THE SPECIALITY LITERATURE REFLECTION ON THE CONFLICT OF LAWS ASPECTS REGARDING THE MATERIAL VALIDITY CONDITIONS OF THE JURIDICAL ACT FROM THE MOLDAVIAN INTERNATIONAL PRIVATE LAW

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Abstract

The paper presents conflict of laws aspects regarding the material conditions of the juridical act reflected in the Moldavian legislation and in the speciality literature, starting from the dispositions of article 1609 of the Moldavian Civil Code (the v-th Book- „Private international law").

A difference is made between the material validity conditions, that are the object of the juridical act law (lex actus) and the material validity conditions and the contract effects, that are the object of the contract law (lex contractus).

The material conditions of the juridical act are governed by the law chosen by the author of the juridical act (lex voluntatis) or by the law of the country with which the juridical act is mostly connected to or by the law of the place where the unilateral act was signed. The accessory juridical act is governed by the state law that rules the material aspects of the main juridical act, if the parties have not chosen differently.

Thus, the law applicable to the material conditions of the juridical act (lex actus) can be presented under two forms: - as lex voluntatis, by the author's choosing the applicable law for the unilateral act; - as the law determined by the juridical act locating using objective criteria.

The will, as an unilateral act, is the object of the testament law regarding its material validity conditions (lex succesionis), that is different when it refers to movable goods (thea national law of the deceased) or to immovables (the state law where the immovable properties are situated).

Keywords:

Juridical act, material validity conditions, applicable law, conflict of laws, lex voluntatis

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In the context of the difficult transition of the Republic of Moldova towards a competitive market economy, that has generated radical changes which require an adequated juridical frame, the juridical act represents a fundamental institution that is the basement of the regulation of the private law relations involving foreing law elements.

The law applicable to the material validity conditions is regulated in the V-th Book of the Moldavian Civil Code, dedicated to the international private law, and in a series of bilateral treaties regarding the juridical assistance in civil and commercial matters signed by the Republic of Moldova with the Republic of Azerbaidjan, the Republic of Letonia, the Republic of Lituania, Romania, Russia, Ucrain, the Republic of Italy (this one is still in force), the Republic of Turkey, the Republic of Hungaria, The Czech Republic and the Republic of Slovakia. Also, there are provisions in the field that is the object of our study in international conventions signed by the Republic of Moldova, such as the Independent States Community Convention regarding the juridical assistance and the juridical relations in civil, family and penal matters of the 22-nd January 1993 from Minsk, the European international commercial arbitration Convention of 1961 from Geneva, the United Nations Organization Convention for the foreign arbitrational decisions acknowledgement and execution of the 10-th of June 1958 from New York.

The theme that is under disscussion has been in the attention of the Moldavian authors V. Babara and M. Buruiana, the Romanian authors I. P. Filipescu, M.V. Jakota, D. A. Sitaru, O.Ungureanu, C. Jugastru and A.Circa, D. Lupascu, I. Macovei, I. Chelaru and G. Gheorghiu, T.R. Popescu, M. Avram and R. Bobei, G. Gheorghiu and N. Enache, the foreign notorious authors Y. Loussouarn and P. Bourel, H. Batiffol, J.P. Niboyet, J.Derruppé, R.H. Graveson and C.F. Forsyth.

The Moldavian author V. Babara has made the difference between the law applicable to the juridical act and the applicable law of the contract. Thus, the material validity conditions of the juridical act are the object of the juridical act law (*lex actus*), and the material validity conditions and the effects of the contract are ruled by the contract law (*lex contractus*), that contains all the material law provisions of the chosen law system, excluding the conflict of laws dispositions of the chosen law system (Babara, (2009), : 244; Chelaru, Gheorghiu, (2007), : 272; Deleanu, (1993), : 18). Some of the aspects related to the contract material validity conditions and effects are not regulated by *lex contractus* (e.g., the parties capacity and the inadequate obligation execution), reason for which, in the speciality literature, *lex contractus* is regarded as being the law that regulates most of the problems regarding the material validity conditions and the effects of the contracts in their wholeness (*the proper law which usually governs most matters affecting the formation and substance of the obligation*) (Cheshire, (1965), : 186). In the Bucharest Arbitration Court practice, *lex*

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contractus refers, in principle, to the whole juridical operation, meaning the creation, effects, execution, transmission and extinction of the obligations resulted from the juridical act.

