THE JUDGMENT IN LIEU OF THE CONTRACT - INTERPRETATION AND APPLICATION OF ARTICLES 1279 AND 1669 OF THE CIVIL CODE RELATING TO THE PROMISE OF SALE

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Abstract

The matter of enforcement in the promise of sale poses practical problems arising from the interpretation of the articles 1279 and 1669 of the Civil Code and that we intend to analyze in this study. Among the issues to analyze we can mention: the role of the court and the legal requirements for a judgment in lieu of contract as follows: execution of their duties by the party calls for a judgment in lieu of the contract; the unjustified refusal of the promissor-seller to conclude the contract of sale within the set deadline; establishing the fulfillment of the terms of sale at the time of the judgment; the quality of the promise-seller of the owner of the good; the filing of the fiscal certificate issued by the specialized department of the local public administration authority resulting in the lack of debts of the promised property owner; proof of up-to-date flows of contribution allowances to the owners expenses. We will now consider the prescription of the right to request a decision in lieu of contract under article 1669 para. (3) Civ. Code, as well as the importance of the inalienability clause in the conventions which give rise to the obligation to pass on the property in the future to a determined or determinable person, as provided by article 627 par. (4) Civ. Code.

Keywords: *promise, promissory agreement, judgment in lieu of a contract, prescription, inalienability.*

Introduction

The Civil Code regulates in art. 1669 and art. 1670 promise to sell, in certain respects, such as the ability of the rightful party to request, in the event of unjustified refusal of the other party to conclude the contract of sale, the delivery of a judgment which takes the place of the contract, the limitation of the right of action, the nature of the sums of money paid on the basis of a sales promise.

The unilateral sales promise is a contract whereby a party, called the promisory-seller, undertakes to sell in the future a certain good to the other party, called the promissory-buyer, if the latter promises to buy it. The promissory-seller does not sell the good, but only undertakes to sell it in the future or to conclude the sales contract if the promissory-buyer chooses to buy it.

The existence of an option for the promissory-buyer is one that characterizes the unilateral promise and distinguishes it from the sinalagmatic promise. In order to exercise the right of option, the parties agree that the beneficiary has a certain amount of time to reflect and make informed decisions. In the case of the bilateral sale promise, both parties, both the promissory-seller and the promissory-buyer, firmly and mutually commit themselves to conclude in the future the sales contract, whose essential elements (at least the object and price) are already established the promise ended.

The bilateral sales promise is a preparatory contract for the conclusion of the definitive sales contract between the same parties. Given that the sales promise is not a sale, the consent given at the end of the sale promise differs from the consent given at the conclusion of the sales contract, the latter being expressed in order to fulfill the obligation to undertake by promise.

1. The judicial stamp duty

In the matter of the judicial stamp duty, for the application for a decision to take place the contract shall apply art. 3 par. (1), par. (2) lit. c) and art. 31 from G.E.O. no. 80/2013 on stamp duty. The interpretation of these legal provisions leads to the conclusion that the application for a decision in lieu of sale contract is one that can be evaluated in money, the determination of the amount of the judicial stamp duty being made by reference to the value limits established by art. 3 par. (1) of the mentioned normative act. According to art. 31 par. (2) from G.E.O. no. 80/2013 the value taken into account for stamp duty is the one indicated in the application (which may or may not coincide with that indicated in the sales promise). The same law stipulates that if the value is disputed or appreciated by the court as obviously ridiculously low, the assessment is made under the terms of par. (3) of art. 98 Civ. Proc. Code.

Over the value to be taken into account when stamp duty is set, several approaches are encountered in court practice. A first solution is to establish the stamp duty considering the value of the price set by the parties in the promissory-sale, in the context in which the applicant does not specify in the application its value for the stamp duty. This method of setting the stamp duty is the easiest and includes a high degree of celerity, because the setting of the stamp duty will no longer be postponed in order to inform the applicant of

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the obligation to specify the value of the object of the application in order to establish the stamp duty.

The use of the price of the promissory-sale as a reference also takes into account the fact that the price set by the parties for sale usually reflects the market value of the good, even if it is possible to imagine situations in which the parties have set a price lower than the real value of the good. This approach is to be criticized for failing to comply formally with art. 31 par. (2) from G.E.O. no. 80/2013 which state that the value at which the judicial stamp duty is calculated is the one provided in the application.

A second practice of the courts is to notify the applicant of the obligation to provide proof of the taxable value for immovable property and to set the judicial stamp duty on that amount. It takes into account the real estate demand, capitalizing on it by reference to an objective value, the taxable one, which usually reflects the value of the movement of the asset.

A third variation of stamp duty, which is less common in practice, is to report the value of the movement of the asset to be transmitted if the request is made by the promissory-buyer, or the agreed price if the request is made by the promissory-seller. This method has as a criterion the value with which the applicant's patrimony is to be increased, which consist either of the good which is the object of the sales promise for the buyer or the selling price for the seller.

Although all three solutions present convincing arguments, the closest to the letter and spirit of the rules governing this matter is the establishment of the stamp duty at the market value of the good, which can be assimilated to the taxable value, or the value of the notarial scales. It is true that according to art. 31 par. (2) from G.E.O. no. 80/2013 value must be the one in action, but this value can not be left to subjective appreciation, but must be based on objective criteria .

