



ORIGINAL PAPER

Discharging Civil Obligations by Payment as Provided by the Romanian Civil Code

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Abstract

Payment is the main way of discharging civil obligations. The Romanian Civil Code regulates in detail all these aspects: the notion of payment, the subjects of the payment, the terms and conditions of payment, the proof of payment, payment imputation, the formal notice to the creditor. The payment has the effect of extinguishing the legal relation of obligations as a result of the performance of the object of the legal relation in question. It involves the voluntary performance of the object of the obligation. So that the obligation can be discharged by payment, the debtor must perform exactly the obligation he owes.

Keywords: *payment, discharge of obligation, performance of obligation, object of obligation, ways of discharging obligations*

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Preliminary issues

The civil obligation is defined in the 2009 Romanian Civil Code as a legal relation on the basis of which one party, called a debtor, is bound to perform a promise (either positive or negative) for the other party, called a creditor, and the latter is entitled to receive the benefit of the promise (art. 1164 of the Civil Code). One may notice that the new Civil Code has defined the concept of civil obligation in its broader sense, as the legal relation between the creditor and the debtor, a relation comprising two inseparable elements: the active element (the creditor's right of claim) and the passive element (the duty incumbent on the debtor); the term civil obligation is also used in the Civil Code with the limited meaning of duty of the debtor to give, to do or not to do something. Referring to the way in which the legislature defined civil obligations, the legal doctrine has criticized the fact that the legislature took into account the obligations assumed by the parties and not the rights acquired by them as a result of creating a relation of obligation (Dogaru, Drăghici, 2014: 9-10). Professor L. Pop was critical as to the definition of civil obligations, as the Romanian legislature highlighted the passive aspect of the obligation, based on the need of the legislature for consistency as to how the law or doctrine defined patrimony or real rights. Thus, patrimony is defined by its active aspect and only correlatively by its passive one. On the other hand, real rights "are defined (...) by the attributes they give to their holder and only correlatively by the general duty of abstention" (Pop, Popa and Vidu, 2012: 12).

Referring to the "sources of obligations", the legislature mentions that they are: the contract, the unilateral legal act, the management of affairs, unjust enrichment, undue payment, torts, as well as any other act or fact to which the law relates the creation of an obligation. Given this provision, the doctrine divided the sources of obligations into two categories: civil legal acts (the contract and the unilateral legal act) and civil legal facts, divided in turn into legal facts as human conduct which may be lawful (the management of affairs, unjust enrichment, undue payment) and unlawful, and legal facts as non-human conduct (earthquakes, floods, lightning, landslides, explosion of a boiler, derailment of a train, defects of the products marketed, scare of an animal, ruin of a building, etc.) (Pop, Popa and Vidu, 2012: 12). Particular attention is given by the legislature and doctrine to the classification of civil obligations, using for this purpose the criterion of the object of obligations, the criterion of the sanction of obligations, of the enforceability of obligations, of the subjects of the civil relation of obligation, of the modalities of obligations (Pop, 2006: 48-54; Stătescu, Bîrsan, 2008: 11-13).

Considering the object of the obligation, a distinction is made between the obligations to give, obligations to do and obligations not to do; the obligation to give means that the debtor transfers or creates a real right in the patrimony of the creditor (sales contract, mortgage contract, etc.); the obligation to do is the obligation of a debtor of a legal relation to perform a positive promise, which may consist in performing an action, a work or a service (Popescu and Anca, 1968: 11); obligations to do are the following: the contractor's obligation to build a building, the depositary's obligation to return the property received in deposit, the tenant's obligation to pay rent, the doctor's duty to provide medical services, the carrier's obligation to make a transport, etc.; the obligation not to do is the obligation consisting of the debtor's duty not to perform a certain act that he would have been entitled to perform if he had not undertaken such a duty; it therefore involves the abstention of the debtor (Costin, Costin, 2007: 689); obligations not to do are

Discharging Civil Obligations by Payment as Provided by the Romanian Civil Code

the following: the depository's obligation not to use the deposited asset, the obligation of the owner of the servient tenement to do whatever is likely to prevent the exercise of the servitude created for the benefit of the dominant tenement, etc.