Article 1609 of the Moldavian Civil Code applies to the juridical act from all the law areas, including the obligations matter, the testament law and the family law, excepting the special rules established by the law. The qualification of the juridical act is done according to the law of the forum (*lex fori*), so that we will start from the juridical act notion of the Moldavian law. Although, according to the Modavian author's oppinion M. Buruiana, the juridical act notion from the international private law must be seen wider that the one stipulated in the internal law, so that it also includes the actions similar to the juridical act, without needing a analogue application, an ideea that results from the interest of relating all the connected matters of the juridical act to the same statute, of the form or of the juridical act. Thus, if there are no exceptions, article 1609 of the Moldavian Civil Code applies to all of the of the juridical acts from all the cilil law areas in the wide meaning, taking into consideration its position of common law of all the law branches.

From the material law point of view, the juridical act and its validity conditions is regulated by The Moldavian Civil Code and has been the object of study for the authors Baies and N. Rosca – for the general part of the civil law, Gh. Chibac, A. Baiesu, Al. Rotari and O. Ifrim – for the contracts and successions part of the civil law and A. Baiesu, Al. Rotari, O. Alexa, respectiv Lilia Gribincea – for the international commerce law. Also, a detalied study on the validity conditions of the juridical act is to be found in the Moldavian Civil Code Commentary, an impressive paper written under the coordination of M. Buruiana, O. Efrim and N. Esanu by a team of 14 Moldavian authors, starting with A. Baiesu – for the first volume, respectively by 33 Moldavian authors, such as L. Antohi – for the second volume.

In Romania, the law that regulates the validity conditions of the juridical actis the Civil Code of 1864, and the authors that have dedicated themselves to the study of the general part of the civil law have been the classics C. Hamangiu, I. Rosetti-Balanescu and A. Baicoianu, Tr. Ionascu, A. Ionascu, M. Eliescu and the contemporary Gh. Beleiu, G. Boroi, T. R. Popescu, O. Ungureanu, R. P. Vonica, St. Rauschi, P.P.Andrei, respectively Fr. Deak and S. Carpenaru, D. Chirica, Al. Ticlea and Gh. Botea, D. Macovei – in the matters of the contracts and successions.

The Moldavian Civil Code dedicates to the juridical act the third Title of the first Book (articles 195-258). In the speciality literature, the definition given to the juridical act by article 195 of the Moldavian Civil Code has been assumed by the Moldavian authors S. Baies and N. Rosca (Baies, Rosca, (2007), : 47). Thus, the juridical act represents the legal entity or the natural person manifestation towards the creation, modification and extinction of rights and obligations.

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In a similar approach, the Romanian author Gh. Beleiu has defined the juridical act as the will manifestation done with the intention of producing juridical effects, meaning creating, modifying or extincting the juridical relations (Beleiu, (2003), : 130). The juridical act notion has two meanings: legal operation (*negotium juris*) and writing proof (*instrumentum probationis*).

The second Title of the third Book of the Moldavian Civil Code is dedicated to the contracts. Thus, the contract is defined in article 666 of the Moldavian Civil Code as a will agreement done between two or more persons by which juridical relations are established, modified or extincted. In article 942 of the Romanian Civil Code the contract is defined as an agreement between two or more persons towards the creation or extinction of a juridical relation between them.

Regarding the correlation juridical act-contract, the Moldavian authors S. Baies and N. Rosca have alleged that the juridical act is the gender, and the contract is the species, any contract being a juridical act, but not any juridical act being a contract (Beleiu, (2003), : 150).

According to article 196 of the Moldavian Civil Code, depending on the number of the contracting parties, the juridical acts can be classified as follows:

a. the unilateral juridical act – that is created through the will of one single person (e.g.: the will, the inheritance renouncement, the outside marriage child recognition, the testimonial, the contracting offer, the public reward promise, the unilateral contract termination, to the extent that the law allows it or the parties have stipulated in the contract the possibility of unilateral contract termination, the confirmation of a null juridical act, the ratification of a juridical act signed without or by overrunning the proxy, the purge offer done by the person that acquired a mortgaged immovable property in order to pay the debts up to the value of the settled in the juridical act by onerous title or up to the pricing value of the immovable property acquired through the juridical act by free title) (Boroi, (2002), : 132).

Also, the proxy is considered to be an unilateral juridical act under the Moldavian law.

