PROBLEMS OF PRACTICE IN APPLYING THE RULES OF CONVENTIONAL RESOLUTION IN SPECIAL CONDITIONS

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ABSTRACT: *After a summary examination of the mechanisms that develop the unilateral and conventional resolution, the author finds that the specific formalism established by the civil code for achieving the objectives of the pacts agreed by the parties is - in some situations - difficult to fulfill, in the context in which the partners do not know or cannot rigorously follow the steps required by the delay procedure.*
The uncertainties that the mechanism can produce in special conditions are observed and, then, practical solutions are suggested, starting from the premise - generally accepted - that the commission pact is itself a subsequent and accessory convention to the fundamental contract.

KEY WORDS: *conventional resolution; Civil Code; resolution; remedy; sanction.*
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1. PRELIMINARY EXPLANATIONS

We are concerned about the mechanism of operation of the commissioner's pacts under special conditions; more precisely, we have in mind the hypothesis that those who sign such conventions cannot fulfill the specific tasks assumed - expressly or deduced - tasks of finalizing the conventional resolution; this, for reasons not attributable to them.

The commission pact presupposes a resolution in which the court does not intervene in advance (Daghie, fără an); the judge can only exercise - at the request of the interested party - a control subsequent to the declaration of the resolution and verifies if the conditions for the functioning of the pact have been fulfilled and accomplished (Popa, 2012).

We are interested, therefore, in the legal regime of two institutions: firstly, we are talking about the resolution - the conventional resolution (art. 1553 Civil Code) - and, separately, about the impossibility of the execution by the parties of the tasks incumbent on them. 1557 Civil Code).

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2. QUESTIONS FROM THE PRACTICE

Both institutions are considered remedies for non-performance of contracts (Pop, et al., 2015); however, we note that these institutions appear to be opposed, the cumulative fulfillment of their remedial mission, at least in principle, would be excluded.

The approach of this study would seem useless.

However, the practice highlights situations that may call into question the correlated collection of the effects of subjective situations that would be subject - in their beneficial logic - simultaneously or successively - to the two expressions of the philosophy of remedies.

The first confusion would arise in connection with the understanding of the models of judicial resolution - conventional resolution, the last formula leaving full freedom to the parties to choose the operation of the resolution; that is, in the latter case, the parties indicate which unfulfilled obligations would result in the resolution and, in particular, how it would be operationalized.

But the applied meaning of the resolution-remedy shows that the functioning of the idea of remedy restricts the freedom of the parties: not every violation of the tasks assumed leads to resolution; such an effect is produced - in economic logic - only by the disregard of significant obligations (Popa, 2012); does the option of the subjects for insignificant tasks - as a conventional resolutive basis - not take the commissioner's pact out of the sphere of the logical economic values of the remedy? Doesn't such an option direct us to other civil values whose effects we would thus gain?

Moreover, the real existence of the commission pact and its completion is formal; obtaining the effects of the pact is conditioned by the passage of procedural steps by the interested parties.

Therefore, even if, in order to support the usefulness of the conventional resolution mechanism, the need for precaution is invoked - the viability of the pact remains - from a pragmatic perspective - excessively formal; the notification of the conventional resolution - imposed by law - obliges to go through some formalities initiated by the disappointed and interested creditor; and such formalities must be known in their technicality and followed accurately; their non-compliance would deprive the resolving convention of the expected effect - art. 1553 al. (2) and (3) of the Civil Code.

The necessary question arises: what happens if the creditor is unable to go through such procedures for reasons not attributable and has not transferred such tasks to another, in his name and on his behalf? What happens to the commissioner's pact if the former formal procedures for its operationalization are badly done, out of direct personal guilt or because of the inappropriate election of the trustee in charge of it?

3. RESOLUTION AS A REMEDY

The theory of the remedy - as opposed to the idea of sanction - is very generous from a social point of view; its economic effects are undeniably beneficial: it is more economically efficient to fulfill a contract than to block it in fulfillment.

Regardless of conceptualization (Stoica, 2004), the economic rule imposes the need for the proper execution of the contract; research, deepening the investigation of guilt is

equitable in principle but economically inconvenient; the completion of the contract matters more than the guilty history of its performance (Chirică & Mureșan, 2010).

a. For this reason - legislative and doctrinal - we opted for practical formulas (Pop, et al., 2015): "the creditor does not have the right to resolution when the non-execution is of small significance" - art. 1551, thesis I, Civil Code; the resolution gives the right to damages, if appropriate - art. 1549 paragraph 1 Civil Code; the doctrine develops, adapts, in the sense of the same practical philosophy: the non-execution must nevertheless concern a contractual obligation.

