

Main Characteristics of Solidary Obligations in the Law of Russia and Argentina

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The legal notion of solidarity (*solidarité, Solidarität, solidaridad*) refers to a situation where several creditors are entitled to receive the performance *in solidum* from a debtor or (and) several debtors are bound to render one and the same performance, so that a creditor has the right to claim the performance from any of them until it has been fully received [1, p. 1287; 2, p. 1573].

This institution has been known to legal systems for a long time; however, it still raises a number of theoretical and practical issues. One of them is whether a solidary obligation constitutes a single legal relationship or a bundle of them. At the present time, so-called “theory of multiplicity” is dominant in Germany, Austria, and Switzerland [6, pp. 48-49], whereas the opposite approach prevails in France and Spain (with certain diffusion) [4, p. 565].

Russian legislation on solidarity combines two conflicting concepts, which, with a few exceptions [5; 6], remains unnoticed in the domestic doctrine. Thus, a better understanding of the situation can be achieved by comparing main characteristics of solidary obligations in Russia with counterparts in legal systems following the concept of a single solidary obligation. Inasmuch as Argentina reconstructed the genuine model of a solidary obligation in its *Código Civil y Comercial de la Nación* (hereinafter referred to as CCyC) in 2015, it seems to be a perfect choice.

According to legal studies of Argentina, the main characteristics of solidarity are the following: (1) plurality of persons, (2) unity of object (performance), (3) unity of cause, (4) plurality of legal bonds [3, pp. 835-836; 4, pp. 571-572].

1. Plurality of persons

There are no arguments against this attribute in both legal orders.

2. *Eadem res debita*

According to Ramon D. Pizarro and Carlos G. Vallespinos, the object (performance) of a solidary obligation is supposed to be single and identical for all the co-creditors and co-debtors. This attribute does not present difficulties for obligations to give (*dare*), but it does for obligations to do (*facere*): in order to be identical, performance should be fungible and non-personal [4, pp. 571-572].

This requirement is not strictly followed in Russia and allows for exceptions. For instance, if the liability of one person is insured by several insurers, the obligations of the insurers might be different and have not-identical amounts of liability, conditions and terms [6, p. 95].

3. *Eadem causa obligandi (causa fuente única)*

The Civil Code of the Russian Federation does not require that solidary obligations arise from the same source. Moreover, it establishes some cases of solidarity from different sources: solidary liability of a guarantor (art. 363), solidarity of a parent company and its subsidiaries for transactions concluded by the latter following instructions or with the consent of the parent company (art. 401), and so on.

El CCyC follows this characteristic of solidarity and has established regimes of *las obligaciones concurrentes, conexas, indistintas o convergentes* for obligations arising from different sources.

4. Plurality of legal bonds (links)

In Argentina, el *vinculo juridico* is considered to be an intangible, ideal element of an obligation that binds parties and entitles a creditor to receive the performance [3, p. 83]. In the Russian legal doctrine, there is no counterpart for this legal phenomenon.

The concept of plurality of legal bonds in a solidary obligation has several important consequences:

- a) a solidary obligation might be simple and pure for one creditor or debtor and have modality (condition, term) for others;
- b) partial nullity, validity and renunciation;
- c) personal and common defenses of debtors [4, pp. 575-576].

Had the Russian legal science known this concept, there would have been fewer arguments against the idea of a solidary obligation as a single legal relationship.

In the light of the aforementioned considerations, main characteristics of solidary obligations are different in the law of the Russian Federation and Argentina: the latter requires more criteria of solidarity to be met. Consequently, the scope of application of Argentinian laws on solidarity is narrower, but el CCyC has established other legal regimes that correspond to Russian solidarity (e.g., *las obligaciones concurrentes*).

Источники и литература

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