The unilateral juridical acts are also classified in juridical acts submitted to the communication, in order to produce legal effects, such as, for example, the public reward promise, and juridical acts not submitted to communication, such as the testament (Beleiu, (2003), : 141). Through the unilateral juridical act, the holder disposes of his right without the will of third parties. According to the general rule stipulated in article 196 line 1 of the Moldavian Civil Code, the unilateral juridical act can generate obligations only for his author. Only in the expressly regulated cases, the unilateral juridical act can generate obligations for third parties.

The will manifestation of a single party is not always equivalent to the will manifestation of a single person. For instance, several persons that are making a public reward promise constitute a single party, and the respective act

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is an unilateral one. The unilateral juridical act must not be mistaken for the notion of unilateral contract, that is created by the will manifestation of two parties, but is unilateral because only one party assumes an obligation. For instance, the donation contract is a bilateral juridical act and an unilateral contract, because it implies the two parties will manifestation, the donor and the donee, but only the donor undertakes an obligation (of handing over a thing), the donee not being obliged to anything. But the unilateral juridical act can never be a contract, because it is not the consequence of an agreement, but the result of an unilateral will manifestation (Boroi, (2002), : 141).

b. the bilateral juridical act – that is created by the will manifestation of two parties. Most of the contracts are bilateral juridical acts (e.g.: the sale-purchase contract, the donation contract, the rental contract, the swop contract).

c. the multilateral juridical act – that is created by the will manifestation of two or more parties (e.g.: the company setting up contract).

This classification is found regulated in articles 943-944 of the Romanian Civil Code as well.

The validity conditions of the juridical act represent those essential elements that a juridical act can not exist without and the requirements which each of the juridical act elements must fulfill (Apetrei, (2005), : 133).

The Civil Code of the Republic of Moldova contains a chapter dedicated especially to the validity conditions of the juridical act – the second Chapter of the third Title of the first Book (articles 199-215). From these articles four juridical act validity conditions can be distinguished: - the consent (articles 199-205 of the Moldavian Civil Code); - the object (article 206 of the Moldavian Civil Code); - the purpose (article 207 of the Moldavian Civil Code); - the form (article 208-215 of the Moldavian Civil Code). Besides these conditions, there are another two stipulated in other compartments of the Civil Code: - the juridical act must obey the law, the public order and the good morals (article 220 of the Moldavian Civil Code); - the contracting capacity of the natural persons (article 20-22 of the Moldavian Civil Code) or of the legal entities (article 60-61 of the Moldavian Civil Code).

According to the Moldavian authors S. Baies and N. Rosca, there are the following validity conditions of the juridical act: 1) the juridical act must obey the law, the public order and the good morals; 2) the persons's capacity of signing the juridical act; 3) the valid consent of the person or persons to sign the juridical act; 4) the object of the juridical act, that has to be determined or that can be determined and must be legal; 5) a purpose that obeys the law, the public order and the good morals; 6) the form of the juridical act (Baies, Rosca, (2007), : 162-163).

In the Romanian speciality literature, the author G. Boroi considers that, according to the aspects that they are referring to, the validity conditions of the juridical act are classified in **material validity conditions** (capacity, consent,

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object and purpose), that concern the material part of the juridical act, and the **formal validity conditions**, that refer to the externalization of the will (Beleiu, (2003), : 141; Boroi, (2002), : 151).

According to the article 948 of the Moldavian Civil Code, the contracting capacity, the valid consent of the party that undertakes obligations, the determined object and the legal purpose are qualified as essential conditions for the contract validity. The material validity conditions of the juridical act are regulated in the articles 948-985 of the Romanian Civil Code of 1864 and in Decree no. 31/1954 regarding the natural persons and the legal entities. And the new Romanian Civil Code of 2009 regulates them in articles 1179 line 1 and 1180-1239.

According to the Moldavian authors Gh. Chibac, A. Baiesu, Al. Rotari and O. Ifrim, the juridical capacity means the person's faculty of being a subject of the juridical relations and of signing juridical acts, by pursuing the idea of becoming civil rights and obligations owner (Chibac, Baiesu, Rotari, Ifrim, (2010), : 18). The usage capacity of the natural person is defined as the faculty of having rights and obligations, according to article 18 of the Moldavian Civil Code. The performance capacity of the natural person represents the person's faculty of acquiring by himself and of exercising rights, of personally undertaking and performing obligations, according to article 19 of the Moldavian Civil Code.