The obligations to do are divided into two categories: obligations of result (or determined obligations) and obligations of means (or duty of care). Art. 1481 of the Civil Code provides that in the case of obligations of result, the debtor has the duty to obtain the promised result for the creditor (for example, to carry some goods to a destination) and in the case of obligations of means, the debtor undertakes to use all necessary means to achieve the result promised to the creditor (e.g. an obligation of a lawyer to provide legal assistance to his client). To determine whether an obligation is of result or of means, the legislature provides in art. 1481(3) of the Civil Code several guiding criteria: a) the way in which the obligation is stipulated in the contract; b) the existence and nature of the consideration and the other elements of the contract; c) the degree of risk involved by the achievement of the result; d) the influence that the other party has on the performance of the obligation. Determining the nature of the obligation (of means or of result) is important in order to know whether the performance of the debtor led to the discharge of his obligation, since the debtor's failure to obtain the result, for the obligations of result, means presuming his guilt (art. 1548 of the Civil Code), while, for the obligations of care, the creditor must prove that the debtor did not use "all necessary means to achieve the promised result" (art. 1548 of the Civil Code).

According to legal sanctions, the doctrine divides civil obligations into two categories: perfect civil obligations and natural obligations. In the case of civil obligations, the creditor may resort to the coercive power of the state to achieve his right of claim, if the debtor does not voluntarily perform the obligation correlative to the creditor's claim right; in the case of natural obligations, if the debtor did not pay voluntarily, the creditor cannot resort to the coercive power of the state to make the debtor perform his obligation. According to the persons against which they are enforceable, obligations are classified as follows: ordinary civil obligations; obligations enforceable against third parties; real obligations. The ordinary civil obligation is incumbent upon the debtor against which it was created. The obligation enforceable against third parties is characterized by the fact that it is closely related to the possession of a thing and the creditor can achieve his right only if the current possessor of that thing is obliged to respect that right, although he did not take part in the formation of the relation of obligation ((Stătescu and Bîrsan, 2008: 9); for example, the lessor's obligation to ensure the use of the leased property to the lessee; if the item of property is alienated before the expiration of the lease, the new owner has the obligation to respect the rights of the tenant, even if he was not a party to the contract. Real obligations lie with the holder of a thing for reasons such as: the protection of things of national importance, judicious exploitation or preservation of certain qualities of some important things, the existence of good neighbourhood relations, etc.; for example, the legal obligation of the holder of agricultural land to cultivate and protect the soil. Depending on the number of subjects of the legal relation assuming obligations, the latter are classified into unilateral obligations and bilateral obligations. As for the classification of civil obligations according to their modalities, one should mention that the 2009 Civil Code regulated the modalities of obligations as distinct from complex obligations; under the name "modalities of obligations" the legislature regulated the time limit and the condition, considered the modalities of obligations, and under the name "complex obligations" it regulated plural obligations, i.e. obligations having a plurality of subjects and/or a plurality of objects. The doctrine has accepted the solution of the legislature to

delimitate the obligations affected by modalities from complex obligations, arguing that both types of obligations may be affected by modalities (Uluitu In Baias, Chelaru, Constantinovici, Macovei (coord.), 2012: 1474). With regard to the discharge of civil obligations, one should note, as a preliminary point, the following aspect: in Book V (“On obligations”), there are two titles approaching the issue of payment: Title V (entitled “Performance of obligations”) and Title VII (entitled “Discharge of obligations”).

Regulation of payment

In the “general provisions” referring to the discharge of obligations, the legislature states that the following are ways of discharging obligations correlative to claim rights: payment, compensation, confusion, remission of debt, fortuitous impossibility of performance and other means expressly provided by law (art. 1615 of the Civil Code). The phrase “other means expressly provided by law” is used by the legislature to refer to ways of discharging obligations that are regulated in legal texts other than those contained in the title for the discharge of obligations. In the opinion of Professor I. F. Popa, the following are part of this category: enforcement in kind, equivalent performance, rescission or cancellation of the contract, novation, nullity, fulfilment of the resolutive condition, prescription of the right to action, loss of rights. In such cases there is no longer need to perform the obligation (as these legal operations result in termination or extinction of the relation of obligation) and therefore it may be considered discharged (Pop, Popa and Vidu, 2012: 702). Other authors have criticized the inclusion of such operations in the category of modalities of discharging obligations; thus, professor Bîrsan brings the following arguments against the view above: novation is a way of transforming obligations; nullity and rescission are not means of discharging obligations because they abolish the relation of obligation retroactively, so they cannot discharge the obligation of a legal relation which does not exist; the extinctive prescription is rather a way of transforming obligations, for it leads only to the extinction of the right to action in the material sense, the claim right continues to exist and the correlative obligation degenerates from a civil obligation into a natural obligation, lacking the right to legal action (Stătescu and Bîrsan, 2008: 377). Noting the provisions of art. 1615 of the Civil Code, the doctrine has found that, although it lists payment together with other ways of discharging obligations, the legislature does not regulate it in the title on the discharge of obligations, but in the one on the performance of obligations, considering that prevalence should be given in this case not to the effect caused by the operation of payment, but to the way of discharging the obligation (performance of the promise) (Zamșa In Baias, Chelaru, Constantinovici, Macovei (coord.), 2012: 1558). In accordance with the 1864 Civil Code, obligations could be discharged by payment, novation, voluntary remission, compensation, confusion, fortuitous loss of the thing, cancellation or rescission, effect of the resolutive condition, and prescription (art. 1091); one should note that the legislature also enumerated in the texts on the discharge of obligations operations leading to discharge regulated in other parts of the code referring to other legal institutions, omitting important ways of discharging obligations, such as caducity, enforcement in kind or equivalent performance (Pop, Popa and Vidu, 2012: 701).

