DOCTRINAL CONTROVERSIES AND JURISPRUDENTIAL SOLUTIONS CONCERNING THE "BILATERALIZATION" OF THE DIRECT ACTION OF THE PRINCIPAL AGAINST THE SUBSTITUTE

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Dana-Lucia TULAI
Babeș-Bolyai University of Cluj-Napoca, Faculty of Economics and Business Administration
Cluj-Napoca, Romania
dana.tulai@econ.ubbcluj.ro

Abstract: *Our article brings to attention the operation of trustee substitution and its complex effects on the relations between all the parties involved, this study being focused more specifically on the relationship between the principal and the substitute agent. Thus, in a previous study, we have analyzed the agent substitution, as a exception from the rule that the trustee must personally carry out the mandate; we focused on the the legal nature of the operation, supporting its "sui generis" character, that differentiates it from the subcontract and the contract assignment; we also analized the effects of the substitution on the relations between the principal and the primary trustee, between the original trustee and substitute, as well as between the contracting parties and third parties. In this article, we shall approach the issue of the direct action that the principal can initiate against the substitute, as well as the intense debates generated in French and Romanian doctrine by the possibility of a jurisprudential recognition of its "bilateralization". French jurisprudence serves as an example of courage and pragmatism on the matter, by consecrating the reciprocity of the direct action, even in the absence of such legal provisions. However, given the fact that Romanian law does not recognize the ability of jurisprudence to establish a direct action, where it is not provided by express law, we highlight the importance of legislative consecration of a direct action of the substitute against the principal, on grounds of equity.*
Keywords: *mandate; trustee substitution; direct action*

Introduction: The Relationship Between The Principal And Substitute

A direct contractual relationship is not established between the primary principal and the substitute agent. Each of them is bound by a mandate contract concluded with the initial trustee, but is third party to the mandate agreed by the other. Therefore, agent substitution requires the existence of at least two successive contracts: one between the principal and the primary agent and another between the agent and the substitute (Stănciulescu et al., 2013: 346). However, the legislator explicitly establishes the existence of a legal link between the two, by stipulating in favor of the original principal the benefit of a direct action against the substitute, which he has *"in all cases"*, so regardless of whether the substitution was authorized or not (para. 6 art. 2023 Civil Code). Therefore, if the substitute has not properly fulfilled the mission entrusted to him, the principal a right of claim against him, which entitles him to compensation, without depriving him of the contractual liability action that he can file against his contractual partner, that is the initial trustee.

Although the legislator does not provide for the possibility of filing a direct action except for the benefit of the principal, French jurisprudence established, on grounds of equity, the solution that the substitute would also have an action against the original principal, which would allow him in the event of insolvency of the primary trustee to recover from the principal the sums due for the fulfillment of his mandate, as remuneration or reimbursement of expenses or reparations for the losses suffered. Romanian doctrine seems to embrace the opinion that although such an action of the substitute against the principal would be useful and necessary, as long as the legislator does not expressly provide for it, it cannot be recognized.

The principal's direct action against the substitute

The relationship between the *"extreme"* parties of the operation of agent substitution, namely between the principal and the substitute agent, has caused much doctrinal and jurisprudential debate. The principal and the substitute each are parties to a separate contract. What brings them together is their participation in the same legal operation, their membership in a contractual group and the identity of their common contractor - the primary trustee. Based on this connection, in all cases, the principal has direct action against the substitute, established by the legislator by art. 2023 para. (6) of the Civil Code. This action is subject to proof by the principal of a fault on the part of the substitute (Cass. 1re civ., 26 Nov. 1981, in Collart Dutilleul, 1998: 484). The doctrine underlined the fact that the principal's direct action against the substitute can be formulated regardless whether the substitution was authorized, with or without naming the substitute, or it was not authorized by the principal (Piperea, 2009: 89).

