



THE 11TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

About the Just Cause of the Revocation of a Mandate Contract

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Abstract: We hereby propose to identify the limits where it can be assessed as just cause of the revocation of a mandate contract, as it is stipulated by the provisions of art. 1431, paragraph (4) from Law no. 31/1990, being known that the revocation without just cause of the mandatory (administrator / director of the Board of Directors) entitles him/her to payment of damages. The analysis starts from jurisprudence solutions and it has been necessary as the problem has been treated differently in practice, this collocation “just cause” being interpreted either restrictively, by reporting only to the mandatory, or extensively, by reporting to the subjective – objective resorts of the mandator.

Keywords: mandate contract; revocation; jurisprudence

I. We hereby propose to identify the limits where it can be assessed as just the cause of the revocation of a mandate contract, as it is stipulated by the provisions of art. 143¹, paragraph (4) from Law no. 31/1990, being known that the revocation without just cause of the mandatory (administrator / director of the Board of Directors) entitles him/her to payment of damages.

The aspects under analysis start from a different interpretation of the legal provisions which regulate the possibility to grant some damages in case the mandate given to the administrator of a company, respectively to the Director of the Board of Directors, is revoked before the expiration of the term contractually convened.

II. Accordingly, it is known the fact that, according to art. 143¹ from Law no. 31/1990, “*the directors can be anytime revoked by the Board of Director. Is case the revoking comes without just cause, the director under discussion is entitled to payment of some damages*”.

This provision of the special law is corroborated with the provisions from Title III entitled “*Companies’ activity*” of Law no. 31/1990 on companies, namely with the provisions of art. 72, according to which: “*the obligations and the responsibilities of the administrators are regulated by the provisions regarding the mandate and by those especially provided by this law*”.

Next, the provisions of the general law, Law no. 287 / 2009 regarding the Civil Code, respectively art. 1914, paragraph (2), show that: “*the administrator can be revoked according to the rules from the mandate contract, in case it is not provided otherwise in the company contract*”.

Art. 2032, paragraph (2), Civil Code, provides that “*when the parties declared the mandate irrevocable, the revoking is considered to be unjustified in case it is not determined by the fault of the*

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mandatory or by a fortuitous case or by a force majeure case”.

We underline, at the same time, the essentially revocable character of the mandate contract, as art. 2030, paragraph (1), letter a) Civil Code states the revoking of the mandate by the mandator among the special causes of mandate termination.

The legal provision is justified by the *intuitu personae*¹ character of this contract and by the circumstance that the mandate is concluded in the interest of the mandator.

Thereby, according to art. 2031 Civil Code, “*the mandator can anytime revoke the mandate, expressly or tacitly, no matter the form in which the mandate contract was concluded and even if it was declared irrevocable*”.

It results that the director of a company, the administrator / the mandatory, in generic sense, cannot oppose to this revoking, the only possibility for this being the one to request to the mandator to execute the obligation provided by paragraph (1) of art. 2032 Civil Code, according to which the “*mandator is compelled to repair the prejudices suffered by the mandatory due to unjustified or tempestuous revoking*”.

III. Usually, the parties insert in the mandate contract a criminal clause which quantifies the prejudice in case of revoking the mandate contract without just cause², stating at the same time the circumstances which delimit this notion (just cause).

In this case, we consider that, being on the domain of the contractual provisions, whenever the parties have actually identified the just causes of contract termination, meant to absolve the mandator from paying damages, they cannot be extended to other situations than those expressly stated.

IV. There are cases when the parties do not identify in the content of the contract the causes which would justify revoking the contract or when they indicate a single situation which represents (or which does not represent) a just revocation cause.

In this case, the check points that stay at the basis of classifying a revocation cause as being just or unjust must be identified. With other words, by reporting to the jurisprudence, the following question must be answered: Should the rightfulness of the revocation cause be regarded from the mandator’s point of view or from the mandatory’s point of view? Or, more practically: Is it possible that an objective and unavoidable situation in which the mandator is found is appreciated as just revocation cause (for example, redrawing the operating permit of the defendant entity by the Financial Monitoring Authority).

V. Accordingly, it was analysed the problem that marks the explaining of the just cause notion, in a jurisprudential³ solution.

The object of this request was represented by the plaintiff’s request according to which the defendant is compelled to pay damages, according to a contractual clause with the following content: “*in case*

¹Please see on these lines, (Schiau, 2009,p. 450).

² In the sense that „*a tempestuous revocation, without just cause, of the directors’ mandate, can give rise to damages in favour of the revoked director, damages that can be established in advance, in the mandate/administration contract, with a title of criminal clause*”, please see (Cârpenaru, David, Predoiu, Gh. Piperea, *The Law of trade companies. Comments articles wise*, 4th Edition, C.H. Beck Publishing House, 2009, p. 584.

³ Please see the Arbitration sentence no. 100 from September 29th, 2015, given in the File no. 69/2015 by the Court of Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania (not published).

the leader's mandate is revoked before the expiration period of the contract, without just cause, to pay to it damages amounting to a sum equal to the gross fixed remuneration which it was entitled to collect until the end of the mandate. Not fulfilling the performance criteria represents a just reason for revocation”.

The reason for revoking the mandate contract, contract established for a certain date, was represented by the circumstance that the defendant, which was an entity subject to authorisation by the Financial Monitoring Authority, decided, within the same meeting of the General Meeting of Shareholders, in which it was decided upon the content of the mandate contract of the plaintiff, not to increase the share capital of this entity, increasing claimed by the provisions of the European Union Regulation no. 648/2012 of the European Parliament and Council from July 4th, 2012, on OTC derivatives, central counterparts and trade repositories¹.