The notion of payment

In accordance with art. 1469(1) of the Civil Code, payment is the voluntary performance of a promise making the object of the obligation. Complementing the idea that the debtor must perform the obligation he has undertaken, not an equivalent benefit,

Discharging Civil Obligations by Payment as Provided by the Romanian Civil Code

art. 1516(1) of the Civil Code provides that “The creditor is entitled to full and accurate performance of the obligation in due time”, thus consecrating the creditor’s right to performance in kind of the obligation; similarly, to enshrine the principle of performance in kind of the obligation, art. 1527(1) of the Civil Code provides that in the matter of both contractual and non-contractual obligations, “The creditor may always request that the debtor be constrained to perform the obligation in kind, except where such performance is impossible”.

In ordinary language, payment means “the act of paying a due sum of money” (Definition available at: <https://dexonline.ro/definitie/plata>). The legal meaning of the term payment is richer; in this respect, art. 1469(2) of the Civil Code provides that payment consists not only in transferring an amount of money, but also in voluntarily performing the benefit of a promise that the debtor owes, regardless of its object; therefore, the act of giving, doing or not doing may make the object of payment. In synallagmatic legal relations, the performance of either party to the legal relation of obligation makes a payment; payment is made by both the seller transferring ownership of property, and the buyer paying the price of the item of property, both the carrier shipping the merchandise to the destination and the sender/ receiver paying the transportation; both the mechanic fixing a car and the client paying the price of the repair, etc.

Subjects of the payment

Under this title, the legislature regulates issues relating to the person that can make the payment and the person that can receive the payment of the obligation. As for the person that can make the payment, the Civil Code establishes the rule according to which the payment of the obligation can be made by any person, even if that person is a third party in relation to that obligation (art. 1472 of the Civil Code.). But the payment made by the third party cannot be made in his own name but, to be valid, it must be made on behalf of the debtor (art. 1474 (3) thesis one of the Civil Code). The legislature also states that the third party, even if he makes a valid payment, cannot be subrogated to the creditor’s rights except as provided by law (the existence of a convention, subrogation consented to by the creditor, subrogation consented to by the debtor, subrogation operating under the law) .

From the rule that the payment of the obligation can be made by any person, even if a third party in relation to that obligation, the law provides the following exceptions (art. 1474 of the Civil Code): a) the creditor is obliged to refuse payment offered by a third party if the debtor previously notified him that he opposed this payment; b) the creditor may refuse payment by a third party if the nature of the obligation requires that the obligation be performed only by the debtor; c) the creditor may refuse payment by a third party if the agreement of the parties requires that the obligation be performed only by the debtor.

If we accept the idea that payment is a legal act similar to a contract (the debtor is the one that makes the offer of payment and the creditor is the one that accepts payment), it means that full or limited capacity to exercise rights is necessary for the validity of the payment, as an answer to the question whether payment is an act of administration or an act of disposal. In this sense, the doctrine has argued that payment is an act of administration when the one that pays discharges his own obligation, such payment being validly made by a person with limited legal capacity, and it is a legal act of disposal when the one that pays discharges a debt of another; to be valid, such payment must be made by a third party with full legal capacity to exercise rights (Pop, 2006: 451).

Art. 1475 of the Civil Code lists a limited number of persons to whom payment can be validly made: a) the creditor; b) his legal or conventional representative; c) the person indicated by the creditor; d) the person authorized by the court to receive it (for instance, the creditor that confiscates). All other persons have the status of third parties.

