a fortuitous impossibility, which will oppose the debtor except the execution will invoke the impossibility to establish the nullity of the contract, according to the theory of risk. In this case, the exceptio non adimpleti contractus will not achieve its purpose because it allows the recipient to obtain performance and the debtor which opposes will defend citing the impossibility of enforcing. So it will be of no use.

Conversely, when the failure will be due to fault of the debtor, it no longer has any means to counter this exception so that it will fulfill its obligation to obtain consideration from the other contractor. If the lender is convinced that he can not obtain performance of the obligation of the debtor to request termination.

However, except for non-performance can not be considered only if the obligation is uncertain unenforced. As long as the obligation is uncertain, the exception should be rejected because it can not be a means of coercion to enforce such obligations.

Given that the binding force of the contract does not cease being merely suspended, the party entitled to refuse to perform its obligations, it can not be forced to pay damages default because it would have delayed implementation of benefits owed to the other party.

In conclusion, we have shown that the plea of non-performance may be considered at the same time: a defense of the party invoking a way to pressure the other party and also a guarantee

of fulfillment of the obligations correlative functions were presented in Title I, Chapter 2 of the thesis.

In Chapter 2 of Title IV have shown that the principle of relativity and the principle of contract enforceability effects interact and complement each other, building together civil contract basis. We presented various definitions of the effects of contract enforceability, which noted that, viewed as social reality, the contract is enforceable against everyone, even to those who did not participate in his conclusion, having their negative obligation to respect the legal situation created by contract.Terţii not become creditors and debtors through a contract in which they are parties. So to third parties not produce internal effects of obligational legal relationship that arises between the Contracting Parties. However, the contract arises and external legal effect is, in fact, a legal situation that third parties can not ignore, disregard or respected, even if they are not personally bound by that contract. Contract and legal situation arising out of it are binding on third parties that existing fact, because the contract is not just an isolated element, the result of which they form wills, but should be seen as an element that integrates into law.

As noted, third parties are not beholden to execute benefits subject of obligations existing legal relationship between the parties to that contract. Instead, it is forbidden to act in such a way as to prevent the execution just contractual obligations by the parties.

As regards the plea of non-performance, I mentioned that it is enforceable only to persons whose rights or claims have their source in the contract. When a third party claim arising from the contract execution exception may be invoked against him. The exception may be invoked also unsecured creditors of the contractor fails to perform the obligation when invoking their right general pledge, they want to seize goods which it holds the other party in the contract. Instead Withholding performance may not be invoked as a third party claiming an own quite separate contract.

We have shown that specific features arising from non-performance bond exception to reciprocal obligations inherent in the contracts. This exception arises and disappears with the contract that generated it. When the contract is sent to a third party by assignment of the contract, it undergoes transformations that will transmit the exception of failure. This approach is justified by the plea of non-performance function as a means to guarantee performance of the obligations.

Thus, except for non-performance will be enforceable against all persons who initially had a third party to the contract and later transmission to become parties.

In this context, we attempted to analyze the role of nonperformance exception when a contract assignment that is legal transaction by which one party to a contract is replaced by a third person during the life of that contract, with a transfer of contractual position along with all the rights and duties involved. We have shown that the assignment of the contract will be enforceable disposed and therefore it will be relying on the exemption from execution, once notified to or accepted the assignment, according to the provisions of the New Civil Code art.1578. Withholding performance born of the relationship between the transferor and assigned prior to acceptance of the assignment will not be opposed to accepting as, until that point, it is still new debtor of the obligation enforced. So, the exception may be disposed opposite the creditor of the obligation enforced only against the transferor.

In other words, for non-performance of the contract prior assignment, assigned creditor may object that obligation exception to the transferor execution as long as he did not accept the assignment. From the time of acceptance of the assignment can be invoked against the assignee, touching a subsequent execution correlative obligation. So, for the exception of failure to function and produce its effects for the assignment of contract invocation of its reporting is required when the borrower failed to accept the assignment.

In Chapter V of the work we have identified practical applications of the plea of breach of contract, both those generally accepted in doctrine and jurisprudence, and those controversial.

