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REMEDIES FOR NON-EXECUTION OF BILATERAL PROMISE TO SELL IN THE 2009 CIVIL CODE SYSTEM

- PhD THESIS SUMMARY -

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I. PAPER PLAN

Introductory considerations

Chapter I. The notion, legal nature and classification of sales promises

Section 1. Concept and legal nature of promise to sell

Section 2. The meaning of the notion of antecontract

Section 3. Classification of sales promises

§1. Unilateral promise to sell or buy

§2. Bilateral (synalagmatic) promise to sell

Chapter II. Conditions of validity (essential elements) of the bilateral promise to sell

Section 1. Capacity

Section 2. Consent

Section 3. The object of the promise

§1. Good

§2. Price

Section 4. The cause of the promise

Chapter III. Enforced execution in kind of the bilateral promise to sell – the action for the pronouncement of the judgment that takes the place of the contract of sale

Section 1. Remedies available to creditor

Section 2. The legal regime of the action having as its object the pronouncement of a decision that takes the place of a sales contract

Section 3. Specific aspects regarding the resolution of the action

§1. Written stage – relevant aspects in the regularization procedure

1.1. The content of the summons and the submitted documents

1.2. Court stamp duty

§2. Competence

§3. Problems specific to the general conditions for exercising civil action

3.1. The procedural capacity of use

3.2. Procedural quality

§4. Prescription of substantive right to action

§5. Some aspects related to the forfeiture of the right to propose evidence

§6. The conditions required by law for the rendering of a decision that takes place of the contract and the evidence administered to prove them

6.1. The conclusion between the parties of a valid promise to sell the property in dispute

II. KEYWORDS: unilateral promise to sell or buy; bilateral promise to sell; promisor-seller; promisor-buyer; the sales contract; unjustified refusal to conclude the contract; conditions of validity; capacity; consent; cause; object; interest-moratorium damages; compensatory damages; penalty clause; earnest; contractual response; execution by equivalent; resolution of the bilateral promise to sell; execution in kind of the obligation to do; judgment that takes the place of the contract; competence; court stamp duty; active procedural quality; forfeiture of the right to present evidence; the prescription of the material right to action; inalienability; opposability of the inalienability clause; the legal mortgage corresponding to the bilateral promise to sell; agricultural land outside the village; the action for the nullity of the decision that takes place of the contract; the action to annul the alienation concluded with the disregard of the implied inalienability in the bilateral promise to sell; adaptation of the contract in the event of vitiation of consent by mistake.

III. THE THEME OF THE RESEARCH AND ITS SCIENTIFIC IMPORTANCE

This doctoral thesis is called "Remedies for the non-execution of the bilateral promise to sell in the 2009 Civil Code system".

Over time, taking into account the evolution of economic and legal realities, it has been proven that the conclusion of sales contracts does not always take place in a single stage, the will of the parties passing through several stages and preparatory discussions, which materialize including through the conclusion of some contracts preliminary, as a preliminary stage of the final sale.

Precisely from this complex process of formation of the final sales contract, many exceptional situations from the principle of consensualism arose over time, such as the writing of the contract, the payment of certain guarantees. These exceptions did not constitute an infringement of the intrinsic link between consensualism and the contract of sale, representing rather a confirmation of the indissoluble link between the two.

The purpose of establishing these exceptions was originally the desire to reduce the state of uncertainty that can hover over the moment of the realization of the agreement of will regarding the conclusion of the sales contract, which can result from the long process of negotiation realized through a multitude of stages prior to each of these corresponding to a certain distinct psychological position. Thus, it is difficult to establish the final moment, and the consequences of not clearly determining it are not without practical consequences.

The consensual character of the sales contract was regulated, by the provisions of art. 1589 para. (1) French Civil Code 1804, which provided that "the promise of sale is worth sale, if there is mutual consent of the two parties on the work and on the price", this legal provision having the express role of marking the transfer of property exclusively by the will of the parties, and not by the tradition of the sold good as it was before.

Although the synalagmatic promise of sale was recognized by the Romanian doctrine, it was not included in the regulation of the Civil Code from 1864, considering its reduced frequency in practice at the time of the adoption of this normative act.

With the entry into force of the new Civil Code, bilateral promises of sale were regulated, their legal regime being detailed in art. 1669.

As it follows from the brief presentation made in the preceding, the evolution of the institution of the antecontract in legislation and in jurisprudence was a winding one, but at the same time largely organic, and was based on the realities of the development of social and legal relations, on the edge of the transfer of property ownership, predominantly with reference to real estate alienations.