Clarifications are also made: the deviation from the pre-contractual period or during the execution of obligations that do not have a contractual origin is not included in the calculation of the resolution (Pop, et al., 2015).

We understand that those obligations that do not originate in the contract whose term is sought are considered; in other words, the unfulfilled task - capable of producing a resolution - should result from a convention organically linked to the unexecuted contract; such a selection - moreover very important - directs us, logically, to a certain necessary connection between the pre- or postoperative conventions of the convention leading to the resolution.

In a generic wording, we would say that an essential unfulfilled contract - preparatory, concurrent, or subsequent - that enjoys a certain autonomy in relation to the one that would imply the resolution, would not lead to the resolution; and conversely, another of an accessory character, with unfulfilled obligations, would justify it.

It would also be admitted receiving a resolution in violation of the general obligation of good faith and of subsequent tasks inferred from the same general rule (Pop, et al., 2015).

The doctrine emphasizes the details: significant non-fulfillment of the contractual burden presupposes a serious, sufficiently serious non-fulfillment; the assessment of gravity relates only to the contract, from a quantitative perspective: the total non-execution would exclude the discussion of gravity, it - gravity - being obvious; in case of partial non-execution, the significance of the non-execution *remains at the discretion of the one who invokes it - finally, at the discretion of the judge*; then follow two clarifying additions: it does not matter if we are talking about a non-fulfillment of a main or accessory task, only the consequences from the perspective of the whole contract matter, everything being related in time at the moment of signing the contract.

We notice a difference in the expression of the legislator and the theorists: the law indicates a significant disregard (important, of great importance) of the tasks; the doctrine uses a superlative expression: serious non-fulfillment (extremely important, dangerously important, which could have bad consequences).

We wonder if the different expressions would have a clearer meaning from the point of view of the person facing the difficulty of the decision.

We think not; all the expressions, in fact, indicate the concern of the doctrine to give full meaning to the subjective rights produced by the contract subject to the pressure of the resolution; whatever expression you use, the evaluation will be subjective; concretely, it - its expression and consequence - will have to be convincing (for the parties, for the interested third parties, for the judge): how much the subjective rights will be affected, in their content, by not fulfilling the tasks assumed by the debtor; therefore,

the evaluation will be made in relation to the subjective rights resulting from the contract and not from the holder of the affected rights, from his patrimony.

b. Nothing prevents the parties from agreeing, according to their interests, the rules they wish for the achievement of the objectives of the resolution; so we are talking about a conventional resolution.

The concern of the legislator was located in imposing a formalism prior to the option for resolution which consists in a procedure of delaying the debtor and which would be meant to ensure transparency and to temper possible excesses.

c. Separately, there is a whole debate about the meaning of the expression in art. 1550 paragraph 2 of the Civil Code: the resolution can operate in full if the law provides or the parties have agreed so.

That is, it is discussed whether there is a third form of operation of the resolution: the legal resolution.

The doctrine argues convincingly that it is not (Stoica, 2013). If the formula were accepted, it would be indirectly admitted that a creditor would not have the right to choose between the enforcement of the debtor and the resolution mechanism; or, such a conclusion would contradict the whole practical philosophy of remedies.

4. CONVENTIONAL RESOLUTION. SHAPES AND SPECIFIC.

This model is agreed by the parties who have total freedom of will to indicate it through resolutive clauses.

The convention on the resolution has two forms, both operating extrajudicially: the unilateral resolution (art. 1552 of the Civil Code) and the commission pact (art. 1553 of the Civil Code).

In the first case, the parties agree that one of them may invoke it unilaterally; this when the other does not perform an essential task of the contract; in advance, the debtor is delayed (art. 1552 para. 1 of the Civil Code) and is granted, by notification, an additional term of execution (art. 1522 para. 3 of the Civil Code); the delay is not made if the debtor is legally in delay (Pop, et al., 2015).

By commissioner agreements, the parties indicate from the beginning what non-contractual performance would result in the resolution; the subsequent subjective assessment of what a significant contractual clause means and, in particular, how serious its non-performance would be, is conventionally removed.

