

The Validity of the Sales Purchase Contract with Redemption Pact in Light of the Provisions New Civil Code

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Abstract: The sales contract with buyback agreement has existed in the Romanian legislation as it has been instituted by means of the original form of the Civil Code in force. The legislative evolution of the last century has abrogated the provisions referring to this field and has eventually led to a legislative void in this matter. This situation has entailed the validation of all legal deeds in the form of sales contract with buyback agreement, form which used to be prohibited in the past, in certain situations. Noticing such situation and understanding the need to reinstate the legal framework for the regulation of social relationships with respect to the sales contract with buyback agreements, the Romanian lawgiver has dedicated it a subsection in the new Civil Code. The future civil regulation resumes a major part of the contents and meanings of the provisions of articles 1371-1387 of the Civil Code, currently abrogated. The different element lies in the institution of the express prohibition of sales with buyback option where the difference between the price received and the price paid exceeds the level of interests set by the specific legislation. In addition, the sales where the seller has the obligation to buy back the good sold without setting the price of the good at the time of undertaking such obligation are also prohibited. Following the entry into force of the new Civil Code, the sale with buyback option shall fit the category of legal deeds affected by a resolutive condition, which shall also affect possible rights transmitted by concluding the contract. Such agreements shall be fully valid as long as the general validity conditions of the legal deeds are complied with and the legal norms passed in the interest matter are not infringed.

Keywords: contract; validity; resolutive condition

1. Establishing the Sale by Redemption Resolution. Practical Implications

Regulating the sale purchase contract with redemption pact was made by chapter six ¹ of the Civil Code, namely by Articles 1371-1387 civil code, now repealed. Overall, these provisions regulated the resolution of the sale purchase contract by exercising by the seller of the option to redeem the sold property.

In fact, the said provisions introduced the possibility of concluding the sale purchase contracts affected by a resolution condition², consisting of exercising the option to redemption of the thing sold by the seller within five years from the date of sale³. In other words, was regulated by a class of sale and an

¹ Chapter six of the Civil Code (entered into force on 4 December 1864) was entitled "About the sale resolution by redemption" and included a total of 17 articles.

² Article 1019 Civil code defines the resolution condition as being the one which submits the abolition of duty on a future and uncertain event. It does not suspend the obligation but obliges the creditor to return what he received, in case of failure of the event referred to in the condition.

³ This redemption option, which the buyer reserves, takes to some extent the form of a truly protestation conditions, prohibited by article 1010 Civil Code. The difference is that the seller assumes no obligation to redeem the sold property, but

ownership right over the propriety submitted by it, namely, the resolution sale and ownership. They have full availability, when were respected the conditions regarding the availability conditions of the redemption clause and the period within which redemption could have been exercised (Hamangiu, Rosetti-Balanescu, & Băicoianu, 2002, p. 571). In addition to these special conditions, the sale purchase convention and the redemption clause must comply with the entire availability conditions commune to all conventions¹. The regulation also refers to the factual way of exercising the option to redemption², the effect of expiring the redemption deadline and the effects of exercising the redemption option over the sub-obtainer rights through acts or judicial facts of the propriety for the sale.

Regarding the applicable penalty imposed for non-compliance with the conditions of validity for this variety of sales, the chapter on it makes no explicit mention. Therefore, for non-compliance with the general conditions of validity of the agreements remain applicable the general provisions that introduced the default nullity for all legal acts that contravene to legal texts in this field. This form of nullity arises from lack of explicit indication of sanctions in its legal norm and the mandatory nature of the texts regulating this area.

This gap in the law relating to the lack of express regulation of the penalty system applicable to the sale purchase contracts with redemption pact created the premises of loan shark behaviors. The specificity of these operations was the conclusion of the sale purchase contracts by which the seller alienate a good (movable or immovable) of a price and also reserved the faculty at a later date to redeem the sold property at another, bigger price. The difference between the two prices the sale and redemption one represented, according to art. 1372 and 1377 civil code, the price and expenses incurred by the seller with the sold propriety. So far, none of those were to contravene to any legal requirements. However, in figures, this situation is different. Thus, the selling price for a house was 1,000 lei, while the redemption one was of 2000 lei. The difference between the two prices was assumed to be due to the expenses incurred by the buyer to purchase the propriety or with the propriety itself. However, while the market value of the sold propriety was of 1,000 lei and the actual expenses incurred for legal transactions relating to it were of 200 lei, the price difference up to the amount of 2000 lei, at which the propriety was redeem, appeared as unjustified and still legal. Most of the times the seller is unable to exercise the redemption option due to its excessive price, and, the seller is strengthened by the failure of the resolution condition (Nicholas & Craciun, 3/2001, p. 19)³. Going forward, in the spirit of finding out the mediated cause of the parties at the conclusion of the legal act, is can be ascertained that such a sale hides, in reality, a loan with usury interest (Deak, 2001, p. 104), really guaranteed with the sold propriety.

a right (a faculty) to redeem the sold property. This redemption option is valid through the agreement of the parties of the sale purchase contract.