From the rule that payment made to third parties does not discharge the obligation, so it does not release the debtor, art. 1477 and 1478 of the Civil Code provide the following exceptions, where the payment made to a third party, i.e. to a person other than those having a legal right to receive it, is valid: a) payment ratified by the creditor (which thus loses the right to invoke the relative nullity of the payment); b) payment made to a person other than the person legally entitled to receive it, but which later becomes the holder of the claim (for instance, the third party which received the payment later becomes the heir of the creditor); c) payment made to a person which claimed payment under a releasing receipt signed by the creditor (for instance, in the case of conventional subrogation agreed to by the creditor, when a third party makes the payment to the original creditor and then acts against the debtor) (Vasilescu, 2012: 72); d) payment made to a third party under conditions other than those referred to in art. 1477(1) of the Civil Code discharges the obligation only to the extent that it benefits the creditor (for example, if the debtor pays a creditor of his creditor, the payment is valid because it benefits the creditor, since it discharges the obligation which the latter had against the creditor of the paying debtor) (Stătescu, Bîrsan, 2008: 313); e) payment made in good faith to an apparent creditor is valid, even if it is subsequently determined that this was not the real creditor (art. 1478(1) of the Civil Code), for example, if an heir apparent acquired claims of the inheritance and he was subsequently removed by the heir entitled to collect the inheritance, the payment made to him is valid and therefore it releases the debtor. However, the apparent creditor is bound to return the received payment to the real creditor, in accordance with the rules established for the restitution of performance (these rules distinguish between the good and bad faith of the debtor).

Aiming to protect the interests of the creditor who lacks capacity to exercise rights, the law has provided that the payment made to a creditor who is unable to receive it, is valid insofar as it benefits the creditor (art. 1476 of the Civil Code). So payment made to an incapacitated creditor does not release the debtor unless he proves that the payment fully benefited the creditor. If the payment benefited him only partially, the payment is only partially valid (In this sense, see also art. 47 of the Civil Code, in accordance with which “The person lacking capacity to exercise rights or having limited legal capacity shall only be obliged to restitution within the limit of the benefit achieved”).

Conditions of payment

They refer to the aspects relating to the duty of care required from the debtor in the performance of the obligation, the object of payment, indivisibility of payment, place and date of payment, expenses for payment. As for the duty of care required for the performance of obligations, the Civil Code distinguishes between the duty of care of non-professionals and that required in professional activities, the demands being higher for professionals; a) as a matter of principle, the unprofessional debtor is bound to perform his obligations with the care of a good owner who administers his property (art. 1480(1) of the Civil Code); b) in the case of obligations inherent to a professional activity, the care is assessed by taking into account the nature of the activity, the specific standards for each activity (art. 1480(2) of the Civil Code).

Discharging Civil Obligations by Payment as Provided by the Romanian Civil Code

Assuming that the debtor cannot release himself by performing an obligation other than the one he owes, even if the value of the performance offered was equal or higher (art. 1492 of the Civil Code), the legislature impliedly establishes that the object of the obligation is the benefit owed by the debtor. And, since that way in which the payment is made varies from one type of obligation to another, one must determine the nature of the obligation in order to know whether the performance of the obligation by the debtor came to extinguish his obligation; thus, in the case of the obligation of result, the debtor is bound to provide the promised result for the creditor (art. 1481(1) of the Civil Code), while in the case of the obligation of means, the debtor is bound to use all necessary means to achieve the promised result (art. 1481(2) of the Civil Code), the legislature enumerating the main criteria that must be considered in order to determine whether an obligation is of means or of result.

The legislature also establishes rules on: the performance of the obligation to move the property (art. 1483(1) of the Civil Code), the performance of the obligation to lodge a security (art. 1487 of the Civil Code), the performance of the obligation to deliver an individually determined asset (art. 1482(1) of the Civil Code), the performance of the obligation to deliver goods of the kind (art. 1486 of the Civil Code), the performance of the obligation to give a sum of money (art. 1488 of the Civil Code), the performance of the obligation to pay interest on amounts owed (art. 1489(1) of the Civil Code), the performance of the obligation to do (art. 1474(2) of the Civil Code). As for frozen assets, the applicable rule is that the payment is not valid if made in disregard of seizure, attachment or an opposition brought under the law in order to stop payment by the debtor; the creditors that have obtained such measures may again request payment and the debtor retains the right of recourse against the creditor that received the invalid payment (art. 1479 of the Civil Code).

