

Enforceable contracts and the consequences of termination on them in Romania

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Abstract

The article is dedicated to the overall presentation of contracts to which the law recognizes the power of enforcement, in a brief retrospect carried out through the Roman law and their evolution to the present day as they are found in the Civil Code or special laws that govern them. The contract is in effect, the conventional framework by which parties incur obligations and acquire rights in relation to each other, representing the materialization of the agreement of the parties and is only deemed validly concluded if the parties have expressed their consent freely and without undue influence. Contract partners are free to insert any clauses they want in the Contract signed, provided that they do not contravene to public order or morality. But the aim is to highlight both the power of the contract, and even more the importance of expressing the individual's will on its fate. The importance of this legal act never contested, made the legislator invest it with the force of law between the contracting parties. So in cases expressly stipulated by the rules of law, this legal act has been given the benefit of enforcement, however without prejudicing in any way the principle of autonomy of will and without creating a contractual imbalance, privileges or discriminations.

Keywords: *contract; enforcement; termination; forced execution*

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1. Preliminary considerations

Everything in our life is governed by contracts. From the first moment our life is ruled by them. Citizenship, for example, is a contract with the state in which you were born. Any sale or purchase, marriage, labor, school attended by us or our children, a new house or car, holidays and illnesses we suffer from, every move we make leads to acceptance of a contract, or is a consequence of their existence .

The contract is, worldwide, the quasi-exclusive instrument of the movement of assets and one of the essential legal mechanisms of economic activity². The contract - is in fact the conventional framework whereby the parties incur obligations and acquire rights in relation to each other. It is the agreement of the parties and can only be deemed validly concluded if the parties have expressed their consent freely and without undue influence, and its subject is moral and

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² Stanculescu Liviu, *Civil law course-Contracts*, Ed.Hamangiu, Bucharest, 2012.

lawful. The business world is, by excellence, a world of acts of commerce, generally materialized in contracts, and contracts mean free will of the contracting parties and predictability, manifested in relation to the whole period of validity of the contracts since their conclusion and until the last act of execution. Therefore, participants in trade relations need both a legal certainty regarding the evolution of their contractual relations, and also a right of option, in case these relations are damaged, so that the parties may, to the extent permitted by law, decide both in terms of the law that will govern them in the future and on the jurisdiction which will intervene, if needed.

The contract is not a product of the modern world; perhaps the most valuable contracts legislation was drafted by Roman jurists. With the pragmatism, ingenuity and finesse that characterized them, they created an empirical but logical contractual right with a high degree of perfection and constant values for posterity, both through its rich content and its flawless form of expression. We must acknowledge the settling given by those times to the technical structure of contracts (the capacity to contract, consent of the parties, object and cause) and the formulation of many paradigms as dicta, which also apply to current law, being, over the centuries, witnesses to a progressive evolution of the general theory of contracts.

But in ancient Roman law, the mere agreement of the parties did not generate legal effect. Positive above all and materialistic to excess, the Romans of those times could not conceive that a simple agreement could bind one's freedom, forcing him to fulfill something: for this derogation from the natural state of freedom of a man they wanted something safe instead, something to materialize, as far as possible that agreement³. For the first time, the jurist Pedius, who is mentioned by Ulpian (4 ad edictum), is considered by some authors the one who tried to join around the agreement, as an essential element of the contract, all categories of conventions recognized by the lawful order and producing legal effects "...*adeo autem conventionis nomen generale est ut eleganter dicat Pedius nullum esse contractum, nullam obligationem, quae non habeat in se conventionem, sive re sive verbis fiat: nam et stipulation, quae verbis fit, nisi habeat consensum, nulla est.*"⁴. In this regard, many pacts, simple agreements have been raised to contracts. The word *contractus* was generalized in Roman private law system and was resumed afterwards by all world laws that followed. The term of contract (*contractus*) is met in ancient Roman law, while the Greeks used the term *synallagma* (hence the name of mutual contracts).

The three traditional categories of contracts – formal, genuine and consensual – that constitute a *summa divisio* in current law occurred successively in Roman law.

³ Popovici Constantin, *Effects of conventions in Roman and Romanian law*, Ed. Noua tipografie "Tulcea", Tulcea 1886.

⁴ Contracts in Roman law, Lector univ. dr. Mihai Olariu, Romanian-American University, Bucharest.

