

The Contract for the Alienation of a Good With the Condition of Life Maintenance in the Law of the RM and Romania

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Abstract—The theoretical research is the result of a synthesis on the lifetime maintenance contract within the civil contract. Such contracts are of major importance in society and have an impact on the segment of the elderly, sick, disabled, or socially vulnerable, who use this type of contract to live a decent life. The regulation of the alienation contract with the maintenance clause has undergone successive modifications over the time, in order to ensure a complete protection of the contracting parties. Initially, in Romanian law, the contract was outlined rather by the doctrine, following that the current regulation to define it explicitly, the jurisprudence also contributing to the outlining of the currently applicable provisions. In the Republic of Moldova is an express regulated contract, starting from the conditions of the sale-purchase contract, conditioned by the maintenance clause for life - conditioning included in the alienation contract, as an expression of the will of the parties. The maintenance condition included in the transfer such characters specifically individualized by law. The result of the research allowed the author to expose himself on the legal framework that clearly defines the difference between a contract with the condition of maintenance for life and other civil contracts, which determines the object of alienation.

Keywords— *maintenance clause, usufruct, synallagmatic contracts, sale-purchase contract*

I. INTRODUCTION

The legal doctrine uses the notion of contract in relation to the agreement concluded between two or more parties, by which certain rights and obligations are created, modified or extinguished. The contract is the instrument that ensures free competition and stimulates private initiative, being the legal form that organizes the exchange of values in society. The lifetime maintenance contract is of particular interest to the elderly, the sick, the disabled, their pensions and benefits, which do not cover their vital needs by far. These persons, having the possibility to conclude such a contract, are provided with the most important living conditions until death.

II. RESEARCH METHOD

In the study process, the general methods of knowledge of the contractual law were applied, such as logic, analytical, comparative, etc., being used and combined depending on the issues addressed in the paper. However, the materials used in the research are the legal framework in the Republic of Moldova, Romania.

III. RESULTS AND DISCUSSIONS

Regulation of Romanian law

The seat of the matter - the regulation of this type of contract, respectively the sale-purchase contract with the maintenance clause - we find it in the Romanian law in the Civil Code [1-2], starting with the provisions of art. 2254 and the following. Upon the entry into force of the current Civil Code, which occurred on October 1, 2011, the maintenance contract did not benefit from a legal regulation, being an unnamed contract [3]. Subsequently, the regulations were updated, being adopted prior to the entry into force of the current Civil Code, certain normative acts of a special nature, precisely to come to the aid of the elderly who concluded maintenance contracts by which real estate was alienated. Among them we mention Law no. 17/2000 regarding the social assistance of the elderly, art. 30 providing that the elderly person, as defined in art. 1 para. (4), shall be assisted, at its request or ex officio, as the case may be, with a view to concluding a legal act of alienation, for consideration or free of charge, of the property belonging to it, for the purpose of its maintenance and care, by a representative of the guardianship authority of the local council in whose territorial area the person concerned resides. They are considered elderly persons, within the meaning of this law, according to art. 1 para. (4), the persons who have reached the retirement age established by law.

In the period prior to the adoption of the New Civil Code, the maintenance contract was subject to the provisions of

unnamed contracts, as contained in the Civil Code of 1864. in judicial practice, the use of this contract has given rise to the need for its express regulation. [4]

After the appearance of the last regulation - the old code being replaced by the new cond with application from 2011, the practitioners - respectively notaries resorted to the incorporation in a single contract of the specific regulations of the maintenance contract and of the sale contract.

The sale-purchase contract with maintenance clause and possibly the right of living habitation is the variant that people with low incomes and without relatives to help them use more and more often. The seller alienates a house, and the buyer undertakes to provide maintenance consisting of food, clothing, medical care for as long as the seller will live, and after his death to bury him. The seller is also given the right to live in that home for the rest of his life.

Like any synallagmatic contract, which provides rights and obligations of both parties, in the case of the contract of sale and purchase of real estate, with the maintenance clause, the rights of the maintenance creditor are personal and cannot be assigned to third parties or subject to prosecution. If the maintenance or receipt of the maintenance in kind can no longer continue for objective reasons or if the maintenance debtor dies, the court may replace, at the request of either party, even temporarily, the maintenance in kind with an appropriate amount of money. Also, when the provision or receipt in kind of maintenance can no longer continue through the fault of one of the parties, the court will increase or, as the case may be, decrease the amount of money that replaces the maintenance benefit.

The maintenance contract, according to art. 2254 para. (2) of the Civil Code, is usually concluded during the life of the maintenance creditor, if the contract did not provide for the duration of maintenance or provided only for its lifetime. However, the parties may also conclude a fixed-term maintenance contract, in which case they will set its term and maturity. Assuming that the duration is not mentioned but only the lifetime, we are in the presence of a maintenance contract concluded during the life of the maintenance creditor. [6]

When the behavior of the other party makes it impossible to execute the contract in accordance with good morals, the interested party may request the resolution. This cannot be required if maintenance can no longer continue for objective reasons or if the maintenance debtor dies. The heirs of the maintenance creditor cannot request that the benefit continue in their person but have the right to act in the termination of the contract for non-performance within the general limitation period.

