

UNIVERSITY OF EUROPEAN STUDIES OF MOLDOVA
DOCTORAL SCHOOL
"LEGAL SCIENCES AND INTERNATIONAL RELATIONS"

Manuscript title

C.Z.U: 347.232(478+498)(043.2)=111

BĂNCILĂ DANIEL

CONTRACT FOR THE ALIENATION OF PROPERTY
SUBJECT TO LIFETIME MAINTENANCE IN THE LAW OF
THE REPUBLIC OF MOLDOVA AND ROMANIA

SCIENTIFIC SPECIALTY: 553.01. CIVIL LAW

Summary of the PhD thesis

CHISINAU, 2024

The thesis was developed within the Doctoral School "Legal Sciences and International Relations" of the University of European Studies of Moldova

PhD coordinator:

BÎTCĂ ION, PhD in Law, Associate Professor

Official referees:

1. MIHALACHE IURIE, Ph.D. habil. in Law, Associate Professor, "B.P.Hașdeu" State University, Cahul;
2. FRUNZĂ IURIE, PhD. in Law, Associate Professor, Comrat State University

Composition of the Public Defense Commission:

1. President - BĂIEȘU AUREL, PhD habil.in Law, University Professor, USEM,
2. PhD coordinator - BÎTCĂ ION, PhD in Law, Associate Professor, USEM
3. MIHALACHE IURIE, Ph.D. habil. in Law, Associate Professor, ""B.P.Hașdeu" State University, Cahul;
4. FRUNZĂ IURIE, PhD. in Law, Associate Professor, Comrat State University
5. PUȘCĂ ANDY-CORNELIU, PhD. in Law, Associate Professor, Danubius International University, Galați, România

The defense will take place on __22.01.2025_ , at __14.00 _ in the meeting of the Public Defense Commission of the Doctoral School "Legal Sciences and International Relations" of the University of European Studies of Moldova, address. Chisinau, Ghenadie Iablocikin str. 2/1, room 200A.

The abstract and the PhD thesis can be consulted at the National Library of the Republic of Moldova, at the Library of the University of European Studies of Moldova and on the website of the National Agency for Quality Assurance in Education and Research (www.cnaa.md).

The abstract has been sent to _29.11.2024_

President of the Public Defense Commission,

BĂIEȘU AUREL, PhD habil in Law, University Professor, _____

PhD coordinator,

BÎTCĂ ION, PhD in Law, Associate Professor, _____

Author

DANIEL BĂNCILĂ _____

© Daniel Băncilă, 2024

CONTENTS

CONCEPTUAL LANDMARKS OF THE RESEARCH.....	4
THESIS CONTENT	8
GENERAL CONCLUSIONS AND RECOMMENDATIONS	27
BIBLIOGRAPHY.....	30
LIST OF THE AUTHOR'S PUBLICATIONS ON THE THESIS TOPIC	31
ADNOTARE	32

CONCEPTUAL LANDMARKS OF THE RESEARCH

Topicality and importance of the topic. The contract for the alienation of property on the condition of lifetime maintenance is a particularly important legal mechanism in the current social and economic context, both in the Republic of Moldova and in Romania, and is increasingly used by vulnerable groups in society, such as the elderly or people with disabilities. These social groups, despite owning valuable movable or immovable property, often face financial difficulties and the need for material support and continuous care. Thus, the lifetime maintenance contract becomes an attractive legal solution, offering the possibility of providing the resources necessary for survival and personal care in exchange for the transfer of ownership.

The study reveals the topicality and importance of this legal institution, emphasizing the need for a clearer and more coherent regulation¹. Although the lifetime maintenance contract is not a new concept in the Republic of Moldova and Romania, recent developments in the social and economic structure of these countries have highlighted legislative gaps that affect the effectiveness of the application of this type of contract in practice. In particular, the complexity of the rights and obligations of the parties involved, in terms of maintenance and transfer of property, raises legal issues that require better defined solutions.

At the international level, this contract is particularly relevant in the context of demographic change, in particular the ageing population. Different countries have adopted distinct regulations in this respect and their experiences provide valuable lessons that can guide the improvement of national legislation in Moldova and Romania². The study highlights the importance of aligning national legislation with European and international standards, not only to improve the protection of beneficiaries' rights and contractual obligations, but also to stimulate foreign investment and economic competitiveness.

The paper focuses on analyzing the legal and practical complexities associated with the lifetime maintenance contract, taking into account the unique characteristics that differentiate it from other forms of contracts. This analysis is undertaken from an inter- and trans-disciplinary perspective, integrating not only legal, but also economic and social dimensions,

¹ Puie.,O., Treaty on civil contracts,Ed. Universul Juridic,2018, ISBN 978-606-091-4, pag 44

² Cojocaru A. Civil Contracts. București: Lumina Lex, 2014, pag 54

in order to provide a comprehensive picture of the impact of this type of contract on contemporary society.

This study makes a substantial contribution to the doctrine of civil law on lifetime maintenance, not only by analyzing the legislative gaps, but also by proposing concrete solutions to improve the current normative framework. Moreover, by integrating the social and economic dimensions, the work proposes a multidimensional approach to the issue, which makes it relevant for theorists as well as practitioners in the fields of law, economics and sociology.

Thus, the paper provides an important frame of reference for the future development of the law and practice on lifetime maintenance contracts, both in the Republic of Moldova and in Romania. It advocates for the clarification and adaptation of the regulatory framework to the current needs of society, while emphasizing the importance of a rigorous and fair application of legal regulations in this essential area .³

Aim of the paper and research objectives. The main aim of this study is to formulate a coherent and well-founded concept of the legal institution of alienation of property subject to lifetime maintenance, with a focus on identifying the challenges and difficulties in the practice of applying this type of contract.

A particularly important aspect of the study consists in referring to classical doctrinal works of civil law and adjusting these perspectives to the current needs of national legislation. Through this approach, the paper aims to formulate concrete solutions *de lege ferenda* to support the development of national law in the field of alienation contracts subject to lifetime maintenance.

To achieve this aim, the research is structured around a number of key objectives. The first of these is the clear formulation of the concept of alienation of property subject to lifetime maintenance, taking into account both its legal dimensions and the current needs of society .⁴

Another central objective is to identify the defining elements of this contract by examining the essential legal and doctrinal concepts in order to clearly delimit this institution

³ Cojocaru A. Civil Contracts. București: Lumina Lex, 2014, pag 55

⁴ *ibidem*

from other similar contractual forms. This will highlight the complexity and specificity of this contract in relation to other forms of alienation of goods.

The research also explores the applicability of the substantive rules on the formal and substantive conditions of the lifetime maintenance contract in order to ensure their correct application in practice, in accordance with the general principles of civil law⁵. In addition, special attention will be paid to the effects of this contract, analyzing various legal provisions in the former Soviet republics and other European states in order to assess the effectiveness of national legislation in relation to international standards.

The scientific novelty of the results obtained from this research is emphasized by the fact that it represents one of the first detailed studies dedicated to the institution of alienation of property subject to lifetime maintenance in the context of the Republic of Moldova and Romania. The paper goes beyond its theoretical character, addressing also practical aspects in order to establish directions for the development of this legal field. The conclusions and recommendations drawn from the research are intended to contribute to the continuous improvement and adaptation of the legislation.

The scientific novelty of the work manifests itself on several levels:

- *Formulation of a concept of the institution of alienation of property subject to lifetime maintenance*: The research establishes the nature, essence and content of this institution as a legal entity in civil law, providing a sound theoretical framework for a better understanding of the institution.

- *Identifying the particularities of the notion of maintenance*: the study explores the specificities of property as an object of civil law in the context of the alienation of property subject to the condition of lifetime maintenance, highlighting the characteristics that make this type of contract unique.

- *Determining the terms of the contract*: It analyzes the conditions of conclusion, performance and effects of the contract, highlighting the specific features of this type of contract in comparison with other forms of contract in civil law.⁶

- *Comparison with other types of contracts*: The paper makes a comparative examination between the contract of sale of goods subject to lifetime maintenance and other

⁵ Puie.,O., Treaty on civil contracts,Ed. Universul Juridic,2018, ISBN 978-606-091-4, pag 44

⁶ Cojocaru A. Civil Contracts București: Lumina Lex, 2014, pag 55

similar contracts governed by national and international law, highlighting its differences and specificities.

