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ERROR. BRIEF REMARKS ON THE LEGAL NOVELTIES ON ERROR

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Abstract

We will start by noting that an absolute novelty is to be found in the New Civil Code concerning the nature of error, which may lead to contract nullity. The novelty resides in the new Civil Code regulating expressly the error of law as a case of the voidance of a contract, obviously under strict circumstances. Also new (however, in our opinion only relatively new, as the doctrine mentioned these aspects under the former law) is de lege lata *regulation of the inexcusable error. However, it is very important that, for the first time, the Civil Code distinguishes accurately and restrictively between the cases where a error is deemed as essential and may lead to the voidance of the deed; it is also of interest that, although essential, this type of error may be confirmed. And there are the concepts of assumed and calculation errors, which were not provided for in the former Civil Code.*

Finally, another novelty in the matter is the adjustment of a contract in case of error, a measure that could not be ordered under the former civil code, where a error could lead, under certain circumstances, to contract nullity.

Keywords: Private Law, Civil Law, error, error of law, essential error, inexcusable error, adjustement of contract.

1. Grounds of the matter. Legal regulation of error

The old civil code provided for error in only one article, art. 954 respectively, a legal text that generated our entire doctrine concerning this defect of consent. As we remember, the quoted article referred to the error *in substantiam* (leading to the deed being null) and the error *in personam* (which could not lead to the nullity of a contract).

Currently, the error as an imperfect consent is regulated in more detail by art. 1.207 – 1.213 of the New Civil Code. However, it is worth mentioning that in this matter, the main source of inspiration was another code, namely the Italian Civil Code and not the Civil Code of Quebec; even if the Italian law does not acknowledge the prejudice, the legal provisions on error are almost identical.

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2. Definition and classification

A very simple but accurate definition of error was formulated by the professor Gh. Beleiu, with whom we agree, especially when the law does not provide such a definition. The error is the misrepresentation of the reality upon the conclusion of a legal deed[1]. This definition is perfectly valid nowadays, even if there have been important new elements in the matter of error as compared to the old civil code (as we will see, such new elements mainly concern the types of errors and the sanctions applicable to the legal deed under error).

More ample debates are required for the *classification* of errors. According to the new legal provisions, there are several categories or types, namely:

- *Error of fact and error of law* – based on the misrepresented circumstances, that is facts or, on the contrary, legal norms;
- *Essential error and non-essential error* – based on the importance of the misrepresented circumstances;
- *Excusable error and inexcusable error* – based on the fault of the person invoking the error.

2.1. Error of fact and error of law

A error of fact is that error as to factual elements and circumstances related to the contract. In the former civil code, this was the only type of error (according to the classification based on the nature of the misrepresented elements) and invoking error was not allowed if such error was the result of the lack of knowledge of legal regulations. Obviously, we expect that even after the adoption of the new civil code, most of the errors be of fact and that the error of law, although currently acknowledged by law as a defect of consent, is only exceptional. In other words, we assume that the error of fact and not the error of law be the rule in practice.

It is a error of fact:

a) the error concerning *the nature of a contract (error in negotio),* that is the error affecting the nature of the concluded legal deed (for instance, a person believes that he will receive an asset free of charge, but actually, the contract was not a donation contract, but a sale contract and such person is bound to pay the price[2]);

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[1] Gh. Beleiu – *Drept Civil român. Introducere în dreptul civil. Subiectele dreptului civil*. Ed. Şansa, Bucureşti 1993. p. 135.

[2] Our judicial practice considers as error as to the nature of a contract the case where an employee is errorn about the warranty document he has signed, believing he has signed a document for his capacity of employee and not a document for the real estate credit contracted by the company; therefore, it was deemed as an *error as obstacle (erreur obstacle),* because there was no consent whatsoever upon the conclusion of the document, which led to the absolute nullity for the respective legal deed (High Court of Cassation and Justice, Commercial Dept, Decision no. 1844/17.03.2005 on the websitel www.scj.ro).