Although the regulation of the synalagmatic promise of the contract is currently a generous one, there are enough aspects that still generate problems in practice, some of which have been resolved through the mechanisms for the unification of judicial practice, but others still remain unclear so that they generate interpretation difficulties. Although it represents a synalagmatic contract, the promise to sell has an atypical structure, having as its object an obligation to do, which itself has a particular structure. Precisely for this reason, the system of remedies provided by the new Civil Code regarding the obligation to make arising from the pre-contract presents a series of particularities.

IV. PURPOSE AND OBJECTIVES OF THE RESEARCH

In the present case, the scientific research followed the analysis of the remedies provided by the Civil Code in force regarding the bilateral promise to sell, by addressing the theoretical and jurisprudential aspects, of internal law and comparative law, in order to provide a grounded view of the subject. Also, we mainly analyzed the legal issues solved differently in the legal literature and the practice of the courts, proposing reasoned solutions for a better understanding and application of the existing legal provisions.

In the center of the remedies researched in this paper, by far the most complex and characteristic is the forced execution in kind of the obligation to make assumed by means of the synalagmatic promise of sale, materialized in the form of the action of pronouncing a decision that takes the place of the contract.

We consider it important to clarify all aspects related to this mechanism of the pronouncement of a decision that holds place for sale, all the more so since the regulation, although existing and useful, is not as detailed as it would be necessary to solve all the specific problems that may arise during the pendency of such action.

Such problems also start from preliminary procedural aspects related to the judicial stamp duty or jurisdiction, and continue with the identification and detailing of the conditions required by law for such a request to be admitted. The path of the need to interpret and clarify the rules does not stop here, it being very important to establish what is the content of the decision that takes place of the contract, especially since this decision has a dual nature, a procedural act and a convention.

Also, judicial practice has revealed that the importance of the entire process at the end of which a judgment is pronounced that will take the place of the sales contract is all the more important as, later on, this contract may be the subject of annulment or resolution actions. In this aspect, the jurisprudence is not very rich for the time being, but the number of these litigations that seek the subsequent annulment of the judgment that takes the place of the contract seems to be increasing, the reasons being different

from case to case. Being a jurisprudence at the beginning of the road, it also contains different solutions, and the distinct opinions are often based precisely on the different conception of the legal nature of the decision that takes place of the contract.

If the common law action for the pronouncement of a judgment that takes the place of the contract was not already sufficiently tender in terms of practical issues, a special form was added to it, with regard to agricultural land located outside the village, regulated by Law 17/2014, which is also the subject of a diverse judicial practice, as well as decisions issued by the Constitutional Court.

Another issue specific to the legal relationships arising from the bilateral promise to sell is represented by the damages associated with this agreement, which may be moratorium or compensatory in nature and may have a legal or, often, conventional origin. Again, the specifics of these disputes are outlined by the special nature of the bilateral promise to sell, the conditions provided by law for the award of damages having their origin precisely in the obligations assumed by the pre-contract and which were not fulfilled by the party at fault or were executed non-compliant or late.

Another type of litigation in the matter of bilateral promises, subsequent to a non-execution of one of the promisors, is the resolution of these conventions, which also involves a series of particularities generated on the one hand by the existing divergences in the legal literature regarding the substantive conditions of the resolution, and on the other hand from the features of the obligations assumed by the bilateral promise to sell.

The aspects that have generated a non-uniform practice, also in the case of the resolution of the pre-contract, start from aspects regarding the judicial stamp duty and the jurisdiction of the court and reach the conditions that must be analyzed by the judge in order to pronounce the resolution of the bilateral promise of sale.

Another typical type of litigation specific to bilateral promises of sale is the action for the nullity of sales contracts concluded by the promisor seller with disregard of the implied inalienability clause in the pre-contract, it being important to analyze the legal regime and the effects of this legal prohibition of alienation intended to protect the promisor-buyer from a possible alienation in bad faith on the part of the promising seller. This remedy is mainly based on the legal regime of legal inalienability specific to the synalagmatic promise of alienation of immovable property which is all the more interesting as it represents the culmination of an evolution of the doctrine and judicial practice that started from the simple possibility of the promisor-buyer to claim damages from the promisor-seller in case he disposed of the good that was the object of the promise, a right that was based on an obligation existing implicitly in the pre-contract to the promisor-seller, not to alienate the good that makes the object of the prefigured sales contract.

In this paper I have dealt with all these institutions one by one and analyzed their particular elements both procedurally regarding the appropriate action, but also

substantively from the point of view of the conditions that must be met on their merits in order to be admitted.

Equally, we researched the jurisprudence, in order to be able to note its optics with regard to each remedy that we analyzed in the matter of the bilateral promise of sale and noted possible difficulties or non-unitary judicial practice, trying to also propose possible solutions where we have appreciated necessary.

Throughout this process, we intended to highlight the legal issues that are the subject of controversy in the specialized literature, proposing possible solutions for the existing divergences at the theoretical level, with the aim of reaching a solution that is not only correct from a substantial point of view, but and satisfactory from a practical point of view.