¹ These conditions were imposed by art. 948 civil code, and currently in force relating to the capacity to contract, the valid consent of the Party that undertakes, the determinate subject and a lawful cause.

² In this respect, Art. 1377 civil code shows that the seller who wants to exercise its redemption pact must return the full price, the sale charges, the fees for necessary reparations, the fess for useful reparations, up to the mount of added value produced by them. "The possession of propriety could be acquired only after fulfilling the above obligations.

³ The creditors in this category were usually loan sharks, who bought, with ridiculous prices, valuables, showing a much higher price than the paid one. If within that time, the seller did not exercise the faculty of redemption on the price written in the document, the object remained the propriety of the buyer, who made a big benefit.

2. Legislative Developments with Incidence in Relation to Redemption Pact. The Current Regulation

Clearly, the Romanian legislature is aware of how the loan sharks operations succeeded to impose in legal life under the protection of article 1371-1387 civil code. We consider that they were in front of the maneuvers of misuse of the legal provision from the purpose for which it was issued. This social reality can be repaired by expressly removing from the illicit area of the sales with redemption pact that hid shark loans also by establishing severe penalties for any breach of these laws.

By the law against usury¹ the legal situations above were regulated. Thus, by article 4 it was expressly stipulated the rightful nullity of sale purchase contracts with redemption pact concluded after entry into force of the law. Also, the provisions of article 1371-1372 of the Civil Code were expressly repealed. Equally, criminal and civil penalties were imposed² for those who performed the usury operations³.

Since it did not address all social needs, the usury law was repealed by Decree-Law no. 1700/1938 for establishing interest and usury removal⁴. This enactment maintained the provisions of the enactment that it repealed and also established new points⁵ as applying its provisions to the contracts earlier concluded and under performance. Regarding these it is showed that on the interests exceeding the maximum established by decree, "for everything that is exceeded, the bond is void"⁶.

The historical-political developments led to the adoption of Decree no. 311/1954 for the establishment of legal interest⁷ where it is expressly repealed the Decree-Law no. 1700/1938 for the abolition of usury and establishing the legal interest.

After 1990 it was felt the need of regulations in various areas of social life, need generated by the continuous diversification by social relations, the rise of private property, the development of trade relations, credit institutions and other such institutions. To meet this situation the post-revolution legislature has issued enactments in all areas, repealing the previous to 1990 ones. For this reason, at a given time, there was the need for expressly repealing of the enactments issued by the *old regime*, aspect made by Law no. 7 / 1998 declaring that certain enactments are repealed⁸. Among these it can be found the Decree no. 311/1954 on the establishment of legal interest⁹.

¹ 61 against usury law was adopted by the Assembly of Deputies and the Senate in the hearings on 12 and 27 March 1931, promulgated by Decree no. 994/1931 and published in Official Gazette no. 77 of April 2, 1931.

² According to article 8 and 11 of the quoted enactment the creditor who received a conventional interest higher than the rate fixed by law is punishable by imprisonment. In addition, the debtor had at hand, against the creditor, the civil action for reducing the illegally stipulated interest or for refund of the illegally collected one.

³ A specific problem of these cases was caused by the difficulty of proving the existence of loan shark interest in case of a sale with redemption pact. Proving this aspect occurred during the pending cases in which the judge was required to arithmetically ascertain on the amount of money obtained by subtracting from the redemption price the sale price and the sale charges of the sold propriety. To the extent that it was extremely high, it was interpreted as having loan shark interest characteristics.

⁴ Published in the Official Monitor no. 102 of May 5, 1938.

⁵ Under the criminal aspect establishes the crime of usury and other elements to individualize a fact as being usury as well as the people who may be its authors.

⁶ Last paragraph of Article 10 Decree-Law no. 1700/1938.