We showed that the new Civil Code the contract of sale has a uniform rule, but some specific issues are especially applicable sales relationships between professionals and traders contracts in the course of a business. The commercial sale to customize the subject-sale, which consists mainly of movable and often, future goods (crops unpicked, goods to be manufactured), the distance between contracting parties, transfer of ownership and risk, transport of goods from seller to buyer, sale pricing, liability for defects etc work sold. However, the main purpose of commercial sale is the intention of resale: the purchase is made for the purpose of resale or lease. Also, the professional trader, owner of a trading company specializing in sales, purchasing

products for profit, ie the profit aims. On the contrary, the buyer unprofessional seeks its satisfaction or family.

As highlighted in the legal literature, the obligations under the contract reciprocal obligations must be made simultaneously by both parties, with the principle of good faith performance of its obligations. Commercial sale, is a mutually binding contract, either party is entitled to refuse the execution of their duty, while the other party fails to perform correlative obligation.

In this paper we showed that the plea of non-performance is a preventive means of defense that can be used by both seller and buyer, by which the protection of that Contracting Party and an important means of pressure on the other party contracting with Comin very effective character. The effect of the plea of breach of contract of sale is the binding force of contract suspension until the party seeking enforcement of its contractual obligation to the partner without having served his own obligation, change their attitude to performance of the contract passing what incumbent.

According art.1720 of the New Civil Code, the buyer may refuse to pay the price if the seller fails to deliver the work, and where there is an imminent danger of eviction (art.1722 of the New Civil Code). And the converse is true, the seller is entitled to refuse to hand work, unless the price is paid according art.1693 of the New Civil Code.

In this situation, we analyzed the execution be raised by the seller and the buyer later: under the contract, the seller is obliged to deliver the sold buyer, obligation must not be confused with transmission ownership or possession . Thus, in addition to teaching duties and guarantee good crowd and vices, art.1672 of the New Civil Code provides for the obligation of the seller to convey ownership of the property.

According art.1693 of the New Civil Code, the seller is obliged to deliver the sold if the buyer does not pay the price in the contract did not stipulate a deadline for payment. In our opinion, in this situation, except for breach of contract is grafted on the benefit period, which is of a legal nature. Thus, if the parties have not set a deadline for performance, the law grants the seller a deadline for performance of the obligation to do the thing that is to teach the buyer, within which become due when the buyer will execute required paying the price. So buyer can

ask the seller delivery of the sold unless, in turn, to fulfill the obligation to pay the full price of the property.

If the contract of sale set a good clause that will be taught only after the price will be paid by the buyer, the seller will not be obliged to deliver the goods before payment of the price. If the buyer requests delivery of the asset, the seller may claim the exception of breach of contract. We appreciate that it is not necessary to provide a clause to this effect, because according to art. 1693 of the New Civil Code, the seller is not obliged to deliver work if the buyer does not pay the price and not stipulated a deadline for payment.

If, however, a clause in the contract provided that the buyer will pay the price for a certain period of good teaching means that the seller has waived the benefit of the exception and in case of default by the purchaser price, he will not be able to invoke exception. This observation follows from the provisions of paragraph 2 of the New Civil Code art.1555 providing explicitly specify that "to the extent that performance obligation one party requires a period of time, the party is bound to render its performance first, if the agreement between the parties or the circumstances indicate otherwise. "

In terms of execution be raised by the buyer, art.1720 of the New Civil Code introduces a new element, providing that "in the absence of stipulation to the contrary, the buyer must pay the price at which the property is located at the contracting and as soon as the property is passed ". So the rule is that the price paid at the time the seller and forward the property sold thing, as a consequence of the principle of simultaneity of fulfilling reciprocal obligations. This amount will be paid upon delivery of property sold and not the work contract.

As mentioned above, the obligation of the seller to transfer ownership of the thing sold is distinct from that of the teaching of the thing to the buyer. According art.1685 the New Civil Code correlative obligation incumbent seller teaching effective means making the goods sold to the buyer "with all that is necessary, according to circumstances, to exercise free and unrestricted possession."

Teaching work requires an active attitude from the seller. In the absence of a period, the purchaser may require delivery of the asset "as soon as the price is paid" according art.1693 of the New Civil Code. The buyer may require delivery of the asset sold by the seller unless he

fulfilled the obligation to pay the price. In the case of a total or partial surrender obligation due negligence seller, the buyer has a choice between: exception invoking execution, to require performance of the contract according art.1527 nature of the New Civil Code, or to request termination according art.1549 sale of the New Civil Code.

