ASPECTS REGARDING CONTRACTUAL LIBERTY

University assistant doctor Livia Dumitrescu,
Faculty of Law “Nicolae Titulescu”, University of Craiova

Resume

The paper tackles the issue of fundamental liberty of the individual as a consequence of his will autonomy. After short introductive considerations regarding the will autonomy and the conditions that must be fulfilled to guarantee the validity of the agreement between the contracting parties, we have proceeded to include a short historical evolution of the concept of will autonomy, from the Roman law to the theories regarding contracts and positivism. Then we have broached upon contractual liberty as a natural consequence of will autonomy and even its legal limitations: public order and good manners and even the very actual problem of contractual planning and its consequences.

1. Introductive considerations

The contract, “the agreement between two or more persons regarding the constitution or the ceasing between them a juridical-civil report”, regulated by The Civil Code in the article 942, implies the agreement of will of the parties and the producing of juridical effects (the beginning, the modification, the transmission and the ceasing of an obligatory report). Also, a contract it is considered to be concluded in the moment of the concordant wills manifestation, with the respecting of the substance and form conditions requested by the law, by reference to the specific of every contract.

Thus, the essential factor of the contract’s conclusion is the agreement of will of the parties – (juridical will). The principle of liberty of will in contractual matter implies the liberty of concluding contracts, but not in the sense of absolute free arbitrator, but in the sense of liberty conditioned by social life and by legal standards.

The Romanian Civil Code, from 1864, establishes, with principle of right title, the liberty of every physical or juridical person to conclude any type of contracts.

Contractual liberty is expressed from the point of view of the form, in the rule of consensual agreements, according to, for the validity of an agreement, it is sufficient the agreement of will of the parties, if it not regards real or solemn contracts and the execution of the obligations it’s made in the way they were assumed (“pacta sunt servada”).

The basis of the principle of contractual liberty it’s found in the so-called theory of autonomy of will, formulated by the French jurist Charles Dimoulin, who, in its elaboration, took into consideration the necessity of finding some solutions for conflicts o laws of the province (cutuma) which appeared in France in the XVI-th century.

According to the theory, since human will is free (without restraints and autonomous) the contracting parties, exclusively, by their will, can initiate a contract which will produce the effects desired by the parties.

---

As a philosophical argument of this theory, it was said that “when people assume obligations through a contract, they limit their liberty by through their own will... therefore individual will has its creative power of obligations from itself, not from the law and in this sense it is creative”.3

Thus, the juridical will of the parties, their agreement of will, is an essential factor of the contract.

2. The will, essential factor of the contract

The study of the will by jurists is imperative.4 Jurists must have knowledge from various domains: social science, medical technique, financial accountancy etc. as well as serious physiology knowledge, in general and regarding will, especially, because in the field of the law, will is an omnipresent factor: the collective one in the normative documents regarding the constitution, the individual one in reports and juridical documents.

The literature of specialty considers that “will is a capacity of the individual to presume goals and to realize these purposes on the way of some activities which involve the defeat of certain obstacles and through the putting in function of his psychical and moral resources. Will is the individual’s capacity to plan, to organize, to fulfill and to control his activity to accomplish his goals.”5

According to art. 948 from the Civil Code “the essential conditions for the validations of a convention are: 1. The capacity to contract. 2. The valid consent of the party which obliges; 3. A determinant object; 4. A legal cause”. In an exceptional way, when the law requires, under the penalty of absolute nullity for a contract to be made with the respecting of some form conditions (solemn contracts) one more essential condition is added: form. In a vast way, by consent (“cum sentire”) is understood the will agreement itself of the parties form the contract, but the other structural elements mustn’t be neglected, because only will manifestation of the parties, does not cover entirely all the meanings and valences which produce juridical effects.

In a limited way, the consent represents the will of a party as it is being manifested at the conclusion of the contract, but in a vast way we must consider that it represents the expression of will of both parties at the moment of the conclusion of the contract.