The legislator limits himself to qualifying this action as a *"direct"* one, without making other clarifications regarding its legal regime. This action is of great practical interest, establishing a legal relationship with its own particularities between two individuals who are not otherwise united by a legal relationship. As a result, it has been the subject of numerous doctrinal debates, which have concerned its source, nature or legal regime (for example: Moțiu, 2011: 242; Florescu, 2012: 234-235; Uță, 2012: 228).

Recognizing the possibility for a third party to file a direct action in order to protect his interests in connection with a contract in the conclusion of which he did not participate either personally or through a representative was imposed with difficulty, since it deviates from a fundamental principle of contract law, namely that of the relativity of the effects of conventions. Thus, it was admitted with reluctance by the doctrine, which tried to define this notion as precisely as possible and to clearly outline its scope. A comprehensive picture of the contradictory opinions expressed in relation to direct actions, especially in French jurisprudence and doctrine, as well as the resistance of European private law to the recognition of this legal instrument, was captured by I. F. Popa, in a recent article (Popa, 2020: 204-221).

The direct action is the one that *"allows a creditor to pursue directly, in his own name and on his own account, the debtor of his debtor"* (Terre et al., 1999: no. 1090). This definition reveals the major interest of the existence of the direct action: the right of the owner of the action does not pass through the patrimony of his debtor, thus avoiding the contest of the other creditors of the principal debtor, as well as the risk of their insolvency. The one who acts *"directly"* acts for himself and benefits alone from the result of his action

(Larroumet, 1998: no. 794). The direct action is therefore a favor granted to certain creditors, who thus benefit from increased protection of their claims, in relation to unsecured creditors, who, according to the common law of obligations, only have a general pledge on their debtor's patrimony, a right which they exercise simultaneously and competitively.

Therefore, the direct action makes for an exception to the principle of equality of creditors, giving its holder an exclusive right over the main debtor's claim against his sub-debtor. This right is *"the essence of the direct action"* (Cozian, 1969: 36), allowing its holder to avoid any possible competition with the other creditors of the principal debtor. Another favorable effect for the creditor who acts directly against the sub-debtor is that of the inapplicability of exceptions. The direct action has as a consequence the immobilization of the claim in the sub-debtor's patrimony: all the acts of disposition that he carries out after the moment of immobilization of the claim are unenforceable to the owner of the action, who may thus not recognize, for example, the payment or compensation between the sub-debtor and the principal debtor. Only the exceptions that refer to the very nature of the obligation relationship and the contractual relations between the sub-debtor and the main debtor are opposable to the holder of the direct action. As for the moment when the main debtor's claim on the sub-debtor is immobilized, it can be the following: the moment of filing the direct action (called *"imperfect"*) or even the moment of the birth of the claim in the debtor's patrimony (these direct actions being considered *"perfect"*). This distinction is fundamental in that it determines the time limit of the effectiveness of the legal acts concluded by the sub-debtor regarding the disputed claim. Contemporary doctrine makes a clear distinction between the two types of direct actions (Terre et al., 1999: no. 1093; Starck et al., 1999: no. 678; Malaurie et al., 1999: no. 1047).

Regarding the *"direct action"* provided by the legislator in favor of the principal against the substitute, it has often been at the center of doctrinal debates, some authors disputing the existence of a direct action in the strict sense in this matter. Jurisprudence played a major arbitral role in these controversies, consistently ruling in favor of recognizing the direct action. Thus, in the context of doctrinal discussions about the position of third parties in direct actions, V. Stoica raised the question of whether the material right of action that the law makes available to the third party against a party to a contract in the conclusion of which he did not participate can have an autonomous existence (Stoica, 2020: 36). The doctrine gave an affirmative answer, stating that *"direct action implies a right to action conferred by law in the absence of a direct legal relationship of substantial law between the subjects of the action in question"* (Dincă, 2018: 477). Thus, the author considers that there is no direct legal relationship of substantial law between the owner of the direct action (the active subject) and the passive subject, but *"an indirect legal relationship of substantial law"*. R. Dincă states that the substitution contract between the initial trustee and the substitute is not concluded in the name and account of the principal, but is concluded by the primary agent in his own name, generating an obligation of the substitute towards him, that is to conclude in the name and on behalf of the principal the contract for which the latter authorized the primary trustee. Therefore, the substitute does not receive his own power to represent the principal, but a power to represent the agent when he exercises (through another) the power received from the principal. The principal does not have substantive legal relations with the substitute, but only with the original trustee. The latter is, in turn, in substantive legal relations with the