The principle of indivisibility of payment, according to which the obligation of the debtor can only be discharged if he performs the obligation at one time, even when the performance was divisible (art. 1490 of the Civil Code), is consecrated by complementary rules, so the debtor is released if the creditor accepts, either expressly or impliedly, a partial payment.

As for the place of payment, the Civil Code provides that the will of the parties to the legal relation prevails; they may establish the place of payment, i.e. of the performance of the obligation, to be the domicile of the debtor, the domicile of the creditor or elsewhere (for example, where the asset is located at the time of concluding the contract); unless the parties expressly agree upon the place, it may be determined by taking into account, accordingly: the nature of the performance, contract terms, practices established between the parties or usages in the matter (art. 1494(1) of the Civil Code).

If the parties have not expressly agreed on the place of payment and it cannot be determined by the jurisdictional body on the basis of the criteria listed by the legislature, the place of payment will be determined by taking into account the following rules provided by law, one being general in nature and the other two (with a view to the object of the obligation) having a special character; a) the general rule is that the obligation is performed at the domicile or headquarters of the debtor on the date of concluding the contract; b) the first special rule is that financial obligations must be performed at the domicile or headquarters of the creditor on the date of payment and the second special rule is that the obligation to deliver an individually determined asset must be performed in the place where the asset was on the date of concluding the contract.

And in order to determine the date of payment, the legislature considers first of all the will of the parties to the obligation relation, which may be express or implied. In the absence of express contractual terms, the payment date may be determined based on the interpretation of all the contractual clauses in accordance with the practices established between the parties or the usage; if the payment date cannot be determined in this way, the debtor's obligation must be performed "right away", i.e. the time of concluding the contract (art. 1495(1) of the Civil Code). If the nature of the performance or the place where payment is to be made requires the establishment of a time limit for the performance and it has not been set by the parties, nor can it be determined based on the criteria laid down by law, the court may set a judicial deadline for the payment (art. 1495(2) of the Civil Code).

If payment is made by bank transfer, the law establishes the rule that the payment date is when the account of the creditor was funded with the amount of money which made the object of the payment (art. 1497 of the Civil Code); the law does not grant legal value to the time when the debtor gave the payment order to his bank, but if he fulfilled his obligation within a reasonable time so that the bank transfer was in due time, and yet the discharge of the obligation was delayed for reasons attributable to his bank, the debtor may be forced to pay moratory damages to the creditor (the basis of his liability being guilt in eligendo), but this can be remedied in an action for damages against the culpable bank. Regarding anticipated discharge of the obligation, art. 1496(1) of the Civil Code establishes the rule that the debtor is free to perform his obligation even before due date of payment; this provision of the law is supported by art. 1413 of the Civil Code, in accordance with which the suspensive time limit is provided for the benefit of the debtor, except the case where by law, out of the will of the parties or the circumstances, it results that the suspensive time limit was stipulated in favour of the creditor or of both parties (art. 1413 of the Civil Code). If the debtor performs his obligation in advance, the additional expenses caused to the creditor lie with the debtor (art. 1496(3) of the Civil Code). From the rule that the debtor is free to perform his obligation even before it is due, art. 1496(1) thesis II of the Civil Code provides a few exceptions, justified by the parties' agreement, the nature of the contract or the circumstances in which the contract was concluded and the legitimate interest of the creditor that the payment be made on due date. For situations where the parties have not stipulated who covers the expenses of payment, the legislature has established the general rule that the expenses covering the payment lie with the debtor (art. 1498 of the Civil Code).

Proof of payment

With regard to the means of proof that can be used for proving the payment, the Civil Code provides that the proof of payment is by any means (art. 1499 of the Civil Code). The debtor who makes the payment is entitled to a receipt releasing him of all obligation (the expenses covering this receipt lie with the debtor), and if the creditor unjustifiedly refuses to issue the receipt, the debtor has the right to suspend or refuse payment (art. 1500 of the Civil Code).