In order to advance the solutions deemed correct in the present approach, it was necessary to study in depth a significant legal doctrine that transposes the interpretive effort of the numerous authors who have dealt with this subject over time and whose effort we have tried to continue in the most rigorous and pragmatic manner possible so as to contribute to bringing solutions and additional clarifications to the bilateral promise of sale remedies regime.

V. THE STRUCTURE OF THE WORK

The general purpose of our research was to find out the existing peculiarities regarding the remedies available for synalagmatic promise for sale, so we carried out a step-by-step analysis of them.

The work comprises seven chapters, divided into sections, the latter being, in turn, divided into subsections.

In the first chapter, I made a settlement of the bilateral promise to sell within the complex process of forming the contract, and following this process, a series of consequences regarding its legal nature and effects resulted.

From a brief analysis of the institution's history, it emerged that the current regulation of contract promises is the most generous ever existing, and the legislator provided a distinct regulation for contract promises (unilateral and bilateral), which are expressly differentiated from of option contracts, having separate regulations (art. 1278 and art. 1279 Civil Code).

On the other hand, the Civil Code of 2009 associates with the notion of antecontract only promises of sale, regulated in art. 1669 Civil Code, not option agreements, this aspect resulting from the content of art. 902 para. (2) point 12 of the Civil Code, which establishes that the preliminary contract and the option agreement are subject to notation, and from art. 906, which details the notation procedure, making the same reference to the term pre-contract and having the marginal name "notation of pre-

contracts and option pacts". From the interpretation of these texts, it follows that the legislator designates by the name of antecontract, even bilateral promises of sale or unilateral promises of sale or purchase.

Regarding the legal characters, the bilateral promise of sale is a preparatory (preliminary), consensual, synalagmatic, commutative contract, with uno ictu execution, named, with onerous title and has as its object an obligation to do. The synalagmatic promise of sale has an autonomous structure, so that it is not confused with the contract of sale or the sale under a suspensive condition, even if the future completion of the sale or the final sale depends on the same future event and uncertain as to realization (for example, obtaining a bank loan). A final aspect addressed in this first chapter, which also makes the transition to the second chapter of the paper, concerns the need for sufficient agreement regarding the essential elements of the contract for the validity of the contract, the bilateral promise of sale having to contain all the clauses of the promised contract, in their absence, it cannot be executed [see art. 1182 para. (2) Civil Code].

In the second chapter, I made an analysis regarding the validity conditions of the synalagmatic promise.

Thus, being a convention, the synalagmatic promise of sale must meet a series of conditions, called by the doctrine essential elements, which are included, in addition to all the general conditions for the validity of the contract provided by art. 1.179 of the Civil Code (consent, capacity, object and cause), and a series of special conditions closely related to the role of the preparatory contract regarding the final will of the parties to conclude a sales contract, considering that through the preliminary sales contract the validity conditions of the sales contract must be identified.

Secondly, in addition to the essential elements, in the bilateral promise of sale you can also find other clauses, called non-essential elements, through which the parties agree on additional aspects and, by way of example, the penal clause, the disclaimer clause, the arvuna can be mentioned , the inalienability clause, the formalities regarding the exercise of preemption, the condition that the asset is in the civil circuit.

Regarding the form of the pre-contract, I emphasized that it does not fall into the category of essential conditions considered by the legislator, in art. 1.279 para. (1) Civ. Code, being currently established that a promise can be enforced in kind, in the form of a decision that takes the place of a contract, without the need for a certain form (namely the form of the promised contract).

As for the condition of the ability to dispose, it must be met in the person of both promisors, both at the time of the conclusion of the promise, but also at the time of the conclusion of the promised contract, because the execution of a promise to sell, although it is not a has a translational effect of ownership, is outside the scope of administrative acts, precisely because it represents a preparatory act of the final sale. Thus, the

agreement on the property sold and on the price must be given by parties with full legal capacity or who meet all the conditions required of the guardian for him to represent the minor or regarding the consent of the guardian, as well as those related to the authorization of the court of guardianship and with the approval of the family council.

A peculiarity of the consent within the contract promises is the fact that the agreement of the parties concerns the conclusion of a contract in the future, so that they do not undertake to conclude the prefigured contract, but only agree to reiterate this agreement at the time conclusion of the final contract.

Regarding the content of the consent in the case of the promise to sell, it must refer to the good sold and the agreed price.

With regard to the defect of consent of the injury, I noted in the content of this chapter that the provisions of art. 1.222 of the Civil Code does not apply to the promise of sale, but only to the final contract, because, although the law uses the phrase "performance promised or performed by the injured party", I appreciated that it refers to certain performances that have not yet been performed, but which arise from the final contract and not from a promise, although the regulation of the injury does not result in the exclusion of the application of the provisions regarding this defect of consent with regard to the contract promise.