Basically, this would be the purpose of the pact: the conditions under which the resolution becomes operational and the way in which the mechanism will be carried out are conventionally set; such a purpose justifies its existence: to avoid the subjective and subsequent assessment of the importance of non-execution (Pop, et al., 2015).

The consideration of the two forms of resolution - the unilateral one and the commission pact - as forms of the conventional resolution, raises another question: are they two different species or does one of them express the common law, in general, in conventional matters?

We consider that the unilateral one expresses the common rule regarding conventional resolution; the pact becomes a species with particularizations.

We look at the systemic resolution, in stages, connected to the essential social needs: the judicial and unilateral one substantiates, par excellence, an economic idea: it is a

priority to maintain the contract and to cancel it retroactively only for serious failures; however, the formula of the pact is admitted - with caution, explicitly, motivated and conventionally - only conventionally - for the non-performance of tasks of importance only for one of the parties.

From here, we gather the consequences:

The pacts could indicate - as a resolutive condition and derogation from the common rules - other conditions, which would not normally lead to a judicial resolution; that is, the will and needs of the parties are given freedom; it is admitted that - in a conjunctural, accidental way - some non-specific contractual options may be important for one or the other of the parties and the business partner may accept them; but such tasks are not important from the perspective of the cause of the contract, of the general interests.

The insistence on the idea that the parties may indicate in pacts commissioners and non-specific conditions, does not mean that a pact commissioner cannot operate only / and for the non-execution of essential tasks.

Such an understanding of the resolution also helps us deduce the rules relating to the prescription of the right - conventionally acquired - to terminate the effective contract of the covenant[1].

We therefore follow the special rules of the resolving pacts.

a) the terms of the commission agreement must be expressly specified; the conventional resolving rule - in order to fulfill its purpose - must unequivocally indicate what attracts the resolution (termination).

Can the pact be censored? And especially when?

That is, can the court of censure of the conditions for the operationalization of the resolution already made, assess whether or not the wording of the pact is excessive? Can the free option for minor reasons to terminate the contract, the inaccuracy of the wording of the terms of the pact, lead to its ineffectiveness? If so, on what criteria?

The law does not provide; the answer of the doctrine is affirmative; the commission pact may be censored on grounds of disproportion (Pop, et al., 2015).

We understand, however, the idea of examining the disproportion only as an exception to ensuring the full effectiveness of the pact.

Practically - in such a situation - the proportionality of the idea of freedom of will of the parties will be debated -the fundamental right - with the concrete economic consequence on the subjective rights of the operationalization of the pact (Popa, 2012); the abstract rule will be evaluated - the true freedom of will of the subjects - with the concrete economic value protected (the immediate economic consequence of the effective finalization of the resolution); more specifically, the serious effect of the resolution is taken into account: the ex tunc effect and, in particular, the possibility of repealing subsequent acts that also affect third parties (Moise, 2013); the commission pact becomes - especially in the economic field - a civil instrument for streamlining binding relations, an instrument that directs the will of the parties towards a certain economic value and not only[2].

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[1] See also point 8. b

[2] the criteria for assessing proportionality are difficult to set; the law sometimes intervenes: art.1756 of the Civil Code „in the absence of a contrary agreement, non-payment of a single installment, which is not higher than one-eighth of the price, does not give the right to terminate the contract, and the buyer retains the benefit of the term successive installments"; see V. Terzea, *Neexecutarea obligațiilor contractuale*/L'inexecution des

Moreover, it has been observed that even in the case where the parties explicitly and transparently determine which unfulfilled task leads to the resolution, the subjective assessment of gravity is not completely excluded; the discussion arises in the hypothesis in which the obligation declared as a resolutive condition is partially executed.

Or the question of how to use the pact has arisen: it must be invoked in good faith (Popa, 2012); the abusive exercise of the right of resolution - like any other right - will be sanctioned by declaring its ineffectiveness.

In such situations - when the pact is imprecise, disproportionate, the named obligation is fulfilled only in part or an attempt is made to impose the pact in bad faith - practically, the conventional formula becomes nonfunctional.

A resolution will be reached, however, but it will operate according to the general, common legal rules, in a judicial manner; the judge will not be able to reject the request of the interested party, provided that the impossibility of operating by pact is proved.