Another classification is met according to Gaius, stating that obligations are contractual or tort because Gaius considered that obligations arise either from contracts (*ex contractu*) or from torts (*ex delictu*). Subsequently he completed the original classification with a new element, considering that obligations arise either from contracts or from torts or other sources of obligations (*variae causarum figurae*). Later Justinian made a quadripartite classification of the sources of obligations, considering that obligations may arise from: contracts; quasi-contracts; torts; quasi-torts. Modern legal doctrine appropriated Justinian's classification with some objections, because it is highly symmetrical and gives the opportunity to observe the physiognomy specific to each source of obligations.

The contract – then and now – is in fact the agreement of the parties, the materialization of their intention to establish, modify or extinguish a legal relationship and which can only be deemed validly concluded if the parties have expressed their consent freely and without undue influence. The main effect of contracts is to create legal relations between co-contractors in order to achieve the interests pursued by its conclusion. The civil obligation arisen hereby will produce effects between the creditor, who will have an active civil obligation, and the debtor, on whom the debt is incumbent and who is the passive party⁵.

The law recognizes and guarantees the subjective civil rights, so any natural or legal person may appeal to the coercive force of the state bodies to be granted the right and to compel the debtor to fulfill its obligations.

The legal means by which the creditor - holding a subjective civil right - is recognized and guaranteed the legitimate interests is the civil trial. If the recognition of this right is not executed voluntarily, then the state will compel the debtor to the effective fulfillment of its obligation through the act of enforcement.

In Romania enforcement is only achieved by virtue of a court decision or a document legally recognized as enforcement⁶, only by observing the procedural means provided expressly by law and only with the help of competent bodies for this purpose under the Code of Civil Procedure.

The enforcement is therefore the basis that will enable the competent bodies to carry into effect the enforcement, which confirms in fact the existence of the holder's right on the alleged claim.

2. Enforceable contracts in the Civil Code of Romania

By the regulations of the Civil Code or special laws in order to protect creditor's rights, the legislator conferred the power of enforceability to certain contracts. According to the provisions of the Civil Code, the following contracts are enforceable:

- Tenancy contract;
- Lease contract;

⁵ Stanculescu Liviu, *Course of civil law - Contracts*, Ed. Hamangiu 2012.

⁶ Code of Civil Procedure - Art. 372 – *The enforcement shall only be carried out pursuant to a court decision or other document that constitutes an enforcement, according to law.*

- Commodate contract;
- Consumption loan;
- Mortgage contract.

This benefit was assigned by special law to:

- Leasing contract⁷
- Legal assistance contract⁸
- Mediation contract⁹

This recognition is not pure and simple, but it is a recognition conditioned by certain factors, and the power of enforceability intervenes under the conditions expressly provided by law. Thus, by this study I intend to analyze when and under what circumstances, those contracts become documents that are given the benefit of enforcement by law, and also its limitations.

2.1 Tenancy contract¹⁰

The tenancy contract is the contract by which a party, called the lessor, undertakes to provide the other party, called the lessee, with the use of a property for a specific period, in exchange of a price, called rent.

A. The enforceability of the contract on rent payment is recognized according to art. 1798 Civil Code *"Tenancy contracts concluded by deed under private signature which have been registered with the tax authorities, as well as those concluded in authentic form are writs of execution for rent payment under the terms and procedures laid down in the contract or, failing that, by law.*

Therefore we keep in mind that, in order to obtain the enforceable feature, the tenancy contract must be entered into the records of tax authorities if it is concluded under private signature or be notarially attested. The enforceability power is recognized to this contract in terms of rent payment, on the dates and in the manner set out therein or, in the absence of an express provision, by the legal

⁷ Ordinance no. 51 of 28/08/1997 on leasing operations and leasing companies with the amendments from the following acts: - Tax Code published in 2003 - Act no. 533/2004 - Act no. 287/2006 - Act no. 241/2007 - Act no. 93/2009 published in OB no. 259 of 21/04/2009 - Act no. 383/2009 published in OB no. 870 of 14/12/2009.:

⁸ Statute of lawyer profession, published in the Romanian Official Bulletin, Part I, no. 898 of 19th December 2011;

⁹ Act no. 192/2006 on the mediation and organization of mediator activity published in the Official Bulletin no. 441 of 22.05.2006, with the amendments and additions by Act no. 370/2009 published in the Official Bulletin no. 831 of 3.12.2009 (whose object was the organization of the legislative framework in the field with Directive 2008/52/EC of the European Parliament and Council, for the purposes of establishing the enforceability of the mediation agreement between the parties, expressly guiding the litigants to amicable settlement of disputes or antagonisms that may arise between the contracting parties) and by O.U.G. no. 13/2010 for amending and supplementing some laws in the field of justice in order to transpose the Directive 2006/123/ EC of the European Parliament and Council of 12th December 2006 on services within the internal market, published in the Official Bulletin no. 70 of 30th January 2010; Hereinafter Act no. 192/2006 shall be referred to as Act.