Also, if the conclusion of the bilateral promise of sale takes place through legal or conventional representation, the validity of the consent at the conclusion of the preliminary contract will be analyzed in the person of the representative, and not of the represented person who either expressed his consent on the occasion of the conclusion of the mandate contract or is legally represented at the conclusion of the promise.

As regards the existence of the good at the time of making the promise, even if it is absolutely necessary for the parties to establish by promise what is the object of the contract, it does not necessarily have to exist at the time of making the promise. Also, the good that is the object of the promise must be in the civil circuit at the time of concluding the final sales contract, only this presupposing the transfer of ownership, not the conclusion of the preliminary contract.

Regarding the ownership of the asset, it is not a condition that the promisor-seller be the owner of the asset that is the subject of the promise at the time of the conclusion of the promise, it being only necessary that the right of ownership be acquired by the date of the conclusion of the promised contract.

In the third chapter, I analyzed the action for the pronouncement of the judgment that takes place of the contract of sale, addressing a series of procedural and substantive aspects characteristic of this particular form of forced execution in nature.

The action in the pronouncement of a decision that takes the place of the contract is a personal action, even if the contract that is requested to be perfected is a transferable

contract of property or other real rights, as established by the H.C.C.J. by Decision no. 8/10.06.2013, pronounced in the context of an appeal in the interest of the law.

The request having as its object the pronouncement of a decision that takes the place of the contract is an action in realization, and not one in establishing or establishing rights. Thus, through this action, one of the beneficiaries of the promise aims to capitalize on the right to claim by obtaining a judgment, which is specific to the actions being carried out. The effect of admitting the action consists in the transfer of the ownership right to the buyer's patrimony, and not in the creation of a new right.

If the heirs of one of the promisors, who died after the conclusion of the promise of sale, are sued through the action for the pronouncement of a judgment that takes the place of the contract, the issue of lack of procedural capacity does not arise, because the plaintiff did not intend to be sued with his deceased co-contractor, but from the beginning introduced the action in opposition with the heirs of the other promisor, leaving only the task of proving their passive procedural quality.

In the event that the claimant-promisor files the action against the promisor who was deceased at the time the action was filed, the claimant can amend his action under the terms of art. 204 para. (1) Civ. Proc. Code, until the first court term or after this term, but only with the express agreement of all parties.

With regard to the value in relation to which the judicial stamp duty must be determined and the material jurisdiction of the court in the case of the analyzed action, I have assessed that this is the market value of the asset, which can be assimilated to the taxable value, or the value from the notarial grids or other means of proving the current value of the asset. Regarding the time at which the circulation value of the asset is established, this is the time when the summons is filed.

Also, regarding the proof of the quality of heir of those called to participate in the civil process instead of the promisor-seller, this must be done with the certificate of heir, and if the court is requested to establish the heirs, the parties have the obligation to submit to the file the conclusion provided for by art. 193 para. (3) of the Civil Procedure Code.

Both judicial practice and doctrine were unanimous in establishing, similar to the Civil Code of 1864, that during the period in which the promising buyer is in possession of the promised asset, the prescription is interrupted, according to art. 2538 para. (2) Civil Code. The delivery of the asset to the promising buyer and his exercise of control over the promised asset represents an act of tacit recognition by the promising seller of the claim regarding the forced execution of the pre-contract in the manner of issuing a judgment that takes the place of the contract. In this case, the prescription of the right to action begins to run again from the date on which the promisee-seller manifests itself expressly in the sense of denying the right of the promisee-buyer.

Also, if the prescription exception was not invoked within the term provided by art. 2513 Civil Code, the court has the possibility to invoke ex officio the exception of lateness, and to order the forfeiture of the defendant from the right to invoke the exception of the extinguishing prescription of the material right to action, substantive procedural exception invoked with non-compliance with the legal term.

With regard to the conditions for the pronouncement of a decision that takes place for sale, I have assessed that the following conditions must be met for the admission of this action: 1. the existence between the parties of a valid promise of sale regarding the property in dispute; 2. the promisor-seller unjustifiably refused to conclude the sales contract at the set deadline; 3. the promisor-buyer is in arrears; 4. all other conditions for the validity of the sale to be met at the time of the pronouncement of the court decision; 5. the promisor-seller must be the owner of the good; 6. the request for a decision to take the place of the contract must be made by the party that has fulfilled its own obligations; 7. all payment obligations owed to the local budget of the administrative-territorial unit where the building is located have been paid; 8. the debts to the owners' association or to the public utility providers have been paid, in the case of individual invoicing of the services or if there are debts, the acquirer has expressly accepted that he will fully take over all the alienator's debts to the owners' association, as well as all debits to all public utility providers.