Citing exceptio non adimpleti contractus, the buyer is obliged to pay the price if the seller fails to deliver the thing sold and the contract did not provide for a deadline. This as opposed to the buyer except for non-performance is justified by the fact that the contracts reciprocal obligations, obligations of the parties are reciprocal and interdependent.

We showed that another obligation of the seller is to guarantee the full exercise of the purchaser and acquired after the contract. According art.1722 of the New Civil Code, the buyer which is the existence of a cause for eviction is entitled to suspend payment of the price until the end of disorder or until the seller provides an adequate guarantee. The buyer may suspend payment of the price when there is a well founded fear of eviction, citing exceptio non adimpleti contractus.

In this case, the price paid may be suspended without prior permission from the court. Instead, we believe that it is the buyer's obligation to timely inform the clerk of the suspension of the payment of the price, so not to harm and to enable the buyer to provide adequate security.

In case of dispute, the suspension of payment of the price by the buyer the seller may be opposed by raising the exception of default warranty against crowding.

However, the buyer may suspend payment of the price if known danger crowding at the conclusion of the contract or if he has risked crowding, stipulating in the contract that payment will be made even if the disorder.

In terms of the swap, the new rules of the Civil Code states that it shall apply the provisions on sale, according to the express provisions of art. In 1764. These provisions are consistent with those of art.1651 of the New Civil Code, according to which the provisions of this chapter shall apply to the obligations of the seller duly înstrăinătorului obligations to any other contract with transmit a law if the regulations of that contract or those relating to obligations generally not apparent otherwise. The lack of self regulation of the exchange contract

shall apply the provisions of the validity conditions of sale materials, effects, advertising and exceptions provided in those rules, including practical applications of the plea of non-performance.

If the supply contract, governed deart.1766-1771 of the New Civil Code, where the supplier fails to fulfill its obligation to deliver the goods that are the subject provision, the recipient has the same possibilities that the buyer has under the contract of sale, Withholding performance may claim that the contract by refusing payment of the price as long as the goods have been delivered.

Since art.1771 of the New Civil Code provides that the contract of supply is complete, properly, with provisions on the sales contract, and the supplier has the obligation to guarantee against crowding. In this situation, the beneficiary may suspend payment of the price when there is a well founded fear of eviction, citing exceptio non adimpleti contractus. Similarly, the exception may be invoked by the provider, if the recipient does not pay the agreed price.

Regarding the tenancy when delivery of the lessor refuses, the tenant may invoke the exception for non-performance of the contract and refuse to pay the rent, if it must be paid in advance. The French doctrine was established that, in order to determine the possibility of invoking the plea of non-performance by the lessee, if the lessor fails to make repairs that are the responsibility of its importance must be considered disorder caused by the tenant.

On the other hand, if the tenant does not fulfill its obligation to pay rent, if paid in advance and work had not yet surrendered to the lessor is entitled to refuse to surrender the property, except for breach of contract grounds.

As shown, the insurance contract, although it is a mutually binding contract, has a number of features that challenge the simultaneous fulfillment of the obligations of the Contracting Parties. This contract is a mutually binding for both parties, the insured and the insurer undertakes to each one a benefit obligations are reciprocal and interdependent. The main duty of the insured is paying the insurance premium and the insurer's primary obligation is to pay insurance indemnity or compensation for damages, upon occurrence of the insured event. But the moments that make these payments are not simultaneous: the insured pays the insurance

premium when concluding the contract or in installments during the execution, and the insurer pays compensation when the insured event occurs or is exempt if it does not occur.

However, as shown in the paper, except for the simultaneous execution has the fundamental right of obligations by the parties to a mutually binding contract, and when they set a deadline for execution exception can not be invoked. Therefore, we consider that an insurance contract can not be successfully invoked the exception of breach of contract by any of the contracting parties.

We also showed that the main effect of the plea of non-performance is Excipient suspension of his obligations, until the debtor will understand to fulfill their obligations. In the situation referred to art.2207 of the New Civil Code, failure to pay compensation to the insurer is final and not temporary, it acting as a penalty for non-fulfillment of the obligation to notify the insured of the insured risk in a given period expressly stipulated in the contract, so be sanctioned just exceeding it and in any case not a suspension of obligations.