- *Assessment of the regulatory framework*: The paper provides a critical assessment of the regulatory framework and practice in the Republic of Moldova, highlighting legislative impediments and proposing solutions for the development and improvement of legislation in the field.

The scientific problem solved consists in formulating a clear concept of the institution of alienation of property subject to lifetime maintenance, determining its role in the civil law of the two States. The research also addresses the existing doctrinal and legislative gaps, providing analytical solutions to fill them. Thus, the work contributes to clarifying and improving the understanding of this type of contract both in doctrine and in legal practice.⁷

Theoretical relevance. This paper explores theoretically and practically the institution of the contract of alienation of goods subject to lifetime maintenance, focusing on the legislation of the Republic of Moldova and Romania.

From an application point of view, the study is useful for future research, teaching and legal practice, contributing to the improvement of legislation through concrete proposals and recommendations for the protection of vulnerable persons, such as pensioners and persons with disabilities.

Summary of the research methodology and justification of the research methods chosen. The methodology used includes doctrinal, comparative and empirical research. The doctrinal research analyzes the literature, providing a solid theoretical basis. Comparative research examines regulations in Moldova, Romania and other European countries to identify best practices. Empirical research involves interviews with specialists to understand the practical application of these contracts.

The approval of the research results took place at the University of European Studies of Moldova, where the doctoral thesis was evaluated within the Doctoral School of Legal Sciences and International Relations, specialization 553.01. During the research, the preliminary ideas, conclusions and resulting recommendations were presented and validated in national and international scientific conferences, being also published in specialized journals, thus strengthening the relevance and scientific value of the work.

⁷ Cojocaru A. Civil Contracts. București: Lumina Lex, 2014, pag 55

THESIS CONTENT

The PhD thesis is systematically structured in several sections, each having an essential role in deepening the topic "The contract of alienation of a property with the condition of lifetime maintenance in the law of the Republic of Moldova and Romania". This organization includes: annotations in three languages, list of abbreviations, introduction, four chapters, general conclusions and recommendations, bibliography, appendices and CV of the author. The entire work has been prepared in accordance with the academic requirements applicable to this type of research.

In the **Introduction**, *the current importance of the investigated topic* is highlighted, emphasizing the gaps identified in the literature. The topic of the contract of alienation of property subject to lifetime maintenance is an issue of major interest in the laws of the Republic of Moldova and Romania, being closely related to the needs of vulnerable groups, such as pensioners and disabled people, in the context of contemporary economic and social challenges⁸. This contract responds to a growing demand for legal mechanisms to facilitate the management of resources by people who, while owning assets, face financial difficulties. The research examines the social and legal context of this contract, analyzing the evolution and diversification of national and international regulations, marked by demographic trends and the growth of the elderly population. The study also highlights the differences in legislation and terminology between the two countries with a view to facilitating the application of the contract in each jurisdiction. The proposed inter- and trans-disciplinary approach brings into discussion the economic, social and ethical implications of this contract, contributing to a better understanding and refinement of the existing regulatory framework to protect the rights of the contracting parties and avoid abuses.

This study aims to provide a comprehensive grounding of the legal institution of alienation of property subject to lifetime maintenance, addressing the practical challenges and formulating solutions to avoid incidents that could jeopardize the validity of this type of alienation. To this end, the work examines key doctrinal contributions, adapting classical civil law perspectives to modern regulations in order to improve the national legislative framework.

⁸ Avornic Gh. Treatise on the General Theory of State and Law. Chişinău: Tipografia centrale, 2010, ISBN 9975703704, 9789975703703, pag 12

The scope of the study includes a number of specific objectives: defining the concept of the institution, analyzing national regulations in detail and clarifying the distinctive features of this contract in comparison with other contractual forms. The research also explores the formal and substantive conditions applicable to this contract, i.e. the impact of its effects in national and comparative law.

By analyzing legislation in other jurisdictions, including former Soviet republics and European states, the study assesses the effectiveness and adaptability of national legislation to international standards. The identification of legislative shortcomings will form the basis for proposals to improve regulation in this area⁹. This research aims to make a significant contribution to the literature by providing an in-depth analysis of the institution of dispossession subject to lifetime maintenance from both theoretical and practical perspectives, through the prism of national and international civil legislation, relevant doctrine and case law.

This work makes an innovative contribution in the field of civil law by dealing in detail with the institution of alienation of property subject to lifetime maintenance, being one of the first comprehensive researches on this subject in the Republic of Moldova and Romania.

The scientific novelty of the paper is structured in several directions: definition of the concept of alienation with the condition of lifetime maintenance and identification of its legal nature and content; analysis of the characteristics of the concept of maintenance in the context of civil law; establishment of specific conditions of form and substance for the maintenance contract; comparison of this institution with other similar contracts, as well as assessment of the normative framework and practice in the Republic of Moldova¹⁰. This approach provides an analytical perspective on the impediments and possible developments of the legislation.

The main scientific problem solved in this paper is the definition and the role of the institution of alienation of property subject to lifetime maintenance in the civil law of both States, as well as the clarification of some doctrinal uncertainties and legislative gaps, complemented by relevant analytical solutions.¹¹

⁹ Stătescu C. Bârșan C. – Civil Law- The Theory of general obligations, Publishing House ALL, București : ALL, 2019, pag 46

¹⁰ Boroi G., Angheliescu C.A., Nazat B. Civil law course: principal rights in rem. Ed. a 2-a, rev. București: Hamangiu, 2013, ISBN: 978-606-678-796-3, pag 176

¹¹ ibidem

The paper, entitled "The contract of alienation of property with the condition of lifetime maintenance in the law of the Republic of Moldova and Romania," has a significant *theoretical* and methodological *value* in deepening and developing the concept of this legal institution. The study makes an essential methodological contribution to the investigation of lifetime maintenance contracts, providing an analytical reference for national and international doctrine¹². The results obtained find practical applications both in lawmaking and in national case law, supporting future interpretations and reforms of the regulatory framework in this area.

The research hypothesis proposes that the institution of dispossession of property subject to lifetime maintenance is an effective and necessary legal instrument for the protection of vulnerable persons, such as pensioners and persons with disabilities, but its application is affected by legislative ambiguities and lack of clear regulations. Comparative analysis of the legislation of the Republic of Moldova and Romania will allow to identify the gaps and formulate proposals to strengthen the legal framework, ensuring adequate protection of the rights of the parties involved.

The research methodology uses a multidisciplinary approach and integrates doctrinal, comparative and empirical methods. The doctrinal research will review the literature in order to synthesize existing concepts and to theoretically substantiate proposals for improving the legislation. Comparative research will analyze similar regulations in the Republic of Moldova, Romania and other European countries, identifying best practices and shortcomings of national legislation. The empirical research, conducted through interviews with legal and social experts, will provide a practical insight into the challenges encountered in the enforcement of lifetime maintenance contracts.

These methods are complementary and allow a holistic assessment of the subject. Doctrinal research provides the theoretical foundation, comparative research identifies benchmarks, and empirical research provides insights from practice. Taken together, these methods support an in-depth analysis of the institution of disposing of property subject to lifetime maintenance, with the aim of developing concrete solutions to improve the legal

¹² Boroi G., Anghelescu C.A., Nazat B. Civil law course: principal rights in rem. Ed. a 2-a, rev. București: Hamangiu, 2013, ISBN: 978-606-678-796-3, pag 176

framework. Finally, details are provided on the approval and validation of the results of this research.

In **Chapter 1**, entitled "The particularities of the contract of alienation of an asset subject to lifetime maintenance in the legislation of the Republic of Moldova and Romania," an in-depth analysis of the historical evolution of this type of contract is proposed, highlighting not only the socio-economic and cultural influences that have shaped its development, but also the social and legal context in which these changes have taken place. This section begins with an overview of the historical origins of the contract, tracing how past practices have evolved and transformed into current regulations, providing a holistic view of the process of alienation of property.¹³

Today, the maintenance contract is regulated in Romanian and Moldovan law. In Romania, the new Civil Code adopted in 2011 defined a maintenance contract as a contract whereby one party, called the "maintenanceee", transfers a property to the other party, called the "maintainer", who undertakes to provide maintenance for the lifetime of the maintenance. Similarly, in the Republic of Moldova, the new Civil Code adopted in 2002 included specific rules for this form of contract.