As for proving the unjustified refusal, the burden of proof is reversed, so that it falls not on the plaintiff, but on the defendant [v. Art. 249 Civ. Proc. Code]. Thus, the plaintiff would only have to prove the fact that, upon completion of the term established in the contract for the completion of the sale, this did not happen. It would follow that the defendant proves either the justified character of the refusal (proving the existence of one of the justified causes of non-execution of the contractual obligations provided for by art. 1555-1557 Civil Code), or the fault of the plaintiff according to art. 1517.

The phrase "if all other validity conditions are met" provided by art. 1279 paragraph (3) of the Civil Code, must be interpreted in the sense that the court will check whether all the conditions required by law for the validity of the sale (capacity, object , the case, according to art. 1179 Civil Code) are fulfilled, this being called to fulfill only the consent of one of the parties.

With regard to the object, namely the promised good, it must be in the civil circuit at the time of the judgment, and the judgment that takes the place of the sales contract is governed, like the legal act it enshrines, by the law in force at the time of its pronouncement.

The condition of consent to the conclusion of the pre-contract is included in the condition of its validity, while the consent to the effective conclusion of the sales contract for the party who unjustifiably refuses will be supplemented by the court by pronouncing the decision that replaces the contract. Thus, if the promisor reluctant to

conclude the sales contract expressed a valid consent at the time of the conclusion of the sales promise, it will be automatically and forcibly reiterated, by means of the pronounced decision that will replace the contract. In conclusion, possible flaws in the consent or its total lack can only be invoked with regard to the moment of concluding the promise of sale.

In the same way, the question arises regarding the cause of the sales contract, this will also be checked from the perspective of the validity of the cause of the promise of sale, the considerations presented during its analysis being valid.

With regard to the capacity of the parties, they must have full exercise capacity on the date of the judgment, and there must be no inability for any of the promisors to sell or buy.

Pronouncing a decision that takes the place of a sales contract is not conditional on the fulfillment of the promise in authentic form, a solution arising from Decision no. 23/2017 of the H.C.C.J., pronounced as a result of a referral regarding the resolution of some legal issues.

Another condition for the rendering of a judgment that takes the place of the contract is that the property belongs to the alienating promisor at the time when the transfer of ownership takes place. The requirement that the promisor-seller be also the owner of the asset at the time of the judgment was the subject of controversy for a while, however, the non-uniform practice problems it triggered were resolved by the H.C.C.J through Decision no. 12/2015 pronounced following an appeal in the interest of the law.

In the case of successive alienations, when the first acquirer has not proceeded to register his property right in the land register, after the application for the final court decision to be taken as a sales contract will be accepted, the beneficiary of the promise will request the land register land, in order: the registration of the right of ownership, in favor of the promisor-seller, based on the document proving the transfer of ownership to the latter from the one who, both on the date of the dispute with the beneficiary of the promise, and on the date of submission by the beneficiary of the promise of the application for registration of the right in the latter's name, appears as tabular owner; subsequently, the registration of the right of ownership in favor of the beneficiary of the promise, based on the court decision that holds the place of sale in relations with the promisor-seller.

Regarding the meaning of the phrase "at the request of the party that fulfilled its own obligations" provided by art. 1279 para. (3) Civ. Code, I judged that the interpretation according to which it refers to the obligations established by the pre-contract, and not by the contract to be concluded, is applicable.

Further in the analysis of the requirements for the admission of the action for the pronouncement of the decision that takes place of the contract, I have shown in an

argumentative way that the prior payment of the sale price cannot be a condition for the admission of the request.

For the asset being disposed of, the owner of the asset must pay the tax due for the year in which the asset is disposed of, unless the tax is due for the asset being disposed of by a person other than the owner, as also results from Decision no. 42/2017 pronounced by H.C.C.J. – The suite for resolving some legal issues, related to the promise of exchange, but fully applicable to bilateral promises of sale as well.

As it also results from the judicial practice cited in the content of the work, through the decision that takes place of the contract, the court does nothing but establish the existence of an agreement of the parties and give it the form of an authentic act by pronouncing the decision that takes place of authentic act. In a subsequent action regarding the nullity of the promise of sale and the contract of sale concluded through the court, the party in whose favor the judgment was pronounced cannot invoke as the original property title, the court judgment by which the consent of the other party was fulfilled at the conclusion of the contract, because this decision cannot have effects independently of the agreement of the parties on the basis of which it was pronounced.

In Chapter IV, we have analyzed the special provisions regarding the promise to sell an extra-urban agricultural land according to Law 17/2014 and the evolution of jurisprudence regarding the pronouncement of a decision that takes the place of a contract regarding these lands.

