Abstract: The unjust enrichment is an unlawful legal act (in the sense of action) which was the subject of many controversies over time. The regulation of this unlawful act by the new civil provisions represents an innovative element, whereas the old rules of civil substantive law did not provide it, verbis expressis, with any legal text, even if this institution has always existed in Roman law. However, in the old rules of civil substantive law, there were several articles which referred to the situations where a person was enlarging his/her patrimony at the expense of another person (for example, art. 493, 494, 997 etc. of the old Civil Code). Equally, no other modern civil legislation allocates express provisions to this institution, as happened in the Romanian legal area until the entry into force of the new Civil Code. For example, the current French civil legislation does not state any rule under which the person who grew rich unjustly, at the expense of another person, is obliged to pay compensation. Regarding these issues, this study aims, on the one hand, at providing a theoretical presentation on this legal act, and, on the other hand, at revealing its importance in the current system of substantive law.

Keywords: enrichment; acts/actions; obligations; illegal act; injured party.

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1. Preliminary considerations on the unjust enrichment under the new Civil Code [1]

If the unilateral contract and the legal act represent the most relevant legal acts in matters of obligations, the legal facts represent the extra-contractual sources of obligations. Among these legal facts, we can distinguish between the lawful legal fact generating obligations and, respectively, the tortious illegal fact, known as tort liability.

Upon the presentation of this theoretical approach, we will also deal with the illustration of the most instructive issues relating to unjust enrichment (art. 1.345-1348 of the NCC), as one of the most important lawful legal facts generating obligations.

Therefore, it is useful to remember, from the very beginning, that some obligations which do not arise from any contract nor from a civil offense are supposed to arise as from a contract (quasi ex contractu), because they are similar to contractual obligations.

The regulation of this lawful fact by the new civil provisions represents an innovative element because the old rules of civil substantive law did not provide it, expressis verbis, with any legal text, although this institution has always existed in the Roman law. However, in the old regulations of civil substantive law, there were several articles referring to the situations where a person was enlarging his/her patrimony at the expense of another person (for example, art. 493, 494, 997 etc. of the old Civil Code).

Equally, other civil laws do not specify any other express provisions regarding this institution, as happened in our country until the entry into force of the new Civil Code. For example, the current French civil legislation does not state any rule by virtue of which the person who got rich unjustly, at the expense of another person, is forced to pay for damages. The only particular applications of the French Civil Code include references to this situation such as art. 555 on consolidating a building on another person's the land,
or art. 1376 - 1381 regarding undue payment [2]. As already mentioned, in this country, the jurisprudence is the fundamental source of this lawful fact (Decision *Patureau vs. Boudier*, 1892).

2. **Definition and situations where the unjust enrichment may be justified**

Currently, our civil legislation deals with the unjust enrichment theoretically, under several aspects. First, for a better understanding of the notion, we should know that we are in the presence of unjust enrichment when there is a movement of value between two patrimonies.

However, the provisions of art. 1346 of the NCC regulate the situations where a person’s enrichment (as a lawful legal fact) may be justified, when it results from:

- the performance of a valid obligation;
- the non-execution by the injured party of a right against the enriched party;
- an act performed by the injured party: in his own personal interest and exclusively at the risk or with intent to gratify;

In situations other than those established by the above-mentioned text, any person who got rich unjustly, at the expense of another person, shall be liable to refund. Therefore, regarding the refund, the NCC (in a similar way to the institution of undue payment) provides that this shall be founded on the grounds of art. 1639 et seq. In all cases, the plaintiff of action for recovery (*actio de in rem versio*) is the impoverished person, and the defendant is the enriched person [4].

3. **The material and legal conditions of the action for recovery**

For a better understanding of the institution of unjust enrichment, we should distinguish between the material conditions of the action for recovery and the legal conditions of the action for recovery.