⁷ Adopted by the National Grand Assembly and published in the Official Gazette no. 38 of 9 August 1954.

⁸ The law was adopted on December 7, 1997 and published in the Official Gazette no. 9 of 13 January 1998.

⁹ By repealing the enactment that repealed another enactment does not revert into force the provisions of the first repealed enactment, the rule in this area being the final character of the enactment for repealing.

In other words, in the current regulations, the sale with redemption pact is valid¹, since, according to the principle of contractual freedom and freedom of will of the parties, it may be concluded contracts of sale that include in themselves the possibility of redemption of the sold propriety by the seller. This is possible because, following the sequence of acts in this matter, it was produced a legal vacuum relating to validate all the acts that took this prohibited form in the past, in certain situations.

The validity of these agreements can be overturned only if they hide illegal or immoral transactions (Chirica, 1997, pg. 47-48) (Munteanu, 1/2004, p. 242)². On that last point, we ascertain to only distinguish for teaching purposes³.

One aspect mainly aimed the validity of the redemption pact is the legal value of the redemption option to be exercised within a particular term by the seller. As the doctrine stresses (Chirică, 2008, p. 298), the redemption is for the seller a faculty that can be use whether or not having the character of a purely potestative conditions⁴.

The jurisprudence has endorsed these views by accepting actions as seeking a declaration of absolute nullity of sale purchase contracts because they hide usury interest loans for immoral or illegal cause because since the creditor buyer profit of the status of need of the debtor seller lending him a redemption price obviously not proportioned with the sale one (which did not represented a freely expressed consent)⁵.

3. The Validity of The Sales Purchase Contract with Pact of Buyback in Light of the Provisions New Civil Code

In other varieties of sales category, the future civil regulation devotes to the sale institution with the option of redemption a subsection within the 4th section entitled "Sale with redemption option". Consequently, the seat of the material⁶ of this new institution is article 1758-1762 of the New Civil Code. According to article 1758 of the new Civil Code the sale with redemption option is a sale⁷ affected by a resolution condition in which the seller reserves the right to redeem the property or the right transmitted to the buyer⁸.

¹ See Court of Appeals, IV civil Department, Dec. 3136/R/2000 in *Dreptul* no. 12/2000, pp. 132-133.

² There are opinions that the sale accompanied by the redemption clause of the propriety must qualify as a sale accompanied by a penalty clause under which the creditor is entitled to appropriate the pledged property without the intercession of the court. Such an ancillary clause, invalid according to article 1689, paragraph 2 civil code, lead to the nullity of the entire contract and it was not only because the essential of the *commissoria lex*, but for its main operation as well. Thus, it is considered, that without the ancillary clause, the parties would not contracted. For this reason, the nullity of the ancillary leads to the nullity of the principal. In our view, this argument cannot be accepted because there is a purpose other than that presumed by law, at the concluding of the main operation, alleging the intention of the parties expressed by the conclusion of the ancillary Convention, is likely to lead to invalid principal Convention by non licit clause.

³ Thus, article 968 Civil Code, include as non licit clause the clause prohibited by law (unlawful) and the clause contrary to public order and morality (immoral).

⁴ Although at first reading the condition might seem absolutely void, the reality is legal since it does not contravene to Art. 1010 Civil code on obligations incurred under the purely potestative conditions.

⁵ See, Cluj Court of Appeal Dec. No. 2508/2002.

⁶ The novelty of the institution is determined by its absence in the current legislation. This novelty does not an absolute character, since, as I stated, the institution has existed in the contents of the Civil Code of 1864, which in his turn had found the inspiration in the Calimah Code (1817), by which is was established the "redemption."

⁷ Article 1650 of the new Civil Code defines the sale as being the contract by which the seller transmits or, where applicable, obliges to transmit the property in exchange of a price the buyer is obliged to pay. It can also be transmitted through the sale a part of property right or any other right.

⁸ Between the definition of sale with redemption option given by the new Civil Code and the one provided by article 1371 of the civil code (now repealed), there are differences in the approach. Thus, according to article 1371, the sale with redemption

Although, from the contents of the section devoted to this institution it results the willingness of the legislature to regulate only the sale with redemption option, from the interpretation of Art.1762, paragraph 2 of the new Civil Code results that it is only a form of sale with redemption pact, beside the sale with redemption requirement.