Also, must be taken into consideration the conditions will has to accomplish. Thus:

2.1. The will expressed by the contracting party must be conscious

Being a juridical document, the contract implies the manifestation of will of the parties, therefore an action of the intellect, because the will to contract involves the knowledge of the juridical action’s elements which the parties previous analyze regarding all advantages and disadvantages which result from it.

Therefore, each party, must have the necessary intellectual faculties to “understand” and “to want”, respectively to have the complete capacity to manifest it’s will. So an “infans”, according to the Romanian terminology or an alinate cannot have the conscience of the juridical consequences which result from the manifestation of the will. In the same way it is the case of a person in the state of intoxication or hypnosis.

This condition of the will, in some cases must be judged by the instance depending on all the elements which compete to the settlement of the measure in which the party has acted consciously. Thus, the consent6, must be given by a person who has the conscience of the juridical consequences, both rights and obligations which arise from the contract; the one who gives a valid consent must have the capacity requested by the law to contract (psychical maturity).

2.2. The will expressed by the contracting party must be free

---

3 L. Pop – Teoria Generală a Obligaţiilor, Tratat, Ed. Chemarea, Iaşi, 1994, pg. 31;
4 Ion Dogaru – Valentele juridice ale voinţei, Ed. Ştiinţifică & Enciclopedică, 1986;
6 In the acceptance of art. 948 Civil Code, of a valid consent of the party which obligates it self as an essential condition for the validity of the contract;
The will manifested by the contracting party mustn’t be incorrect or determined by a vice of consent: an error, an act of violence or through fraudulent manual labour the expression of the will must be the consequence of its own decision of autonomy, without being influenced in any way, without being the result of a compulsion or of a captivation. Only in this way the will incorporated in the contract is truthfully a self psychical process, a capacity of the contracting party to propose goals and to accomplish them.

2.3. The will must be manifested with the intention to oblige oneself

The effective manifestation of the will means seriousness and intention to realize a document with juridical value, with the intention to oblige oneself.

A particular case is constituted by the situation in which the parties want to realize only purely apparent document, simulated, which in reality does not express the true will and which doesn’t produce necessarily juridical effects. Although, these manifestations of will can produce effects upon third parties (“penitus extranei”) because they didn’t know if the parties concealed their will.

Therefore, the contracting party of a contract which imposes obligations, through the manifestation of the will gives its consent to assume a juridical obligation.

Even in unilateral contracts, the party which obliges itself manifests the will with the intention to oblige, to assume a juridical obligation. The consent must be expressed seriously, not in jest (“icondi causa”).

The manifestation of the will at the conclusion of the contract must be conscious, free and expressed with the intention to oblige itself. These conditions are necessary but not sufficient for the forming of the will agreement.

2.4. The will of the parties must be exteriorized, expressed in a certain form, to note both every will incorporated in the contract as well as their fusion, the realization of the agreement of will and of course, the moment in which the wills unite (the moment of the contact’s conclusion) since from this moment begin to produce the juridical effects taken into consideration by the parties. The form of expression of the will at the conclusion of the contract is analyzed in close connection with its form conditions, taking into consideration that in our law functions the rule based in mutual consent according to, for the valid forming of a contract, is sufficient the agreement of will of the parties. Also, cannot be neglected the problem of the juridical action’s proof in sense of negotium juris, in which purpose it is requested the finding through an act of the will’s parties (the act is requested ad validatem) or the existence of an origin of a written proof, which completed with other evidence makes the proof of this action.

We add that, the cases in which the written form of the contract is requested under the penalty of absolute nullity (ad validitatem), the wills of the contracting parties are expressed and it is compulsory ascertain in writing.

3. Short historic of the concept of will autonomy

Analyzing the concept from the historical point of view, Roman law did not know a so-called principle of will autonomy. The explication lies in the fact that Roman law was strict and formalist, that is why the possibility of the will as being sure could not be admitted, without its exterior forms being observed, to generate juridical effects.