Maintenance contracts have become a viable legal solution for elderly people or those without descendants who want to ensure a decent living. The legal framework establishes clear obligations and rights for both parties, with the aim of protecting the interests of the maintenance recipient. This becomes particularly important for older people who own valuable property but do not have sufficient pensions or allowances to meet their basic needs.

Current global trends emphasize the importance of protecting contractors, fairness in contractual relations and addressing the special needs of vulnerable populations, with a significant impact on the legal conception of property rights.

The evolution of the contract of alienation of property on condition of lifetime maintenance reflects its adaptation to the social and economic needs of different historical periods. This type of contract serves as an essential legal mechanism to support the welfare of vulnerable people. The law stipulates that the acquirer must provide maintenance in kind,

¹³ Bloşenco A. Civil Law. Special Part. Course notes. Chişinău: Cartdidact, 2003, ISBN 9975940-51-X, pag 51

thus ensuring the well-being of the beneficiary through various means such as food, clothing, medical care and housing .¹⁴

We also see how international standards have been integrated and adapted to local specificities in the Republic of Moldova and Romania. This adaptation is not just a mere transposition of external regulations, but involves a series of adjustments and modifications that take into account the legal traditions, economic structure and social needs of each country. We also analyze the impact of the legislative changes on judicial practice, highlighting how the courts have interpreted and applied the rules in the particular context of the alienation contract .¹⁵

The chapter includes a detailed comparison of the relevant legal rules in the two legal systems, highlighting both the similarities and the essential differences. This comparison is crucial not only for understanding the legal frameworks in which we operate, but also for identifying possible gaps or contradictions in the law that may influence the effective enforcement of the alienation contract.

An essential component of this chapter is an examination of the theoretical contributions of civil law scholars. It analyzes the perspectives of different schools of thought and the significant contributions of relevant authors who have influenced the perception of the legal regime of contract. This discussion is vital for substantiating the theoretical arguments presented in the paper, providing a frame of reference for the interpretation and application of legal rules.

At the same time, research objectives are formulated, which provide a clear direction for investigating the problems identified. These objectives are not merely abstract formulations, but represent specific commitments of the author to explore, analyze and offer solutions to the complexities encountered in the application of the alienation contract under analysis. By defining these objectives, it contributes to the logical structure of the thesis, facilitating a coherent and organized presentation of the research results.

The aim of the research is to assess the effectiveness of current legislation, identify areas for improvement and propose appropriate legislative reforms.

¹⁴ Cojocaru A. Law Contracts. București: Lumina Lex, 2014, pag 55

¹⁵ ibidem

The research aims to achieve specific objectives, including: analyzing the historical development of the institution, defining and examining the applicable legislation, investigating contractual particularities and assessing the effectiveness of regulation in the former Soviet states and the European Union .¹⁶

We aim not only to contribute to the specialized literature in the field, but also to influence notarial and judicial practices in the Republic of Moldova, offering solutions to the problems identified and supporting the necessary reforms in this sector.

The chapter concludes by summarizing the main findings and highlighting the need for further research in this area¹⁷ . Future directions of study are proposed, indicating that there are many unexplored aspects and questions that need to be answered in the context of the continuing evolution of legislation and legal practice.

In **Chapter 2**, entitled "The legal regime of the formation of the contract of alienation of goods subject to lifetime maintenance", we define and analyze in detail the contract of alienation of goods subject to lifetime maintenance, highlighting its specific features within the applicable legal system.

To fully understand the nature of this contract, it is essential to analyze its legal characteristics. First of all, the contract is based on mutual consent between the parties, which makes it a voluntary and reciprocal agreement¹⁸ . Secondly, it entails clear obligations, both as regards the transfer of the property and as regards responsibility for maintenance .¹⁹

Analyzing the structure of the contract for the alienation of the property subject to the condition of lifetime maintenance involves a detailed examination of the role of the parties involved. The recipient of the maintenance is usually the person transferring the property, while the acquirer of the property is the person who takes over the ownership rights and is obliged to provide maintenance to the seller .²⁰

These contracts offer particular protection to vulnerable beneficiaries and require clear structuring to avoid disputes. The right of the beneficiary to demand the conversion of

¹⁶ Bujorel F. Civil Law. Special contracts. București: Universul Juridic, 2013, ISBN 978-606673-197-3, pag 38

¹⁷ ibidem

¹⁸ Boroi G., Anghelescu C.A., Nazat B. Civil law course: principal rights in rem. Ed. a 2-a, rev. București: Hamangiu, 2013, ISBN: 978-606-678-796-3, pag 176

¹⁹ Comănița Gh., Comănița I-I. Civil Law. Special civil contracts. București: Universul Juridic, 2013, ISBN 978-973-127-995-4 , pag 41

²⁰ Bloșenco A. Civil Law. Special Part. Course notes. Chișinău: Cartdidact, 2003, ISBN 9975940-51-X, pag 51

maintenance into cash in case of default provides a flexible solution, but implies novation of the obligation. Thus, the current legislation seeks to ensure a balance of rights and obligations between the parties, protecting in particular persons in need of constant care.

A crucial aspect of this type of contract is the legal requirements that must be met for it to be considered valid. These requirements include conditions of substance and form, which are essential to ensure the legality and enforceability of the contract .²¹

As regards the substantive conditions, there must be legal capacity of the parties, their free and unconditioned consent and a lawful subject matter. Contractual terms must also be clear and precise to avoid ambiguities that could lead to disputes.

Formal requirements may include, among other things, the need to register the contract in the public registers. Such registration not only provides proof of the existence of the contract, but also serves to protect the rights of the parties involved by providing a degree of legal certainty .²²

The registration of the contract of sale of the property subject to the condition of lifetime maintenance is a crucial step in the process of its formation. Registration in the publicity registers confers enforceability against third parties, thus protecting the rights of the acquirer and the maintenance beneficiary.

The legal effects arising from this process include formal recognition of property rights and maintenance obligations, which minimizes the risk of challenging the contract, respectively the risk of litigation²³ . Registration can also influence taxation and liability issues, with a direct impact on relations between the parties.

As for real estate publicity, it is carried out through the Register of Immovable Property in Moldova and the Land Register in Romania. The entry of real property rights in these registers not only ensures the transparency of transactions, but also confers enforceability against third parties and the constitutive nature of these rights. In the case of maintenance contracts, this registration is crucial, offering both protection to the disposing party by

²¹ Comănița Gh., Comănița I-I. Civil Law. Special civil contracts. București: Universul Juridic, 2013, ISBN 978-973-127-995-4 , pag 41

²² ibidem

²³ Bujorel F. Civil Law. Special contracts. București: Universul Juridic, 2013, ISBN 978-606673-197-3, pag 38

registering his maintenance right and a guarantee that the property will not be alienated or encumbered without complying with the contractual obligations .²⁴

The analysis of the legal regime of the contract of sale of the property subject to the condition of lifetime maintenance reveals a number of key issues that require clarification and improvement in the regulation of the registration process. The legislation needs to provide a clearer and more detailed framework to protect the rights of the parties involved and to ensure uniform application of the legal rules.

Recommendations for improvements could therefore include: revising the legislation to clarify the requirements of validity and form, improving the registration process to make it more accessible, and providing further guidance for legal practitioners to ensure the correct and efficient application of this type of contract.

Chapter 3 deals with "Enforcement of the contract of alienation of an asset subject to lifetime maintenance", examining in detail the process of enforcement of the contract of alienation of the asset subject to lifetime maintenance, with a particular focus on the obligations of the acquirer, the manner of enforcement of these obligations and the possible defences that may arise in this context. It will also analyze the role of the courts in resolving disputes and their impact on the correct application of the contract .²⁵

Maintenance is a complex legal concept involving a number of nuances that are essential for understanding the contractual obligations between the parties and resolving any disputes. The maintenance contract is based on reciprocity, obliging the recipient to transfer ownership of an asset in exchange for ongoing maintenance provided by the acquirer during the lifetime of the recipient. This obligation is essential to ensure the well-being and security of the beneficiary.

The obligation to transfer the property, whether movable or immovable, is regulated both in the Republic of Moldova and in Romania and is a fundamental condition for the validity of the contract. The beneficiary also usually reserves the right of life usufruct, thus protecting himself from the risks associated with the transfer of ownership .²⁶

²⁴ Comănița Gh., Comănița I-I. Civil Law. Special civil contracts. București: Universul Juridic, 2013, ISBN 978-973-127-995-4 , pag 41

²⁵ ibidem

²⁶ Bujorel F. Civil Law. Special contracts. București: Universul Juridic, 2013, ISBN 978-606673-197-3, pag 38

The features of the contract also include the transfer of a future asset, governed by the laws of the two countries. On the death of the beneficiary, the rights and obligations of the acquirer are transferred to the heirs, ensuring continuity of care. Importantly, the acquirer cannot alienate the property during the beneficiary's lifetime, and the legislation provides for additional obligations covering living and care costs.