According to article 199 of the Moldavian Civil Code, the consent represents the exteriorized person's will manifestation of signing a juridical act, expressed by a person having discernment, with the intent of producing juridical effects. The consent must not be vitiated, and its essence must be determined with certainty from the exteriorized will manifestation or from other circumstances of it's signing, according to article 201 of the Moldavian Civil Code. According to the Romanian author Gh. Beleiu, the consent represents the exteriorized manifestation of the decision of signing a juridical act. In the consent matter, one of the principles that govern the juridical will is the principle of will autonomy. According to it, the perssons are free to sign any type of juridical act, no matter if it has or not an express regulation, which emerges also from article 8 of the Moldavian Civil Code. Regarding the principle of the real will, the Moldavian legislation has consecrated the subjective oppinion, meaning that the internal and real will will be taken into consideration and not the one that results from the textual meaning of the words (Baies, Rosca, (2007), : 166).

The object of juridical act consists of the obligation of the person that has signed the juridical act. The object of the juridical act must be legal, in the civil circuit, determined, according to the article 206 of the Moldavian Civil Code and of article 962 of the Moldavian Civil Code. The authors from the Romanian speciality literature define the juridical act object as being the action or the non-action that the parties are entitled to or obliged to (the parties

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conduct). Often, the parties conduct can refer to a thing, that is the derived (material) object of the juridical act.

The purpose of the juridical act represents the concrete reason of signing the juridical act. The purpose of the juridical act must exist, be real and legal. According to article 207 of the Moldavian Civil Code and article 968 of the Romanian Civil Code, the cause that contravenes the law, the public order or the good morals is illegal. According to both legislators, the purpose's requirement of being moral is not different to the requirement of being legal, but is a component of the second one.

We will analyse **the conflicts of law dispositions regarding the material validity conditions of the juridical act** reflected in the legislation and in the speciality literature. The difference between the law applicable to the material validity conditions and the law applicable to the juridical act form has been pointed out for the first time in the XVI – th century by Distincția dintre legea aplicabila condițiilor de fond si cea aplicabila formei actului juridic a fost the French author Charles Dumoulin. Previously, the law of the place where the juridical act was signed governed both the material and the formal validity conditions.

According to the article 1609 line 2 of the Moldavian Civil Code (The V-th Book – „Private International Law''), the material validity conditions of the juridical act are governed by the law chosen by the author of the juridical act (*lex voluntatis*) or by the law of the country that the juridical act is mostly connected to or by the law of the country where the unilateral judical act was concluded.

Thus, the law apllicable to the material validity conditions (*lex actus*) can have two shapes:

- as *lex voluntatis*, by the author's choice of juridical act applicable law;
- as a law determined by using objective criteria for the juridical act locating.

In the first situation, *lex voluntatis* is the expression of the parties' will autonomy principle, that regulates the matter of the material validity juridical act conditions in most of the national law systems, concurring the uniformity of the conflicts of law solution in the juridical acts matter (Diaconu, (2009), : 228), according to the author N. Diaconu. Thus, the parties have the freedom of specifying the content of the juridical act, as well as determining the law system applicable to their juridical act, as *lex causae*, avoiding a possible conflict of laws (Babara, (2009), : 245).

The Moldavian author L. Gribincea consideers that, when the parties choose an applicable law system, it is presumed that they have agreed to refer to the material law of the respective country. If the conflicts of law dispositions were to be chosen as well, that could lead to the situation when the respective law system refuses the contract regulation and directs to another law system. For this reason the international conventions exclude the *renvoi* in contract matters.

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Charles Dumoulin (1500-1566) is the founder of the „will autonomy" theory and the one that has spoken about the „qualification" problem (Filipescu, (1999), : 86). The French lawyer pleaded for the custom unification, observing the fact that, next to the goods' statute and the person's statute, there also is a statute whose apllication depends on the parties' will, such as in the contract area. He considered that the parties can submit to another law than the one of the place where the juridical act was concluded. According to his theory, the contract is submitted, with regard to its substance and effects, to the law expressly determined by the parties through the concluded contract, and if this law is not expressly indicated, it must be deduced from all of the circumstances that the contract was concluded.

In a consultation given in 1525 to the Ganay couple, that owned immovables in Paris - where the custom of goods comunity was practiced, and in Bourgogne - where the custom of goods sepparation was practiced, Dumoulin considered that the matrimonial regime is a tacit contract for which the parties can choose the most appropriate custom, that of the common domicile – Paris. Dumoulin considered that a prenuptial agreement produces its effects on all of the spouses' immovables, no matter where they are located, because the party's will is not limitted to country borders. Dumoulin considered that ca the matrimonial regime pertains to the contract cathegory, so that the parties can choose their applicable law.