So, the institution of the general resolving remedy does not disappear; it is given and described by law; only the regime under which it will take place will count under the legal or the conventional one.

b) the execution of the pact is dominated - in principle - by formalism.

We find the formalism:

In its doing: the resolutive condition must be explicitly indicated (the unfulfilled obligation that produces this effect, as well as the operationalization model - by law, with the exact understanding of the meaning of the expression of the law or by delay);

or when it is achieved: the steps to be taken for the pact to take effect (delay; providing the additional deadline for execution; observing - if necessary - the reasonable deadline for execution; certifying compliance with the terms of the pact[3]; finding the parties back to the previous situation).

The wording is therefore important; It must follow whether we are really in the legal space of a commission agreement (Bârsan & Stătescu, 1981).

he general expression that the non-performance of the contract produces the resolution indicates the prospect of a judicial resolution.

When it is recorded that if one party does not perform its obligations, the other party will be entitled to consider the contract canceled, indicates the option for a unilateral declaration of the resolution - art. 1552 al. 1, thesis I; it remains only to determine whether the resolution occurs only by issuing the unilateral declaration (when the debtor is legally in delay), in the event that the parties have so agreed or the declaration and the resolution follow a prior notification (delay).

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obligations contractuelles/The non-performance of the contractual obligations, în Revista romana de drept privat nr. 3/2018, https://lege5.ro/Gratuit/gmztcmryg4ya/neexecutarea-obligatiilor-contractuale-linexecution-des-obligations-contractuelles-the-non-performance-of-the-contractual-obligations?pid=286096920&expression=#p-286096920 , accesed at 17.11. 2020.

[3] Through the public notary according to art. 12 parargraph.1 lit. d and art. 150 paragraph 1lit. d of Law no. 36/1995, of public notaries and notarial activity, republished in the Official Gazette of Romania, Part I, no. 237/19. 03. 2018; art. 24. Al. 3 of Law no. 7/1996, of the cadastre and real estate advertising, republished in the Official Gazette of Romania, Part I, no. 720 of September 24, 2015

A distinction is made between the legal (full right) realization of the resolution - in the expression of art. 1550 al. 2, Thesis II[4] - and the legal delay in enforcing an obligation, followed by the implementation of the resolution.

The legal delay in law operates when this has been stipulated in the contract[5] or when the law explicitly provides for this[6].

More precisely, the debtor is - conventionally - legally in delay if it has been stipulated that the simple non-fulfillment of the obligation is valid as such; or, that it is not necessary for the conventional resolution to be delayed if the indicated obligation has not been fulfilled.

There are no standardized formulas; it is certain that from the expressions must appear that the parties do not wish to go through the delay procedure.

Delay in law does not oblige the creditor to grant the additional term of execution; by formulating the clauses of the contract - formulations accepted in full knowledge of the facts - the protection granted to the debtor by the grace period is thus removed.

In the case of a unilateral resolution, the absence of the obligation to delay does not completely relieve the creditor of formalism: he must make the unilateral declaration (notification) of resolution[7].

The doctrine shows that there is no resolution without a minimal formalism; the expression of the law "resolution of law (full right)" must be understood, however, in the whole mechanism of remedies: specific guarantees cannot be fulfilled without having the debtor on delay; the operation is done through a specialized notification (Stoica, 2013); specialization involves the precise indication of the conditions under which the notifying creditor understands to exercise his conventional right of resolution.

5. DISTINCTIONS

The practice of forming and executing contracts sometimes indicates confusion in enunciating and finalizing commission agreements; inaccurate formulations send subjects - involuntarily - to other remedies, to other instruments, intended to protect the stated interests or, as the case may be, of their subjective rights; this, in the situation where some legal institutions, although not regulated, are practiced[8]; this, the effect of recognizing the general principle of free will in the formation of contracts.

Distinctions are necessary because the confusion of the wording of the clauses may call into question civil liability for the person who has inadequately advised one (or all) of the contractual partners.

a) in such an analysis, we consider it important to identify the particularities of a contractual *exit* clause - unregulated model - and, possibly, to indicate the differences from a commission agreement.