¹⁰ Short considerations on the enforceability of some special contracts in the light of the new Civil Code, 22nd May 2012, JURIDICE.ro Adrian Dobre Attorney-at-law, Bucharest Bar Association.

norm. Thus, we keep in mind that the contract is enforceable as soon as the lessee-debtor fails to fulfill its obligation assigned by contract or by law, to pay the rent due to the lessor-creditor or when the manner of payment does not correspond to the understanding from which it arose but only when the conditions of form or registration stipulated by the legislator are fulfilled. So the simple non-compliance within the deadline entails the transformation of the tenancy contract into enforcement, and no reference to any period of notice or notice of delay is made by the legislator.

B. The enforceability of the contract on property restitution.

a) According to art. 1809 Civil Code: *(2) Regarding the obligation to restitute the property in tenancy, the contract signed on fixed-term and ascertained by authentic deed is, under the law, enforceable upon the deadline.*

(3) The provisions of para. (2) also apply accordingly to the contract signed on fixed-term by deed under private signature and registered to the competent tax body.

As such, the tenancy contract signed on fixed-term and ascertained by an authentic deed and the tenancy contract signed under private signature and registered to tax authorities will be enforceable upon the deadline for which it was concluded in terms of the obligation to restitute the property that was given in tenancy.

If the contract was not concluded for a fixed term, its enforceability on the restitution of property shall be governed according to art.1816 of the Civil Code:

“(1) If the tenancy was made without determining the duration, either party may terminate the contract by notice.

(2) The notice made in violation of the notice period established by law or, failing that, by customs shall only take effect from the end of that period.

(3) At the end of the period of notice, the obligation to restitute the property becomes due and the tenancy contract concluded under the terms of art. 1809 para. (2) or (3), as applicable, are under the law, enforceable in relation to this obligation.”

So, according to the text of the law cited above, if the tenancy contract was concluded for an indefinite period, either party has the option to terminate unilaterally the contract by notice, in compliance with the notice period established by law. If the law does not stipulate a notice period, customs will be used to determine it. Upon the expiration of this term, the obligation to restitute the property becomes due and the creditor may profit by the benefit conferred by the legislator of the tenancy contract or the enforcement, but only in terms of the restitution of property, as set out restrictively by rules.

According to art. 133 of Act no. 71/2011 for bringing into force the Act no. 287/2009 on Civil Code, *“The tenant and people living with him may not invoke the provisions of art. 1831 and 1832 Civil Code to oppose the forced eviction based on art. 1809 par. (2) or par. (3) or on those of art. 1816 par. (3) of the Civil Code”*.

The provisions of art. 1831 in art. 1832 Civil Code, refer to the eviction of tenant or other persons residing with the tenant.

Therefore, neither the tenant nor the people living with him can invoke the provisions of art. 1831 and 1832 Civil Code in order to oppose the forced eviction based on art. 1809 par. 2 or 3 (restitution of the property in tenancy upon the expiry of contractual term) and art. 1816 par. 3 (obligation to reconstitute the property upon the expiry of notice period).

2.2 Lease contract

The lease is the contract whereby one party, called the lessor, delivers agricultural goods to the other party, called the lessee, to be operated for a period of time, for a price called lease.

According to art. 1845 Civil Code, *lease contracts signed in authentic form and those registered at the local council are, under the law, enforcements for lease payment on the terms and in the manners set out in the contract.*

So the contract signed in authentic form and the one registered at the local council are enforceable. The enforcement aims at paying the lease on the terms and in the manners established by contract. Like the tenancy contract, the law recognizes the value of enforceability of the lease contract once the payment deadline specified in the contract for the lease expired or when the creditor finds that the method of payment has not been respected.

2.3 Commodate contract (Loan for use)

The commodate contract is a contract whereby one of the parties, called the lender in commodate, delivers for temporary and free use a determined good to another party, called the borrower in commodate, with the obligation of the latter to return it to the lender in commodate in its individuality.