With regard to the reasoning of the Constitutional Court in Decision 755/2014, reiterated in Decision 274/2017, it was appreciated in doctrine as open to criticism, because the law in force from the moment the pre-contract was concluded must be taken into account, since the effects of legal acts concluded under the empire of a law can only produce the effects provided by the law in force on the date of their conclusion, completely ignores the effects of the preliminary contract as a preliminary (temporary) legal act whose execution is ensured by the conclusion of the definitive contract.

Thus, the argument of the need to recognize the right acquired through a promise by the promisor-buyer through the antecontract is difficult to accept precisely because through the promise the promisor-buyer only acquires a claim right, consisting in the commitment given by the promisor-seller that he will reiterate his consent at the set time to conclude the final sale. The new law does not retroactive, but on the contrary produces effects for the future, with respect to the contract of sale, and does not affect the validity of the promise already legally concluded.

A problem of non-unitary practice concerns the admissibility of the action having as its object the pronouncement of a decision that takes the place of a sales contract in the hypothesis that the good that constitutes the object of the preliminary sales contract is an extravillage land that is not registered in the land register. The requirement to register the land located outside the village in the land register is expressly provided in

the legal provisions analyzed as a condition for the admissibility of the request, so that, if it is found that it is not fulfilled, the action will be rejected as inadmissible.

In the content of the Vth chapter, we analyzed particularities regarding contractual liability - execution by equivalent, regarding the bilateral promise to sell.

In this sense, the necessary requirements for engaging in contractual civil liability are: the existence of a valid concluded contract; non-execution by the debtor of the contractual obligation; the debtor's fault (art. 1.547 of the Civil Code; in the case of non-execution of contractual obligations, the debtor's fault is presumed relatively, according to art. 1548 of the Civil Code); the existence of the prejudice (art. 1.537 Civil Code); the existence of a causal relationship between non-execution and damage. In case of non-execution of the bilateral promise of sale, the beneficiary has the right to damages [art. 1279 para. (2) Civil Code]. In addition to this clarification, the legislator does not provide a special regulation for damages arising from the non-fulfillment of the promise to sell, so they will follow the common law regime.

A question arises regarding the damages due for late execution of the obligation to conclude the sales contract arising from the bilateral promise to sell: what is the counter value of the obligation to do? This value is necessary to be able to calculate liquidated damages. I appreciated in the content of the chapter that this value should be determined with the same reasoning as the one used to establish the value for the action in pronouncing a judgment that takes place of the contract, as well as for the action in the resolution or nullity of the promise. As in the case of the mentioned actions, we opted for the calculation of liquidated damages at the updated market value of the good that is the subject of the promise to sell, valuing at this value the equivalent in money of the obligation to make assumed by the bilateral promise of sale by both promisors, the argument the main being the need for a unique, objective criterion for determining the value of the object of the contract.

Referring to the interpretation of art. 34 para. (1) from G.E.O. no. 80/2013, I came to the conclusion that the judicial stamp duty will be established, when the plaintiff requests the obligation of the defendant to pay a sum of money representing the counter value of the penal clause provided for non-execution through the promise of sale and to pay another sum of money representing damages-moratorium interests, in relation to each of the two heads of demand, and not in relation to their total value. The finality of the two heads of request is distinct, such a difference arising from the very difference in the legal cause of the requests.

Chapter VI consisted in the analysis of the resolution of the bilateral promise to sell.

From this point of view, we rallied to the doctrine that appreciates that guilt is not one of the necessary conditions for the dissolution of the bilateral promise to sell by way of resolution. The only requirement required by art. 1516 para. (2) point 2 of the

Civil Code is that the non-execution of the obligation is "without justification". From an evidentiary point of view, the debtor has the burden of proving the existence of one of the causes justifying the non-execution, provided by art. 1555-1557 Civ. Code. The verification or not of the debtor's fault exceeds the legal provisions, as a general rule there is no coincidence between non-execution without justification and culpable non-execution of the obligation, an aspect that results all the more clearly from the provisions of art. 1530 Civil Code which in its final sentence mentions them alternatively. However, the notion of non-execution without justification, used in art. 1350 para. (2) Civil Code and in art. 1516 para. 2 of the Civil Code usually overlaps, in contractual matters, with the notion of culpable non-performance.

The phrase "fortuitous event" used in art. 1557 para. (1) thesis I Civ. Code refers to the same events as the provisions of art. 1634 Civil Code, with reference to art. 1351 and 1352 Civil Code, respectively force majeure and fortuitous event, as well as the act of the victim, the creditor and the act of a third party, but only if the latter have the characteristics of force majeure or fortuitous event.