For these reasons, we considered that, although the contract is a mutually binding contract and obligations of the parties are interdependent, they can not invoke the exception of breach of contract, because the condition of simultaneity their execution.

In our attempt to systematize the exception mechanism of failure, we noted that although no specific regulatory enjoyed before the new Romanian Civil Code, it has evolved over time, with their own rules of exercise and a natural vocation of application . We believe that the plea of non-performance is not only implied, inherent CIEST mutually binding contract which generates force, and the diversity and complexity of sistematizareşi analizăadinamicii justificădemersul it. The conclusion is that the execution is similar except sometimes with other legal institutions that have a similar purpose, but should not be confused with any of them, because it has a legal aspect proprie.We conclude by stating that in our approach Research the general rule in the New Civil Code, the legal doctrine and jurisprudence, I tried to analyze this legal instrument of execution exception, giving the opportunity of further legal discussion and debate.

Bibliography

1. ”Assentio mentium. Studii juridice în onoarea prof.univ.dr. Ernest Lupan”, ed. C.H.Beck, București, 2012;
2. ”In honorem Alexandru Bacaci, Ovidiu Ungureanu” – Culegere de studii, ed.Universul Juridic, București, 2012;
3. ”In honorem Corneliu Bîrsan, Liviu Pop” – Culegere de studii, ed.Rosetti, București, 2006;
4. Adam, I., ”Drept civil. Obligațiile. Contractul în reglementarea Noului Cod civil”, ed.C.H.Beck, București, 2011;
5. Albu, I., “Drept civil. Contractul si răspunderea contractuală”, ed. Dacia, Cluj-Napoca, 1994;
6. Avram, M., „Actul unilateral în dreptul privat”, ed. Hamangiu, Bucureşti, 2006;
7. Baias, Fl.A.; Chelaru, E; Constantinovici, R; Macovei, I, ” Noul Cod civil. Comentariu pe articole”, ed. C.H.Beck, București, 2012;
8. Bădoiu, C., Haraga, C., “Obligaţiile comerciale. Practică judiciară”, ed.Hamangiu, Bucureşti, 2006;
9. Beleiu, Ghe., “Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil”, ed.a IX-a, editura Universul Juridic, Bucureşti, 2004;
10. Bénabent, A., „Droit civil. Les obligations”, 9e édition, ed. Montchrestien, Paris, 2003;
11. Boroi, G. coordonator, ”Noul Cod de procedură civilă. Comentariu pe articole”, ed.Hamangiu, București, 2013;
12. Boroi, G., ”Drept civil. Partea generală”, ed. All, Bucureşti, 1998;
13. Boroi, G.; Stănciulescu, L., ”Drept civil. Curs selectiv”, ed.Hamangiu, București, 2010;

14. Cabrillac, M., Mouly, Ch., „Droit des sûretés”, Litec, Paris, 1997.
15. Cabrillac, R., „Droit des obligations”,5e édition, ed. Dalloz, Paris, 2002;
16. Catană, R.N., ”Drept comercial în powerpoint”, ed.Universul Juridic, București, 2013;
17. Catană, R.N., ”Dreptul asigurărilor. Reglementarea activității de asigurare. Teoria generală a contractelor de asigurare”, ed. Sfera Juridică, Cluj Napoca, 2008;
18. Cărpenaru, St.D., ”Tratat de drept comercial român conform noului Cod civil”, ed. Universul Juridic, București, 2012;
19. Chirică, D., “Contracte speciale”, ed. Lumina Lex, Bucuresti, 1997;
20. Chirică, D., “Tratat de drept civil. Contracte speciale”, ed. C.H.Beck, Bucuresti, 2008;
21. Chirică, D., ”Studii de drept privat”, ed. Universul juridic, București, 2010;
22. Ciobanu, V.M., “Tratat teoretic si practic de procedură civilă”, vol.2, ed.National, Bucureşti, 1996;
23. Ciobanu, V.M., Boroi, G., “Drept procesual civil. Curs selectiv. Teste grilă”, ed. All Beck, Bucureşti, 2005;
24. Circa, A., ”Relativitatea efectelor convenţiilor„, ed. Universul juridic, Bucureşti, 2009;
25. Costin, M., Mureşan, M., Ursa, V., „Dicţionar de drept civil”, Editura Ştiinţifică şi Enciclopedică, Bucureşti, 1980;
26. Cucu, C., Gavriş, M., “Contractele comerciale. Practica judiciară”, ed.Hamangiu, Bucureşti, 2006;
27. Dănăilă, V.; Anghelescu, C.A.; Constantinescu, V.H.D., ”Excepțiile în procesul civil. Jurisprudență comentată și reglementarea din noul Cod de procedură civilă”, ed.Hamangiu, București, 2012;