[4] Article 1550 para. 2 of the Civil Code: "also, in the specific cases provided by law or if the parties have so agreed, the resolution may operate in its own right"
[5] Article 1523 paragraph 1 Civil Code
[6] Article 1523 paragraph 2 Civil Code
[7] Article 1522 paragraph 1, thesis II, Civil Code
[8] Like termination clauses

Such a clause expressly indicates (not deduced) the possibility and reasons of the debtor to terminate the contract[9]; in other words, such a clause is formulated only *in the interest of the debtor* and indicates an optional right recognized only to the debtor to withdraw unilaterally from *a contract already formed*; analytically, such a clause can be analyzed, however, as a double affectation of the existing but unexecuted contract: a resolutive condition (if the will to exit is expressed) and a resolutive term (can be expressed up to a certain point).

The analysis requires two observations, considered here as essential.

On the one hand, the exit clause supposes in itself a resolutive condition in favor of the debtor of the burden, which inevitably leads to termination (the signed contract abolishes the debtor's withdrawal effect; it is a possibility of withdrawal - condition of execution, not of formation of the contract- accepted as a protestative right - which belongs exclusively to the will of the subject; it can be expressed only within a certain term).

A termination clause is operable after the beginning of the execution of the contract and as a result of its non-execution by the will of one of the parties.

A termination clause would make sense only before the start of enforcement; after this moment we would enter the space legally covered by other protective institutions (resolution).

On the other hand, we imagine the possibility of imposing a termination clause, especially in a practical manner, in the field of unilateral contracts.

In the field of synallagmatically assumed tasks, the termination model is more difficult to implement because the non-execution of a synallagmatic task is in itself the resolving condition of the contract; separately, it should be noted that - in such situations - the partners are equally and reciprocally both creditors and debtors.

We can, however, imagine a termination clause in a synallagmatic contract, in favor of each of the partners but in the predetermined time, before the beginning of its execution.

b) Although the clause is regulated in art. 1544 -art. 1545 Civil Code, it still has a high potential for confusion because it includes by the very wording of the law a complex content, still unclear: cancellation, penalty and / or down payment (partial payment of the price); although it is used frequently, the likelihood of confusion is very high; these uncertainties can only be eliminated by proving and framing the will of the parties, which complicates the obligatory relationship, does not simplify it.

The earnest clause is an accessory of the contract and has two formulations: confirmatory or penalizing; what is specific to it is the prior delivery in the hand of a part of an amount (of a mass of generic goods) to be retained in the event of termination of the contract; but the purpose of the delivery should be clarified by formulating the clause, precisely in order to distinguish it from a dismissal, a penalty, a commission pact, an advance.

If it is difficult to say what earnest is, it is not so difficult to remember what it is not: from the perspective we are examining, an earnest - of whatever kind - is not a commission pact; it is a clause that patrimonially regularizes the contract after the resolution - regardless of how the resolution operates - or after the revocation.

[9] Malaurie, p. 489

Basically, the earnest clause is an optional and complementary clause to the renunciation of the contract, voluntary or not, culpable or not; it is no coincidence that it is included in the theoretical and regulatory space of remedies; in other words, the resolution and the earnest express optional remedies but which can cumulate the effects; the resolution - judicial or conventional - is a form of disclaimer of the contract, it was an amicable form of decoupling.

The earnest clause can cause confusion only in connection with the effects of the patrimonial regularization instruments after the termination of the contract (Ungureanu, 2012).

c) *the unilateral resolution* is also analyzed as a conventional resolution, but in a formula that makes it operable, on the merits, only under the conditions of the judicial resolution; that is, it is not the parties who choose which clauses can lead to their resolution but the specification of the law; unilateral resolution is possible only if one of the parties has not fulfilled an essential task.

Therefore, the parties can choose - in this case - only the lack of prior control of the judge and not the clauses whose non-compliance would lead to the resolution; in relation to the commission pact, the regulation of the unilateral resolution expresses the common conventional resolutive law.

The conventional model - with the particularity of the unilateral expression - imposes - and the conditions of transparency: the express indication of the possibility of invocation; delay - art. 1552 al. (1), thesis II, Civil Code; unilateral declaration of resolution - art. 1552 al. (2) Civil Code; notification of the resolution - art. 1552 al. (1), thesis I (Pop, et al., 2015).

d) *the early resolution* has an economic logic: the record of essential non-execution by the debtor would entitle the creditor to notify the debtor of the resolution; we are talking about a resolution deduced from the concept of forfeiture from the benefit of the debtor's suspensive term (art. 1417 Civil Code): the fact of the obvious non-execution leads to a forfeiture fact that produces an anticipated exigibility of the task - art. 1418 C. civ. - cours.) (Pop, et al., 2015). ; the mechanism would operate mainly in the manner of a judicial resolution; if, however, there are clauses that would justify a unilateral resolution, the anticipated enforceability together with a unilateral operating convention would also justify the initiation of a unilateral resolution.