From the text shown above results that certain rules relating to the sale with redemption option it is also applied to sales in which the seller is obliged to redeem the sold property. We consider that in such a situation is a straightforward sale unaffected by any condition as means of the legal act. Thus, within the sales of the contract stated in article 1762 paragraph 2 of the new Civil Code, the seller undertakes to redeem the sold at a later date. The legal qualification of this operation is still a sale with redemption pact¹, but it cannot be confused with the sale with redemption option.

From a semantic point of view, the redemption option consists in a faculty that the seller reserves and can exercise or not, while the redemption obligation does not confer to the seller any right to choose between several behaviors, him being obliged to redeem the asset at a certain date, determined by contract. So, there are established two forms of the sale with redemption pact: the sale with redemption option and the sale with redemption obligation. Both they enjoy validity as long as they meet the legal requirements.

A) The first form of the sale with redemption pact namely the sale with redemption option is subject to the same conditions of validity of which is subject any agreement, to which is added the specific conditions of sale and those provided by the new Civil Code on this variety of sale.

In accordance with article 1179 of the new Civil Code, the essential conditions for the validity of conventions are: the capacity to contract, the valid consent of the parties, a object given, possible and legitimate, a valid clause of obligations and, to the extent that the law provides a certain form of the contract, it must observed, under the penalty provided by legal provisions in force.

To these general conditions of validity are added special conditions governed by the New Civil Code in the chapter dedicated to the sale purchase contract. From their analysis, it results the following rules applicable to the sale with repurchase option. Can conclude a sales contract with redemption option any person that is not declared by the law inapt or legally prohibited² to conclude such an act.

option is presented as a clause of resolution of the "sale" contract. This results from the exposure in the legal rule text, made by the 1864 legislature. Thus, it states, before presenting this case of "Resolve the sale contract", that this resolution clause is added to the clauses of cancellation or resolution contained in Title V - About the sales, and also the common clauses to all conventions (it is about general clauses). The new Civil Code test presents the sale with redemption option as a sale affected by a resolution condition.

¹ The word *pact* is synonymous with the *understanding* or *agreement* one. Throughout the pact the parties may reserve the option right to exercise or not certain rights. Equally they may undertake different obligations. It results that the legal concept of *pact* has a much wider content than the *option* one, including the latter.

² In the matters of sales the article 1653-1655 of the new Civil Code sets up a range of disabilities to buy or to sell. Thus, it is provided in Art. 1653 (1) Under penalty of absolute nullity, judges, prosecutors, clerks, executors, lawyers, public notaries, judicial councilors and insolvency practitioners cannot buy directly or through intermediaries, disputed rights that are the competency of a court in whose jurisdiction operates.

(2) Are exempted from the provisions of par. (1):

- a) the purchase of inheritance rights or shares of ownership from joint owners or co-heiress. as appropriate;
- b) the purchase a disputed right in order to full a debt who was born before the law the right become disputed;
- c) the purchase was made to protect the rights of the one who owns the property on which there is the disputed right.

(3) The right is disputed if there is a process started and incomplete on the existence or its scope.

art. 1.654. - (A) Are unable to purchase, directly or through intermediaries, not even by public auction:

- a) the trustees, who are responsible for the goods to sell, unless provided for in art. 1304;
- b) the parents, guardian, trustee, provisional administrator for the property of the people they represent;

The consent expressed at the concluding of the contract must be valid¹.

In addition, the sale with redemption option must have an object given, possible and lawful². The object covered by the sale to be sold freely in the sense that his sale was not prohibited or restricted by law, convention or will³. The sale price must consist of a sum of money and, moreover, must be serious and determined, or at least determinable⁴.

The cause of the sale contract with redemption option is the reason that determines each side to conclude it. It must exist, be lawful and moral⁵. According to article 1239 of the new Civil Code the existence of a valid cause is presumed until proven otherwise.

The analysis of validity conditions would be insufficient to the extent that would not be present the penalties provided by law for their failure. In such a situation we are obliged to show the penalties that intervene for failure of general conditions of validity. They differ depending on the character of the infringed rule and the nature of the protected interest.