The obligations of the maintenance creditor, for the hypothesis of the maintenance contract for consideration, consist in the transfer of the property or other patrimonial right, the obligation to hand over the goods and to preserve them until their delivery, as well as the obligation of guarantee against eviction and defects. hidden assets or assets. It is also specified that in order to guarantee the obligation to provide maintenance, in the case of the contract for consideration, the

text of art. 2256 para. (1) of the Civil Code, refers to the provisions of art. 2249 and art. 1723 of the Civil Code Thus, the maintenance creditor benefits from a legal guarantee, either in the form of a privilege or in the form of a legal mortgage on the capital that is the object of the maintenance contract. In order to register the legal mortgage, it is not necessary to declare the value of the secured claim, art. 2249 para. (2) C. Civ.

The debtor of the maintenance obligation cannot be released from this obligation by offering the return of the capital and waiving the refund of the maintenance provided, being bound by that obligation until the death of the person in whose favor the maintenance obligation was established, no matter how burdensome its provision may become.

The maintenance debtor owes to the creditor fairly established benefits, taking into account the value of the capital and the previous social condition of the creditor. Maintenance continues to be due to the same extent even if, during the performance of the contract, the good that constituted the capital has totally or partially perished or diminished in value, for a reason for which the maintenance creditor is not liable.

When maintenance is stipulated in favor of a third party, we will be in the presence of an indirect donation. In this case, the parties will be the constituent or stipulator and the debtor of the maintenance obligation or the promisor, between which the contract is concluded, while the creditor of the maintenance obligation or the maintenance is the third beneficiary. The third-party beneficiary must accept the maintenance stipulated in his favor and if he does so, he cannot request the termination of the contract but only the execution of the obligation contracted by the maintainer [5].

The problem arises separately when the good is alienated in exchange for maintenance but also for a sum of money. In the conditions in which the alienation of the good is done in exchange for maintenance without a sum of money, but only in exchange for maintenance, the situation differs as we will detail below.

The value of the maintenance is random, unknown at the time of signing the alienation contract, so that the benefit will be related to the value of the good. The contract will be only for maintenance if the cash benefit represents less than half of the value of the alienated good, otherwise the contract will be only for sale.

Notary establishes the legal nature of the contract taking into account the will of the parties, after explaining that regarding the components found in the act, there is a different regulation depending on the case, so that in the end they will establish the rules applicable to their will.

The theory of complex contracts represents a creation of the doctrine, it not being regulated as such even in the new civil code. regarding the maintenance, however, this became a contract called being regulated by art. 2254-2263 Civil Code, so that even in its respect, not only the principles governing obligations no longer apply.

It is very important to emphasize that this maintenance contract included in the sale-purchase contract has an intuitive personae character, it being concluded considering the personal qualities of the contracting parties. Thus, the maintenance obligation is an obligation to make, strictly personal and non-transferable [7]. Even if sometimes the maintenance debtor appeals to other persons to fulfill, in part, the assumed obligation, it cannot be said that in this way the personal character of this obligation is defeated. Also, according to art. 2258 of the Civil Code, the rights of the maintenance creditor cannot be assigned or subject to prosecution. The personal nature of the maintenance contract may not be relied on by the parties to oppose the action for revocation of the contract or the oblique action brought for its performance, stipulates art. 2259 of the Civil Code. The text of art. 2259 of the Civil Code protects the creditors who request the revocation of the contract by way of the Pauline action, as well as the personal creditors of the maintenance, who requests, by means of the oblique action, the execution of the contract.

Authentic form which the sale-purchase contract must cover with the maintenance clause is a requirement for the validity of the contract. Prior to the current Civil Code, the maintenance contract was consensual, it was concluded by the simple agreement of the parties, except in cases where a building was transferred in exchange for maintenance, when it was also required to respect the authentic form. We appreciate that the imposition of the authentic form of the maintenance contract is of real benefit to those interested in concluding such a contract, the parties will be advised by a notary on all aspects necessary to be known. One could only object to the costs of imposing the authentic form, but the long-term benefits are much more important. Failure to comply with the authentic form of the contract is sanctioned with absolute nullity.

The implications that especially the complex contract can have in the notarial practice are limited to the new regulation from the civil code in the matter of the resolution, thus according to art. 1549 para. 2 the resolution can take place for a part of the contract only when its execution is divisible. This situation is obvious in the contract we called mixed, but it appears less clearly in the case of the complex contract. On the other hand, the creditor does not have the right to resolution in case of a minor non-execution, having only the possibility to request a proportional reduction of his benefit, and if this is not possible, he has the right only to damages (art. 1551 Civil Code). The resolution will not intervene even when non-execution of the obligation is determined by the action or inaction of the creditor,

However, it is important to note that the notary public could instruct the parties to use the new form of unilateral resolution, which operates through the declaration of resolution of the interested party noted in the land book, in case of non-execution of obligations. In this way, the inconveniences of the judicial resolution can be avoided, which, in addition to duration and expenses, presupposes the right of the court to grant the debtor a grace period for the exercise of the obligation. Also, if the parties have not established by contract the essential character of both

obligations assumed, the court will be able to order a reduction of the plaintiff's performance, maintaining the validity of the contract.