6. IMPOSSIBILITY OF PERFORMANCE OF CONTRACTUAL OBLIGATIONS

The total impossibility of the execution of the tasks, incident occurred after the conclusion of the contract (we do not consider the hypothesis of the initial impossibility of execution (Pop, et al., 2015)), produces two main effects: the contract is no longer carried out and the debtor of the task is absolved of liability (Zamșa, 2012); norm - art. 1557 of the Civil Code - does not distinguish between an objective or a subjective impossibility, if it is an external cause, if such a cause concerns material or economic aspects.

The doctrine, by interpretation, makes clarifications (Pop, et al., 2015): the specific graduating effects concern only those objective or subjective causes, material, external to

the will of the parties, uncontrollable by them; for the other situations there are other remedies.

If the conditions indicated by art. 1557 al. 1 of the Civil Code - total and final impossibility - the contract is terminated by law, without any formality and without liability, from the moment of occurrence of the event; once the conditions of force majeure, of the fortuitous case have been fulfilled, the contract enters under the regime of risks: who bears the risk of damage; In such a context – under risk - it is important whether or not the debtor was late (art. 1274 para. 2 of the Civil Code).

If the impossibility is temporary, the creditor has options: either he accepts the suspension of the execution of the debtor's task during the period of impossibility, or he requests the termination of the contract, with retroactive effect, according to the rules of the resolution.

In each of the hypotheses indicated by law, the non-execution of the essential clauses of the contract counts.

This model of remedy is protective, operable exclusively and absolves of liability only for one of the parties; for these reasons it is limited and restrictive as to the conditions of its capitalization and therefore produces side and subsequent effects for the party who does not want it; that is, its operation puts the contractor in a position to wear or bear the consequences of another remedy.

It should be noted that the norm does not refer to the general notions of force majeure and fortuitous event (art. 1351 Civil Code); this does not mean that art. no. 1557 of the Civil Code does not take into account precisely these situations; however, the wording of the latter text takes into account the particular circumstances of application of the concepts in contractual terms and operations (Zamșa, 2012).

7. DELAY AND GENERAL PROBLEMS WITH THE IMPLEMENTATION OF THE COMMISSION PACT

The delay - in the situations of interest - is made by extrajudicial written notification: the creditor requests the debtor to execute the obligation; unless otherwise provided - by law or by contract - the notification is communicated to the debtor through a bailiff; by notification, the debtor must be granted a term of execution (if, however, the notification does not mention such a term, the debtor must execute the obligation within a reasonable time, which is calculated from the date of notification) - art. 1522 to 1-3 C. civil. These rules are supplementary; the parties may establish other forms by which the delay is to be effected (Pop, 2010).

The procedure is simple - even if there is a commission agreement - and leaves the image of a legal institution that would not pose problems; the parties expressly indicate - as they wish - the resolving conditions and avoid going through a long and costly process, by certifying by the notary public the operation of the resolution, followed by the restoration to the previous situation[10].

[10] Article 24 para. 4 lit. b of law no. 7/1996: 'real property rights and the promise to conclude a contract having as object the right of ownership over the real estate or another right in connection therewith, inscribed on the basis of legal acts in which the parties have stipulated the termination or resolution on the basis of agreements commissioners, shall be deregistered on the basis of:....

The delay also has the quality of recording the creditor's option for a certain remedy; in the analyzed case, the option for the execution of the pact; that is, the creditor will request - after completing and proving the transparency procedures - to obtain an opposable finding that the debtor has not fulfilled an obligation described by the parties as essential, that he has granted the grace period, that the debtor is unable to execute within the additional time granted and that even after the grace period there was no execution.

I note, therefore, that the examination of the fulfillment of the conditions for the operationalization of the commission agreement is the responsibility of the public notary; he replaces the judge without having at hand the specific procedural tools: the adversarial debate and the power to administer any evidence.