substitute. The relationships have the same object: concluding a legal act in the name and on behalf of the principal. Each of these substantive legal relationships is protected by a material right to action, the derivative product of which is the right of action having as its object the observance and sanctioning of the violation of the obligation to represent the principal with loyalty at the conclusion of the legal act for which the mandate was given, materialized in the direct action established by art. 2023 para. 6 of the Civil Code (Dincă, 2018: 482).

This position is also shared by V. Stoica, who states that the principal remains a third party to the substitution contract, as the substitute remains a third party to the original mandate contract. Regardless of whether the substitution was made with or without the prior authorization of the principal, the latter has a direct action against the substituted. Therefore, the principal has against the substitute a substantial right derived from the claim the principal has against the agent and from the claim the agent has against the substitute. This substantive derivative right is protected by a material right of action that the principal can exercise against the substitute (Stoica, 2020: 41). L. Pop also stated that the basis of direct action is the law, not the contract (Pop, 2006a: 14-15): there is no legal relationship of obligations between the principal and the substitute, but the principal is given the privilege of acting against the substitute for the execution of the substitution contract, although he is not a party to this contract. The effects of the direct action consist in obliging the substitute to fulfill his tasks, and in case he does not, in forcing him to repair the damages caused to the principal for improper execution, non-execution or delayed execution of the tasks received. The main advantage of the direct action is avoiding the competition of the other creditors of the trustee, as well as the risk of his insolvency.

However, doctrinal opinions were also expressed in the sense of the approximation of this action of the principal against the substitute by other legal institutions, some authors even supporting the existence of a legal bond of contractual nature between the principal and the substitute. Thus, one author (F. Deak, 2006: 236) stated that we are talking about a true direct action only in the situation where the substitution was not authorized by the principal. If it took place on the basis of an authorization given by the principal to the trustee, then the authorization in question has the legal nature of a mandate contract for the conclusion of a mandate contract, and its execution consists precisely in obtaining the consent of the substitute agent to the substitution. On the basis of this agreement, the substitute has direct legal relations with the principal, whose right of action against the substitute protects precisely the content of these relations. So, in the situation of an authorized substitution, there would not be a direct action, since a relationship of contractual nature has been established between the parties. However, if the substitution was not authorized by the principal, he could act against the substitute through direct action, while the substitute could no longer act against the principal except through oblique action, as a creditor of the primary trustee.

In French doctrine, such controversies regarding the nature and basis of the principal's action against the substitute, that had been arising since the beginning of the 19th century (concerning the interpretation of the expression *"direct initiation of the action"*, used in art. 1994 para. 2 of the French Civil Code), gradually died out, so that in the 20th century doctrine, the existence of a genuine direct action of the principal against the substitute was unanimously recognized. Even more, the French jurisprudence also established the *"reciprocal"* action of the substitute against the principal, a position that we

consider just, responding to an imperative of equity and balancing the position of the persons involved in the operation. This solution was imposed as a result of extensive jurisprudence, which proved the need to recognize this instrument of protecting the interests of persons who, without being in a contractual relationship, are nevertheless involved in a joint operation and have direct interests in relation to one another.