The current regulations favor the maintenance beneficiary, but the proposed amendments to the law suggest the need to allow the acquirer to claim damages in case of bad faith on the part of the beneficiary, highlighting the existing asymmetry in the contractual relationship.

Maintenance is a fundamental element of contracts for the alienation of goods on condition of lifetime maintenance, requiring the acquirer to provide all the essential necessities for a decent living for the transferee, including food, clothing and access to adequate medical care. These benefits must correspond to the standard of living to which the acquirer is accustomed and the accommodation provided must be comfortable and secure.

If the acquirer is faced with force majeure or unforeseen circumstances, the benefits may be performed by third parties, but only with the agreement of the acquirer. The indivisibility of maintenance is a legal principle which stipulates that the maintenance obligation must be performed in its entirety, irrespective of the number of beneficiaries or acquirers, in order to prevent disputes and to ensure continuity of benefits .²⁷

For effective performance of maintenance obligations, the contract should clearly stipulate the nature, extent and manner of performance. Monitoring mechanisms, such as periodic evaluations, are essential to verify compliance with obligations. Legal safeguards, such as detailed contractual clauses, financial guarantees and the right of termination, ensure that the rights of the beneficiary are respected, thus allowing a prompt reaction in case of default by the acquirer.

These issues underline the importance of clarity and precise details in maintenance contracts, ensuring the protection of the interests of the assignee and preventing legal conflicts.

²⁷ Chelaru R. and others. The New Civil Code. Commentary on articles. București: C.H. Beck, 2012, ISBN 978606-18-1059-8, pag 49

The enforcement of lifetime maintenance contracts can present a number of practical challenges, affecting both beneficiaries and acquirers. These problems include contractual ambiguities, financial difficulties, interpersonal conflicts and diverging interpretations of the obligations assumed. In this context, the analysis of common problems and possible solutions is essential, as is the contribution of the courts in resolving these situations.

The courts play a crucial role in settling disputes over the performance of contracts, intervening in the event of disputes or non-performance. Judges interpret contract terms and can decide to terminate them, thus protecting the interests of the seller. In situations of ambiguity, the courts tend to interpret the terms in favor of the alienator.

The courts may order remedies, including financial compensation, specification of the benefit due or termination of the contract. They consider the evidence presented and can clarify vague terms, ensuring uniform application of the law and good faith principles.

The practical problems in enforcing lifetime maintenance contracts are varied, but with careful planning and appropriate legal tools, proper enforcement can ensure that obligations are properly enforced, thus protecting the welfare of the beneficiaries and preventing conflicts. The courts have a key role to play in resolving these issues, ensuring justice and protecting the rights of the parties involved .²⁸

A comparison of the legislative systems in the Republic of Moldova and Romania reveals similarities, but also notable differences in terms of the parties' liability. In Moldova, the beneficiary can ask for the termination of the contract without refunding the amount of maintenance provided, thus protecting its vulnerabilities. In Romania, on the other hand, the legal framework is more interpretative, allowing courts to decide on a case-by-case basis. In both countries, however, the protection of the beneficiary is a priority, but Moldova seems to offer a more balanced framework, also taking into account the objective difficulties of the maintainer.

The analysis of party liability in maintenance contracts emphasizes the importance of the principles of good faith and contractual equilibrium, which are essential to protect the rights of vulnerable parties and to ensure fair and equitable performance of contractual obligations.

²⁸ Dinca., R., Varieties for sale, Ed. Universul Juridic, Bucuresti, 2016, ISBN UJU978-606673-839-2, pag 76

In contract law, the *pacta sunt servanda* principle states that legal agreements between the parties must be respected, guaranteeing the stability of contractual relations. However, Article 1271 of the Romanian Civil Code introduces a significant exception, stipulating that, in exceptional circumstances, strict compliance with the contract may become unfair or impossible. This exception, based on equity, allows the parties to request revision or termination of the contract in case of unforeseen circumstances.

Unforeseeability refers to exceptional and unforeseeable changes in circumstances that affect the ability of one of the parties to perform its contractual obligations, creating a disproportionate burden. This applies in particular to onerous contracts, such as those for the alienation of goods on condition of lifetime maintenance, where economic fluctuations, such as inflation and deflation, can affect the contractual equilibrium.²⁹

Also as an exception to the *pacta sunt servanda* principle, we find *simulation*, which in contract law is a complex legal operation that contravenes the fundamental principle of the enforceability of contractual obligations. It consists in hiding the true intention of the parties under an apparently different legal agreement, involving two types of contract: a public one, which serves as a facade, and a secret one, which reflects the real will of the parties. According to the New Civil Code, articles 1289-1294, simulation creates a false appearance in order to mislead third parties, while the secret contract produces effects only between the parties and cannot be relied on against third parties acting in good faith on the basis of the public contract.³⁰

Sham contracts can be categorized into relative sham, where certain aspects of the agreement are falsified (e.g. price), and absolute sham, where there is no real substance behind the apparent contract. The law protects third parties who acquire rights based on the public contract, even in the context of simulation. The burden of proof is on the party alleging the existence of the secret agreement.

In lifetime maintenance contracts, simulation can influence the legal structure of the agreement. For example, the public contract may be drafted as a sale, and the secret agreement may detail the maintenance obligations. It is essential that these agreements comply with legal requirements in order to be enforceable. The courts may intervene in cases

²⁹ Dinca., R., Varieties for sale, Ed. Universul Juridic, Bucuresti, 2016, ISBN UJU978-606673-839-2, pag 76

³⁰ Draghici P., Dogaru I. - Civil law. General Theory of Obligations, Editura C.H.Beck, București, 2019, (ISBN: 9786061808328), pag 80

of sham which are contrary to public policy, and the validity of the agreements depends on the intention of the parties and the confidence of third parties.

The involvement of simulation in lifetime maintenance contracts raises ethical issues, particularly in relation to the protection of vulnerable persons. Therefore, simulation, while it can serve as a tool for managing contractual relationships, requires regulation and careful oversight to prevent abuse and to protect the rights of the parties involved.³¹

At the end of Chapter 3, we find the *stipulation for another*, as a notable exception to the *principle of the relativity of the effects of the contract*, an institution which allows a party to stipulate benefits for a third party without that party being directly involved in the formation of the contract. This legal provision is essential for understanding contemporary contractual relationships and their impact on the lives of individuals.

The concept of stipulation has deep roots in Roman law, where it was a formal agreement, reinforcing various contractual obligations. Stipulation for another (*stipulatio alteri*) contradicts the principle of 'res inter alios acta', allowing third parties to benefit from contracts without being direct signatories. This adaptation has been integrated into various European legal systems, including the French Civil Code and the Romanian Civil Code, reflecting the Roman heritage.³²

Stipulation for another is a legal mechanism whereby a right in its own right is created directly from a contract concluded between the stipulator and the promisor in favor of a third party beneficiary, without the need for the latter's consent. In this configuration, a distinction is made between three parties: the stipulator, the promisor and the third party beneficiary. The contract is agreed between the stipulator and the promisor, where the promisor undertakes to perform a service for the third party beneficiary, who becomes the holder of the right to require performance.

One of the fundamental effects of the stipulation for another is the direct creation of a self-standing right for the third party beneficiary, which enables him to require performance of the promisor's obligation. In the relationship between the stipulator and the promisor, the stipulation for another may influence the contractual terms, but the stipulator does not become directly liable to the third party beneficiary unless the contract provides otherwise.

³¹ Chelaru R. and others. *The New Civil Code. Commentary on articles*. București: C.H. Beck, 2012, ISBN 978606-18-1059-8, pag 49

³² Tăbăraș M. *Special Contracts*. București: C. H. Beck, 2013, ISBN 978-606-18.0272.2 , pag 64

This may give rise to conflicts in the event of non-performance, with the stipulator having the right to sue on behalf of the third party.

The relationship between the promisor and the third party beneficiary is characterized by direct rights and obligations, allowing the third party beneficiary to take action against the promisor for non-performance, with the right to claim damages. It creates an independent legal relationship, in which the stipulator cannot intervene without the consent of the third party beneficiary.