Thus, for non-compliance with the dispositions related to the ability to conclude a sale with redemption option, is expressly imposed the absolute nullity in the cases specified in article 1653, article 1654 paragraph 1 letter c) and article 1655 related to art. 1654 paragraph 1 letter c) of the new Civil Code and relative nullity for situation contained in Art. 1654 paragraph 1 letters a) and b) and those in the art. 1655 related to art. 1654 paragraph 1 letters a) and b) of the new Civil Code regarding the non-compliance of general dispositions on individual ability, the involved penalties are: the absolute nullity for non-compliance with the legal regime of use capacity⁶, the relative nullity for non-compliance of the legal regime of the individual exercise capacity established by article 41-43 of the new Civil Code. The existence of invalid consent is punishable by absolute nullity⁷ or relative nullity⁸, as appropriate. The lack of purpose of the contract or its unlawfulness is punishable with absolute nullity⁹. Depending on the nature of the protected interest is sanctioned with absolute or relative

c) civil servants, syndic judges, insolvency practitioners, executors, and other such persons who might influence the terms of sale made through them or which has as object the assets they manage or which administration they supervise.

Art. 1.655. - (A) The persons referred to in Art. 1654 paragraph (1) cannot, also, sell their own goods for a price that is a sum of money from the sale or operation of the property or assets that they manage or which administration they supervise, as appropriate.

(2) The provisions of paragraph (1) shall apply accordingly to contracts in which, in exchange for promised benefits of persons referred to in Art. 1654 paragraph (1), the other party is obliged to pay a sum of money.

¹ To be valid the consent must meet the conditions provided in Art. 1204 civil code, respectively to be serious, freely and expressed knowingly.

² According to art. 1225 of the new Civil Code the object of the contract is the legal operation, like the sale, rental, lending and other such, agreed by the parties, as is evidenced from all contractual rights and obligations.

³ Art. 1657 and seq. by the new Civil Code establishes the principle according to which all goods are in trade and the exceptions thereto and the conditions in which takes place the sale of a future good and the effects of destruction in whole or in part of the sold good.

⁴ Art. 1660 and seq. by the new Civil Code regulates the conditions of the price and also the way of determining it the limits and validity of this operation.

⁵ Article 1236 of the new Civil Code defines the unlawful cause as being contrary to law and public order and the immoral cause as contrary to morality. In article 1237 is treated as illegal the fraud by law.

⁶ The lack of ability to use of natural or legal person and non-respecting the principle of specialty service capacity of the legal person are cases of absolute nullity of the legal act.

⁷ When expression a not-serious consent.

⁸ When the lack of discernment (art. 1205 civil code), of the vices of consent: fraud, violence, injury and critical error in terms of article 1207 civil code.

⁹ Article 1225 paragraph 2 of the new Civil Code provides that the contract should be determined and lawful under the penalty of absolute nullity.

nullity the sale of property that is not in the civil circulation or perished in the moment of sale or not-seriousness or indeterminacy of price¹. For the latter, the new Civil Code established relative nullity.

According to article 1238 of the new Civil Code the lack of cause attracts the relative nullity of the contract² and the illicit or immoral cause is sanctioned by absolute nullity, by particularity of the facts³.

Regarding the specific conditions of validity contained in the new Civil Code, in the subsection dedicated to sale with redemption option this is referred to the period of the term of exercising the option to redeem and the difference between the redemption and selling price.

According to article 1758 of the new Civil Code, the redemption option cannot be stipulated for a period exceeding five years.

This condition does not regard the contract of sale itself but only the ancillary clause, namely, the redemption option. Its duration was limited to five years to comply with the principle of civil circuit security. In other words, it is intended to avoid the situations in which the exercise of the redemption option would lead to much series of resolution legal acts. However, theoretically, there the existence of this resolution condition does not prevent the many times sale and resale of property. The existence of article 1760 paragraph 2 of the new Civil Code enables the seller to exercise the right of option to any sub-obtainer of which right of option is opposable. Therefore, there is no legal limiting of the number of successive transfers that can follow the conclusion of sale with redemption option. Moreover, this would not have been possible because it brought prejudice to the ownership right of the buyer under a resolution conditions under the exclusive exercise of its right of disposition on it. The penalty of failure the term of⁴ option of redemption is the partial absolute nullity of it, with the consequent of lawful reduction to five years.

Since to the specifics of this sale there are given the option of redemption, it must indicate the shape and place of it under the contract. As in the old regulation, the redemption option should be included in the sale contract as ancillary clauses, otherwise, it would have the value of a resale and not the one of a resolution condition. The second specific condition of sale with redemption option concerns the difference between the redemption price and the sale price paid for the sale related to the law established regarding the interest. Thus, article 1762 sets by default that for the sale with redemption option to be valid is necessary that the difference between the redemption price and the sale price not to exceed the maximum level set by law for the interest. Otherwise, the sale with redemption option will be null and void⁵.