b) the error concerning the *subject-matter of a contract (error in corpore),* that is the error affecting the asset being the subject-matter of a contract (for instance, a party may believe he purchases a certain asset but, actually, the subject-matter of the sale is another asset, a case that is frequently found in the French case-law for works of art, especially for the paintings which are later proven not genuine[3]);

c) the error concerning *important characteristics* of the asset being the subject-matter of a contract (*error in substantiam*) is the error that occurs, for example, when a person believes they purchase a new car, but actually the car is used[4];

d) the error concerning a *person (error in personam)* is the error related to the person with whom the contract is concluded and it is most frequently found for *intuitu personae contracts*, free of charge contracts, as well as for onerous contracts (a person believes they purchase an asset from the seller, but actually the owner of the sold asset is another person[5]).

e) The error concerning other *insignificant elements* of a contract, which are not crucial for the conclusion and validity of the legal deed, such as the price, delivery times, date of contract termination, etc.; such error is also called an *indifferent error (erreur indifferente)* or, according to the new civil code, *a non-essential error*.

The current legal regulation recognises the error of law as well. A error of law occurs when a party has a misrepresentation of a legal norm, which they did not know. There have been and still are debates and controversies concerning this type of error, with respect to whether such error may be deemed as a defect of consent, as the internal regulations of various countries differ substantially in this matter.

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[3] The error concerning the authenticity of a painting is a error relating to the substance of the asset and not a simple error as to its value (Civ. 1, 13 Jan. 1998 and other solutions cited in *Code Civile Dalloz 2012*, p. 1273). Also in the field of works of art it was considered that a buyer was error in terms of a painting from a catalogue, which was said to show scenery created by Dali, and the buyer understood and believed it was a painting by Dali himself (Civ. 1, 30 Sept 2008, idem, *op. cit.*, p. 1274).

[4] The French case-law showed this type of error in the case of a horse that had been bought to take part in races, but such horse was in fact a pregnant mare, which the buyer had not been aware of and which was essential for the conclusion of the contract (Civ. 1, 5 Feb. 2002, *Code Civil Dalloz*, p. 1273). However, we must say that, in the French case-law, a error as to the subject-matter of a contract is assimilated to the error on the substance of an asset (*erreur sur la substance*).

[5] Our case-law constantly stated that the error as to a person is essential when it affects his physical identity, civil identity or his essential qualities; on the contrary, when the error concerns the marital status of a person, it cannot be admitted as an imperfect consent (Bucharest Court, Civil Department., Decision no. 499/1997). The French legal practice showed that there is a error as to a person also when such person was chosen as an arbitrator in an arbitration procedure, and the party having chosen such person was error with respect to his capacities; in such case, the arbitration agreement was cancelled (Civ.2, 13 avr. 1972, *Code Civil Dalloz,* p. 1278). Furthermore, when the party believed they conclude a contract with an experienced trade company and not with a natural entity, as it was proven later (Saint-Denis de la Reunion, 6 oct. 1989, *idem*., p. 1277) or when a person (creditor) accepted a trustee without being aware that such trustee was under interdiction, which affected seriously the consent at the time the security agreement was concluded (Com., 19 fevr. 2003, *idem*.)

In our former civil code, the error of law could not be considered an imperfect consent, as the law applied the principle of *nemo censetur ignorare legem* (nobody can be exempted from liability due to their lack of knowledge of the law) as taken over from the Roman law, a principle that was applicable up to the level of contract liability; obviously, the absolute application of this principle led to absurd resolutions, as no person, despite their best legal training, can know of all the laws passed in a country at a certain time. However, currently, due to the trend in the legal practice and to the influences of other law systems where the error is deemed as a defect of consent (for instance, our main source of inspiration in the matter of error, the Italian Civil Code, as well as the principles of the European Contract Law[6]), due to the defining influences of the regulations of the international commercial law unanimously accepted[7], the error of law *(erreur de droit)* is correctly acknowledged as an imperfect consent; on the other hand, we must note that another (main) source of inspiration for our new civil code, namely the Civil Code of Quebec, refers only to the error of fact and expressly excludes the error of law from the class of defects of consents[8] (under the obvious influence of the French Civil Code).

The general modern trend of recognising the error of law covers other law areas as well, namely the criminal law, where art. 30 of the New Criminal Code expressly regulates that the error of law is a cause for removal of the criminal nature of a deed, provided that it concerns an extra-criminal legal provision (which is of absolute novelty in criminal law, as it is well known that art. 51 of the former criminal code did not acknowledge and even expressly removed the error of law and provided only for the error of fact).