Also, in the relationship between the stipulator and the third party beneficiary, the stipulation does not create direct obligations, and the promisor's performance can be considered an indirect gift. The stipulator, although not directly liable, may have an interest in ensuring that the promisor's obligation is performed, and in the event of non-performance, may be indirectly affected.

Some authors consider that stipulation for another does not violate the legal prohibition, while others argue that it undermines the personal nature of the maintenance obligation. Notwithstanding this controversy, the enforceability of the stipulation could be accepted under certain strict conditions, which would require the consent of the beneficiary and a clear specification of the terms in the contract.

In contrast, Romanian law allows greater flexibility in the use of stipulation for another in maintenance contracts, without an express prohibition on the transfer of the claim. The Romanian Civil Code recognizes the right of the third party beneficiary to request the enforcement of the maintenance obligation, thus favouring contractual adaptation to social needs. The Romanian courts have validated the arrangements providing for maintenance in favor of a third party, providing protection in the event of default by the maintainer.

Therefore, the Romanian approach offers greater adaptability of maintenance contracts, encouraging the protection of vulnerable persons by stipulation in favor of third parties, while in the Republic of Moldova, the enforceability of the stipulation in favor of another remains a matter of debate, highlighting the strict legal limits imposed by national law.

The enforcement of the lifetime maintenance contract highlights the importance of the substantive aspect of maintenance obligations and the possibility of their modification, with significant implications for legal practitioners and all parties involved in the drafting, enforcement or litigation of such contracts. Recognizing the exceptional scenarios in which

maintenance obligations may be divisible or modifiable requires a nuanced approach tailored to the specificity of each individual case.

This complexity highlights the need to develop further research that examines the evolution of legal standards in this area and how maintenance contracts can be adjusted in response to social change. Such an approach could enrich academic and professional dialog and contribute to more effective legal practice in the management of these contracts.

Therefore, a detailed analysis of the implications and potential changes to maintenance obligations could lead to more adaptable and efficient solutions, ensuring that the needs of beneficiaries are protected and met in the dynamic context of contractual relationships.

In Chapter 4, entitled "Termination of the contract of alienation of an asset with the condition of lifetime maintenance ," the key issues related to the termination of the contract are addressed, highlighting the risks involved and the ways of terminating the contract. The section on risks in the maintenance contract examines the challenges and uncertainties that may arise in the performance of the contract. Termination of the contract is analyzed in detail, providing a distinction between the different forms of termination, such as termination and rescission. The sub-chapters on termination explore its effects on the parties involved and the particularities applicable in the context of maintenance contracts. We also explore the effects of termination and rescission on third parties, highlighting the legal and social implications of this contract. Judicial practice is also a central element of this chapter, with a focus on the procedural legal means that may intervene in the legal regime of the maintenance contract. In addition, relevant case law from Romania and the Republic of Moldova on actions for termination of the maintenance contract is presented, providing a solid basis for understanding the application of the law in practice.

The maintenance contract, as a form of contractual relationship, involves a number of risks that the parties involved need to consider carefully. These risks can have a significant influence on the ability to perform the obligations and thus on the stability of the contractual relationship.

One of the most important risks is fortuitous events, which refer to unforeseeable and unavoidable events that may prevent the performance of contractual obligations. In Romania, the Civil Code regulates fortuitous events as a cause of exemption from liability, stipulating that the impossibility of performance of the obligation leads to its suspension, and in case of

total impossibility, to the extinction of the obligation. Similarly, in the Republic of Moldova, fortuitous events are treated in a similar way, and the courts have an important role in applying these principles. The differences between the two jurisdictions are related to the clarity of the rules and case-law interpretation.

Another significant risk is the loss of or damage to the object of the contract. In both jurisdictions, the risk of deterioration of the property is transferred to the acquirer at the time the property is transferred, but the Moldovan legislation specifies that such deterioration does not relieve the acquirer from maintenance obligations. Parties are encouraged to include clear clauses on the transfer of risks and insurance of the immovable property.

The death of the beneficiary is an important risk, given the personal nature of the maintenance contract. In the event of death, the contract terminates, but heirs can exercise the right of termination. In the Republic of Moldova, there is an additional protection for heirs, which allows them to claim restitution of the property without returning the amount of maintenance.

The inability of the acquirer to fulfill its contractual obligations can create problems. In both laws, the heirs of the acquirer can take over the maintenance obligations, but in the Republic of Moldova, the acquirer can request the termination of the contract due to unforeseen financial difficulties.

Inappropriate behavior of the acquirer can seriously affect the contractual relationship. In the Republic of Moldova, the transferee may request termination of the contract in such cases, and the contract should clearly define unacceptable or improper behavior of the acquirer.³³

The comparative analysis between Romania and the Republic of Moldova reveals similarities, but also notable differences in the regulation of the risks associated with the maintenance contract. While both countries recognize the personal character of the contract and include exemption clauses, Moldovan legislation seems to provide a more balanced protection of both the beneficiaries and the acquirers through detailed regulations. In contrast, Romanian law relies more on judicial interpretations, which allows for flexibility but may create uncertainties in application.

³³ Malaurie P., Aynes L., Gautier P-Y. Civil law. Special contracts. Dănișor D. București: Wolters Kluwer, 2009, ISBN 978-973-1911-61-8, pag 47

The maintenance contract, as a complex legal agreement, can be terminated in various ways, the most significant of which are:

- a) By death of the beneficiary
- b) By resolution
- c) By agreement of the Parties

Termination and rescission are key concepts in contract law, having a significant impact on how parties can adjust their obligations in the event of non-performance. These legal mechanisms are regulated differently in the laws of the Republic of Moldova and Romania, which influences their applicability and effects.

Termination refers to the premature termination of the contractual relationship, constituting a sanction for non-performance, contrary to the principle *pacta sunt servanda*. In the Republic of Moldova, rescission implies a termination initiated by one or both parties before the final performance of the contract³⁴. This right falls into the category of potestative rights, giving the holder the ability to change previous legal situations.

Termination, by contrast, applies specifically to successive performance contracts. It leads to the dissolution of the contract, with effects only for the future. Under previous Romanian law, termination was reserved to these types of contracts, while rescission applied to contracts with instantaneous performance.

The main distinctions between resolution and termination include:

- Temporal effects: Termination produces retroactive effects (*ex tunc*), annulling all the effects of the contract from the time of its conclusion. Termination, on the other hand, operates for the future (*ex nunc*), without affecting performance already made.

- Intensity of fault: Rescission requires significant contractual fault, whereas termination can occur even in the case of small but repeated fault.

- Restitution of benefits: In the case of termination, restitution of past benefits is required, whereas rescission only affects future, non-callable obligations.

The Republic of Moldova opted for a terminological standardization, adopting the term "termination" for all types of contracts, according to Article 1084 paragraph (4) of the Civil Code. In contrast, Romania maintains the distinction between termination and rescission, applying each concept according to the nature of the contract and its mode of performance

³⁴ Tăbăraș M. Special Contracts. București: C. H. Beck, 2013, ISBN 978-606-18.0272.2 , pag 64

.³⁵Understanding these legal mechanisms is crucial for the efficient management of contractual relations and for protecting the interests of the parties involved.

The comparative analysis of the legislation of the Republic of Moldova and Romania highlights the importance of the effects of termination on third parties in contract law. These effects have a significant impact on the rights and obligations of the parties involved, as well as those of third parties who have acquired rights under the terminated contract.

The rescission is characterized by retroactive effects, which means that the rights acquired by third parties on the basis of the rescinded contract should, in principle, be abolished. In the Republic of Moldova, the new Civil Code has taken over the regime of rescission from the Draft Common Frame of Reference (DCFR), based on influences from the Vienna Convention. Thus, termination extinguishes the unpaid obligations arising from the contract.

In Moldova, termination releases the parties from future obligations, while in Romania it is recognized as a cause of termination with retroactive effect. However, there are relevant exceptions:

1. Partial rescission - can apply when the obligations are divisible, protecting the rights of third parties over the unaffected parts of the contract.

2. Protection of bona fide third parties - there are legal provisions that protect the rights of bona fide third parties, who can keep the rights acquired under the contract, even in the event of termination.