In order to ascertain this last validity condition, we should analyze its components: the paid price for the sale, the redemption price, the difference between the sale price and the redemption price and the maximum level of interest established by law. The price paid for the sale will be the amount of money indicated by the contracting parties at the conclusion of the act. The redemption price is a complex

¹ Article 1665 provides that the sale is voidable if the price is established without the intention to be paid or is in not proportioned with the value of the property.

² If it cannot be qualified so that it can still produce legal effects.

³ Article 1238 paragraph 2 indicates that illicit or immoral cause attracts absolute nullity of the contract if it is common or otherwise, if the other party has met it, or where circumstances, have to meet.

⁴ The deadline for the exercise of the redemption option is a future event and ensures that the realization, at which the buyer is required to recognize to the seller the option right of redemption, following which the latter becomes again the owner of the sold propriety.

⁵ So, it also establishes an absolute presumption of unlawful sales that do not qualify under art. 1762 by the new Civil Code.

concept whose content is described in article 1759 of the new Civil Code. Thus, the redemption price consists of the received price, the expenses for concluding the sale purchase contract and making the formalities of advertising, expenses on lifting and carrying the property, the costs necessary and useful expenses (the latter only limited to gain value).

The redemption price is a dynamic concept based on the sold propriety and the expenses generated by it¹. The difference between the redemption price and the sale price is the arithmetic result resulted from the decrease of the amount of the sum of elements that form the redemption price and the price at which the sale took place. This can vary depending on the nature of goods sold, the redemption period, the status of the propriety at the time of sale and expenses necessary to maintain utility of the propriety, etc.

Regarding the maximum set by law for interest this concept should be reported to law regarding interest to the time of entry into force of the Civil Code or the conclusion of the sale. Currently, in civil matters, according to GO no. 9 / 2000 regarding the legal interest for monetary obligations, the legal interest is established at the level of official tax of the discount established by Romania's National Bank, decreased by 20% per year². To this interest might report the test of the art. 1762 of the new Civil Code, since, the contract obligation is interest bearing and does not show the interest rate. In other words, the parts of such sale will not be able to invoke the provisions of Art. 5 of the enactment described above, since they have not explicitly expressed their intention to establish a conventional interest for their obligation³.

The validity of sales with redemption option is related primarily by the above analyzed condition. In principle is of interest that the difference between the redemption price and the sales price do not exceed the maximum interest level established by law, not to make by such sales loans with interest exceeding the limit allowed by law. Indeed the legislature's intention is in line with morality and law, but we wonder if this institution could be used in reality to all categories of goods while maintaining the validity of the concluded act.

To answer this question we developed the following hypothesis. For the sum of 100,000 lei are sold with the redemption a land and an old house situated in an area in full real estate development. The redemption period is of 2 years. The costs of making the act and the real estate advertising formalities are of 11,000 lei. Subsequent to the sale, the buyer connects the property to gas supply network and mounts the central heating spending 10,000 lei. On the street where the property is situated it is introduced the sewer and water network which is accessed by the buyer in exchange for 5000 lei. The old house requires some repairs, and in this respect, is fitted PVC joinery with double glazing windows, restore its interior, mounting for this purpose tiles, flooring and plumbing in the amount of 20,000 lei. After a year and a half, the buyer sells the property to a third party in exchange for the sum

¹ For example if it is sold with redemption pact (the redemption option to be exercised in 2 years) an apartment building in the amount of 100,000 lei, notary expenses are in the amount of 10,000 lei, adding to these the advertising expenses amounting to 500 Lei, taxes will be the amount of 300 lei. If to these are added expenses with renovation amounting to 15,000 lei and the possibly to mount a thermal plant worth 6000 lei, which, together would increase the value with 15,000 lei, the repurchase price would be of 125 800 lei. If, a car would sell at a price of 50,000 lei, and the redemption should take place after a year, the redemption price will include the following amounts in addition to sale price: 50 lei expenses with the contract, 150 lei registration costs, the tax of approx. 100 lei, other costs arising from exchanging tires or oil and filters in the amount of 1,500 lei, 200 lei mandatory liability insurance. The total redemption price of the car will be of 52,000 lei.