Liberty of will (in the sense of contracting liberty and of will that through itself has a certain value from the juridical point of view) was excluded, because conventions that didn’t have un nomen or o causa couldn’t generate juridical effects. Formalism is expressed through the fact that an agreement of will, to value a convention from the juridical point of view, must be materialized either in “verba” or in “litterae” or exteriorized through the handing of the work (“res”). Conventions “ex consensu” were related to the strict law, in the sense that they had to dress up a certain shape of contract. For the not

---

specified contracts, when they were recognized as being compulsory “their will was drawn not from the reality that they were will agreements, but from the fact (exterior to them) that one of the parties has already performed already labor conscription”; relying on the principle of enrichment without just cause, not on comprised will. To these restrictions, essential to Roman law, we add the fact that will needed to subdue to the law, because it couldn’t contract in the opposite law and not even in the defiance of the good manners.8

The specific formalism of Roman law is continued in early Middle Ages, in the Roman – German law dominated by the reign of culture although its concrete manifestations get some transformations.9

Meanwhile rigid forms of Roman civil law become manifestations with a pronounced symbolical character. The rule “solo consensus obligat”, didn’t have the juridical valences that we give it nowadays. She didn’t assign the autonomy of will or the idea that by simple expression of the consent rights and obligations appear – this matter having its origin in the practice of canon law, which legalized the practice of the oath regarding future actions10, by which God was conventionally reevaluated in a double hypostasis:

1. As an essential witness of the assumed commitment by the conclusion of the agreement and in the same time
2. As the main creditor of the conventional commitment. Looking upon things in this manner, the non-execution of conventional obligations was punished as perjury, as an insult towards divinity, considered witness and party in the non-executed contract. Roman formalism becomes useless with its rigid forms – sufficient was the oath. Thus, the principle “solo consensus obligat” didn’t have today’s juridical valence, the one of autonomy of will, but rather represents the evolution from Romanian law formalism to the “Christianization” of the law and of convention. From the religious oath which regards future actions to the secular one was just a step which seems it was made by Grotius.11 The laicization of the oath as intrinsic element to the convention transposes in the fidelity of contractors towards the word exchange – given and expressed. Also to this evolution has contributed the development of economic relations, which implies the eliminations of Roman law formalisms. The convention will become the one that, meanwhile, will explain everything, inclusively political institutes.12

The same principle begins to be used and to explain the contract’s suspension in the situations in which the word wasn’t kept; the resolution and equity in the matter of not named contracts has stimulated the identification of a common principle on which to support any convention. Thus, the rule “solo consensus obligat” will explain not only the conclusion or the formation of the contract but especially the its resolution, indifferently if it was or not a named one. The rule gets substance with J.Domat13 work, but it isn’t based upon the will’s autonomy expressed by the contractors, rather on the

---

8 R. Tison, op. cit., pg. 16;
9 R. Tison, op. cit., pg. 17-19, in this way, manifestations as “fides facta”, “festo ca” and “radium” are specific to the German common low. They were borrowed from the ancient French law, but in the same time they were replaced with the shake of hand and oath – gestures which still exist today, but without the same juridical content.
10 R. Tison – op. cit, pg. 19;
11 Grotius – Le droit de la guerre et de la paix, t II, cap. XIII, Du serment, Paris, 1865, in the sense that Grotius’s contribution to the laicization of natural law his time was essential, to look up E. Gounot – Le principe de l’autonomie de la volonté en droit privé, Dijon, 1912, pg. 3
12 The special contract and the presumption of consent will the ones which will dominate the doctrine of law but also political philosophy in the next two centuries;
idea of human solidarity which should be found in any convention, on the fact that the individual is a social being and he subdues to the rules of society.\textsuperscript{14}

The most important implication (indirect) of the rule “solo consensus obligat” is the principle “conienances vainquent loi”.\textsuperscript{15} This does not imply the autonomy of will towards the positive law, but rather a legal principle of conventions liberty\textsuperscript{16}. But liberty convention is direct convention of law, which expresses human solidarity and not the autonomy of the (will) of the individual towards the law.