Since the beginning of the XX-th century until the end of the Second World War, a lot of criticisms were made in the speciality literature regarding the will authonomy principle. The anti-authonomists (J.P. Niboyet in France and Alfred Juvara, Iorgu Radu in Romania) asserted that nothing allows the contracting parties to infringe the imperative dispositions of their national law, the parties' will not being superior to the law (Niboyet, (1928), : 503).

The principle of contract freedom can be found in the internal and international contracts area, but functions in the realm of the suppletory law dispositions, not that of the imperative law dispositions. According to the author L. Gibincea, *lex voluntatis*, even if it is a reflex of the principle of contract freedom, it has a different juridical nature: are o natura juridica distincta: the principle of contract freedom is an internal law principle, while *lex voluntatis* is a private international law disposition. The applicable law choice under the *lex voluntatis* dispositions basis is not influenced bt the imperative or suppletory character of the dispositions from the law chosen by the parties to govern the contract (Gribincea, (1999), : 89).

In the speciality literature there are a lot of oppinions regarding the will manifestation' limits: some authors, such as Cheshireand Batiffol, pleaded for applying this principle to a restraint relations area, and others, such as Wolf and Naussbaum, pleaded for unlimitted will authonomy. In the western literature the doctrine according to which the will authonomy must be conditioned by the legal order limits circulates. This doctrine is found today in the Austrian and

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Switzerland practice, while in the Czech Republic, the Kalensky legal adviser criticised it harshly, by affirmig the fact that the theory denies the will authonomy principle. According to the so-called theory of "the unlawful contract" or of „the contract autocracy", the contracting parties act as legislators, by creating in their own interest a law parallel to the one adopted in public interest by the official state legislators. According to the Moldavian authors A. Baiesu, Al. Rotari and O. Alexa, this theory can not be accepted because any juridical effect resulted from the contracting parties' will can have legal value only on the basis of the law.

The conflict of laws disposition *lex voluntatis* is accepted by most of the countries. The English courts of law use the principle of will authonomy as a technical and juridical way of establishing the real intentions of the parties and of solving the conflict of laws problems on a case to case basis, their method being the one of choosing the proper law of the juridical act (Baiesu, Rotari, Alexa, (1998), : 99).

Other authors, by denying the principle of will authonomy, are suggesting the locating of the juridical act upon objective criteria; on the basis of the actual content of the juridical act, the court of justice has to localize the legislation of the country to which the juridical act is closely and really connected to.

The author L. Gribincea considers that the application area of the *lex voluntatis* disposition is limitted to the fraud against the law, the international private law and the uniform material law dispositions. Also, beyond these general limits, the Romanian author D.Lupascu considers that the following can be appreciated as special limits for the parties' freedom of choice: - the situations when the chosen law system is absolutely inappropriate to regulate the juridical act, because it does not contain the adequate dispositions, neither from the legal regulation analogy point of view, nor from the law analogy point of view; - the situation when the chosen law annihilates the main juridical act, by declaring it not valid (Lupascu, (2008), : 166).

Lex actus determines the admittance or the prohibition of concluding the act and the limits of will authonomy. Thus, the author M. Buruiana considers that all the law systems contain provisions regarding the lawful juridical acts, limitting the freedom of concluding the juridical acts. There are law systems that prohibit expressly the conclusion of certain juridical acts or that limit the possibility of concluding juridical acts to the ones expressly mentioned by the law. The contracting obligation, that has its source in a law or a contracting promise or a letter of intent, limits the will authonomy. For instance, a person's legal obligation of contracting, who holds a dominant market position is regulated by the law of the headquarter's obliged party, not by the law applicable to the future contract. And the legislator intervenes in private law relations, limitting the will authonomy, in the public interest, social politics or economic interest – through legal dispositions regarding the external economic activity,

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currency operations, the competition protection and the limitation of the monopoly activity or with the purpose of ensuring an equilibrium between the contracting parties' interests – through standard clauses.

If the parties have not chosen the applicable law for the juridical act (*lex voluntatis*), the court of justice will localize the juridical act using objective criteria, by positioning it in a law system. Thus, in the absence of the law chosen by the author of the juridical act, subsidiarly the law of the country to which the juridical act is closely connected to can be applied or, secondly, not alternatively, the law of the place where the juridical act was concluded, considers V. Babara (Babara, (2009), : 246).