According to art. 2157 Civil Code: *(1) Regarding the restitution obligation, the commodate contract signed in authentic form or by a deed under private signature with specific date shall be enforceable under the law, in case of termination by death of the borrower in commodate or by expiration of term.*

(2) If no deadline for restitution was stipulated, the commodate contract is only enforceable if the use for which the good was borrowed is not provided or if the provided use has a permanent nature.

Therefore, we keep in mind that legislative regulations expressly establish two situations as follows:

- in relation to the restitution obligation, this contract only constitutes enforcement by the death of the borrower in commodate or upon the expiry of the contractual term;
- if a deadline for the restitution of property was not stipulated therein, the commodate contract is only enforceable if the use for which the good was borrowed is not provided or if the provided use has a permanent nature.

The validity is also conditioned by the conclusion of the contract either in authentic form or by a deed under private signature which was given certain date. Also, it should be kept in mind that this time the legislator has expressly stipulated that this contract is only enforceable in terms of the obligation to restate the property, the loan being actually free, but not without other costs.

2.4 Consumption loan

The consumption loan is the contract whereby a person named lender, delivers the property of consumable goods to another person called borrower, with the latter's obligation to return the goods within the same nature, the same quantity and quality. According to art. 2165 Civil Code, the provisions of art. 2157 par. (1) shall also apply accordingly to consumption loan. As such, the provision of art. 2157 par. 1 Civil Code which refers to the enforceability of the commodate contract in terms of the obligation to restate the property also applies to the consumption loan. The only remark that must be made is that in the case of the commodate contract (loan for use) its object may be, according to art. 2146, a movable or immovable property, and in the case of the consumption loan, its object may be, according to art. 2158 par. 1, an amount of money or other goods which are fungible and consumable by their nature.

2.5 Mortgage contract

The mortgage contract is the agreement whereby one party, called debtor conveys a real accessory right on a movable or immovable property or on a body of assets to guarantee a main obligation, towards another person called creditor, who, on the maturity date of that obligation unless it satisfies its claim, has the right to track the assets which form the object of the guarantee and to be preferred to any other creditor in terms of seniority of its right of preference, in order to satisfy the debt¹¹. The mortgage contract is a solemn contract. According to art. 2431 Civil Code, mortgage contracts validly entered into are under the law, enforceable. It should be mentioned that this provision applies to conventional mortgage, real estate mortgage, chattel mortgage and mortgage on the claims. Only mortgage contracts concluded in accordance with the provisions of the Civil Code can be considered as validly concluded, so that only these can be declared enforceable.

2.6 Leasing contract

Pursuant to the provisions of art.8 of OG 51/1997, the leasing contract has the legal feature of enforcement: *“leasing contracts, as well as real and personal guarantees, set up to guarantee the obligations undertaken by the leasing contract,*

¹¹ Tița (Panțu) Ioana Cristina, Guarantees for the Execution of Obligations in the New Civil Code - PhD thesis, Univ. N.Titulescu, scientific coordinator Prof.univ.dr.Liviu Stanculescu, Bucharest 2014.

are enforcements". We can see that unlike the conditions imposed by law for other contracts, no terms or similar records are imposed upon it. Thus, for the leasing contract, its conclusion in written form provided for its validity, is sufficient to benefit from the power conferred to enforcement. In this regard of the benefit of enforcement, we can see the almost unanimous opinion found in case law and in a great part of the literature and according to which only the investor can profit by this benefit. I believe that this interpretation can be reconsidered because the leasing contract has reciprocal character and the ordinance does not make a distinction, *ubi lex non distinguit, nec nos distinguere debemus*, and thus the user will also benefit by the same right if the investor will not fulfill his obligations under the contract.

2.7 Legal assistance contract

As defined by law¹² in art. 113: "(1) *The lawyer's right to assist, to represent or to exercise any other profession-specific activities arises from the legal assistance contract, concluded in writing, between the lawyer and the client or his representative*" and the enforcement character is provided by art. 129 of the same act:

(1) *The legal assistance contract rendered enforceable under the law shall be enforceable on the arrears of fees and other expenses incurred by a lawyer in the client's interest.*

(2) *The enforcement procedure is stipulated by the provisions of the Code of Civil Procedure.*

Therefore, we keep in mind that this contract will bring benefit to the creditor for recovering the outstanding fee and other expenses incurred by the lawyer in his client's interest, after becoming enforceable. Unlike other contracts for which the law recognizes the power of an enforceable contract, this contract is not subject to a term on which it takes effect in relation to the claim chargeability.

