DIRECT ACTIONS IN CIVIL CONTRACTS ADJUSTED BY THE NEW CIVIL CODE. COMPREHENSIVE RIGHT ELEMENTS

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SUMMARY

The subject we proposed to treat from the very beginning was a very large one. Direct actions are a special legal mechanism granted to certain creditors. Although examples of direct actions in the Romanian doctrine under the new Civil Code are multiple and diverse, we understand to treat in the present work those actions that are found in the civil contracts regulated by the new Civil Code, because we have appreciated that the explanations on which we could bring will be very useful to the theoreticians, but especially to the practitioners.

The work is systematized and divided into two major titles. In Title I, the general theory of direct actions, we have extensively presented the origins, history, evolution, mechanism, effects, classification and foundations of direct actions, referring to numerous works in the French doctrine. In the same title, we dealt broadly with the issue of direct actions in comparative law (English, Scottish, German) as well as Community law on contracts. At the same time, we have analyzed the founding theories of direct actions, as well as the two major types of direct actions that we can say have the greatest impact on social, economic and legal life, namely direct actions in guarantee or liability, and direct payment actions.

Title II of the paper is devoted to the analysis of each direct action in civil contracts governed by the new Civil Code. As such, we analyzed seven direct actions, each of which was devoted to a separate chapter. These are: the direct action of the underwriter against the first vendor, on the one hand, in the case of eviction, and, on the other hand, the hidden vices of the sold thing; the direct action of the subcontractor against the principal or beneficiary of the work; the direct action of the lessor against the subordinate; the direct action of the consignor or, where applicable, of the consignee of the shipment against the substitute carrier; the direct

action of the depositor against the subdepository; the direct action of the principal against the subcandidate; and, finally, the direct action of the victim who has suffered damage to the civil liability insurer in general and to the motor third party insurer, in particular.

The work involved a broad and rigorous study of the doctrine and legislation of many states, especially the French, where direct action was widely debated. Direct action is a mechanism for achieving the claim that has not yet been embraced unanimously or, better said, has been embraced with great reservations by the Romanian courts. In addition, there is still a very high reluctance among practitioners in law to promote such action. We can say that, in the sense of the old Civil Code, the reluctance was even stronger, since there were only two direct actions expressly regulated in the Code. The new Civil Code, borrowing the French model, regulated several types of direct actions, particularly in civil contracts. However, in court practice, there are relatively few situations where courts can settle direct actions in payment or in guarantee or liability.

The nature and general background of the direct action are currently not clearly established. However, very specific cases are delineated in which we discuss a contractual action based on the stipulation for another and the direct action based on the law. Thus, when the third person, the owner of an action is expressly determined in a contract, we will always be in the presence of a contractual action based on the mechanism of the stipulation for another. In the opposite sense, when the right of a third party to a contract to bring an action against one of the contracting parties is set by law (whether we are discussing the Civil Code or other special laws), we will be in the presence of a direct action.

Regarding the situation of the civil contracts in this paper, we can not fail to notice that the concept of a group of contracts was the basis for the creation of many direct actions, on the assumption that part of the contractual chain can act on the

upward or even descending scale of another part of the contract chain. The French doctrine embraced the notion of direct action under warranty or liability, on the assumption that, for example, in the case of successive sale contracts, the guarantee obligation for eviction or for hidden vices is transmitted from the first vendor to the last buyer. The assignment of the guarantee obligation was based on the notion of the groups of contracts.

One aspect to which we have been very much concerned is the foundation of direct actions under warranty or liability and the foundation of direct payments. Thus, it is important to know that groups of contracts as the basis for direct action are justified in the case where an accessory is supplied with the good, an accessory that ultimately entitles one of the parties to the chain to act on another part of the chain. In the opposite direction, in the case of direct payment transactions, in order to give rise to such an action, there must be two different contracts, not in the presence of a genuine group of contracts through which the right to direct action as an accessory is passed.

As far as the legal nature of direct actions is concerned, it depends on the triggering factor of the action. That is why, in our work, there is an extensive analysis of them.The right of the creditor to bring the direct action shall not arise from the contract concluded between the intermediary debtor and the subdelegator. In the case of direct actions on which the concept of a group of contracts is based, direct action can only be of a contractual nature, since the right transmitted as an accessory derives from the first contract and reaches the lender through the chain of the contract to the last contract. In the case of direct payment transactions, the right to file the direct action is not transmitted by contract, which is recognized by law. As such, the sub-contractor will incur contractual liability, as it is quite clear that he will respond as a result of the obligations assumed in the contract concluded with the intermediary debtor.

However, the right to make direct action is extracontractual, in which case the action itself acquires a hybrid nature. All of these aspects are treated very carefully in our work. Therefore, the paper is intended to be a means of facilitating the promotion of direct action derived from contracts that have been subject to analysis. However, the discussions on the subject under discussion have not yet come to an end, but have just begun. As a consequence, we hope that this paper has opened the apex of the theoreticians who will bring additions meant to support the Romanian legal culture.

KEYWORDS

direct action, intermediary debtor, subdelegator, group of contracts, injury.