According to I. Chelaru and Gh. Gheorghiu, in the absence of the law chosen by the author of the juridical act, the main locating criterion of the juridical act is the existence of the tighter connections and the second criterion is the law of the place where the juridical act was concluded.

The first thesis from line 2 of article 1609 of the Moldavian Civil Code contains three alternatives regarding the applicable law: the first alternative (the law chosen by the parties) and the second alternative (the law of the country to which the juridical act is closely connected to) does not refer explicitly to the unilateral act, such as the third alternative does (the place where the unilateral act was concluded)). Still, according to M. Buruiana's oppinion from the second volume of the Moldavian Civil Code Commentary, both the first alternative and the second one must be understood as referring implicitly to the unilateral acts. This author observes the fact that, at first site, all of the three alternatives appear to be equaly applicable, but, in reality, the exposed alternatives can not be considered as equal. The first alternative will always have priority over the second and the third alternative. If the author of the juridical act has chosen the law applicable to the unilateral juridical act, this law will be applied; if he has not made a choice, the court of justice will apply the second or the third alternative. The law of the state to which the juridical act is closely connected to applies, for instance, when the law designated by the parties makes the juridical act not valid. Because, in certain situations, the law to which is closly connected to is difficult to establish, the court of justice will apply the law of the place where the juridical act was concluded (Antohi *et al.*, (2006), : 1320).

According to M. Buruiana, in the proccess of establishing the law to which is closly connected to, the nature of the juridical act and the circumstances of the juridical act concluding, such as the place where the juridical act was concluded, the main performance place, the object of the juridical act, the domicile, the residence, the nationality, the headquarters, the form, the currency, the language used, the content of the conflicting laws, the arbitration clause or the clause for choosing the jurisdiction and the author's attitude wiil be taken into account, the importance and the hierarchy of these elements being left at the court of law or the parties appreciation.

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Regarding the juridical act of administering or disposing of an immovable, this is regulated by the law of the state where the immovable is located, the author of the juridical act not having the possibility of electing the applicable law according to the will authonomy.

Regarding the applicationa area of the *lex actus*, article 1609 line 2 of the Moldavian Civil Code determines the law that governs the statute of the juridical ac, that contains all its material aspects, the legislator not making a difference between the law applicable to the juridical act conclusion and the law applicable to the juridical act effects. Thus, *lex actus* applies to the interpretation, the consented obligation performance, the consequences of non-performance, the obligation extinction, the prescription and the obsolescence, the consequences of juridical act nullity. The law of the performance place could prove to be inevitably applicable regarding the technical aspects of the juridical act performance.

The legislator did not expressly establish if some of the material validity conditions of the juridical act could be submitted by the author of the juridical act to a certain, while others could be submitted to other laws, such as it is expressly mentioned in the contracts matter in article 1610 line 2 of the Moldavian Civil Code. The author M. Buruiana considers that, in practice, the general solution will be a unitary statute applicable to all of the material aspects of the juridical act; only in special circumstances different laws could be applicable (Antohi *at al.*, (2006), : 1321).

The situations when the principle of juridical act unitary statute is not applied are the following: - the situation when the juridical act statute is regulated by a certain law system, but the dispositions of another law system that prohibit this juridicat act are also taken into consideration, when the juridical act refers to juridical relations that can not be unitarily connected to a single law system; if the juridical act is not submitted to a single law system, according to the law indicated by the conflicts of law dispositions it will be established if the prohibited juridical act entails the absolute or the relative nullity and if there is the possibility of its ulterior validity confirmation; - the situation when the juridical act statute is regulated by a certain law system, but also the imperative Moldavian dispositions apply.

The juridical act statute determines the exterior conditions of the will manifestation validity, such as, for example, the necessity of will externalization or of the will entering to the addressee, who should understand it or simply perceive it or receive it, the risk of will language misunderstanding. *Lex actus* will determine the internal conditions of the will manifestation validity, if the will has been vitiated and its consequences. The personal statute does not apply to the will because it represents the core of the juridical act. Also, in the application area of the juridical act law we can find its interpretation according to a certain law system, the means of interpretation, the method of interpretation, the rank

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of the different law dispositions and the interpretation result, if the internal or the external will shall be taken into consideration.