As is the case with the error of fact, the first requirement to be fulfilled to classify the error of law as a defect of consent is that such error is *essential*. The error of law is deemed as essential when it concerns a legal regulation that is,

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[6] Art. 4.103 PECL called „*Fundamental Error as to Facts or Law*" refers to the conditions and effects of nullity, with no distinction between the error of fact and the error of law.

[7] In international trade law and, generally, in the international private law relationships, the error of law has been accepted traditionally as a defect of consent, as it has been considered that an individual residing in a country cannot be aware and cannot be held to be aware of the laws of another state. The UNIDROIT principles applicable to the international trade contracts are extremely relevant for this purpose; the principles define the error as a misrepresentation of some aspects of law or of the law at the time when the contract is concluded (art. 3.4 - *Definition of Error*).

[8] *L'erreur de droit n'est pas une cause de nullité de la transaction. Sauf cette exception, la transaction peut être annulée pour les mêmes causes que les contrats en général* (art. 2.634 C.C.Q.). However, we must say that the Canadian legal literature considers the error as to the nature of the contract as a error of law, because it leads to „*an inaccurate legal opinion*" unlike the error of fact, „*which bears on the factual circumstances*". On the other hand, the Canadian common law applicable in the other Canadian provinces recognises, by virtue of the solutions passed in the case-law, the error of law as a defect of consent, which influenced the solutions of the courts of Quebec as well (for this purpose, see M. Tancelin – *Des obligations en droit mixte du quebec*, Wilson & Lafleurn Publishing, Montreal 2009, p. 137).

according to the will of the parties, *determining* for the conclusion of the contract. On the contrary, the error of law cannot be invoked for legal provisions that are accessible and foreseeable (inexcusable error of law).

2.2. Essential error and non-essential error

The old civil code, although very brief and lacking in the matter of error, gave rise for over a century to countless theories concerning the determining nature or, on the contrary, non-determining nature of error, which, fortunately, led to consistent doctrine and case-law solutions. Over the past years, it has been acknowledged that, from the perspective of its importance, of the consequences it may generate, there are three types of errors: the error as obstacle, the error as a defect of consent and the indifferent error (although there were debates concerning the errors which may be deemed as obstacles or, on the contrary, as defects of consent). *The error as obstacle (erreur-obstacle)*, also known as *the error vitiating the will* was that which affected the nature of the deed *(error in negotio)* or the identity of a person (*error in personam)* and led to the absolute nullity of the contract, as it was considered that there had not been an accord of will[9]. *The error as defect of consent* led to relative nullity and referred to the error concerning certain elements of the subject-matter of a contract *(error in substantiam)* or concerning the subject-matter of the contract itself (*error in corpore*). Finally, *the indifferent error (erreur indifferente)* was the error which affected insignificant elements of the contract and, therefore, bore no effects, at the most, it could result in negotiations for the readjustment of the contract, if applicable.

Apparently, all this doctrine theory concerning the types of errors is no longer in existence after the new civil code was adopted. For the first time, the New Romanian Civil Code refers to the concept of *essential error*. The rule applying in this matter according to the new civil code is that the cancellation of a deed may be requested only for an essential error, namely the error should be as to a determining element for the conclusion of the contract.

Our first remark here is that the former civil code (the Civil Code of 1864) did not use the concept of essential error. Secondly, the wording in the legal text implies that the party having made the essential error *may* request the annulment of the contract, which leads us to think of a relative and not absolute nullity, unlike the former civil code, which provided expressly for the absolute nullity. Finally, so that the error be invoked, a prerequisite must be fulfilled as far as the other party is concerned, as this is a *subjective element,* namely, it is required that the other party should have known or, where applicable had to know that the fact affected by the error was essential for the conclusion of the contract.

[9] The legal doctrine in our country – especially, Prof. Gh. Beleiu – proposed that this type of error should not lead to absolute nullity, a proposal *de lege ferenda* which was actually taken over by the provisions of art. 1.213 of the new Civil Code.