² According to article 3, final paragraph of GO no. 9 / 2000, the level of the official discount rate, on which is determined the legal interest, is the one from the last working day of each quarter, valid for the entire next quarter. The level of the discount official tax shall be published in the Official Gazette, Part I, by courtesy of the Romania's National Bank.

³ According to article 5 of Gd. No. 9 / 2000, in civil rapports the interest may not exceed the legal interest with more than 50% per year. For this, the interest must be determined by written text. In its absence is due only the legal interest.

of 170,000 lei, although it only invested in it the amount of 46,000 lei. Before expiry of the 2 years period, the seller exercises the option to redemption to the third party and notifies its intention to pay the amount of maximum 106,360 lei representing the sale price increased with the maximum rate established by law. Also states that the third party claiming a higher amount would lead to the absolute nullity of the contract. In reality, the value of investments in the property or value gain to it exceeds the sum of 6,360. Is valid or not such sale, provided that, after a technical expertise is proven that the value added brought to the building is of 40,000 lei and the proven expenses are in the amount of 46,000 lei? Is it sufficient the criterion of determining the validity of the contract by reporting the difference between prices at the maximum level of legal interest? Can the court that, under the evidence, finds the carrying of expenses by the buyer or increasing value added of the property with 40,000 lei, cancel the sale contract under article 1762 of the new Civil Code? We ascertain that in the event of hypothetical situations like the one above, the court must also maintain as valid such a contract and to oblige the buyer that exercise the option to redemption or that assumed the obligation of redemption to pay to the buyer or to the sub-obtainer the sale price increased with the sale expenses and advertising costs and property value added cause by the made improvements. Any other solution would affect the third party property, and divert the legal rule from the purpose for which it was enacted.

Indeed there may be situations where the buyer does not make any investment in the purchased propriety, but insofar as advertising and notary costs exceed the amount represented by the legal interest, we reach a situation where, in our example, the parties would conclude an invalid act in the contraction time¹. Such an interpretation would lead to the partial impossibility of concluding a sale with redemption option, or upon concluding some void sale. Also would contravene to the principle of freedom of will of the parties. Thus, they conclude a sale in terms of exercising the option to redemption. Since the moment of contracting, the seller assumes the *risk* that, when redeeming, to pay the categories of expenses listed in paragraph 1 and 2 of article 1759 of the new Civil Code. For this reason, we consider that when exercising the redemption option, the seller should not be allowed to invoke the provisions of article 1762 of the new Civil Code, especially since the value of the sold propriety increased by an amount exceeding the price difference acceptable by article 1762 of the new Civil Code. In other words, the difference between the actual value of the propriety at the time of exercising the redemption option and the price stated in the contract as redemption price, should be borne by the holder of the exercise of the redemption option based on the principles of contracting parties will internal respect and equity. We consider that exercising the redemption option must be interpreted as an agreement of will of its holder to pay the real value of the sold propriety. Any other interpretation would enable the growth of the seller patrimony in the detriment of the buyer patrimony or the sub-obtainer from him, so the transformation of application article 1762 of the new Civil Code in a speculative transaction for the seller. In addition, the buyer would find himself in the impossible to ever recover and value difference, by which he reduced his patrimony, even under art. 1345-1348 of the new Civil Code.², given the alternative of such action if the existence of other actions to for the parties.

There will not be the same situation in the case of a sale with redemption obligation. In this case, the seller undertakes to redeem the propriety at a later date at a certain price of redemption. If at the time of exercising the buying obligation by the seller the real price difference is beyond the one established

¹ Since in our hypothesis, the notary public fee is of 10,000 lei when drawing up the document.

² Art 1345 -1348 of the new Civil Code covers the unjust enrichment.

within the art. 1762 of the new Civil Code., in the redemption clause, the buyer may refuse to conclude the sale-purchase contract (resale) for the propriety or may alienate the propriety to another person. In this case, taking into account the unilateral character of the buying promise made by the seller¹, we consider that under article 1669 paragraph 4 of the new Civil Code, his obligation to purchase the propriety will be considered extinguished.

Although are not subject to this study, we will make brief references to the specific effects of exercising the redemption option. But it has certain limitations in which it may be exercised under the penalty of revocation of the holder from the right to exercise it. Thus, it must be exercised within the time limit set in this respect. In addition, the decay is involved in the situation where the sold propriety is a share of a property which is subject to the division within the redemption period, and the seller, although, is required to the division does not exercise his option to redeem the propriety.