According to the Romanian author D. Lupascu, the following can not be found in the application area of the juridical act law:

- the person's capacity, that is submitted to the national law; - the legal value of the silence, if the party who consented to the juridical act denies it, when the national law of the natural person or the law of the organic statute of the legal entity applies; - the consent vitiated by lesion (prejudice) in the case of the minor aged 14 up to 18 years, that is submitted to the personal law of the child; - the derived object of the juridical act (meaning the good), that is submitted to the law of the place where it is situated; - the publicity forms regarding the creation, the modification or the transmission of the goods property right, that are submitted to to the law of the place where the goods are situated; - the risk of good perishing that is submitted to the law of the place where it is situated; - the will (testament) – submitted to *lex succesionis*; - the nullity for lack of capacity, submitted to the personal law.

According to article 1624 of the Moldavian Civil Code, the extinctive prescription of the petitioning right is governed by the law applicable to the subjective right. The same law system will apply to the estoppel term and to the tacit right renouncement. The foreign prescription terms could impinge upon the Moldavian international private law order, if they are too long or too short.

Article 1609 line 2 of the Moldavian Civil Code does not contain special conflict of laws dispositions regarding the law applicable to the representation and, according to the author M. Buruiana, they are not adequated to this institution. The distinction between the conventional, legal and organic representation is necesssary. The organinc representation is submitted to the law applicable to the organization statute, while the legal representation is submitted to the child statute, for instance. Still, *lex actus* does not apply to the legel representation of the incapables and of the successors by the testamentary executor or of the inheritance adminstrator, one spouse's representation to the juridical act conclusion regarding the common goods property. Regarding the conventional representation, ussualy, the proxy is regulated by the law applicable to the juridical relation between the person represented and the representative. Because the proxy is an unilateral juridical act, the representative can choose the law applicable to the proxy, but the represented person and the third party must also agree with his choice. In the representative did not choose the applicable law, the law of the place where the representative performs the proxy will apply. Still, the proxy for judicial representation is submitted to the law of the forum (*lex fori*).

The distinction between the application area of the proxy law and of the law of juridical act that is concluded by representation is necessary. Thus, the type of representation (by unilateral will or by contract), the proxy validity, the proxy termination by expiry date, by the decease of the represented person, the

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proxy withdrawal, the proxy interpretation, its content, the liberty of concuding a subproxy are in the application area of the proxy law.

Article 1609 line 1 of the Moldavian Civil Code stipulates the fact that the accessory juridical act is governed by the law of the state that regulates the material aspects of the main juridical act, if the parties have not stipulated otherwise. From the legislators' wording results the fact that the parties (the author) can choose the applicable law of the accessory juridical act, that can be different from the one that regulates the main juridical act. Practically, this disposition contains implicitly the expression of the principle from article 1610 line 2 of the Moldavian Civil Code regarding the possibility of submitting the clauses of the juridical act to different laws. The accessory juridical acts could be the cancellation, the performance determination, the summons, the defects notification. Only when the parties have not chosen another law applicable to the accessory juridical act, the law chosen for the main juridical act will apply to it.

The *lex actus* regulation from article 1609 line 2 of the Moldavian Civil Code is practically identical to the one from articles 69-70 from the Romanian Law no. 105/1992 regarding the regulation of the international private law relations. The same conflict of laws dispositions can be found in articles 2637-2638 from the Romanian Civil Code of 2009, that contains in the VII-th Book (articles 2557-2664) international private law dispositions, the Romanian legislator having to abolish, at a certain time, in this manner, the Law no. 105/1992. The V-th Chapter of this new Book of the new Civil Code contains conflict of laws dispositions regarding the juridical act.

The testament, as an unilateral juridical act, is submitted, regarding the material validity conditions and its effects, to the succession law (*lex succesionis*), that is different when it refers to movables (the national law of the deceased) or to immovables (the law of the country where the immovables are situated), according to articles 1621-1623 line 1 of the Moldavian Civil Code.

In comparison to the dispositions applicable to the contracts matter, the law competent to regulate the contract material validity conditions and effects is named *lex contractus*, that can be found in two shapes: - *lex voluntatis*, meaning the law chosen by the parties on the basis of the will authonomy; - the law determined by the objective contract locating, in the absence of *lex voluntatis*. According to article 1610 line 1 of the Moldavian Civil Code, the contract is governed by the law chosen by the parties. The principle *lex voluntatis* is also found in the European Convention regarding the international commercial arbitrage, approved by the Republic of Moldova and Romania, that stipulates in article VII – "The applicable law" the fact that the parties are free to determine the law applicable by the arbiters to the material aspects of the litigation.