Considered the parent of individualistic inspiration regarding contract as a concept, J.J.Rousseau, contesting that any form of government is a political agreement between governors and governed, has tried to substantiate the theory that society has appeared as a pact and represents a finite product of an essential convention, that the only fundament of the law is found in the public\textsuperscript{17} contract, which is the work of the individual’s free will.

The history of law reveals that the origin “will autonomy” is not the civil law, but the private international one. Doctrinarians Brocher and Weiss use for the first time this expression to designate the possibility of the parties to choose the applicable law to the contract with elements of foreign origin. Also in the same matter appears the first limitation of will autonomy effects – public order\textsuperscript{18}

In the civil law of jus-naturalist and individualist inspiration, will – as the only generating force of subjective rights and as a measure of them, opposes the idea that law and obligations can initiate from social or government authority – extrinsic entities of individual will.

The rational individual defines alone the liberty through his will to juridical engage himself; creating his own juridical reality.\textsuperscript{19} In the private law this is characterized through:

a) will is the intellectual fundament of the contract and the source of its compulsory force.\textsuperscript{20} The part of the law limits itself only to the warranty of the contract’s execution, the penalty being the only part of the state in the contract. The explanation lies in the fact that the individual is a free being, of who’s activity cannot be limited only the his will (intrinsic element) and not by the law (extrinsic element);

b) will is the only source of justice The contract – as a paradigm of voluntary auto-limitation of individual liberty – is not only the source of rights and obligations, but it realizes the idea of justice too because only the contract – by consented limitation – ensures the liberty of conscious will.

c) The contract is genetically superior to the law. The law will not limit the liberty of the individual, only in the measure in which through this ensures the conservation of the other’s one liberty.

The law – as an expression of general will – is an inferior form of contract; it is a rest of the individual wills rationally arrived at a juridical agreement.

The conceptions previously presented have as common denominator the individual’s will, intended as a final resource of the law and as a consequence of the fact that the individual is a rational and capable being to define his own liberty.

Considering these conceptions as being subjective, they have evolved, so that, determined by society’s evolution, juridical\textsuperscript{22} positivism reflects best the objective conceptions regarding the law and the contract.\textsuperscript{23}

\textsuperscript{14} “...etant un membre du corp de la societe, chacun doit y remplir ses de voirs et ses fonctions selon qu'il y est determine par le rang qu'il occupe et par ses autres engagements. D'ou il s'ensuit que les engagements de chacun lui sont ses lois propres”;

\textsuperscript{15} This principle can be deduced also by the interpretation of art. 5 and 969 Civil Code;

\textsuperscript{16} R. Tison – op. cit., pg. 84;

\textsuperscript{17} J. J. Rousseau – \textit{Du contrat social}, Ed. Flammarion, Paris, 1992, pg. 126 – interesting is the of Rousseau’s exclusivism, any other convention is a violation of the public contract;

\textsuperscript{18} V. Renouil, \textit{L'autonomie de la volonte: naissance et evolution d'un concept}, Ed. PUF, Paris, 1980, pg. 61;

\textsuperscript{19} A. Weill – \textit{Les obligations}, Ed. Dalloz, Paris, 1971, pg. 50;


\textsuperscript{21} “qui dit contractuel, dit juste” – Fouillé – \textit{La science contemporaine}, Paris, 1880, pg. 410;
4. Contractual liberty

Contractual liberty is the juridical corollary of liberty intended as a product of conscious and free will, a social reverberation of this will. In consequence, contractual liberty, the primary outcome of the will autonomy is expressed through the possibility of the individual to conclude or not a contract. No one can be forced to enter in contractual relations; no one can force the other to conclude a contract and the other way around – no one can be hobbled to conclude a certain contract. The only restrictions to contract must be searched only inside the individual’s will.

