

Some aspects of the conditions of validity of consent

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Abstract: Full analysis of wishes expressed by the parties implies to look up together to consent and the cause, both essential elements, each of them with separate legal consequences in forming the bilateral or multilateral acts, which, in accordance with the provisions of the law may lead to annulment of the act.

Keywords: Consent, expressed will, legal act, capacity, discernment, agreement of the will, intent, vice of consent, tacit consent, legal effects.

Definition of the consent

In a first direction, consent means *that essential condition of the civil legal act which consists in the judgment of concluding juridical civil act civil, expressed outwardly.*

In a second direction, closest to its etimologic meaning (such as *sentire*) the term of consent means the agreement of the parties, in bilateral or multilateral acts.

From the analysis of the two directions of consent it can be concluded that the consent shall be understood as that structural component, that essential condition whose content is given by the valid expression of the will .

Free will is a fundamental element of consent. Free will is a inner component, psychological , so it is subjective.

The validity of the consent

In the case of Article 1,204 C. civ., in order to be valid,the consent must meet both of the following conditions:

1. to be expressed in full knowledge of the facts, that means to come from a person with discernment;
2. to be expressed with the intention to produce legal effects;
3. to be exteriorized;
4. may not be altered by any vice of consent.

1. *The consent must be from a person with discernment.* This means that the person from who comes must have the power to assess the legal effects that can be produced on the basis of the will.

Person with the ability to exercise is computed separately that it has legal judgment to conclude legal acts. However, there are special circumstances in which a person may be lacking their aims of care (for example, they are in a state of advanced drunkenness, etc.). Thus, in the case of Article 1,205 (1) C. civ., it is annulable the contract concluded by a person who, at the time of conclusion, is, if only for a while, in a condition which put her inability to realize his consequences of his act.

Legal persons aged between 14 and 18 years have discernment in the process of formation, and persons lacking of capacity to act (minors under the age of 14 years and disqualification persons) shall be presumed not to have discernment.

The contract concluded by a person made subsequently under ban may be canceled if, at the time when the deed was done, the causes of implementation subject to a prohibition existed and were mostly known (Article 1,205 (2) C. civ.). A natural person is subject to a prohibition if it does not have a court judgment necessary to care for its own interests, due to alienation or mental disorders.

There are situations in which people be presumed to have discernment are devoid of temporary judgement, as this is a natural incapacity, such as statuses of drunkenness, been sleepwalking , hypnosis, powerful anger – *ira furor brevis*. In agreement with the doctrine, judicial practice stated that the lack of judgement in the expression of the will not only reveals non-existent prior consent, but simply a vice of consent.

2. *Consent to be expressed with the intention to produce legal effects (onimo contrahendi negotii).*

It is requested that all will be serious, from the very definition of legal act it is clear that the expression of the will, i.e. expression prior consent, shall be carried out with the intention to produce legal effects (Article 1,166 C. civ.).

This condition shall not be considered to have been fulfilled in the following cases:

- when consent has been given as a joke (*jocandi causa*), of friendship, pure vanity or complaisance;
- when the manifestation of the will is too vague;
- Where manifestation of the will was made under pure postetative condition ;
- when the manifestation of the will was carried out with a mintal reserve (*reservatio mentalis*), known by the contractor.

It is very important to determine whether the parties have wanted to make only an act purely apparently, simulated, which in fact doesn't express their true will, in which case such an act does not produce necessarily legal effects. Because it is difficult to establish if the parties have acted with true for the purpose of discharging of legal commitments, on committing a benefit.

Must be seen, however, whether such manifestations of will produce, however, third party effects(*penitus extranei*). Because they don't know, if the parties have disguise his will, and for this reason they may choose, from the effect, either public act but not true, either secret act, but honest. (Prof. Ion His Pompil Draghici, A general theory of the obligations, Ed. All Beck,2002)

3. *The consent must be exteriorized.*

Internal will produce legal effects only if it is exteriorized, i.e. made known by others, whereas only in this way can mingle with another will if in a case of bi or multilatera actsl. In our law, the principle is that of consensualismului, that means that the parties are free to choose exteriorization of the internal will, for the purposes of concluding a legal act.

In the case of Article 1,178 C. civ., the contract shall be concluded by the agreement of forces of the parties, if the law does not impose a certain formality for the conclusion to be valid.

The manifestation of the will can be either express or tacit.

The manifestation of the will is express when it is exteriorized and is made known to the contractors and third parties.

The manifestation of the will is tacit (default) when it is to be deducted (for example, tacit acceptance of inheritance: if the inharitant makes an act of provision on a succesoral good, shall be deemed to have accepted tacitly the heritage).

As an exception to this rule is made by the authentic documents where it is required special form of consent to be externalized for acceptance.

The intention to contract may be expressed either orally or written. (Article 1, 240 (1) C. civ.)

Alin. (2) of the same article provides that the will may be externalized and by a behavior which, according to the law, parties convention, practices established between them or customary practices, leave no doubt of the intention to produce appropriate legal effects.

Regarding legal value of silence, the silence or inaction of consignee it is not worth acceptance only when this result from the law, of the agreement of the parties, from the practices established between them, from customary practice or in other circumstances.

As a consequence, in our law, the silence is worth exteriorized consent in the following situations:

- when the law expressly provides for this; for example, in the case of tacite relocations provided in Article 1,810 C. civ.;
- when previous legal relationships between the parties it is clear that the silence is equivalent to expression of the prior consent;
- when the silence is consent in accordance with customary practices, approved manner;

4. *The consent shall not be altered by a vice of consent.* It is free will that was formed and exteriorized freely and without external pressures and without captatio benevolentia.

The will expressed must be their own judgment not compulsory and untouched mind. This negative condition is imposed by the free character of the civil legal act.

The vices of consent are those circumstances affecting the conscious and free character of the will to make a legal civil act. In these situations, the manifestation of the will is altered in the intellectual content or (for example, error, fraud) or in his free character (for example, violence, lesion).

In the case of Article 1,206 C. civ., are vices of consent: the error, fraud(cunning), violence and lesion.

Conclusion

Any such consent shall be given by a person, who has the consciousness or the legal image of the consequences which arising therefrom, to have, therefore, consciousness not only of the rights which arise from legal acts but also of the obligations of taken responsibilities.

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