Obviously, having exercised the redemption option, the sale will be abolished with the consequence of returning the propriety in the patrimony of the seller. This will not happen before the seller pays the buyer the amounts stated within the article 1759 of the new Civil Code. For this, the seller will notify the buyer or any sub-obtainer, to whom the option right is opposable about his intention, and, within one month since the notification to record the amounts shown in article 1759 of the new Civil Code to their disposal, under the penalty of revocation from the right to exercise the redemption option.

B) Regarding the conditions to be fulfilled by the second form of the sale with redemption pact, namely the sale with redemption obligation we show that these are validity general conditions which is subject to any convention to which is added the specific conditions of sale. They have already been shown during exposure on sale with redemption option. Article 1762 paragraph 2 of the new Civil Code covers a specific condition to which it must comply the sale with redemption obligation. Thus, under the penalty of absolute nullity, is established the obligation of the parties to correlate the redemption price with the sale price so that the difference between them does not exceed the maximum level set by law for interest. The reasons for establishing such validity conditions, the effects, the possible problems that may arise in practice and the arguments for or against it have already been stated.

What should be noted about this variety of sale with redemption pact is that, in reality, it is straightforward sale in which the seller undertakes the obligation to redeem the sold propriety at a later date for a certain price. The legal value of this clause is of pre-contract, namely, the promise to purchase the sold propriety.

The performance of the redemption obligation of the sold propriety will not effect the resolution condition acting in the case of sale with redemption option, since there is no legal text that leads us to this conclusion. Accordingly, the redemption obligation will be performed by concluding a new sale-purchase contract (a resale) having the initial seller in a buyer position.

The failure to execute the redemption obligation in the period² determined by clause (pre-contract) may draw its contractual liability of it, the buyer having the even the opportunity to rely on the provisions of article 1669 by the new Civil Code. So, unlike the sale with redemption option, the seller

¹ By the interpretation of article 1762 rap. to article 1669 of the new Civil Code we cannot distinguish on the redemption obligation assumed by the seller. We appreciate that this will have the character of a unilateral obligation to purchase the propriety by the seller and cannot also have the value of an obligation to sell by the buyer to the seller. The indicated text states only if the seller has undertaken the obligation to redeem the sold propriety.

² In terms of the effects produced to the term that affects this obligation it can be described as a suspension term.

will not be deprived of the right to redeem the property if he does not act in the redemption term but he would be liable on a contractual basis.

Another specific of the sale with redemption obligation is given by the non-limitation in time of the term in which the seller is obliged to redeem the sold propriety. The parties are those who set the date on which the resale is to be done. Clearly, the term should be set so that it can be fulfilled¹.

A problem that could be raised regarding the sale with redemption obligation may be related to the shape and location that the seller's obligation to redeem the propriety. Thus, it can be inserted in the sale purchase contract as a clause or a separate agreement, concomitant or later as an addendum to the sale-purchase contract. We appreciate that, given the sale - purchase pre-contract autonomous nature of the agreement of redemption clause, it can take any of the forms mentioned above.

The effects of exercising the redemption obligation will lead, as I pointed out, to the conclusion of a new sale contract.

4. Conclusions

Currently, in judicial plan, it feels the need to regulate the sale with redemption pact. We appreciate that its repeal was not the best choice of the inter-war legislature. Over the time, the situations appeared in practice, proved to us that lack of legal framework for this institution led to the possibility of interpreting and using the general rules of agreements for immoral and illegal purposes by concluding some contracts contrary to the norms of the society.

The establishment within the new Civil Code of the legal framework for contracts with redemption pact is a response to the socio-economic realities that, in the present context, are facing many cases of usury practicing. It is known that people are in financial difficulty and without the possibility of contracting another loan from an institution in the field, resort to such persons to obtain money. They take advantage of state of need in which these individuals are and lend, by loan agreement concluded in authentic form², the needed amounts of money.

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¹ According to article 1411 of the new Civil Code, the term should consist of a future event and certain of fulfillment.

² Through the same loan contract is, usually, established a guarantee, namely a security or conventional mortgage. The value to which the loan agreement is concluded is much greater than the one actually loaned, and it usually represents a modest amount of the pledged or mortgaged movable property. Given the size of the borrowed amount, it will be almost impossible for the debtor to repay the amounts included in its loan contract. However, the lender will begin the enforcement of the loan contract concluded in authentic form, which by law is enforceable, even on the propriety on which the security was set up, often, taking it in the account of the claim.