Termination of the maintenance contract it is disposed of only if, through fault the debtor has not received the maintenance provided for in the contract, which, as a rule, consists in providing food, clothing, medicines, satisfying any other needs and is provided in kind. In the absence of a legal impediment, however, the parties may agree, on the date of the contract or later, that the maintenance be converted, permanently or temporarily, into an amount of money that the debtor-maintainer must pay to the creditor-maintenance, to cover, total or partly of the due maintenance obligation.

If the termination of the contract is pronounced, the parties are to be reinstated, stating that, although the maintenance creditor will regain ownership of the transferred property, the debtor at fault cannot obtain a refund of maintenance services already executed, according to art. 2263 alin. (5) of the Civil Code, however, if the debtor has also paid a price, it must be returned to him. [8]

Refusal to receive due maintenance, without a good reason, constitutes an abuse of the creditor, as he cannot obtain the termination of the contract, using his own fault.

At the time of sale, the seller may reserve the right to temporary use of the good even after the property right, more precisely, the bare property, will enter the buyer's patrimony. This right can be inserted in the contract through a usufruct clause.

In practice, there is confusion in the case of contracts for the alienation of real estate, with certain clauses, namely the confusion between the usufruct clause and the maintenance clause that can be inserted in these alienation contracts. If the seller seeks to obtain from the buyer a monthly maintenance, it may constitute the right to be maintained by him, under certain conditions.

It must be specified that the existence of a usufruct clause does not automatically imply the existence of a maintenance clause and vice versa: the existence of a maintenance clause does not necessarily imply the existence of the usufruct clause. In order to produce its legal effects and to oblige the buyer to respect a usufruct and to provide a maintenance, it is obligatory that, in the content of the sale and purchase contract, both clauses be mentioned.

In the case of the sale-purchase contract with usufruct and maintenance clauses, the price paid is lower than it would have been for a pure and simple sale. However, it is recommended that the price be at least 50% of the value of the good, the other 50% being "converted" into the rights that the seller obtains additionally after the sale.

Regulation in the law of the Republic of Moldova

The institution of alienation of property with the condition of maintenance for life is not new in the civil law of the Republic of Moldova. The regulation can be found in art. 839-845 of the Civil Code of the Republic of Moldova [9]

In order to protect the patrimonial interests of the beneficiary, art. 842 of the Civil Code of the Republic of Moldova stipulates two guarantees: on the one hand the interdiction to alienate the good sent by the maintenance beneficiary during his life, on the other hand the interdiction to establish tasks, pledge, or encumbrance of the good without the consent of the maintenance beneficiary. [10] Regarding the legal characteristics of this type of contract, they are similar to the Romanian legislation, detailed above, respectively consensual contract, signaling, translational ownership, for a fee, random in terms of duration, Also the contract of alienation with The lifetime maintenance suit is an intuitive personal contract, which makes the obligation personal and non-transferable. [11]

The relevant legislation was updated with the publication Law on modernizing the Civil Code and amending some legislative acts no. 133 / 15.11.2018, aiming to modernize the private law of the Republic of Moldova, in accordance with the evolution of international legislation. [12-13]. In the analyzed contract, the maintenance obligation has a contractual basis, the maintenance obligation from the Family Code has a legal basis, although it is also a personal obligation. Usually, the legal maintenance obligation is reciprocal, but this character is not always achieved.

Thus, there are notable at least two important changes, with impact on the contracts, applicable to the contract to which we refer, respectively: (i) the introduction of a new article, respectively art. 5171 by which the concept of the correlative obligation was defined, as a result of the abrogation of Chapter III "The synallagmatic contract" (Title II). According to the new regulations, the correlative obligations may arise from contracts (synallagmatic contracts), as well as from other grounds for the creation of obligations; (ii) the second amendment was the introduction of art. 5211 by which a practical problem was solved, respectively it is established that in case one of the indivisible creditors refuses to accept or cannot accept the execution of the service, the debtor can be released from the obligation, by recording.

IV. CONCLUSIONS

Technological parks are an important element in the The sale-purchase contract with the maintenance clause is part of the category of complex contracts that bring together regulations of the sale-purchase contract and of the maintenance contract. The sale-purchase contract represents a transfer deed of ownership, obligatory in exchange for a price. The maintenance contract is a contract for consideration, under which one of the parties transfers to the other the

ownership of one or more goods, in exchange for the obligation which it assumes to provide, in kind, the necessities of life throughout life, being in the same time a random contract, because the duration of the debtor's obligation depends on the duration of the creditor's life, uncertain event. The provision of maintenance, in charge of the debtor, is the obligation to do, with a strictly personal character, which, in case of non-execution, determines the termination of the respective contract.

References

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