To clear any confusion, the new Civil Code lists expressly and restrictively all the cases of essential error in art. 1.207 par. (2)[10]. Thus, an essential error occurs when it is:

- a error as to the nature *(error in negotium)* or the subject-matter *(error in corpore)* of the contract;
- a error as to the identity of the object of the prestation or to one of its qualities or to another circumstance deemed as essential by the parties and in the absence of which the contract would not have been concluded *(error in substantiam);*
- a error as to the identity of an individual or one of his qualities in the absence of which the contract would not have been concluded *(error in personam).*

After seeing which are the situations deemed by the Civil Code as the grounds for an essential error, it is easier to define the concept of *non-essential error*; obviously, we should deduct that any other type of error except for the ones deemed by the law as essential errors, is a non-essential error. According to the law, the error as to the simple motives of the contract is not essential, unless the parties have agreed that they are determining. The source of inspiration for the non-essential error is the Canadian law; the Civil Code of Quebec excludes the cases of „*error of minor importance*", such as calculation (as well as the error as to the economic value, except in case of prejudice), the error of form or the so-called error due to personal reasons[11].

Finally, a variety of non-essential error as regulated expressly by the new Civil Code is the calculation error. A simple calculation error does not lead to the annulment of the contract, but to its adjustment, except when, if it becomes a error as to quantity, it was essential for the conclusion of the contract. According to the law, a calculation error shall be remedied upon the request of either party.

2.3. Inexcusable error and assumed error

Certainly, when we refer to error, we mean the situations where an individual had a misrepresentation of the reality (either a misrepresentation of the factual circumstances or of the legal circumstances of a legal regulation), and such misrepresentation could not be avoided by such individual. In other words, such

[10] The wording of art. 1.207 par. (2) NCC is almost identical to the wording in art. 1.429 of the Italian Civil Code.

[11] *The error due to personal reasons* is, in the Canadian contract law, is a error exclusively concerning the personal reasons why a party enters into a contract, which, at the same time, would be absolutely neutral for another individual. For instance, a collector wants to buy a work by the painter Picasso, painted between 1920 and 1930. If such buyer later discovers that the bought painting, although made by Picasso, was painted in 1918, the collector could not request the cancellation of the sale unless he expressly stated (by means of a contract clause) that he was interested only in certain works by, namely the ones painted between 1920-1930 (Collection du droit 2011 – 2012, *Obligations et contracts*, Y. Blais Publishing, Québec, 2011, p. 42).

individual, although quite careful upon the conclusion of the deed, could not notice the erroneous circumstance; therefore, his was an excusable error, which he did not assume and, which, with reasonable diligence, he could not avoid. This was also the reasoning when the error as defect of consent was regulated, as, otherwise, any individual could avoid the performance of an obligation by availing himself of a false error having affected his consent when signing the contract.

Our new Civil Code does not define the concept of excusable error, but it defines that of *inexcusable error*, namely this cannot vitiate the consent[12]. Therefore, unlike the old code, the current civil code emphasises this aspect by defining the concept of *inexcusable error*. Thus, according to art. 1.208 NCC, the contract cannot be annulled if the fact which it affects could be known provided that reasonable diligence was employed. The same principle applies for the error of law which, as we have seen, according to the law cannot be invoked for accessible and foreseeable legal provisions. Therefore, an inexcusable error occurs when the party invoking it was grossly negligent (art. 3.5 par. 2 of the UNIDROIT Principles) at the time the contract was concluded; however, our civil code preferred to use the wording reasonable diligence, taken from the Italian Civil Code (art. 1.431 which refers to *normale diligenza*). Obviously, in practice, it will be extremely difficult to determine how excusable the error was or how diligent was the party invoking the error. Certainly, the courts of law will have the task of settling such matters, taking into consideration the particular circumstances of every case to be able to apply a concrete assessment pattern concerning „the reasonable diligence" shown by a party[13].

We may refer here also to the concept of *assumed error*, which is defined separately by the law, but which bears the same effects as an inexcusable error. Thus, according to art. 1.209 NCC, a error as to an element for which the risk of error was assumed or, where applicable, had to be assumed by the claiming party does not void the contract. For this purpose, in our opinion it is important to note that the Principles of the European Contract Law (a code of international contract law accepted also by our country) approach the two concepts together – the inexcusable and assumed error. Thus, the party claiming to have been error cannot invoke the error if such error was inexcusable or assumed by such party[14].