It must be mentioned that the defendant entity was not dissolved and it did not stop its activity, but operating changes in what concerns the object of activity of this company, this entity not developing activities of the nature of those that imposed the authorisation by the Financial Monitoring Authority.

VI. Our opinion is in the sense that the object of the mandate contract, as it is configured from contractual point of view, does not superpose with the object of the company contract, least of all with the company's object of activity.

Accordingly, while the object of the mandate contract is represented by the services to which both parties committed (the mandator – to pay the remuneration, the mandatory- to fulfil the obligations committed), the object of the company consists in the activities, which the company is going to achieve.

Indeed, there are some activities of the trade company which are included in one of the categories allowed by the law and for which the company is compelled to obtain the preliminary permit / the authorization of the state organization with competency in the respective area, as it was in this case.

Redrawing the authorisation had not lead to the disappearance of the legal person, but only to changing / modifying the company's object of activity, circumstance which cannot be appreciated as being a just cause of revoking the mandate contract, previously to the date which was convened, so that to be removed the obligation to pay the remuneration to which the defendant committed through the criminal clause.

In case the above mentioned opinion would be allowed, it would result that anytime an entity changes the object of activity and finds that, in regard to this change, a mandate contract is of no use, it might denounce it, being absolved at the same time by the obligation to pay the remuneration.

More so, changing / modifying the object of activity of the defendant was not mentioned as just cause of revocation / contract termination cause although, at the same this contract was signed, both parties knew the evolution which the company was going to have in the future, from the point of view of the European regulations and of the content of the General Meeting decision, meeting which took place in the same day when the mandate contract was signed.

Accordingly, we can note that the revocation of the defendant, following to activity reorganization, as a matter of fact a predictable reorganisation, it was not instituted as cause for terminating the mandate contract, nor it represents a just cause for revoking it.

¹ Published in the European Union's Official Gazette no. I 201/1 from 27.072012.

This event being a sure thing, nothing stops the mandatory to institute it as contract termination cause.

We consider as irrelevant the conviction, which the mandatory had at the moment of signing the mandate contract, meaning it considered that this contract will be terminated at the moment the permit was redrawn.

Accordingly, the essential defence of the defendant done in this cause was that we do not find ourselves in the situation of revoking the mandate contract, but this contract was rightfully terminated, following to redrawing the operating permit.

At the same time, it was requested to be noted that, in case it would be thought it was about revocation, it would be done with just cause.

We appreciate that while the rightful termination of a contract presupposes the termination of the legal relations, by effects of the law, independently from the will of any party, the unilateral revocation / denouncement presupposes a manifestation of will which is conscious and without undue influence, with the purpose of obtaining the legal effects which the revoking act generates.

This is due to the fact that, while the mandator conviction was it would be rightfully terminated at the moment of redrawing the permit, at the moment when it had signed the contract, the mandatory's conviction was that, since there was no culpability from its part, its remuneration would be paid until the end of the contractual period, in case of unilateral revocation / denouncement.

More so, we appreciate that, as long as it is noted that this conviction was founded on a wrong representation of the law norms and not being identified any grounds for the rightful termination of this contract, it cannot have the effect shown and namely, the exoneration of the defendant from the obligation to pay a remuneration, as it was established at signing the contract.

In the judicial practice that comes from the highest Court of law, it was noted that its revocation and implicitly, its tempestuous and abusive character is appreciated not by reporting to the mandator and concretely, to the necessities imposed to it by its internal reorganization, but to the mandatory (in this sense, please see Decision no. 3237 from October 11th, 2013, of the High Court of Cassation and Justice¹).

It was also noted² that, even if *“the temporary impossibility to exercise the responsibilities by the president of the Board of Directors does not represent a cause for mandate's termination, so that its revocation without just cause from the function held entitles him/her to payment of some damages”*.

Indeed, it can be considered as being stated one single hypothesis of individualization of the just cause, the clause from the mandate contract under litigation, through which the parties have convened that not fulfilling the performance criteria represents a just reason for revocation, it cannot and it must not be interpreted as a restriction of the revoking reasons only to the hypothesis mentioned.

But from the content of the mentioned clause it results that the just reason for revocation must be appreciated by reporting to the mandatory and not to the mandator.

Also, we mention that by this interpretation, it is not harmed in any way the principle of the mandate contract revocability, principle provided by art. 2031 Civil Code, corroborated with art. 1431,

¹ Decision available on the Internet, at the address: <http://www.scj.ro/1093/Detailii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=82851>.

² Please see to this sense Decision no. 3156/2012 given by the High Court of Cassation and Justice, available on the Internet, at the address: <http://www.scj.ro/1093/Detailii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=82929>.

paragraph (4) from Law no. 31/1990.

It is and it stays a revocable contract, the problem of the just cause being of interest only under the aspect of the incidence of the criminal clause, respectively under the aspect of the obligation of the defendant company to pay the remuneration convened in advance, remuneration established taking into consideration the term for which the contract was concluded.

As we have already shown, we consider that the unfavourable economic circumstances, as well as the insufficiency of the funds caused by changing the company's object of activity cannot represent just causes for revoking a mandate contract with a term, which would have as effect the exoneration of the defendant from paying the remuneration convened in advance.

VII. In conclusion, we plead for a restrictive interpretation of the notion of just cause, by reporting to the mandatory and not extensively, by reporting to the subjective or objective resorts of the mandator, mentioning that for the objective resorts we do not have in view the fortuitous case or the force majeure.

This interpretation is in agreement with the jurisprudence of High Court of Cassation and Justice and with the legislative provision e (art. 2032, paragraph (2) Civil Code) which shows – it is true, in case of the irrevocable mandate – that “*the revoking is considered as being unjustified in case it is not determined by the mandatory's fault or by a fortuitous or force majeure case*”.

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