The model gives a lot of uncertainty: the intervention of the judge's control is avoided, putting - legally - on the public notary, with the risk of engaging his patrimonial responsibility, the ascertainment of circumstances that cannot be ascertained with one's own senses and that can produce effects not only towards the parties but also to third parties obviously patrimonially interested.

8. SITUATIONS, RISKS, SOLUTIONS

So, in this study, we only follow the hypothesis in which the parties do not consent to the execution of the commission agreement and when a resolution agreement cannot be concluded (when the parties can consensually establish all the details of the resolution and its effects[11]), a situation that essentially exposes the notary.

Everything is analyzed starting from the premise that a commission pact is an accessory and concomitant agreement, in relation to the contract whose resolution is sought: the nullity of the fundamental contract entails the invalidity of the pact; the invalidation of the pact (its non-implementation) does not affect the validity of the contract.

The stated premises outline the situations:

a) An intermediate situation may arise: after the debtor is delayed and given a grace period, he - within the time limit - does not fulfill the task resolving condition; Does this model of non-performance indicate a non-fulfilment of the pact or contract?

We claim that we are in the assumption of an unfulfillment of contract; the unfulfilled task results from the contract, not from the pact.

The tasks of the pact indicate only the completion of legally or conventionally indicated procedures, which ensure transparency, the avoidance of excesses on the part of either party; the procedures imposed by law offer the notary the possibility of the minimum verification of the existence of the resolution situation and its ascertainment.

In this logic we can follow the hypothesis in which for reasons of force majeure, within the grace period offered, the debtor does not perform the resolvable task; hence

b) conclusions of deeds certification, by which the public notary ascertains the fulfillment of the commission agreement, at the request of the interested party .... "c

[11] for the distinction between the commission pact and the resolution convention, as well as in relation to its advantages, see M. Moise, Încetarea convențională a *contractelor*, Buletinul notarilor publici, (17), 4/ 2013, p. 16

the problem: if the debtor did not guiltily fulfill his task to maturity but within the grace period he could not honor it fortuitously - the fortuitous situation appears, therefore, only after the delay - will we be in a resolvable situation? Can the notary ascertain the operation of the resolution?

The solution should be sought in the effects of delay: "the debtor is liable, from the date of delay, for any loss caused by fortuitous event, unless the fortuitous event releases the debtor from the execution of the obligation itself" (art. 1525 Civil Code); the resolution is subject to delay (Ghinoiu, 2012) and I would deduce that once the procedure for fixing the delay is initiated, the resolution would be operable: the debtor is clearly guilty because he did not submit the necessary diligence to perform the service during the previous period; to relieve him of the inconveniences and risks of resolution means to give him the chance - in a non-principled way - to benefit from his own fault[12].

The formula obliges us, however, to a reservation: in the additional term granted and communicated - as a remedy - is the debtor in the legitimate execution of his task?

This, in the context in which - being a precondition for invoking other remedies (Pop, et al., 2015) - the additional term is mandatory (even if it is not expressly stipulated in the notification the debtor can make the execution within a reasonable time - Article 1522 para. 3, thesis II); or, moreover, it is a second chance for the debtor, the procedure of the additional term being imperative and - as a particular interest - for the protection of the debtor (as a general interest, with economic significance, for keeping the contract).

It is also significant that the additional term, subsequent to the delay and after the contractual maturity - therefore in full demand - gives the right to damages or to the exception of non-execution for the unsatisfied creditor on time; at the same time, the debtor is responsible for the damages, the defects, the good that is the object of the delayed benefit (Pop, et al., 2015) (Ghinoiu, 2012).

The descriptive expressions of the doctrine oblige to a synthetic reformulation of the question: does the additional term offer a new maturity of the contract? Through the delay procedure - art. 1522 of the Civil Code - is a contract modified in connection with its maturity?

The answer is obviously no. The additional term is only a remedy and not a change of contract.

The synthetic expression shows us that the location of the analysis in the resolution space indicates a false problem: under the regime of exigibility of a task - after delay of the debtor and the appearance of a fortuitous situation - we enter the scope of a new institution: contractual risk (Pop, 2010); how the fulfillment of the risk excludes any other remedy - including the resolution - the premise hypothesis described, indicates a situation in which the public notary cannot unilaterally operationalize a commission agreement.