3. Contracts with successive performance - in these contracts, the effects of termination are limited. For example, in the case of termination of a maintenance contract in Moldova, the maintenance provider regains ownership of the property without the obligation to repay the value of the maintenance provided.

4. The parties may agree on the manner in which termination affects the rights of third parties, including the regulation of the return of the amount of maintenance.

5. The effects of the resolution must be enforceable against third parties, which may require the registration of the resolution decision in public registers.

³⁵Draghici P., Dogaru I. - Civil law. General Theory of Obligations, Editura C.H.Beck, București, 2019, (ISBN: 9786061808328), pag 80

The new Romanian Civil Code introduces new possibilities for termination, such as when the conduct of one of the parties makes it impossible to perform the contract in good morals.

The effects of termination and rescission on third parties is a complex aspect of contract law, where the law seeks to strike a balance between retroactive termination of the contract and the protection of the rights of bona fide third parties. This dynamic is of particular importance for ensuring certainty and stability in transactions.³⁶

The maintenance contract is a significant legal instrument in modern society, but it frequently generates complex disputes that require a detailed analysis of legal procedures. Both in the Republic of Moldova and in Romania, the legislation provides a specific framework for resolving these disputes, with particularities deriving from the characteristics of each legal system.

Disputes relating to maintenance contracts generally fall within the jurisdiction of the civil courts, with subject-matter jurisdiction being determined by the value of the subject-matter of the dispute and territorial jurisdiction by the domicile of the defendant or the location of the immovable property covered by the contract.

Compliance with the legal requirements and specificities of maintenance contract disputes is essential for the admissibility of the claim and the efficient resolution of the dispute in the competent court.

Jurisprudence also plays an important role in clarifying and interpreting the legal rules relating to the termination of the maintenance contract, a type of contract that is often at the center of disputes. Both in Romania and in the Republic of Moldova, the legislation provides for the possibility of termination of the contract in case of culpable non-performance of the obligations by the maintainer, but case law has developed specific conditions for the admissibility of such actions.

In Romania, the courts approach the termination of the maintenance contract with caution, considering it a drastic measure reserved for exceptional situations. They emphasize the importance of maintaining the contract if there is a possibility to remedy the non-

³⁶ Marcusohn V., *Special Contracts*, 2nd edition, revised and added, Ed.Universul Juridic, Bucharest, 2018, ISBN 978-606-39-0248-2, page 108

performance. The courts recognize the random nature of the contract, which implies a risk for both parties, and are active in determining damages in case of termination.

Romanian courts have handed down relevant decisions, such as those clarifying that partial non-performance can lead to termination if the non-performed part is essential for the maintenance of the maintenance. Also the impossibility to perform the obligations may justify termination, depending on the circumstances.

In the Republic of Moldova, the courts emphasize the principle of proportionality, assessing the seriousness of the default and the interests of the maintenance claimant. Rescission is allowed only if the default is significant and the maintainer is given the opportunity to remedy the situation. Mandatory prior mediation has influenced the process, with courts being more receptive to requests for rescission if mediation fails.

Moldovan courts protect the elderly by ensuring that they are not left without care. The Civil Code of the Republic of Moldova clearly provides for the possibility of rescission in the event of non-performance, and the Supreme Court of Justice has defined essential criteria for the admissibility of actions for rescission.

The decisions of the Moldovan courts reflect the assessment of the essential character of non-performance, including situations of impossibility of performance, similar to those in Romania. The approach in both countries shows a constant concern for the interests of the maintained party, assessing not only the default but also the circumstances of the contractual context.

The analysis of the case law in Romania and the Republic of Moldova on the action for termination of the maintenance contract shows a common tendency to protect the interests of the maintenance interests, with a careful assessment of the seriousness of the non-performance. Courts in both countries emphasize that minor grievances do not justify termination, but a significant non-performance affecting the purpose of the contract is required.³⁷

This chapter therefore brings together both theoretical perspectives and practical analysis, emphasizing the complexity of the dissolution of maintenance contracts and the need for careful interpretation in the light of the law and the specific legal context of each jurisdiction.

³⁷ Florea B. Civil Law. Special contracts. București: Universul Juridic, 2013, ISBN 978606-673-197-3, pag 89

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The right to property is a cornerstone of modern society, essential not only for the individual but also for the economic development of a nation. Recent research on this right in the context of Moldovan law has highlighted not only its fundamental importance, but also the challenges it faces, particularly in the case of contracts for the alienation of property subject to lifetime maintenance. This type of contract, which entails a number of obligations and rights, has been subject to legislative ambiguities affecting its stability, which required rigorous analysis and reform proposals.

A first significant aspect that the research has highlighted is the evolution of the contract of alienation of goods³⁸. Over time, legal regulations have evolved to respond to socio-economic and legislative changes, moving from simple rules to complex regulations reflecting the dynamics of property relationships. This adaptation has been necessary to ensure respect for property rights and to protect legal certainty in transactions. However, the analysis revealed major shortcomings in the current legislation, which lead to litigation and confusion, highlighting the need for clarification in the legal regulations.

Another central aspect of the research was the identification and analysis of practical cases in which contracts of alienation subject to lifetime maintenance have been challenged. These disputes highlighted ambiguities in the existing legislation, suggesting that it is imperative to revise the legal rules in order to prevent conflicts and ensure the stability of the property right acquired through these contracts. The research also emphasized that property law cannot be understood in isolation, but needs to be analyzed in its economic and social context. This multidisciplinary approach allowed a thorough assessment of the factors influencing the transfer of property, including cultural and economic norms.

Based on these findings, the research formulated a series of legislative recommendations that could bring Moldovan legislation in line with EU standards, including reform proposals aimed at simplifying the property transfer process while ensuring the protection of owners' rights³⁹. It has also suggested the creation of a centralized property

³⁸ Tăbăraș M. *Special Contracts*. București: C. H. Beck, 2013, ISBN 978-606-18.0272.2, pag 64

³⁹ Deak, F.; Mihai, L.; Popescu, R., *Civil law treatise. Special contracts*, vol. II, 5th ed. Universul Juridic, București, 2021, ISBN 9786063913655, pag 104

registration system, which would facilitate transparency and efficiency in real estate transactions.

Another important element that the research addressed was the economic impact of implementing these solutions. Clear and well-regulated legislation is essential for building a favorable environment for investors and increasing the country's economic competitiveness. Ensuring a sound legislative framework is not only aimed at protecting individual rights, but also at contributing to the development of a healthy and sustainable economy.

In addition to legislative recommendations, the research also emphasized the importance of legal education among citizens. Raising awareness of property rights is crucial to ensure active and informed participation in the real estate market. Legal education campaigns, workshops and seminars can significantly contribute to a better understanding of legal obligations and property transfer processes.

However, it is important to recognize the limitations of this research. The complexity of the subject of property rights and life tenancy deed contracts requires further analysis in areas such as the long-term effects of legislative reforms. It is essential that future research include longitudinal studies assessing their actual impact on the rights of the contracting parties and on the economic security of citizens .⁴⁰

Thus, the research demonstrated that effective regulation of property rights is essential not only for the stability of this fundamental right, but also for the economic development of the Republic of Moldova. The implementation of the proposed recommendations will contribute to the strengthening of existing legislation, the protection of property rights and the improvement of the living standards of citizens. Thus, an integrated approach including both legislative measures and legal education will ensure not only a climate of stability and trust in society, but also a prosperous future for all citizens.

Proposals for new laws

In the current legal context in the Republic of Moldova, it is essential to develop a legislative framework that responds to contemporary challenges and ensures adequate protection for all parties involved in maintenance contracts. In this light, the following

⁴⁰ Marcusohn V., *Special Contracts*, 2nd edition, revised and added, Ed.Universul Juridic, Bucharest, 2018, ISBN 978-606-39-0248-2, page 108

legislative measures are proposed, aimed at clarifying and strengthening the existing regulations:

1. Clarification of maintenance obligations and of the assignor's rights
2. Creating a centralized registration system
3. Implementation of a digital platform for property registration
4. Strengthening the protection of acquired rights
5. Property insurance against risks
6. National Legal Education Program
7. Information campaigns for citizens
8. Legislation on sham contracts
9. Obligation to declare relevant aspects of the transactions

Creating rules requiring parties involved in real estate transactions to declare all relevant aspects is crucial to prevent simulation and to ensure stronger protection of property rights. This will help avoid legal disputes and increase transparency in commercial relations.