It is practically impossible to identify in French jurisprudence a genuine tendency to reject the qualification of the principal's action against the substitute as a direct action. On the contrary, positive law considers art. 1994 para. (2) of the French Civil Code as a typical example of direct action. The peculiarity of this action is that it creates a legal link between the principal and the substitute, where there is no relationship of contractual nature. It is really an exceptional situation, in which an action is at the origin of a right. In other legal systems, this bond is considered to be of contractual nature. In the Common Law system, for example, the *"direct action"* of the principal against the *"subagent"* is in principle not allowed unless *"privity of contract"* has been created by the parties between these two persons. This expresses a rule of law comparable to that of the relativity of the effects of the contract, which operates in Romanian and French law: *"It is a general rule of English law that a contract cannot confer any right on a person who is not a party to that contract, even when that convention was precisely concluded to benefit that person. As a third party, they will not have the right to act, because there is no ‹‹ privity of contract ›› between them and the promisor"* (Guest, 1986). Therefore, the presence of this *"privity of contract"* (which we could assimilate to the binding force of the contract) creates a contractual relationship between the *"principal"* and the *"subagent"* (Murdoch, 1984: 76). Certain authors believe that if *"privity of contract"* was not created, it would still be possible to exercise a direct delictual action (*"tort action"*) (Fridman, 1990: 151). In the end, direct action does not really exist in the Common Law system in the matter of agent substitution (*"subagency"*), insofar as it is either a common law contractual action (when the principal and the primary agent understood to create a genuine contractual link between the first and the subagent), or a *"tort"* action (in the absence of a contractual link between the principal and the subagent).

In doctrine (Pétel, 1994: 74), an opinion was also expressed that the principal will not have the right to act directly against the substitute if the latter did not know about the existence of the substitution, believing that he worked for the original principal. The French Court of Cassation specified, however, that the principal's action is not subordinated to the substitute's knowledge of the existence of the original mandate and of the substitution (Cass. com. Oct. 14th 1997, in Collart Dutilleul et al., 1998: 484), a solution that is also in agreement with the Romanian Civil Code regulations, which provide that the principal will have the right to action *"in all cases"* (art. 2023 para. 6 Civil Code).

This brings into discussion the issue of the perfect or imperfect nature of the principal's direct action. Thus, the direct action is perfect when the substitute has knowledge of the existence of the initial mandate, in which case he will not be able to oppose the principal any of the exceptions that he could have opposed to his co-contractor, since the claim is immobilized in the substitute's patrimony from the moment her creation (Baudry-Lacantinerie et al., 1907: 581; Guillouard, 1893: n.127; Huet, 1978: n. 31234; Solus, 1914: 218). The opposite opinion was also expressed, the author (Neret, 1979: n.388) stating that the subcontractor, in the case of a subcontract, in which, in his opinion,

the substitution of the agent could also be included, cannot be forced by the court to pay the same amount twice.

On the other hand, the direct action is imperfect when the substitute ignores the existence of the initial mandate, so he can oppose to the principal all the exceptions derived from his relationship with the main trustee, since the claim is not immobilized in the substitute's patrimony until the moment the principal's action is exercised against him. This situation has been subject to numerous doctrinal controversies. We believe that in this case the direct action of the principal is also possible, since the objective pursued by the regulation of this institution, that of granting protection to the principal, must prevail over the interest of the substitute agent, to only be sued against by the person for which he believed he was working. However, the substitute agent who was unaware of the existence of the original mandate contract will be able to oppose to the principal all the exceptions derived from his relationship with his contractual partner, prior to the exercise of the action, including the payment made to the main agent. This rule is based on the existence of a contractual relationship between the substitute and the primary agent, which makes the substitute to always address his contractual partner first.

Doctrine controversies regarding the jurisprudential recognition of a direct action of the substitute against the principal

The legislator explicitly and unequivocally enshrines the principal's right to act directly against the substitute (Civil Code art. 2023 para. 6), but regarding the substitute's right to act against the principal, opinions are divided. Doctrinal and jurisprudential debates remain current, considering the fact that neither the French, nor the new Romanian Civil Code provide a direct right of action of the substitute against the principal.

