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THE INTERMEDIATION CONTRACT BETWEEN LEGAL TRADITION AND EUROPEAN CONVERGENCE: TERMINOLOGICAL CLARIFICATIONS AND PRACTICAL PERSPECTIVES IN THE CONTEXT OF EU ACCESSION

ДОГОВІР ПРО ПОСЕРЕДНИЦТВО МІЖ ПРАВОВОЮ ТРАДИЦІЄЮ ТА ЄВРОПЕЙСЬКОЮ КОНВЕРГЕНЦІЄЮ: ТЕРМІНОЛОГІЧНІ УТОЧНЕННЯ ТА ПРАКТИЧНІ ПЕРСПЕКТИВИ В КОНТЕКСТІ ВСТУПУ ДО ЄС

Gugulan E. V.

*PhD., Associate Professor
Head of Private Law Department,
"Ștefan cel Mare" Academy, Ministry
of Internal Affairs of the Republic
of Moldova
Chisinau, Republic of Moldova*

Гугулан Є. В.

*доктор наук, доцент,
Завідувач кафедри приватного права
Академії імені «Штефана
Великого», Міністерство внутрішніх
справ Республіки Молдова
Кишинів, Республіка Молдова*

1. Defining Aspects of Intermediation as a Distinct Institution of Civil Law

Intermediation has increasingly become a legal institution of considerable importance in contemporary civil law, both in the Republic of Moldova and

internationally, as a consequence of the rapid expansion of business activities across diverse economic sectors. As a legal operation, intermediation is employed in the field of property and personal insurance [5, p. 689], in transactions preparatory to the sale of immovable property, residential lease agreements, and financial services. Furthermore, intermediation is encountered in relation to the sale of package travel services and holiday products, the provision of linked travel arrangements, participation in exchange systems, and numerous other economic activities [6, pp. 23–27].

Article 1667 of the Civil Code of the Republic of Moldova provides that: “Under an intermediation contract, one party (the intermediary) undertakes towards the other party (the client) to act as a facilitator in the conclusion of one or more contracts between the client and a third party” [1, Art. 1667].

The Romanian Civil Code stipulates that: “Intermediation is the contract by which the intermediary undertakes towards the client to connect the latter with a third party for the purpose of concluding a contract. The intermediary is not a subordinate of the parties involved and acts independently in the performance of his obligations” [2]. Nevertheless, the Romanian legislator does not expressly indicate, within the legal definition itself, that intermediation is performed for remuneration, although this characteristic may be unequivocally inferred from the entirety of the specific legal provisions governing the institution.

The German Civil Code (Bürgerliches Gesetzbuch – BGB) [3, Art. 652] provides that: “(1) A person who promises a commission to a broker for providing evidence of the opportunity to conclude a contract or for facilitating the conclusion of a contract shall be obliged to pay the commission only if the contract is concluded as a result of such evidence or as a result of the broker’s intermediation. Where the contract is concluded subject to a suspensive condition, the broker’s commission may be claimed only upon fulfilment of that condition. (2) Expenses shall be reimbursed to the broker only where such reimbursement has been expressly agreed. This shall also apply where no contract is ultimately concluded.”

In French legislation, the contract of intermediation (contrat d’intermédiation) is not regulated as a unified legal institution within the Code civil, but rather derives from a doctrinal and jurisprudential synthesis of several special contractual arrangements.

Accordingly, in French law, intermediation is perceived not as an autonomous legal institution but as a contractual function performed by a third party between two persons seeking to conclude a legal act. The intermediary (intermédiaire) may act either as a mandataire (acting in the name and on

behalf of the client) or as a courtier (bringing parties together without representing them).

Among the legislative instruments containing provisions on intermediation are the Code des assurances, the Code monétaire et financier, as well as regulations governing digital intermediation platforms in the field of public transportation [4]. These provisions do not establish a general contract of intermediation within the Civil Code; rather, they regulate specific categories of intermediaries operating in sectors such as insurance, financial services, transportation, credit, and related fields.

From a comparative perspective, French law structures intermediation through a fragmented and sector-specific regulatory framework tailored to the needs of each professional field, whereas the civil law of the Republic of Moldova establishes intermediation as an autonomous and generally applicable legal institution, regulated within a distinct chapter of the Civil Code. This legislative approach ensures greater systematic coherence, conceptual clarity, and legal certainty in the regulation of intermediation relationships.

2. Analysis of the Specific Characteristics of the Intermediation Contract

The intermediation contract is a non-representative contractual arrangement whereby the intermediary undertakes to facilitate contact between the client and a third party for the purpose of concluding a contract, without acting in the name or on behalf of either party. Its object consists of the provision of services materialized through activities aimed at bringing interested parties together rather than directly concluding the legal transaction itself.

The legal relationship is established between the intermediary and the client, the former enjoying considerable autonomy in the performance of its activities. Although the intermediation contract shares certain similarities with the contracts of mandate and agency, it is distinguished by the absence of representative authority, the predominantly occasional nature of the intermediary's activity, and the intermediary's freedom of action. Furthermore, the law permits dual intermediation, subject to compliance with rules designed to prevent conflicts of interest, thereby enhancing the flexibility and practical utility of this legal institution within civil and commercial transactions.

3. Intermediation in Commercial Activity and the Classification of Legal Intermediation Relationships

The Civil Code of the Republic of Moldova expressly regulates several special forms of intermediation, including housing intermediation, loan

intermediation, and commercial intermediation. In the field of housing intermediation, the legislator establishes clear limitations on the intermediary's right to remuneration, excluding payment in specific situations expressly provided by law.

With regard to loan intermediation, the intermediary's remuneration is conditional upon the actual granting of the loan, while enhanced transparency requirements are imposed concerning financing costs and contractual conditions. Commercial intermediation is characterized by the professional and independent exercise of activities aimed at facilitating the conclusion of contracts, without the existence of permanent powers of representation. The commercial intermediary is subject to specific duties of information, diligence, and professional care towards the contracting parties and is liable for damages caused through fault. These regulatory solutions demonstrate the legislator's intention to maintain a balance between contractual freedom, the protection of beneficiaries of intermediation services, and the security and stability of legal relationships.

4. Conclusions and Implications Regarding the Legal Nature and Practical Importance of the Intermediation Contract

The research undertaken confirms that intermediation has evolved within the civil law of the Republic of Moldova into a distinct legal institution, governed by its own normative framework and characterized by features that differentiate it from related contractual mechanisms such as mandate, commission, and agency. The intermediation contract is defined by the provision of services intended to facilitate contact between prospective contracting parties without conferring representative powers upon the intermediary.

In this context, the intermediary performs both a contractual facilitation function and a significant role in ensuring transparency, legal certainty, and trust within civil and commercial transactions. A comparative analysis of German and French legal regulations demonstrates that the legislative solution adopted by the Moldovan legislator, namely the establishment of a coherent and autonomous legal framework for intermediation within a separate chapter of the Civil Code, contributes substantially to legislative clarity, legal predictability, and the systematic coherence of the regulation governing this institution.

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