To facilitate the proof of payment by the debtor, co-debtor or fidejussor, the Civil Code has established the following payment presumptions: a) the receipt acknowledging the performance of the main obligation leads to the relative presumption that accessory obligations have also been performed (art. 1501 of the Civil Code); b) the receipt issued for one periodical obligation that has been performed creates the relative presumption that all previous periodical obligations have been performed (art. 1502 of the Civil Code); c)

Discharging Civil Obligations by Payment as Provided by the Romanian Civil Code

the voluntary submission of the original document acknowledging the debt, issued as a document under private signature, made by the creditor to the debtor, one of the co-debtors or fidejussor, creates the presumption of the discharge of obligation by payment. The contrary proof lies with the one concerned to prove the discharge of the obligation in some other way (art. 1503(1) of the Civil Code); d) the voluntary submission of the original document acknowledging the debt issued as a deed, creates the presumption of discharging the obligation by payment, but the creditor has the right to prove that the submission was made for a reason other than the discharge of the obligation (art. 1503(2) of the Civil Code); e) the debtor, co-debtor or fidejussor's taking possession of the original document acknowledging the debt creates a presumption that the person concerned has acquired it through a voluntary remission on the part of the creditor (art. 1503(3) of the Civil Code); f) when payment is made by bank transfer and the payment order is signed by the debtor and by the paying credit institution, there is a relative presumption of payment; g) when payment is made by bank transfer if the debtor has obtained from the creditor's credit institution an acknowledgement, in writing, of the payment made by bank transfer, there is absolute proof of payment (art. 1504 of the Civil Code). As the consequence of performing the obligation is the discharge of all guarantees, the creditor that received the payment must agree to release the property affected by real securities constituted to satisfy his claim, and to return the property that the debtor gave as a guarantee entailing dispossession, if applicable; the parties may agree that the guarantees ensure the performance of another obligation (art. 1505 of the Civil Code).

Imputation of payment

If a debtor has towards the same creditor several debts dealing with goods of the same kind and the payment does not suffice to discharge all debts, it is necessary to establish how to determine the order of payment of debts; this operation was regulated by the legislature as the "imputation of payment" (art. 1506 of the Civil Code).

The order of the persons called to make the imputation of payment is the following: the parties to the legal relation, the debtor, the creditor; in the absence of the parties' agreement and an option expressed by the debtor or the creditor, the imputation of payment shall be made by the effect of the law. Imputation made by the agreement of the parties is characterized by the fact that it enables them to establish rules of extinguishing obligations other than those provided by law by complementary rules (for example, they may agree to the payment of the capital before the interest). If the parties' agreement on the imputation of debts defraud the interests of third creditors, it may be cancelled by a revocatory action (art. 1562 et seq. of the Civil Code). If the debtor makes the imputation of payment (because there is no agreement of the parties on the matter), he must observe the following rules laid down by art. 1507 of the Civil Code) (with regard to the limits of the exercise of the debtor's right to impute the payment, see Pop, 2006: 486): a) the payment is first imputed with regard to expenses, then the interest and, finally, the capital; b) the debtor cannot impute payment as to a debt that is not due yet in preference to a debt that is due, unless the creditor consents to that effect and if provided for in the agreement that the debtor may prepay; the debtor has the duty to notify the creditor on the debts that he intends to discharge by the payment he makes, and when payment is made by bank transfer, the debtor indicates the debt that he paid by the mentions he made on the payment order.

If the debtor has not exercised his right to make the imputation of payment, it may be made by the creditor under art. 1508 of the Civil Code, i.e. if the creditor gives the

debtor a receipt releasing him of all obligation, he has the duty to specify in that receipt which debt is extinguished by the payment to the debtor; if the creditor fails to send such a receipt to the debtor, the creditor may, within a reasonable time after receiving the payment, indicate the debt on which it will be imputed. The reasonable time referred to by the law, is estimated from one case to another, depending on the nature of the contract, the history of the relations of the parties, the circumstances under which payment was made etc. (Zamșa In Baias, Chelaru, Constantinovici, Macovei (coord.), 2012: 1590); if the creditor does not exercise his right within a reasonable time, he will lose the right to make the imputation of payment and the rules provided by law for legal imputation are applicable in this case.

Legal imputation is made according to the following rules (art. 1509 of the Civil Code.): a) payment is primarily imputed on debts falling due, if all debts are not due; b) if all debts are due, the unsecured debts or those for which the creditor has the least security shall be deemed discharged first; c) if all debts are equally due and equally guaranteed, imputation shall be first on the debts that are more onerous for the debtor; d) if all debts are equally due, and equally guaranteed and onerous, old debts shall be discharged first; e) if all debts are equally due, and equally guaranteed and onerous and have the same length, imputation shall be proportional to the amount of debt; f) regardless of the rules on the legal imputation of payment, the payment shall always be imputed first as to court and enforcement costs, then instalments, interest and penalties, in chronological order of their payment date, and finally, as to capital, unless the parties otherwise agree.

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