The French case: the *"bilateralization"* of the direct action through jurisprudential decisions

The French Civil Code art. 1994 para. 2 (Romanian Civil Code art. 2023 para. 6) only grants the principal the benefit of a direct action against the substitute. This action, which has the particularity of creating a legal link between the *"extremes"* of the operation of agent substitution, received a counterpart, through the efforts of French jurisprudence (for example: Cass. 1re civ. 27th Dec. 1960, in Capitant et al., 2000: 268), which also opened the possibility for the substitute to act directly against the principal, artificially invoking as the foundation of this *"reciprocal"* action, also art. 1994 para. (2) of the French Civil Code. Therefore, in French positive law, it has become a well-established fact that the two extremes of the agent substitution operation benefit from a direct action against each other. Along with the action originally granted to the principal by the legislator (art. 1994 para. 2 of the French Civil Code), another appeared in favor of the substitute, thanks to the effective intervention of jurisprudence. Thus, French jurisprudence imposed the *"bilateralization"* of the direct action derived from the mandate contract, arguing that it was justified by the mutual transfer of value between the principal and the substitute (Ghestin et al., 2001: 1231). Considering the numerous situations of extension of contractual liability, within groups of contracts, French jurisprudence recognizes the

possibility for the substitute to obtain directly from the principal the sums spent in the execution of the management.

For example, in a decision from 1960, the French Court of Cassation established that *"the principal can act directly against the person whom the trustee substituted; as a consequence, the substitute benefits from a personal and direct action against the principal to obtain the reimbursement of his advances and expenses and the payment of the remuneration owed to him"* (Cass. civ. 1re, 27th Dec. 1960, in Malaurie et al., 2009: 290). Moreover, in another case decision (Cass. com. 19th Mar. 1991, in Malaurie et al., 2009: 290), it was stated that the admissibility of this action was not subordinated to the principal's knowledge of the existence of the substitution. *"The direct action of the substituting agent against the principal can be exercised in all cases, whether the substitution was authorized by the principal or not."*

As shown in doctrine (Baudry-Lacantinerie et al., 1907: 310), if the principal can act directly against the substitute, a just reciprocity demands that the substitute be able, in turn, to act directly against the principal, being able, for example, to ask him directly for the reimbursement of the expenses incurred with execution of the mandate. However, the resolution of this action turned out to be an extremely delicate problem, since such a conflict opposes two individuals who each have relevant arguments to obtain a favorable decision. On the one hand, the principal can legitimately refuse to pay a second time the amount already paid to the primary trustee, all the more so since this payment is most often made without the principal having knowledge of the financial difficulties of the primary trustee. On the other hand, the substitute does not accept to bear alone the insolvency of his co-contractor, as long as he has performed his contractual obligations, in the name and on behalf of the principal, who is the final beneficiary of the operation. Moreover, the primary trustee usually does not inform his co-contractors (the principal and the substitute) about his financial difficulties. Other times, the principal is aware of the financial problems of the primary trustee and of the substitution, but nevertheless pays the requested sums to his co-contractor. It can also happen that the substitute neglects for too long a period of time to ask the primary trustee to pay him the due sums.

For quite a while, French jurisprudence has preferred to favor the substitute, granting him a *"perfect"* direct action against the principal. Thus, the principal could not object to the substitute, neither by the payment previously made to the primary trustee, nor by any other exception derived from his relations with the original trustee (Dutilleul et al., 2007: 431). The Chamber of Commerce of the French Supreme Court has ruled repeatedly (Cass. com. 9 Nov. 1987, 19 Mar. 1991, 5 Oct. 1993) obliging the principal to pay the substitute the sums already paid to the original trustee. The only mitigation of this jurisprudence unfavorable to the principal concerned those cases in which he could have proven the substitute's fault, which would have determined the ineffectiveness of his action directed against the principal. Thus ruled the French Court of Cassation in a commercial decision from 23th Nov. 1993, in a case where the substitute failed to inform the principal about the financial difficulties of the primary trustee, which he knew, let several months pass before acting to be paid by the primary trustee and was also negligent in exercising his direct action against the principal. Regarding the gravity of the substitute's fault, which was necessary for his direct action to be ineffective, this aspect was not clarified by jurisprudence, some decisions ruling in the sense in which simple negligence would have been sufficient, others adopting the opposite position. Therefore, this position of the

jurisprudence, in addition to being unfair to the principal, which was repeatedly revealed by the doctrine (Benabent, 2001: no. 669; Huet, 2001: no. 31155), was also relatively confusing. When the substitute had not committed any mistake (or his fault was not considered serious enough), and the principal had ignored the financial difficulties of the primary trustee or even the substitution itself, the principal had to bear the insolvency of the primary trustee alone.