¹² The statute of lawyer profession, published in the Romanian Official Bulletin, Part I, no. 898 of 19th December 2011, was adopted by the Decision 64/2011 and amended by the following laws: Decision of the Council of the National Union of Romanian Bar Associations no. 7 of 16th June 2012 on amending and supplementing the Statute of lawyer profession, adopted by the Decision of the Council of the National Union of Romanian Bar Associations no. 64/2011, published in the Romanian Official Bulletin, Part I, no. 594 of 20th August 2012; Decision of the Council of the National Union of Romanian Bar Associations no.769 of 29th June 2013 on amending and supplementing the Statute of lawyer profession, adopted by the Decision of the Council of the National Union of Romanian Bar Associations no. 64/2011, published in the Romanian Official Bulletin, Part I, no. 497 of 7th August 2013; Decision of the Council of the National Union of Romanian Bar Associations no.852 of 14th December 2013 on amending and supplementing the Statute of lawyer profession, adopted by the Decision of the Council of the National Union of Romanian Bar Associations no. 64/2011, published in the Romanian Official Bulletin, Part I, no. 33 of 16th January 2014; Decision of the Council of the National Union of Romanian Bar Associations no. 1069 of 7th March 2015 on amending and supplementing the Statute of lawyer profession, adopted by the Decision of the Council of the National Union of Romanian Bar Associations no. 64/2011, published in the Romanian Official Bulletin, Part I, no. 173 of 12th March 2015.

2.8 Mediation contract

The mediation contract is the contract by which the conflicting parties agree to solve it amicably through mediation, the mediator submitting all the care for that purpose, in exchange of a payment of a fee by the parties¹³.

The enforcement character is recognized by art. 48 of Act 192/2006¹⁴ “*The mediation contract is enforceable in terms of the parties’ obligation to pay the outstanding fee which is due to the mediator*”.

The obligation to pay the fee due to the mediator falls on the parties once it becomes due (as opposed to legal aid fee that becomes due immediately upon signing the contract, if a conventional term is not provided, of course). If the failure of execution belongs to one of the parties to mediation, the execution will be accomplished by way of enforcement, since the mediation contract is enforceable with regard to the obligation on the parties to pay the mediator's fee. The mediator may act against the parties jointly or separately, only against the party that has not executed its due obligation.

3. Termination of contracts

The autonomy of the will is the foundation on which the general theory of contract was built *illo tempore* so that the contractual freedom, the binding force of the contract and the relativity of contract effects have dominated the progressive formation of the conventions, especially their abolition by rescission or termination.

By signing the contract, the parties undertake obligations and acquire rights equally. But if one of the contracting parties fails to perform its essential obligations, incumbent to it conventionally or legally, the contractual balance is compromised, and then, the creditor of the obligation pending to be executed has the right to trigger the mechanism by which the contract will be terminated. Thus, if without justification, the debtor fails to fulfill its obligations under the contract, the creditor has the right to execute these rights provided by art.1516 Civil Code, by choice:

- To request or, as the case may be, to levy the forced execution of the obligation;

¹³ F.G. Pancescu, *Mediation Act. Remarks and explanations*, Ed. Ch. Beck, Bucharest, 2008, I. Delcanu, *Mediation in civil law suit*, in „Dreptul” no. 10/2006, p.82, Ș.Beligrădeanu, *Correlations between the Act no. 192/2006 on the mediation and the organization of mediator profession in labor law*, in „Dreptul” nr. 10/2006.

¹⁴ Act no. 192 of 16th May 2006 on the mediation and the organization of mediator profession, amended and supplemented by the following documents: Amending documents: Act no. 370/2009; Governmental Ordinance no. 13/2010; Act no. 202/2010; Act no. 76/2012; Act no. 115/2012; Emergency Governmental Ordinance no. 90/2012; Emergency Governmental Ordinance no. 4/2013; Act no. 214/2013; Emergency Governmental Ordinance no. 80/2013; Act no. 255/2013; Decision of Constitutional Court no. 266/2014; Decision of Constitutional Court no. 713/2014.

- To obtain the rescission or termination of the contract or, as the case may be, the reduction of its correlative obligation;
- To request the debtor's obligation to pay damages;
- To use, when appropriate, any means provided by law for the fulfillment of its right¹⁵.

Voidance the contracts, as a sanction, can be obtained by rescission or termination: conventional (inserting a resolutive pact in the content of the contract clauses), unilateral or judicial (through court intervention), depending on the manner of execution of the contract (with successive or instantaneous execution).