Contractual liberty can also be expressed through the liberty of the parties to choose their form of contract and to settle the content. If every contract is just through itself and the obligation appears from the wills of the parties, it’s normal that this one to be able to settle its content and the form of manifestation of their juridical will. The basic liberty is limited only by the good manners and by public order. In form, contractual liberty is expressed through the fact that a convention appears valid, indifferent to the form of manifestation of the will of the parties: “Solo consensus obligat”.

The mutual consent is only the formal expression of basic liberty of the contract. The only impediment which stands in the way of the liberty of choice of the form of the contract is the respect towards public order and towards good manners.

Contractual liberty can also be expressed through the liberty of will. To be considered the direct source, will must be conscious and rational. The consent – exteriorized element of the will – must be uncorrupted and expressed in causal knowledge. The theory of the consent vices comes to ensure the free character of the will. Thus, the will agreement lacks of juridical sense, where the will is not free, it cannot create law.

Real will, expressed with the intent to generate juridical effects is the only one which creates the law, altered will or above the legal existence will is considered not have existed at the moment when the consent appeared. The penalty of expressing such will is the abrogation of the law’s appearance in this way generated.

Internal will creates the law. The exteriorization of the will is a logical condition of the appearance of the contract, the interior one cannot reveal its valences. In case of contradiction between the real and the expressed will, the first one has the precedence, for the will to be appreciated as it should be (sollen) be, not at is being (sein) presented. Real will remains the essence and the exteriorized one the phenomenon.

Being a manifestation if the individual’s liberty the contract, product of autonomous will which finds value (and sense) in itself, cannot be censored on the motif of the intentions which animated the contracting parties estimation, it will always keep two essential features: the compulsory force of the contract and the relativity of the contract.

---

22 Juridical positivism being the current of judgment which: 1 – will search juridical reality outside itself of concrete juridical will, 2 – it will detach from moral as an indispensable element to the law, 3 – will find the justification of every juridical solutions in the letter of law;
23 “The contract has a nature and a dual function, is a procedure through which conventional rules and a rule are created.” (H. Kelsen), “the contract has a compulsory force not to the will of the parties but through the appeal to common good…will is in the service of the law and not the other way around” (E. Gounot);
25 I. Albu – Contractul şi răspunderea contractuală, Ed. Dacia, Cluj, 1994, pg. 27;
26 L. Pop – Tratat de drept civil Teoria generală a obligațiilor, Ed. Chemarea-Iași, 1994, pg. 60;
27 A. Weill- op. cit., pg. 264;
29 A. Weill – op. cit., pg. 54 – repeated idea of Romanian tradition taken over to the formulation of the French Civil Code;
30 Any nule juridical document is created by an appearance of the law – look up O. Căpățâna, Tratat de drept civil, vol I, Ed. Acad PSR, Buc., 1989, pg. 234 şi 235;
31 M. Djuvara – Teoria generală a dreptului, Dreptul rational, izvoare şi drept pozitiv, Ed. All. Buc, 1995;
Regarded under the economical aspect, contractual liberty, especially in the market economy, is the most adequate juridical method for satisfying the legal interests of the person as well as for the reassurance of the general wellbeing, respectively of social progress. It is one of the basic premises of free competition between economical agents.

In the main consequences of the autonomy of will theory we can include the fact that a contract is the main source of the obligations of the parties, the majority of the rules which regulate the matter of the contracts are devices and/or suppletives and the parties can agree in a free way over some derogatory stipulations from the rules, imperative rules in matters of the contracts (prohibitive and/or with onerous title) are very limited as number, having the task to defend the public order and to protect the fundamental interests of the parties. Also, the forms stipulated by the law for the valid closure of the contracts are pretty simple, the mutual consent being a juridical principle extremely useful in business matter, especially, being known the fact that this domain implies the clarity and simplicity of the forms.

5. Legal limitations of contractual liberty: public order and good manners

Liberty of will is, therefore, determined by the law, but we cannot say that it absolute, it is however limited. Society is the one that, through the means of juridical rules which it dictates, settles the limits in the will of the individuals which can produce its effects desired by its authors.