French doctrine has constantly tried to sensitize the Court of Cassation in order to change this regime of the direct action of the substitute, in the sense of achieving a harmonization of the legal regimes of the two direct actions, of the substitute and of the principal. Thus, doctrine (Malaurie, 1999: 20) supported the *"imperfect"* character of the action, showing that the Court of Cassation should recognize the substitute's action against the principal, through which he could directly claim his fees, only within the limits established by the initial mandate contract, as well as by the subsequent one, and the principal could object to the substitute by the payment made to the primary trustee.

Finally, the vehement criticisms expressed by the French doctrinaires found their echo in the Commercial Chamber of the Court of Cassation, through a decision issued on Dec. 3th 2002, which unequivocally expresses a new orientation of jurisprudence in this matter: *"If the substitute agent has a direct action against the original principal to obtain the reimbursement of the amounts advanced by him, this action can still be exercised only as long as the action of the intermediate trustee is not extinguished itself"*. This decision represents the consecration of the *"imperfect"* nature of the substitute's direct action, which responds to the principle of equity in the matter of agent substitution. As one author points out, *"it was not the direct action itself that was criticizable, since the substitute had been operating on behalf of the principal, providing him with an economic value through his diligence; unfair was the fact that the principal was obliged to pay the same amount twice, a fact that derived from the "perfect" character of the direct action of the substitute"* (Gautier, 2003: 313).

Romania: doctrinal debates in support of a legislative consecration of the direct action reciprocity

Although a direct action of the substitute against the principal is not provided by art. 2023 para. 6 of the Romanian Civil Code (correspondent of art. 1994 para. 2 of the French Civil Code), it has no less practical importance than that of the principal against the substitute, which led the French magistrates to constantly recognize to the substitute this way of achieving his interests. In the absence of a legal regulation of this action, French jurisprudence came to meet the interests of its citizens, taking the initiative itself to grant the substitute the benefit of such an action. Therefore, the action of the substitute against the principal was imposed in France through jurisprudence, without having a legal foundation. In Romanian civil law, it is not recognized in principle, in the absence of an express regulation of the law. We believe that French law should be a source of inspiration in this matter for the Romanian legislator, considering the usefulness of recognizing a reciprocal action in favor of the substitute, proven by French jurisprudence over time.

Under the provisions of the old Romanian Civil Code, namely art. 1542 para. 2, it was almost unanimously accepted that the direct action was unilateral, so only the principal

could act directly against the substitute (Deak, 1986: 279-280; Chirică, 1997: 264; Stănciulescu, 2002: 240).

The new Civil Code maintained the lack of reciprocity of the direct action, the substitute still not having the possibility of direct action against the principal, despite the fact that the need to consecrate through legislation a reciprocal direct action had been emphasized in the doctrine prior to the entry into force of the new Civil Code (Manoliu et al., 1985: 280; Pop, 2006b: 419). An author (Popa, 2020: 213-214) has pointed out that in Romanian law, direct actions have a legal character, in the absence of such support being hard to imagine that Romanian jurisprudence would be as creative as the French one, in identifying direct actions beyond the texts of the law. The author believes that the legitimacy of the principal's direct action against the substitute, which he considers to be a liability action, is conferred by the nominal legal mechanism, which involves a legal nomination of the actions, thus creating proper direct actions. So, strict legality is the only form of legitimization of these direct actions. Therefore, the inventions of jurisprudence, no matter how well-founded they may be from the perspective of equity, are hardly compatible with this condition, hence deriving the need for the legislative consecration of the reciprocity of the direct action, on grounds of equity.