In the case of the unilateral declaration of resolution, the control of the court, even if it is carried out a posteriori, is significant, in the sense that the court is called to verify the significant nature of the non-execution (by the way, this is also the reason why the unilateral declaration of resolution is advisable only to the creditor who is certain of the legality of his act of terminating the contract, the risk being the possibility of being obliged later to pay damages for the eventual damage caused to the debtor), while, in the case of the commission pact, the court only checks whether the stipulated conditions are met in its contractual content.

As a particularity, the interest damages granted following the resolution that are added to the restitution of benefits can be higher in terms of value than the interest damages related to the execution by equivalent. The reason for this difference in value lies in a difference between the two types of damages, arising from the harm that each seeks to repair. The damages related to the resolution are intended to restore the balance between the patrimonial state that the party would have had in the situation where the contract had not been concluded and the one that is as a result of its termination by resolution and the restitution of benefits. On the other hand, interest damages associated with execution by equivalent come to cover the damage created between the patrimonial state of the creditor in the hypothetical situation of the execution of the contract and that at the time of non-execution by the debtor of the obligation assumed by the contract.

Similar to the action for a judgment in lieu of contract, for the resolution of the promise to sell the issue that arises when determining the stamp duty is related to the value of the subject matter of the claim. The conclusion, regarding the method of establishing the stamp duty, was to establish the stamp duty at the circulation value of the good, with the same arguments as in the action in the pronouncement of the decision

that takes place for sale, this solution providing a constant criterion for the calculation stamp duty.

For the resolution action, the statute of limitations begins to run, in accordance with the general rule listed in art. 2.523 Civil Code, from the date on which the creditor knew or should have known the birth of the material right to action, that is, the existence of a sufficiently important, presumptively unjustified non-execution. Regarding the resolution, the prescription will not run automatically from the date the obligation becomes payable, according to art. 2.524 Civil Code, because this remedy does not depend on the simple non-execution (without justification of the obligation), like the remedy of execution in kind, but on an important character of the non-execution, which can appear after the moment when it occurs. Moreover, the stated text expressly regulates the execution of obligations, so it cannot be extended to the remedy of the resolution. Nor can the provisions of art. 2.528 para. (1) Civil Code for the resolution, because they refer to the knowledge of the damage caused by the illegal act, referring to the term damage in a narrow sense, a condition that is not characteristic of a resolution, where only in a broad sense can we speak of a reparation of an injury.

In chapter VII we analyzed the legal regime of legal inalienability provided by art. 629 para. (3) Civil Code and the action to cancel the alienation concluded with the disregard of the implied inalienability in the bilateral promise to sell.

Although the main obligation of the promising seller to conclude the definitive sales contract in the future obviously also implies his negative obligation to refrain from actions that could prevent the realization of the sale and not to alienate his property, this personal obligation of to the promisor being imposed by the very nature of the respective convention, until the new Civil Code there was no regulation in this sense.

In addition to the limitation of the right of disposal specific to the property, inalienability also implies the prohibition of encumbering the promised good with real charges without the consent of its beneficiary (this implies the prohibition of mortgage, the constitution of a dismemberment of the property, the conclusion of a new promise - which would generate a real inalienability etc.).

Inalienability also attracts the imperceptibility of the good that is the object of the bilateral promise to sell, as follows from art. 629 para. (3) Civil Code, which introduces the ban on the forced pursuit of goods subject to inalienability, for the duration of the effects of the clause, of course in the absence of an express legal provision. In conclusion, in the contest between the inalienability implied in a bilateral promise of sale and a forced pursuit of the same asset, the inalienability will have priority, provided that its opposability is achieved and provided that it has a possible preferential rank in front of a possible notation of a forced execution or a previous mortgage that is the basis of this foreclosure.

Violation of the implicit inalienability can lead to the resolution of the promise in which it was stipulated, at the request of the promisor-acquirer [art. 629 para. (1) Civil Code] or to the relative nullity of the deed concluded despite inalienability [art. 629 para. (2)], provided that the inalienability has been made opposable under the conditions provided by art. 628 Civ. Code.

It is sufficient, to ensure opposability, the notation in the land register of the pre-contract pursuant to art. 902 para. (2) point 12 Civil Code, without the need to duplicate it by a new entry of the inalienability clause under art. 902 para. (2) point 8 Civ. Code, applicable text in the case of express conventional inalienability. In the absence of this notation, the annulment action is to be rejected as unfounded.

Pursuant to art. 2.386 point 2 Civ. Code, the promising buyer enjoys a legal mortgage in the event of non-execution of the obligation stemming from the bilateral promise to sell regarding an immovable asset registered in the land register, with respect to that immovable, for the return of the amounts paid to his account. The birth of the mortgage provided for by art. 2.386 point 2 of the Civil Code takes place by its registration in the land register or by noting the promise. The promisor-buyer has the right to request the registration of the mortgage in the land register either from the date of conclusion of the promise, if he made a payment at this time, or later from the date of making a payment based on the pre-contract concluded.