The implementation of these *lege ferenda* proposals will allow the Republic of Moldova to strengthen its legislative framework, ensuring compliance with international standards and better responding to citizens' needs⁴¹. These measures are essential to address the current challenges facing property rights, aiming at stabilizing the real estate market and protecting citizens' rights, promoting a healthy and just social environment. This will contribute to the development of a fair and prosperous society where individual rights are respected and guaranteed.

⁴¹ Marcusohn V., *Special Contracts*, 2nd edition, revised and added, Ed.Universul Juridic, Bucharest, 2018, ISBN 978-606-39-0248-2, page 108

BIBLIOGRAPHY

1. Avornic Gh. Treatise on the General Theory of State and Law. Chişinău: Tipografia centrale, 2010, ISBN 9975703704, 9789975703703, pag 12
2. Boroi G., Anghelescu C.A., Nazat B. Civil Law: Principal Civil Rights . Ed. a 2-a, rev. Bucureşti: Hamangiu, 2013, ISBN: 978-606-678-796-3, pag 176
3. Bloşenco A. Civil Law. Special Part. Courses note. Chişinău: Cartdidact, 2003, ISBN 9975940-51-X, pag 51
4. Bujorel F. Civil Law. Special contracts. Bucureşti: Universul Juridic, 2013, ISBN 978-606673-197-3, pag 38
5. Comăniţa Gh., Comăniţa I-I. Civil Law. Special civil contracts. Bucureşti: Universul Juridic, 2013, ISBN 978-973-127-995-4 , pag 41
6. Dinca., R., Varieties of sale ,Ed. Universul Juridic,Bucharest,2016, ISBN UJU978-60666673-839-2, pag 76
7. Deak, F.; Mihai, L.; Popescu, R., Civil law treatise. Special contracts, vol. II, 5th ed. Universul Juridic, Bucureşti, 2021, ISBN 9786063913655, pag 104
8. Draghici P., Dogaru I. Civil Law. General Theory of Obligations, Ed.- C.H.Beck, Bucureşti, 2019, (ISBN: 9786061808328), pag 80
9. Florea B. Civil Law. Special contracts. Bucureşti: Universul Juridic, 2013, ISBN 978606-673-197-3, pag 89
10. Malaurie P., Aynes L., Gautier P-Y. Civil law. Special contracts. Dănişor D. Bucureşti: Wolters Kluwer, 2009, ISBN 978-973-1911-61-8, pag 47
11. Marcusohn V., Special Contracts, 2nd edition, revised and added, Ed.Universul Juridic, Bucharest, 2018, ISBN 978-606-39-0248-2, page 108
12. Stătescu C. Bârsan C. Civil Law. General Theory of Obligations. Ed. a II-a , Publishing House of Bucureşti : ALL, 2019, pag 46
13. Tăbăraş M. Contracte speciale. Bucureşti: C. H. Beck, 2013, ISBN 978-606-18.0272.2 , pag 64

LIST OF THE AUTHOR'S PUBLICATIONS ON THE THESIS TOPIC

1. Articles in scientific journals

- **in journals in other databases accepted by ANACEC** (indicating the database)

1. **Băncilă D.**, Real Estate Advertising of Rights, Acts and Legal Facts in Romania, in Acta Universitatis Danubius Juridica, Galati, Romania Vol. 18, No. 1/2022, pp. 148-159, ISSN 2065-3891 <https://dj.univ-danubius.ro/index.php/AUDJ/article/view/1847/2159> Indexed CEEOL; EBSCO Publishing; HeinOnline; VLEX; DOAJ; Proquest; EuroPub

2. **Băncilă D.**, Maintenance Contract versus Maintenance Donation in Romanian Legislation, in Acta Universitatis Danubius Juridica, Vol. 18, No. 2/2022, pp. 31-53, ISSN 2065-3891, <https://dj.univ-danubius.ro/index.php/AUDJ/article/view/1859/2182>, CEEOL; EBSCO Publishing; HeinOnline; VLEX; DOAJ; Proquest; EuroPub

3. AC Pușcă, **Băncilă D.**, Stipulation for another, Acta Universitatis George Bacovia Juridica, Vol.13 no 1, 2024, 2024, pl, ISSN2285-0171, <https://openurl.ebsco.com/results?sid=ebsco:ocu.results:crawler&bquery=IS%2022850171%20AND%20VI%2013%20AND%20IP%201%20AND%20DT%202024&page=1>, CEEOL; EBSCO Publishing; HeinOnline; VLEX; DOAJ; Proquest; EuroPub

- **in journals listed in the National Register of Journals** (indicating the category)

4. Bîtcă I., **Băncilă D.**, Ocupațiunea-mod de dobândire a dreptului de proprietate , in Vector European, Revista științifico-practică, Nr. 2 / 2020, pp. 5-10, E-ISSN 2587-358X https://usem.md/uploads/files/Activitate_%C8%98tiin%C8%9Bific%C4%83_USEM/Vector/Vector_European_2020_2.pdf Indexed DIRECTORY OF OPEN ACCESS SCHOLARLY RESOURCES <http://road.issn.org/en>; eLIBRARY.RU (RINTs) <http://elibrary.ru/>

2. Articles in conference proceedings and other scientific events

- **in the proceedings of scientific events included in other databases accepted by ANACEC**

5. **Băncilă D.**, The Contract for the Alienation of a Good With the Condition of Life Maintenance in the Law of the RM and Romania, Proceedings of the International Conference Digital Age: Traditions, Modernity and Innovations (ICDATMI 2020), Advances in Social Science, Education and Humanities Research, Volume 489, p. 13-16, 10.2991/assehr.k.201212.004

6. **Băncilă D.**, Simulation: Theoretical And Practical Aspects, in Globalization, Intercultural Dialogue and National Identity International Conference (GIDNI - 11), May 18-19, 2024, pp.316-326 <https://asociatia-alpha.ro/gidni/11-2024/GIDNI-11-Socs-a.pdf#page316> <https://asociatia-alpha.ro/gidni/11-2024/GIDNI-11-Socs-a.pdf#page316>

7. AC Pușcă, **Băncilă D.**, *Foresight. Limitation of the binding force of contracts* under Romanian law, , 19th International Conference on European Integration Realities and Perspectives - Global Challenges and Opportunities in The Multiple Crises Context, Danubius International University, August 2024, Vol.19 No.1, <https://conferences.univ-danubius.ro/index.php/EIRP/EIRP2024/paper/viewPaper/3434>

- **in the works of scientific events included in the Register of materials published on the basis of scientific events organized in the Republic of Moldova**

8. **Băncilă D.**, *Acțiunile revocatoriile* in the contractul de întreținere, International Scientific Conference "Promoting Social-Economic Values in the Context of European Integration", 6th Edition, USEM, Chisinau, Republic of Moldova, 2023, pp. 129-141, ISBN 978-9975-3611-0-1

ADNOTARE

Daniel Băncilă. "Contractul de înstrăinare a unui bun cu condiția întreținerii pe viață în dreptul Republicii Moldova și România". Teză pentru obținerea titlului științific de doctor în drept. Specialitatea: 553.01 –Drept privat (drept civil). Chișinău, 2024

Structura tezei: introducere, patru capitole, concluzii generale și recomandări, bibliografie din 200 titluri, 195 de pagini de text de bază. Rezultatele obținute sunt publicate în 8 lucrări științifice.

Cuvintele-cheie: Contractul înstrăinare bunului cu condiția întreținerii pe viață, beneficiarul întreținerii și dobânditorul bunului, obligația de întreținere, stipulația pentru altul în cazul contractului de întreținere pe viață, impreviziunea și simulația în contractele de întreținere pe viață.

Domeniul de studiu: Lucrarea de față propune o analiză științifică detaliată, sub forma unei comparații teoretico-practice între reglementările juridice ale Republicii Moldova și cele ale României.

Scopul și obiectivele lucrării: Scopul acestui studiu este de a analiza în profunzime conceptul contractului de întreținere pe viață, punând accent pe reglementările specifice Codului Civil din România și Republica Moldova în forma lor actualizată. Studiul urmărește să evidențieze aplicabilitatea normelor de drept civil în practica juridică, subliniind totodată lacunele normative și oferind propuneri pentru îmbunătățirea reglementărilor existente în vederea unei aplicări mai eficiente și echitabile a acestei instituții juridice.