28. Deleanu, I., "Ficţiunile juridice", ed.All Beck, Bucureşti,2005;

29. Deleanu, I., "Tratat de procedura civilă", vol.I, ed.All Beck, Bucuresti, 2005;

30. Deleanu, I., "Drepturile fundamentale ale părților în procesul civil", ed. Universul juridic, București, 2008;

31. Deleanu, I., "Prolegomene juridice", ed. Universul juridic, Bucureşti, 2010;

32. Deleanu, I., "Tratat de procedură civilă. Ediție revăzută, completată și actualizată. Noul Cod de procedură civilă", ed.Universul Juridic, București, 2013;

33. Deleanu, I., „Părţile şi terţii. Relativitatea şi Opozabilitatea efectelor juridice", ed. Rosetti, Bucureşti 2002;

34. Firică, C., "Excepții de la principiul relativității efectelor contractului", ed.C.H.Beck, București, 2013;

35. Gherghe, A., "Efectele neexecutării contractelor sinalagmatice", ed. Universul juridic, București, 2010;

36. Hamangiu, C., Rosetti-Bălănescu, I., Băicoianu, Al., „Tratat de drept civil român", vol.II, ed. All, Bucureşti, 1997,

37. Ispas, M.C., "Rezilierea și rezoluțiunea în contractele comerciale. Practică judiciară comentată", ed. Universul Juridic, București, 2010;

38. Kocsis, J., „Excepţia de neexecutare, sancţiune a neîndeplinirii obligaţiilor civile contractuale" în Dreptul nr.4/1999;

39. Laithier, Y-M, "Ētude comparative des sanctions de l`inexécution du contrat", L.G.D.J., Paris, 2007;

40. Larroumet, C., „Droit civil. Les obligations. Le contrat", Tome III, 2e partie : Effets, 6e édition, ed. Economica, Paris, 2007;

41. Legier, G, "Droit civil : les obligations", Dalloz, Paris, 2001;

42. Leş, I., "Codul de procedură civilă. Comentariu pe articole", ed.2, editura All Beck, Bucureşti, 2005;

43. Lozneanu, V., "Excepțiile de fond în procesul civil„, ed.Lumina Lex, București, 2003;

44. Lupan, E., Sabău-Pop,I., „Tratat de drept civil român", vol.I.Partea generală, ed. C.H.BECK, Bucureşti, 2006;

45. Malaurie, Ph.; Aynés, L.; Gautier, P.-Y., " Drept civil. Contractele speciale" – traducere a ediției a 3-a din limba franceză, ed. Wolters Kluwer, București, 2009;

46. Malaurie, Ph.; Morvan, P., "Drept civil. Introducerea generală" – traducerea ediției a 3-a din limba franceză, ed. Wolters Kluwer, București, 2011;

47. Malaurie, Ph; Aynès, L; Stoffel-Munck, Ph., "Obligațiile" - traducerea ediției a 3-a din limba franceză, ed. Wolters Kluwer, București, 2010;

48. Malecki, C., „L'exception d'inexécution", L.G.D.J., Paris, 1999;

49. Motica, R.I., Lupan, E., "Teoria generală a obligaţiilor civile", ed.Lumina Lex, Bucureşti, 2005;

50. Moțiu, F., "Contractele speciale în Noul Cod civil", ed. Wolters Kluwer, București, 2010;

51. Mrejeru, T; Mrejeru, B.C.; Mrejeru, M.G., "Neexecutarea contractului de comerț internațional", ed.Rosetti, București, 2001;

52. Nicolae, A., "Relativitatea și opozabilitatea efectelor hotărârii judecătorești, ed. Universul juridic, București, 2008;