However, in order to capitalize on the right of legal mortgage by its owner, it is not necessary to register in the land register, it being sufficient to note the pre-contract according to the legal provisions.

Application of the provisions of art. 629 para. (2) Civil Code regarding the bilateral promise of sale, implies two conclusions. On the one hand, the "alienator" corresponds to the promisor-purchaser under the promise with an implied inalienability clause, because this clause was established by law in his interest, similar to the conventional inalienability established in the interest of the alienator. On the other hand, in the case of the promise to sell, the inalienability clause is considered implied by law and is considered to be established in the interest of the promisor-buyer, the assumption of the conventional stipulation of an inalienability in the interest of a third party not being incident. In conclusion, the request for cancellation may be made by the promisor-buyer to obtain the cancellation of the subsequent sale.

As regards the passive procedural quality in the annulment action, the plaintiff must call as defendants both the promisor-seller who violated the implied legal prohibition to alienate, and his sub-acquirer. I appreciated that the participation of the third-party buyer in the annulment action is mandatory according to the law, being a case of ex officio, forced introduction of the party under art. 78 para. (2) Civ. Proc. Code., being incident in this hypothesis the phrase from the mentioned text "when the legal report deduced from the judgment requires it".

To the question of whether the court could order reinstatement to the previous situation and regarding the third party defendant, party to the subsequent sales contract, and the promisor seller who alienated in violation of inalienability, I answered that it is required that the two defendants, parts of the deed whose annulment is requested for the violation of inalienability, to formulate a counterclaim to obtain restoration to the previous situation, because they must receive the principle of availability in the face of the effects of nullity. Thus, the court will not be able to order the restoration of the parties ex officio to the previous situation, and the plaintiff (the promisor-buyer who requests the cancellation of the sale subsequent to the promise of which he is the beneficiary) will not be able to request the restoration of the parties to the previous situation either.

I also concluded on the method of stamping the counterclaim, in the sense that the provisions of art. 3 paragraph (2) lit. a) from G.E.O. no. 80/2013, according to which it is charged according to para. (1) (i.e. depending on the value of the object of the request) and the action for the declaration of nullity, the cancellation of a patrimonial legal act, and the request for restoring the parties to the previous situation is exempt from stamp duty, only if it is an accessory to these requests. In the analyzed situation, the restoration to the previous situation is not accessory to the annulment of the act, but is formulated within the same litigation.

Regarding the prescription of the material right to action for the term, the provisions of art. 2517, the prescription term being 3 years, considering that the law does not provide for another term. The limitation period begins to run under art. 2529 para. (2) Civil Code according to which, in cases where the relative nullity can be invoked by a third party, the prescription begins to run, unless the law provides otherwise, from the date when the third party became aware of the existence of the cause of nullity. In this last chapter, I also made a short x-ray of art. 1213 Civil Code, which regulates the adaptation of the contract in the event of vitiation of consent by mistake.

From the regulation provided by art. 1213 Civil Code results that for the adaptation of the contract in the case of the defect of consent error, the following conditions must be met: the conditions of the defect of consent error must be met for one of the parties, minus the requirement that the error be common; the contract has not yet been executed; the party in error has the obligation to inform his co-contractor about how he understood the contract.

Depending on the way in which this notification takes place (of the way in which errans understood the contract) we can have two situations: the notification takes place before the introduction of an action for annulment or the notification through the very communication of the summons request. From this moment, the law provides for a 3-month grace period in which the co-contractor has the opportunity either to declare that he agrees with the execution or to actually execute the contract in the manner in which

it was understood by the party in error. In the situation where the notification takes place through the communication of the summons request, the implicit condition also appears that, within the 3-month period, the annulment action is not resolved. If the annulment action has been settled, then the adaptation of the contract can no longer take place.

Adaptation of the contract provided for by art. 1213 Civil Code is different from other contract adaptation situations, in that the court only takes note of the potential right of the opposing party to the one who fell into error to execute or to declare that he executes the contract as it was understood de errans [see adaptation for injury, art. 1222 Civil Code and adaptation in case of unforeseen circumstances, based on art. 1271 para. (2) lit. a and (3) Civil Code].

When it intervenes in the course of a litigation, the adaptation of the contract for error requires that the court verify certain conditions: the conditions of the error of consent for one of the parties are met; the contract has not yet been executed; compliance with the information/acceptance protocol provided for in paragraph (2) of art. 1213, respectively that within 3 months of receiving the summons, the co-contractor must declare that he agrees to the execution or actually executes the contract in the manner in which it was understood by the party in error. If these conditions are met, the court will have to find the adaptation of the contract and that the right to request the annulment of the contract due to error has expired.

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