Therefore, the individual, “as an element of society, must integrate himself in the order settled by the society he is part of, the liberty to make juridical documents it is recognized in a legal way, but it is only a juridical technique rule of which its only fundament lies in the its economic and social unity”.

The principle of contractual liberty is in the same time, a fundamental right of the subjects of the law which belongs to the capacity of utilization of every person. The Romanian Civil Code, through the dispositions of the 5th art. brings an important limitation of the principle of contractual liberty, in the sense that, through the practice of the law to conclude any contract it shouldn’t be brought to public order and good manners any kind of touch. If a contract is concluded respecting the well-known principle in the 5th article from the Civil Code as well as respecting the other principles and special rules, it will have a compulsory force for the contracting parties, as it is stipulated by art. 969 Civil Code:” legal concluded conventions have power of law between the contracting parties”.

Thus, the principle compulsory force of the contracts completes, in a logical and necessary way, the principle of contractual liberty.

However legal limitations of contractual liberty do exist, like public order and good manners.

Public order is a concept difficult to define, because none normative document contains a definition of it. From the point of view of the content, public order differs from state to state, from a century to century, depending on the political, economic and social wishes expressed and followed by state power. The doctrine appreciates that all the regulations which form the public law regard the public order, that is why those juridical rules which legalize the organization of the state power, as well as the relations between itself and the subjects of private law, to every kind of state being specific a certain public order.

We can take the definition that public order “includes all the imperative devices of the public and private law through which institutions defend themselves and the basic values of society, the development of business economy and the social protection of all persons is ensured”. Good manners, like public order, do not have a legal definition, in that way that doctrine and jurisprudence have defined the concept as “the sum of all conduct rules which appeared in the

32 A. Ionașcu- Voința juridică, Ed. Academiei, București, 1974, pg. 53;

33 Liviu Pop – Drept civil-Teoria generală a obligațiilor- Tratat, Ed. Fundația “Chemarea”, Iași, 1994, pg. 34;

34 Liviu Pop, op. cit., pg. 35;
conscience of society and their respecting was necessarily enforced, through an experience and a long practice. The content of the concept being variable in time and space as the one of public order, the courts of judgment are called to determine and to apply them from case to case”. The penalty of violating the rules of conduct regarding the good manners is the absolute nullity of the document concluded with their violation.

6. The critic of will autonomy: the contractual planning

The theory of will autonomy has, as we previously specified, numerous critics which bring arguments against it, considering it obsolete from the perspective of the contract’s institution evolution in the last centuries, consequence of the state’s intervention in the economical life.

In this way, the legislation and modification of the contract’s regulation was exclusively the state’s attribute.

In this modern flowering period of economical changes (18th and 19th centuries), economical activity is almost entirely governed by private initiative. The state settled only general rules: principles, rules of constitution and forming of commercial firms, of the different financial institutions, money markets, offices of trade. Also the state establishes the monopole and the control of monetary emission, creates rules for exterior trade relations, but it doesn’t implicate itself in the economical relations. The free game of - demand and supply, the circulation of capitals, the free competition – is the one that ensures the economical working.

In this general specific context economical liberalism the trading industry has developed and along with it the principle of will autonomy – in the way they were stipulated in the Civil Codes of the time.

Although this principle should reigns in front of the exercised pressure by the following evolution in economical relations. Therefore, coexist in the economical life big companies or even groups of companies, along small and middle ones; also quickness is imposed in the economical relations, but also fulfillment warranties of the contractual obligations.

For these reasons and many specific other, the state is the one that, by the forming of the legislative environment, regulates these relations, the business environment, through the emission of some normative documents, the modification and the completion of the existent ones, the severe penalization of the violation of the legal environment but also of the contractual obligations.

All of these have led to a diminution of the importance of the will autonomy of the contracting parties and as some doctrinarians consider, at a crises of the contract, at least as it was created.