**A. The material conditions of the action for recovery.** These conditions are extremely important because, through them, we can better identify the legal relationship of obligations. Therefore, the material conditions of the unjust enrichment can regard a number of issues that will always identify certain patrimonial features, namely:

- the existence of a person’s enrichment (the defendant’s), by the increase in his/her patrimony or by acquiring an asset, a sum of money or a receivable, or even by the decrease of his/her patrimonial liabilities (for example, the cancellation of a debt);
- the existence of the plaintiff’s impoverishment, by the reduction of his/her patrimony, as a consequence of the enlargement of another person’s patrimony (there can always be an amount that can be assessed in money, such as the performance of activities or services unpaid by their recipient, the performance of some expenditure in favor of the enriched person etc.);
- the existence of a connection between the increase in one’s patrimony and decrease in another’s patrimony. This connection may be **direct** (for instance, a concubine, by his/her unpaid work, enlarges the patrimony of the other concubine) or **indirect**, i.e. when the movement of value operates through an intermediary, in the patrimony of the enriched third party (for example, two brothers live together; one of them buys products for their common life and does not pay for them; the trader-creditor can also act against the respective brother).

**B. The legal conditions of the action for recovery** concern certain legal acts or facts such as:

- the absence of a **legitimate cause** of the enlargement of a person’s patrimony at the expense of another. That cause always corresponds to the existence of a **legal basis** that justifies the movement of the respective amount (such as a provision of law, a legal act or a court order);
- the absence of any other legal means to recover the loss, by the one whose patrimony decreased (the owner of an individual asset may claim its return by the action for recovery and the action from the contract excludes the action based on unjust enrichment). The subsidiarity of the *actio in rem verso* means that it may not be promoted in order to replace another one which is born, for example, from a contract, from an offense.
or from another licit fact or law (art. 1348, NCC), only when the latter's exercise is prevented by a legal obstacle (for example, in case of the extinitive prescription);

4. The effects of the action for recovery

The difference between the management of business and the unjust enrichment consists in the actuality of the act upon the promotion of the action for recovery. In contrast to the management of business, the refund is due only if the enrichment subsists when the court is seized and the person who got rich is obliged to refund, under the regulations established by the institution on "The restitution of benefits", governed by art. 1635-1639 of the NCC. The action based on the unjust enrichment is prescribed in 3 years, as stipulated by art. 2517 of the NCC; these 3 years run from the date on which the impoverished person became aware or ought to have become aware both of his/her unlawful impoverishment and of the enriched person.

By the enrichment of a patrimony at the expense of another, an obligation relationship is entailed, the debtor (the defendant) of the obligation to refund being the one whose patrimony has increased and the creditor (the plaintiff) of the same obligation being the one whose patrimony has diminished [5].

The refund shall be done in nature and by equivalent only if this is not possible (art. 1639 and art. 1640 of the NCC). The obligation to refund, in unjust enrichment matters, is affected, in all cases, by two limitations that may result from the following:

- the debtor of the obligation shall refund only to the extent of the enrichment of his/her patrimony. Any fruit or legal interest shall not be refund by the debtor because one of the rules of the unjust enrichment is that the debtor acts in good faith and, in these conditions, according to art. 1645 of the NCC, the debtor of the obligation is entitled to retain the fruit but he/she shall only bear the costs incurred by their production. When the asset which has helped increase the patrimony perished fortuitously, the refund obligation shall cease. If the asset was sold, the debtor refunds its value at the time when the sale took place;

- one can not ask for more than the decrease in his/her patrimony. In this regard, the jurisprudence pointed out that the correct application of the unjust enrichment principle requires that the defendant's obligation to refund should not exceed his/her actual enrichment and, inextricably linked to it, it should not exceed the amount wherewith the plaintiff's patrimony was reduced [6].

Also, it is noteworthy that the date upon which the enrichment or the impoverishment value is determined is represented by the date of the request for summons.

Conclusions

As we have shown, the importance of the institution dates back to the Roman period, and evolution to the legislation has done nothing to improve it. Also, the actual usefulness of the institution will be removed by the jurisprudence, at which point will be highlighted and certain problem. Therefore, we hope that the usefulness of our study to bring a plus in the edification of people interested in this institution.

References

1. The new Civil Code was adopted by Law no. 287/2009, republished in the Official Gazette of Romania, Part I, no. 505, from 1 October 2011 and it was implemented by Law no. 71/2011, published in the Official Gazette of Romania, Part I, No.409 of 10 June 2011;
6. This limitation was mentioned for the first time in the civil Decision no. 102 of 17 January 1968, T.S. in R.R.D. no. 6/1968, p.171;