Consensus, however, any formula can be agreed.

b) We also imagine a reverse situation: the creditor, after the debtor's non-fulfillment of the task until maturity, cannot express the option for the execution of the commission agreement and cannot fortuitously fulfill the delay procedures.

[12] For significant developments, see: R. A. Deliu, *Nemo auditur propriam trupitudinem allegans.Cazuri practice în procesul civil*, Universul Juridic nr. 11/2016, în https://lege5.ro/Gratuit/ge3dinzuge2a/nemo-auditur-propriam-trupitudinem-allegans-cazuri-practice-in-procesul-civil , accessed at 18. 11. 2020

The hypothesis would be more difficult to fulfill but not impossible.

The situation - if the creditor opted for the conventional resolution - leads us to the logic of prescription, respectively, of decaying: the delay and the other procedural steps must be initiated within the prescription, decaying terms.

Practically, the failure to initiate the procedures for resolution - conventional - within the prescribed time - for any reason deprives the creditor of such a possibility (Florea, 2017).

We have in mind the institution of revocation - and not of prescription - because prescription implies the loss of the material right to a legal action (Afrasinei, 2012); however, the rules regarding an action in court cannot be applied to the conventional resolution - which avoids the judge's investment (Togan, fără an).

In such a situation, the terms of forfeiture - which are not indicated by law - we deduce from the rule - which we consider to be of a general nature for the conventional resolution - art. 1552 para. 2 Civil Code[13]

If the resolution for non-payment of the price is started, the request will be imprescriptible because it tends to claim the good[14]; if the resolution is initiated for non-delivery of the property, the request is time-barred within three years, because the aim is to recover a claim: refund of the price already paid[15]; we do not omit the special situation indicated by art. 1744 C. civil[16].

9. CONCLUSIONS

The analysis undertaken shows some of the disadvantages of using commissary pacts, in a context in which the doctrine insists on the advantages.

It is an indisputable truth that the avoidance of judgment - with its costs and risks - is a good reason for the amicable settlement of any disputes, in case of non-performance of contractual obligations; but, as we have shown, one can enter a space with even more uncertainty.

For this reason, in practice, the commissioner's pacts become inadvisable in complex legal situations, especially considering the prospects in which one of the parties could be tempted, the immediate interest of harassment, of procrastination.

The solution would be to draft with the utmost accuracy the clauses of the Commission Pact in which, negotiated, in full knowledge of the facts, to establish -

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[13] Dec. nr. 1855 din 8 noiembrie 2007, C. Ap. București, secția a lll-a civilă și pentru cauze cu minori și familie, https://legeaz.net/spete-civil/actiunea-in-rezolutiune-a-contractului-1855-2007, accesat la 17. 11. 2020; sent. iv. nr. 1330/29.09.2014 a Judecatoriei Mediaș, definitivă, http://infodosar.ro/speta.php?id=52512 , accessed at 18. 11. 2020

[14] ICCJ, Secția II civilă, dec. civ. nr. 58/2018, definitivă, https://www.universuljuridic.ro/actiunea-in-rezolutiunea-vanzarii-conditii-si-efecte-ncc-ncpc-vcc/ , accessed at 17. 11. 2020

[15] Dec. nr. 1855 din 8 noiembrie 2007, C. Ap. București, secția a lll-a civilă și pentru cauze cu minori și familie, https://legeaz.net/spete-civil/actiunea-in-rezolutiune-a-contractului-1855-2007, accessed at 17. 11. 2020; sent. iv. nr. 1330/29.09.2014 a Judecatoriei Mediaș, definitivă, http://infodosar.ro/speta.php?id=52512 , accessed at 18. 11. 2020

[16] Art. 1744 Civil Code: "The action of the seller for the price supplement and that of the buyer for the reduction of the price or for the termination of the contract must be initiated, under the sanction of forfeiture, within one year from the conclusion of the contract, unless which the parties have set a date for the measurement of the building, in which case the period of one year shall run from that date".

among other things - the exact benchmarks of communications between stakeholders; moreover, in the event that the parties wish to set as a basis for the conventional resolution and other tasks - not essential by the nature of the contract - the pact must also indicate the personal value protected by naming this obligation as the reason for the resolution.

In the event that rights in favor of third parties are to be established over the good that is the object of the potentially resolvable contract, the commission agreement becomes unrecommended; restoring the previous situation unilaterally - by notary - can produce more litigation, with more costs, than a judicial resolution.

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