Noutatea și originalitatea științifică a lucrării: Noutatea și originalitatea științifică a lucrării de față rezidă în abordarea aprofundată și multiaspectuală a contractului de întreținere pe viață, care necesită o analiză actualizată în lumina schimbărilor legislative recente și a interpretărilor doctrinare moderne. Spre deosebire de studiile anterioare, care au pus accent pe caracterul general al acestui tip de contract, cercetarea noastră se concentrează pe identificarea precisă a trăsăturilor distinctive și delimitatoare ale acestuia, oferind o nouă perspectivă asupra mecanismelor juridice care stau la baza sa.

Rezultatele obținute care contribuie la soluționarea unei probleme științifice importante: În cadrul acestei teze de doctorat, s-a urmărit *fundamentarea și clarificarea regimului juridic al contractului de întreținere pe viață*, realizându-se o *analiză detaliată și comparativă* a reglementărilor din ambele țări, având ca rezultat și efect *elucidarea caracteristicilor esențiale și identificarea criteriilor clare*, ce conduc la *formularea unei noi paradigme* de interpretare juridică și la *stabilirea unui cadru normativ coerent* pentru aplicarea acestui contract în practică, în contextul actualizării legislației civile în Republica Moldova și România.

Semnificația teoretică: Din punct de vedere teoretic, lucrarea aduce o contribuție semnificativă la *fundamentarea și dezvoltarea doctrinei dreptului civil* în ceea ce privește regimul juridic al contractelor de întreținere pe viață.

Valoarea aplicativă: Rezultatele acestei cercetări oferă un instrument util pentru practicienii din domeniul juridic, contribuind la o aplicare mai eficientă și uniformă a legislației, dar și la identificarea lacunelor legislative și propunerea unor soluții concrete.

Implementarea rezultatelor științifice: Rezultatele științifice ale tezei pot fi implementate prin actualizarea legislației civile din Republica Moldova și România, în scopul alinierii acestuia la noile realități economice și sociale, dar și în scopul alinierii legislației moldovenești la legislația europeană, în vederea aderării la Uniunea Europeană.

ANNOTATION

Daniel Băncilă. "The contract of alienation of a property with the condition of lifetime maintenance in the law of the Republic of Moldova and Romania". Thesis for obtaining the scientific title of Doctor of Law. Specialty: 553.01 - Private law (civil law). Chisinau, 2024

Thesis structure : introduction, four chapters, general conclusions and recommendations, bibliography of 200 titles, 195 pages of basic text. The results are published in 8 scientific papers.

Keywords: the contract for the transfer of a good with the condition of lifelong maintenance, the beneficiary of the maintenance and the acquirer of the property, the obligation of maintenance, stipulation for another in the case of a contract for the alienation of property subject to lifetime maintenance, unforeseeability and simulation in contracts for the alienation of property subject to lifetime maintenance.

Field of study: This paper proposes a detailed scientific analysis in the form of a theoretical-practical comparison between the legal regulations of the Republic of Moldova and Romania.

Aims and objectives of the thesis: The purpose of this study is to analyze in depth the concept of lifetime maintenance contract, focusing on the specific regulations of the Civil Code of Romania and the Republic of Moldova in their updated form. The study aims to highlight the applicability of the civil law rules in legal practice, emphasizing at the same time the normative gaps and offering proposals for the improvement of the existing regulations in order to a more efficient and equitable application of this legal institution.

The novelty and scientific originality of the thesis: The novelty and scientific originality of the present work lies in the in-depth and multiaspect approach to the lifetime maintenance contract, which requires an updated analysis in the light of recent legislative changes and modern doctrinal interpretations. Unlike previous studies, which emphasized the general character of this type of contract, our research focuses on the precise identification of its distinctive and delimiting features, providing a new perspective on the legal mechanisms underlying it.

The results obtained contribute to the solution of an important scientific problem: Within the framework of this doctoral thesis, the aim was to *substantiate and clarify the legal regime of the lifetime maintenance contract*, carrying out a *detailed and comparative analysis* of the regulations in both countries, with the result and effect of *elucidating the essential characteristics* and *identifying clear criteria*, leading to the *formulation of a new paradigm* of legal interpretation and the *establishment of a coherent normative framework* for the application of this contract in practice, in the context of updating the civil legislation in the Republic of Moldova and Romania.

Theoretical Significance: From a theoretical point of view, the paper makes a significant contribution to the *foundation and development of civil law doctrine* regarding the legal regime of lifetime maintenance contracts.

Applicative value: The results of this research provide a useful tool for legal practitioners, contributing to a more efficient and uniform application of the legislation, as well as to the identification of legislative gaps and the proposal of concrete solutions.

Implementation of the scientific results: The scientific results of the thesis can be implemented by updating the civil legislation of the Republic of Moldova and Romania in order to align it with the new economic and social realities, but also in order to align the Moldovan legislation with the European legislation, in view of the accession to the European Union.

Аннотация

Даниэль Бэнчилэ. "Договор отчуждения имущества с условием по пожизненного содержания в праве Республики Молдова и Румынии". Диссертация на соискание ученой степени доктора юридических наук. Специальность: 553.01 - Частное право (гражданское право). Кишинев, 2024

Структура диссертации: введение, четыре главы, общие выводы и рекомендации, библиография из 200 наименований, 195 страниц основного текста. Результаты работы опубликованы в 8 научных статьях.

Ключевые слова: договор о передаче вещи с условием по пожизненного содержания, получатель содержания и приобретатель имущества, обязанность содержания, обусловливание другого в случае договора об отчуждении имущества с условием пожизненного содержания, непредвиденность и симуляция в договорах об отчуждении имущества с условием пожизненного содержания.

Область исследования: В данной работе предлагается подробный научный анализ в форме теоретико-практического сравнения правового регулирования Республики Молдова и Румынии.

Цели и задачи диссертации: Целью настоящего исследования является углубленный анализ понятий договора пожизненного содержания с акцентом на конкретные нормы Гражданского кодекса Румынии и Республики Молдова в их обновленном виде. Исследование призвано выявить применимость норм гражданского права в юридической практике, подчеркнув при этом нормативные пробелы и предложив предложения по совершенствованию существующих норм в целях более эффективного и справедливого применения данного правового института.

Новизна и научная оригинальность диссертации: Новизна и научная оригинальность настоящей работы заключается в углубленном и многоаспектном подходе к договору по пожизненного содержания, требующем обновленного анализа в свете последних изменений законодательства и современных доктринальных толкований. В отличие от предыдущих исследований, в которых акцентировалось внимание на общем характере данного вида договора, наше исследование направлено на точное выявление его отличительных и разграничительных признаков, позволяющих по-новому взглянуть на правовые механизмы, лежащие в его основе.

Полученные результаты способствуют решению важной научной проблемы: в рамках данной докторской диссертации была поставлена цель обосновать и уточнить правовой режим договора по пожизненного содержания, проведя подробный и сравнительный анализ нормативных актов обеих стран, в результате чего были выявлены существенные характеристики и определены четкие критерии, что позволило сформулировать новую парадигму юридического толкования и создать согласованную нормативную базу для применения данного договора на практике в контексте обновления гражданского законодательства Республики Молдова и Румынии.

Теоретическая значимость: В теоретическом плане работа вносит существенный вклад в основание и развитие гражданско-правовой доктрины, касающейся правового режима договоров пожизненного содержания.

Прикладное значение: Результаты данного исследования являются полезным инструментом для практикующих юристов, способствуя более эффективному и единообразному применению законодательства, а также выявлению законодательных пробелов и предложению конкретных решений.

Внедрение научных результатов: Научные результаты диссертации могут быть внедрены путем обновления гражданского законодательства Республики Молдова и Румынии в целях приведения его в соответствие с новыми экономическими и социальными реалиями, а также в целях приведения молдавского законодательства в соответствие с европейским законодательством в связи с вступлением в Европейский Союз.

BĂNCILĂ DANIEL

**CONTRACT FOR THE ALIENATION OF PROPERTY
SUBJECT TO LIFETIME MAINTENANCE IN THE LAW OF
THE REPUBLIC OF MOLDOVA AND ROMANIA**

SCIENTIFIC SPECIALTY: 553.01. CIVIL LAW

Summary of the PhD thesis

Approved for printing: _27.11.2024_

Paper size 60x84 1/16

Offset paper. Offset printing.

Edition 25 ex

Print pages 2.1

Order no. _____

Publisher

Typography "Pulsul Pieții"

No.5, Gh. Iablokin Str., Chișinău