The termination of contracts (by definition) is a penalty of culpable non-performance of the reciprocal contract with successive execution, making the effects of the contract to terminate *ex nunc* and leaving untouched the previous successive benefits.

“The condition subsequent is always inhered in reciprocal contracts, if one party does not fulfill its commitment.” “The legal basis for rescission is the reciprocity and interdependence of the obligations of reciprocal contract, the circumstance that each of the mutual obligations is the legal cause of the other. Culpable failure of fulfillment of one of the obligations deprives of legal support the reciprocal obligation so that abolition – successive termination – of the whole contract is required”¹⁶.

The legislator made therefore available to the creditor several variants of action, leaving him the right of option.

By virtue of legal provisions and benefiting from the enforceability power of the contract, the creditor may head for the enforcement of the debtor as soon as the conditions stipulated in legal regulations are fulfilled.

But when enforcement begins under an enforcement order, which does not emanate from a court or arbitral decision, the Code of Civil Procedure allows the debtor an opportunity to make substantive defenses (art.720 paragraph 2) in the execution appeal, so that there is no suspicion of establishing privileges or discriminations and thus to provide the requirements of a fair trial¹⁷.

The appeal to the enforcement itself is the most frequent procedural instrument, in practice, which may challenge the enforcement itself as well as any act of execution committed during forced pursuit, asking the court to annul the entire execution or the unlawful act.

But when the creditor chooses to terminate the contract, the art.1549 Civil Code stipulates that it should intervene under the following conditions:

¹⁵ Stanciu Carpenaru, *Treatise of Roman commercial law*, 4th Edition, Ed. Universul Juridic 2014, p. 434.

¹⁶ C. Stătescu, C. Bârsan, *Civil law. General theory of obligations*, Ed. All Beck, Bucharest, 8th edition, p. 95.

¹⁷ Constitutional Court-Decision no. 1181/2010 on the dismissal of unconstitutionality exception of the provisions of art. 8, 14, 15 and 16 of the Governmental Ordinance no. 51/1997 on leasing operations and leasing companies

“(1) If he does not require the enforcement of contractual obligations, the creditor is entitled to his rescission or, where appropriate, termination of the contract and also damages, if granted.

(2) Rescission can occur for part of the contract only where enforcement is divisible. Also, in the case of multilateral contract, the failure by either party to fulfill the obligation does not trigger the rescission of the contract in relation to the other parties unless the non-fulfilled benefit should have been considered essential according to the circumstances.

(3) Unless otherwise provided, the provisions relating to rescission also apply in the event of termination.”

Therefore, only by giving up enforcement the creditor is entitled to request termination of the contract, without losing the right to damages, which this time must be proved. If the creditor opts for termination in fact, this abolishes the enforcement itself and the provisions of art. 643 Code of civil procedure¹⁸ become incidental, of course, without losing the right to damages by way of common law. In these circumstances the creditor will have to demonstrate the liquidity, chargeability and certainty of his debt. But terminated contracts were often vested with executory formula in the practice of courts.

4. Conclusion

I conclude that special attention should be paid to the creditor's option, on the preservation of the contract or the declaration of termination. From *per a contrario* interpretation of the art.1549 there results clearly that, when the creditor decides for the forced execution of the debtor under the enforcement held, then he is no longer entitled to termination. Hence, the creditor can profit by his right of option by choosing between the two alternatives which the legislator grants to him as a benefit: enforcement or termination.

As the Civil Code states, termination is irrevocable from the date of the declaration and in no case the creditor can head for execution of the debtor under the writ of execution which was the contract, forfeiting the right to the enforcement of the obligation remaining to be executed, being able instead to claim from the debtor the recognition of his civil right and damages by way of common law.

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3. Popovici Constantin, *Efectele convențiilor în dreptul roman și român*, Ed. Noua tipografie ”Tulcea”, Tulcea 1886;

¹⁸ Art. 643 C.proc.civ., Abolishment of enforcement: *“If the enforcement was abolished, all the execution acts carried out based on it are rightfully abolished, if not provided otherwise by law. In this case, the provisions regarding the return of execution are applicable.”*

4. F.G.Pancescu, *Legea medierii. Comentarii și explicații*, Ed. Ch. Beck, Bucharest, 2008;
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6. C. Stătescu, C. Bârsan, *Drept civil. Teoria generală a obligațiilor*, Ed. All Beck, Bucharest, 8th edition,
7. Civil Procedure Code. Law 76/2012 on the implementation of Law no. 134/2010 on the Code of Civil Procedure.