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[12] *L'erreur inexcusable ne constitue pas un vice de consentement* (art. 1.400 alin. 2 C.C.Q.)

[13] In our opinion, for an ample and relevant debate on the excusable nature or, on the contrary, inexcusable nature of the error, see M. Tancelin, D. Gardner – *Jurisprudence comentee sur les obligations*, Wilson & Lafleur Publishing, Montreal, 2010, p. 67. We hereby briefly present the criteria used in the case *Legare vs. Morin-Legare*, which determined the judge to consider that the contracting party may invoke an excusable error, namely: such party did not have knowledge of the business area (company law); in advance, he consulted an accountant of the company issuing the shares being the subject-matter of the transaction, as well as a lawyer; he requested a draft of the agreement one week before its signing; he took part in the discussions preceding the conclusion of the contract; he trusted the other party (specifically, his brother-in-law).

[14] Art.4.103 par.(2) PECL: „*However a party may not avoid the contract if: (a) in the circumstances its error was inexcusable, or (b) the risk of the error was assumed, or in the circumstances should be borne, by it*".

3. Invoking error

Therefore, for a error as defect of consent to be invoked two conditions shall be fulfilled, namely the error must be essential and excusable. Under certain circumstances a third condition may be required, namely the other party be aware of the error. The legal literature of Quebec on this matter distinguishes between the essential element and the personal element having become essential; in the first case, the essential element does not have to be known by the other party, as it is an essential element for any individual; in the second case, the personal element should be communicated to the party, as otherwise it cannot be deemed as an essential element leading to the nullity of the contract.

The error bears certain important legal effects, as it is believed it affects (to a lesser or greater extent) the consent of the signing party to a contract. The error may vitiate the consent both if the contract was concluded between parties that were present and in absence thereof *(inter absentes)*, by means of communication sending the offer or, if applicable, receiving the offer[15]. The basic applicable principle in this matter is the *principle of good faith,* meaning that the error party cannot avail himself of it contrary to the requirements of good-faith.

The error as defect of consent, irrespective of whether it is essential or non-essential, of fact or of law, excusable or inexcusable, must be invoked by the party claiming to have been error upon the conclusion of the contract, as such party has an interest of claiming the occurrence of error. Therefore, the party must prove that, should he have known the circumstance of fact or of law relating to which he was errorn, such party would not have entered into the contract. In other words, as shown by the legal literature, there is no defect of consent when the party would have entered into the contract despite being aware of the error[16].

Therefore, a very important matter emerges from all the above, namely *the evidence* of the error bya party, which is quite difficult sometimes, taking into consideration the rather psychological elements defining this defect of consent. Such error may be proven using any means of evidence (documents, witnesses, assumptions etc.), as things do not seem very complicated as we are talking about a legal deed; more difficult will be to prove subjective aspects related to the nature of error, such as how essential such error was and, especially, how excusable it may be deemed.

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[15] According to art. 1.211 NCC, the provisions on the error apply appropriately also when it is a error as to the declaration of consent or when such declaration was sent inaccurately by another individual or by communication means.

[16] C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu – *Tratat de Drept Civil, Vol. I.* All Publishing, Bucharest 1998, p. 82.

4. Effects of error

Above all, in terms of the effects of error, we must note the significant distinction made by the current civil code as compared to the Civil Code of 1864. As we could infer from the above, the two types of error referred to in the current civil code (essential and non-essential error) bear the same effects; also, unlike the old civil code which provided for absolute nullity as the effect of the erreur-obstacle and for relative nullity for the other cases of error, the new civil code gives the same solution irrespective whether the error is *in negotium*, *in substantiam*, *in personam*, or *in corpore.* Therefore, according to the new regulation, we cannot talk about a error as an obstacle or vitiating the will of the party as, unlike the former regulation, it is deemed that none of the errors can irremediably vitiate the will of the parties.