If the parties have not chosen the aplicable law of the contract, the task of objective contract location outside a certain law system in order to determine the law applicable to the contract is addressed to the court of justice or

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arbitration court. Thus, according to article 1611 of the Moldavian Civil Code, in the absence of the parties agreement regarding the law applicable to the contract, the law of the state to which is closely connected to apllies. There are such connections with the law of the state where the debtor of the characteristic performance has, at the time of the contract conclusion, its domicile, residence or is registered as legal entity.

In the absence of the parties agreement regarding the law applicable to the contract, by derogation from the dispositions of article 1611 line 1 of the Moldavian Civil Code, line 2 of the same article stipulates the following: - the contract whose object is an immovable and the contract of fiduciary administration are submitted to the law of the state where the goods are located; - the construction works contract and the design contract are submitted to the law of the country were the contract results are created; - the company setting up contract is submitted to the law of the state where the company is working; - the auction or competition contract is submitted to the law of the state where the auction or the competition takes place.

The law applicable to the contract refers to the contract interpretation, the parties rights and obligations, the contract performance, the consequences of contract non-performance or defective performance, contract termination, the consequences of contract nullity, the assignment of debt, according to article 1612 of the Moldavian Civil Code and article 80 line 1 of the Romanian Law no. 105/1992.

The regulation from article 1610 of the Moldavian Civil Code is practically identical to the one from article 73 of the Romanian Law no. 105/1992 regarding the regulation of private international law relations, that stipulates the fact that the law chosen by the parties mutual agreement applies to the material validity conditions of the contract.

Regarding the law of the country to which the juridical act is closely connected to, according to article 77 of the Romanian Law no. 105/1992 regarding the regulation of private international law relations and article 2638 line 2 from the Romanian Civil Code of 2009 – the VII –th Book – International private law dispositions, it is considered that there are such connections with the law of the country where the debtor of the characteristic performance or the author of the juridical act has, at the time of the juridical act conclusion, its residence, business or headquarters. According to the Romanian legislator from article 78 of the Law no. 105/1992, the characteristic performance means the following: - the performance of the party that, on the basis of a transferring contract, such as the sale-purchase, sells a movable; - the performance of the party that, on the basis of a rental contract, transfers the usage of a good on a certain period of time to another person; - the performance of the representative, the depositary, the contractor, and, in general, of the party that, in services contracts, fulfills the obligation; - the performance of the guarantor in the security contract.

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The law of the place where the contract was concluded (*lex loci contractus*), mentioned in article 79 of the Romanian Law no. 105/1992, applies to the contract that can not be localized on the basis of the party's characteristic performance regarding the material validity conditions. If the parties are in different countries and have negotiated by exchange of letters, telegrams or by phone, the contract is considered to be concluded in the domicile or heaquarters country of the party that sent the accepted contracting offer. The law of the contract performance place (*lex loci executionis/solutionis*), nominated in article 80 line 2 of the Romanian Law no. 105/1992 aplies to the contract obligation performance. As we can see, in the matter of the applicable law for the material validity conditions, the Moldavian legislator does not indicate the law of the place where the contract was concluded and the law of the contract performance place, such as the Romanian legislator does.

In article 2640 from the Romanian Civil Code of 2009, entitled "The law applicable to the contract obligations", it is stipulated the fact that the law applicable to the contract obligations is determined according to the community law regulations. In the matters that are not regulated by the community laws the Civil Code's dispositions are applicable, if it is not stipulated otherwise through international conventions or special dispositions. In this case, the community law is represented by The European Parliament and Council Regulation regarding the law applicable to contract obligations (Roma I) no. 593/17.06.2008, that replaces, between the European Union state members (Romania being one of them), The Rome Convention of 1960 and applies to the contracts concluded in civil and commercial matters starting from 17.12.2009, according to the dispositions of articles 1, 24 si 28. In article 148 line 1 of the Romanian Constitution it is stipulated the fact that the provisions of the European Union constituent treaties and other compulsory community regulations have priority over the contrary dispositions from the internal laws. The Regulation (CE) no. 593/2008 resumes the concept of *lex contractus* in articles 3-4, 10 and 12-18 and the ideea of the law to which the contract is closely connected to in article 4 line 2 and 3 and stipulates the area of the applicable law in article 12.

In the future, the research of the aspects regarding the unification and the harmonization in the matter of the law applicable to the material and formal validity conditions of the juridical act will be opportune, from the perspective of the Moldavian legislation standardization to the European law dispositions.

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