Therefore, the prevailing opinion in Romanian doctrine seems to support the non-existence of the substitute's right to act directly against the principal, since such an action is not expressly consecrated by the legislator. Thus, Prof. Alexandresco, for example, criticized the French jurisprudence that recognized the direct action of the substitute and the doctrine that shared this orientation, stating that in this way direct action was granted to the substitute without having a legal basis, only by virtue of ethical considerations: *"so they make the law, instead of interpreting and applying it"*, since the Civil Code only speaks of the direct action of the principal, and reciprocity is not, in general, sufficient to constitute an action (Alexandresco, 1910: 599). Thus, the author believed that the substitute did not have a direct action against the principal, a fact that emerged from *per a contrario* interpretation of art. 1542 last para. of the Civil Code from 1864 (art. 2023 para. 6 of the new Civil Code). The substitute would only be able to exercise, on behalf of the trustee, the oblique action. However, Prof. Alexandrescu shared the opinion, which we also support, that the law proved to be flawed by the omission to grant the substitute a direct action against the principal.

The opinion of the non-existence of a direct action of the substitute against the principal was also expressed by Prof. Fr. Deak (Deak, 1999: 352), on the same grounds, namely that *"the possibility of filing a direct action, derogating from the general rules, cannot be recognized in the absence of an express provision of the law."* However, the author believed that in the hypothesis in which the trustee was authorized to substitute a third person (with or without specifying the person), the substitute could act against the principal, based on *"the direct relations he has, through the trustee, with the principal"*. In this case, however, it was stated that we were no longer in the presence of a proper direct action, since direct action only concerned the hypotheses lacking the foundation of direct legal relations. As far as we are concerned, we cannot share the opinion that the authorization of substitution by the principal implies the existence of a direct legal relationship between him and the substitute; the principal remains a third party to the contract by which the substitute is given power of representation by the primary trustee. The authorization of the substitution produces effects on the parties between whom it

appears, namely in terms of limiting the responsibility of the original trustee towards the principal; the authorization for substitution given by the principal to the initial trustee cannot produce effects on the substitute, who is a third party to their contract, in the sense of making him liable to the principal on the basis of a direct contractual legal relationship, which practically does not exist.

However, although the Romanian legislator remains faithful to the tradition of the unilateral direct action of the principal against the substitute, Romanian doctrine continues to campaign for the acceptance of its reciprocity, considering that the direct action would give the substitute the possibility of capitalizing on the claims against the principal without additional expenses of time and means (as would happen in the case of the oblique action). Thus, it was suggested (Roșu, 2008: 63) that a direct action of the substitute against the principal be regulated, for identity of reason, in the same way as the direct action of the workers against the beneficiary for whom the construction is built is provided in the case of the enterprise contract (art. 1856 Civil Code). Another author (Gidro, 2015: 81-82) suggests that the substitute be granted the possibility of acting against the principal, through a direct action, based on *"the mutual transfer of value and the law"*, with the purpose of receiving the remuneration, within the limits established by the mandate contract and only in the case of authorized substitution.

As far as we are concerned, we support the opinions already cited, which state that Romanian law does not recognize the ability of jurisprudence to establish a direct action of the substitute against the principal, in the absence of express legal regulations, however convincing the arguments based on equity that support such a possibility may be. In this context, the intervention of the legislator appears as imperative, with the aim of enshrining in the Civil Code the explicit right of the substitute to act against the principal to achieve his claims, within the limits of the mandate contract. This would respond to the principle of equity, since currently the substitute is in a position that puts him at a clear and unfair disadvantage in relation to the principal, who is the beneficiary of a direct action, as opposed to the substitute, who only has the oblique action available to achieve his claims against the principal (based on art. 1560 paragraph 1 of the Civil Code). In the light of an already comprehensive French jurisprudence in the matter, we believe that the usefulness of this action has emerged as an obvious conclusion, since there is a close connection between the obligations of the creditor, the debtor and the sub-debtor, derived from a group of contracts.

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