The sanction characterising and applying generally to error, irrespective of its type, is currently, according to the law, the *relative nullity* of the contract. In fact, this sanction is an application of the provisions of the current civil code on nullity and these provisions themselves are, in their turn, new in our private law. We refer to the principle set out by art. 1.251 NCC, according to which any defect of consent leads to the relative nullity of the legal deed so concluded, as well as to the assumption of relative nullity as set out by 1.252 NCC. It is worth noting that, essentially, this is one of the fundamental criteria which makes the distinction between the absolute and relative nullity, namely the relative nullity may be confirmed or ratified by the parties; such confirmation requires the right of the parties to readjust the vitiated contract. The possibility of adjusting/confirming the contract applied and still applies to relative nullity, as well as the error as a defect of consent

The actual novelty here is the possibility of adjusting the contract to *any* type of error, even to the essential error; furthermore, it provides for a special procedure of contract *adjustment* in case of error (although the relative nullity can be confirmed, according to its definition). Practically, we refer to the possibility of removing the cause of nullity by performing the deed vitiated by error, which was not possible under the former civil code, when the error vitiated the will of the party. More precisely, the law sets out that, where a party is entitled to invoke the possibility of contract annulment for error (for instance, the buyer of an asset), such party cannot do it if the other party (the seller) declares that he wants to performs the contract or performs the contract as it was understood by the buyer. In such case, the contract is deemed to have been concluded as it was understood by the party entitled to invoke the cancellation of the contract (in our example, the buyer).

So that the contract may be adjusted, a certain procedure shall be followed, meant to ensure the good performance of the contract[17]. Thus, unless he requests

[17] The Italian Civil Code, on which the regulation of this matter is based, in art. 1.432, provides for the possibility of maintaining the altered contract, but it makes no reference to any notification and no performance time.

the annulment of the contract and wants to request the performance of the contract, the party entitled to invoke the its cancellation shall inform the other party about the manner he understood the contract; no later than 3 months after being notified, the other party shall agree on the performance or shall perform the contract without delay, as it was understood by the errorn party. If the declaration was made and communicated to the errorn party within this time or if the contract was performed, the right of obtaining the annulment ceases and the notification by the errorn party is not binding. Such possibility of adjusting the contract also occurs when the errorn party referred to a court for the annulment of the contract. The notification to the other party shall comply with the same requirements, as well as with the 3-month period.

REFERENCES

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[8] *L'erreur de droit n'est pas une cause de nullité de la transaction. Sauf cette exception, la transaction peut être annulée pour les mêmes causes que les contrats en général* (art. 2.634 C.C.Q.). However, we must say that the Canadian legal literature considers the error as to the nature of the contract as a error of law, because it leads to „*an inaccurate legal opinion*" unlike the error of fact, „*which bears on the factual circumstances*". On the other hand, the Canadian common law applicable in the other Canadian provinces recognises, by virtue of the solutions passed in the case-law, the error of law as a defect of consent, which influenced the solutions of the courts of Quebec as well (for this purpose, see M. Tancelin – *Des obligations en droit mixte du quebec*, Wilson & Lafleurn Publishing, Montreal 2009, p. 137).

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[12] *L'erreur inexcusable ne constitue pas un vice de consentement* (art. 1.400 alin. 2 C.C.Q.)

[13] In our opinion, for an ample and relevant debate on the excusable nature or, on the contrary, inexcusable nature of the error, see M. Tancelin, D. Gardner – *Jurisprudence comentee sur les obligations*, Wilson & Lafleur Publishing, Montreal, 2010, p. 67. We hereby briefly present the criteria used in the case *Legare vs. Morin-Legare*, which determined the judge to consider that the contracting party may invoke an excusable error, namely: such party did not have knowledge of the business area (company law); in advance, he consulted an accountant of the company issuing the shares being the subject-matter of the transaction, as well as a lawyer; he requested a draft of the agreement one week before its signing; he took part in the discussions preceding the conclusion of the contract; he trusted the other party (specifically, his brother-in-law).

[14] Art. 4.103 par.(2) PECL: „*However a party may not avoid the contract if: (a) in the circumstances its error was inexcusable, or (b) the risk of the error was assumed, or in the circumstances should be borne, by it*".

[15] According to art. 1.211 NCC, the provisions on the error apply appropriately also when it is a error as to the declaration of consent or when such declaration was sent inaccurately by another individual or by communication means.

[16] C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu – *Tratat de Drept Civil, Vol. I.* All Publishing, Bucharest 1998, p. 82.

[17] The Italian Civil Code, on which the regulation of this matter is based, in art. 1.432, provides for the possibility of maintaining the altered contract, but it makes no reference to any notification and no performance time.