53. Nicolae, M., „Drept civil. Curs selectiv pentru licenţă", ed.Press Mihaela, Bucureşti, 1996;

54. Oprişan, C., „Sancţiunile în dreptul civil român" în R.R.D. nr.11/1982;

55. Pena, A., „Garantarea obligaţiilor. Culegere de practică judiciară", ed. C.H.Beck, Bucureşti, 2006;

56. Perju, P., ”Contractul în dreptul civil român cu referiri la Noul Cod civil”, ed.C.H.Beck, București, 2010;

57. Piperea, G., ”Introducere în Dreptul contractelor profesionale”, ed.C.H.Beck, București, 2011;

58. Pop, L., “Teoria generală a obligaţiilor”, ed. Lumina Lex, Bucureşti, 2000;

59. Pop, L., “Tratat de drept civil. Obligaţiile.Regimul juridic general”, ed.C.H.Beck, Bucuresti, 2006;

60. Pop, L., ”Contribuții la studiul obligațiilor civile”, ed. Universul juridic, București, 2010;

61. Pop, L., ”Tratat de drept civil. Obligațiile. Contractul”, ed. Universul juridic, București, 2009;

62. Pop, L., Harosa, L.-M., „Drept civil. Drepturile reale principale”, ed. Universul Juridic, Bucureşti, 2006

63. Pop, L.; Popa, I.F.; Vidu, S.I., ”Tratat elementar de drept civil. Obligațiile conform noului Cod civil”, ed.Universul Juridic, București, 2012;

64. Pop,L., „Cesiunea de creanţă în dreptul civil român” în Dreptul nr.3/2006;

65. Reghini, I., „Cesiunea de creanţă” în „Cesiunea de contract – repere pentru o teorie generală a formării progresive a contractelor”, coordonator P.Vasilescu, ed. Sfera juridică, Cluj-Napoca, 2007;

66. Reghini, I., Diaconescu, Ș., Vasilescu, P., “Introducere în dreptul civil”, ediția a 2-a revăzută și adăugită, ed.Sfera Juridică, Cluj-Napoca, 2008;

67. Rusu, A., „Executarea obligaţiilor.Practică judiciară”, ed. Hamangiu, Bucureşti, 2007.

68. Stănciulescu, L.; Nemeș, V., ”Dreptul contractelor civile și comerciale în reglementarea noului Cod civil”, ed.Hamangiu, București, 2013;

69. Stătescu, C., Bîrsan, C., "Drept civil. Teoria generală a obligaţiilor", ediţia a IX-a, ed.Hamangiu, Bucuresti, 2008;

70. Stoica, V., "Rezoluţiunea şi rezilierea contractelor civile", ed.ALL Bucuresti, 1997;

71. Stoica, V., "Drept civil. Drepturile reale principale", vol.I, ed.Humanitas, Bucureşti, 2004;

72. Suciu, A., "Excepțiile procesuale în Noul Cod de procedură civilă", ed. Universul Juridic, București, 2012;

73. Tăbârcă, M., "Excepţiile procesuale în procesul civil", ed.a II-a, editura Universul Juridic, Bucureşti, 2006;

74. Terré, Fr., Simler, Ph., Lequette, Y., „Droit civil. Les obligations", 9e édition, ed. Dalloz, Paris, 2005;

75. Toader, C., „Drept civil. Contracte speciale", ed.2, editura All Beck, Bucureşti, 2005;

76. Turcu, I., "Noul Cod civil. Legea nr.287/2009. Cartea a V-a. Despre obligații (art.1164-1649)", ed.C.H.Beck, București, 2011.

77. Turcu, I., Pop, L., „Contractele comerciale. Formare şi executare", vol.II, ed.Lumina Lex, Bucureşti, 1997;

78. Vasilescu, P., "Drept civil.Obligații în reglementarea noului Cod civil", ed.Hamangiu, București, 2012;

79. Vasilescu, P., „Relativitatea actului juridic civil", ed.Universul juridic, Bucureşti, 2008;

80. Vasilescu, P., coordonator, „Cesiunea de contract – repere pentru o teorie generală a formării progresive a contractelor", ed. Sfera juridică, Cluj-Napoca, 2007;

81. Vidu, S.I., "Dreptul de retenție în raporturile juridice civile", ed.Universul juridic, București, 2010;

82. Zlătescu,V.D., „Garanţiile creditorului", ed.Academiei, Bucureşti, 1970.