In this way ideas that “will must be in the service of the law and not the law in the service of the will” become to take shape and the postulate “the one that says contractual says right” is contradicted by the reality that not in all situations what was settled through a contract is moral as well. Concretely, the domain of adhesion contracts develops, in the detriment of traditional ones, in which a part proposes to the other, conjointly, an ensemble of stipulations that cannot modify through negotiation and restraints it to contract only in those conditions.

Under normative aspect, the diminution of will autonomy is manifested through:

a) The development of adhesion contracts domain, used by economical agents who own a position of monopoly or dominating on a certain market or on market segment;

b) Predetermination through the law of the contractual stipulations, what limits the will of the parties. (Abusive stipulations from standard contracts stipulated by the Law no. 193/2000 as an example)

c) The appearance of the so-called “forced contracts” of which conclusion is compulsory, according to the Law. For example: insurance contracts of obligatory civil responsibility, according to the Law no.

35 I. Albu- Drept civil, introducere în studiul obligatoriu, Ed. Dacia, Cluj Napoca, 1984, pg 60;
37 L. Pop, op.cit., pg. 32;
136/1995, which all holders of motor vehicles must conclude, but also the ones that belong to some factories which hold the monopoly of some labor conscriptions, of the obligation’s extension – in certain cases – of the renting of apartments type of contract, of life insurance contracts in the case of contracting of a credit etc.
d) The setting up of some solemn forms at the conclusion of the contract, both from grounds ad probationem as well as for the validity of the documents, therefore the principle of mutual consent requires numerous exceptions.
e) The increase of the importance of the obligations of others sources (illicit facts, the enrichment without a just cause etc.)
f) The extension of the concept of public order – which we talked about previously, with the specification that it is not only of juridical order but political, moral and social as well (the organization of the state, of the family, of individual liberty).

Economic public order is replaced, thus, in: monetary and prices policy, the nationalization of some economic areas – energy, transportation, the policy of credits etc.

In addition to all this, from the perspective of European integration, an European and suprastate public order is discussed, which has to be taken into consideration at the conclusion of the contracts.38

Also, the concept of public order, both the specific national one as well as the European one extends over some social aspects too, looking up in the European doctrine the definition of “social public order”39. In this concept are included a series of measures put into action by a state in the regulation of employment contracts, contracts regarding the renting of buildings etc.
g) The restriction of the compulsory force of the contract – in the sense that its non execution is allowed, or the execution in other terms, other that the ones settled initially by the parties.

The evolution of the contracts had historical periods from the economical point of view has led to this possibility to, in the situation when they intervene round the assumed contractual obligation, then the contract is either renegotiated, analyzed or suspended.

BIBLIOGRAPHY
2. I. Filipescu – Drept Internațional privat, Ed. Procardia, București, 1993,
3. L. Pop – Teoria Generală a Obligațiilor, Tratat, Ed. Chemarea, Iași, 1994,
4. Ion Dogaru – Valențele juridice ale voinței, Ed. Științifică & Enciclopedică, 1986;
7. Grotius – Le droit de la guerre et de la paix, t II, cap. XIII, Du serment, Paris, 1865,
8. E. Gounot – Le prinipe de l’autonomie de la volonté en droit privé, Dijon, 1912,
11. V. Renouil, L’autonomie de la volonté: naissance et evolution d’un concept, Ed. PUF, Paris, 1980,
14. Fouilée – La science contemporaine, Paris, 1880;
17. L. Pop – Tratat de drept civil Teoria generală a obligațiilor, Ed. Chemarea-Iași, 1994;

38 René Savatier – La théorie des obligations, Vision juridique et économique, Ed. a II- a, Dalloz, 1969, pg. 161-174;
23. I. Albu- Drept civil, introducere în studiul obligatoriu, Ed. Dacia, Cluj Napoca, 1984;
25. Henri și Leon Mazeaud, Jean Mazeaud – Leçons de droit civil, vol II,
26. Boris Starck, Droit civil, Obligations, Libraries techniques, Paris, 1972,
27. René Savatier – La théorie des obligations, Vision juridique et économique, Ed. a II- a, Dalloz, 1969;