The value of the movement of the property is related to the time of the filing of the petition. If the amount indicated by the claimant is contested, the amount shall be determined by the documents submitted and the explanations given by the parties, according to art. 98 par. (3) C. Proc. in which the data on the taxable value of the property or, as the case may be, the market studies carried out by the public notary's chambers, commonly known as "grids of notaries public" in accordance with the provisions of art. 104 par. (4) the final thesis of Law no. 227/2015 on the Fiscal Code.

2. The competent court

From the perspective of material competence, the value criterion is applied, competence being determined according to art. 94 pt.1 lit. k) and art. 95 pt. 1 Civ. Proc. Code.

From the perspective of territorial competence, the provisions of art. 107, art. 113 par. (1) point 3 Civ. Proc. Code, if expressly stipulated the place of performance of the obligation to conclude the contract.

From this perspective, the application for a contract decision is a personal action, even if the contract that is required to be finalized is a translational contract of ownership or other real rights, this being merely an expression of its real estate character.

In this respect, the High Court of Cassation and Justice, through the Decision no. 8/10.06.2013 , pronounced in an appeal in the interest of the law, stated that "the application requiring a court decision to take the place of an authentic sale and purchase agreement of a building has the character of a personal real estate action", since "the civil action requesting the delivery of a court order to take the place of a sale and purchase agreement, in the matter of the obligations to make arising from the pre-contract is personal inasmuch as the applicant makes use of a right of claim, namely the right to require the conclusion of the contract, correlated with the defendant's obligation to take the necessary steps with a view to concluding the contract. (...) Territorial jurisdiction is alternative, between the court of the defendant's domicile and the court of the place of performance of the obligation only if the legal act concluded by the parties provided for the place of enforcement, or even in part, of the obligation. "

The foregoing considerations regarding the judicial stamp duty relating to the determination of the value of the object of the application relevant to the determination apply mutatis mutandis to the determination of material jurisdiction.

3. The conditions required by the law for the delivery of a judgment in lieu of contract and the evidence administered to prove them

The valid conclusion of the bilateral sale promise obliges the parties to conclude the sales contract. The same obligation have the parties in the case of the unilateral sale promise, once the beneficiary has opted for the purchase of the good.

According to art. 1669 par. (1) Civ. Code "when one of the parties having concluded a bilateral sale promise unjustifiably refuses to conclude the promised contract, the other party may request that a judgment be held to the place of the contract if all other conditions of validity are met ".

The provisions also apply to the unilateral sale promise, according to art. 1669 par. (3) Civ. Code. Therefore, the question which may arise is that of the conditions required for the court to be able to pronounce such a court decision. Of course, the court will have to analyze these conditions in concrete terms, depending on the circumstances of each case.

3.1. The conclusion of a valid pre-contract and the fulfillment of the conditions of sale at the date of the awarding of the contract

The condition results implicitly from the text of art. 1669 par. (1) Civ. Code, which claims that "all other conditions of validity are to be fulfilled" and which clearly refers to the promise to sell agreement. This is

because, in order to be able to pronounce the decision in lieu of contract, the promise of sale must fulfill its own conditions of validity, necessary for any convention. For example, there is a requirement for a valid consent to be expressed under the ordinary law (article 1204 Civ. Code). At the time of the promise, the parties must have the ability to sell and buy, for otherwise the agreement on the sold asset and the price would not be valid.

Also, the object of the promise of sale, consisting in the conclusion of the sale contract in the future, must be determined and lawful and it must be stipulated the good to be sold and the price, and the cause must be licit and moral.

In relation to the provisions of art. 1.279 par. (1) Civ. Code, the court will verify the existence of the essential elements of the sale, which must be included in the pre-contract, when the decision is based on a sales act, otherwise it is considered to be a simple convention concluded for the continuation of the negotiations - art. 1.279 par. (4) Civ. Code.

It should be noted that the object, i.e. the good promised, must be in the civil circuit at the date of the judgment. The decision in lieu of a sale contract is governed by the law in force at the time of its pronouncement as an application of the principle tempus regit actum, a solution legally required by art. 6 par. (5) Civ. Code. This reasoning is followed by the Constitutional Court in the decision no. 755/2014 of the Constitutional Court .

Also, the property must belong to the promissory-seller at the time the property transfer operates. The requirement that the promissory-seller also be the owner of the good at the time of the judgment can no longer be the object of the controversy, the non-unitary practice that it triggered being cut by the H.C.C.J throught Decision no. 12/2015 following an appeal in the interest of the law.

At the date of the judgment, all the conditions required by the law to complete the sale must be fulfilled: the promissory-seller shall be the owner of the promised asset to be sold, and the promise-buyer shall not be struck by any special inability to acquire it. The court's pronouncement of a decision to take place is only possible if the property is in the patrimony of the promissor-seller (current owner) and in respect of which there are no inalienability clauses, established in compliance with the legal provisions (art. 627 par. (1) Civ. Code. If the promissory-seller pledged to sell the whole property, although he is not the sole owner of the property, the supreme court has decided that the promise of sale can not be enforced in kind, in the form of a court decision to take place for sale, unless the other co-owners agree.

The doctrine has advanced the view that such a decision could be pronounced even if, after the promissory contract had been concluded, the promissory-seller sold the good that was the object of the promised contract; the contract thus concluded will be a sale of the good of another.

In the light of Decision no. 12/2015 the sale promise can not be enforced in kind, in the form of a court decision to place a sale contract, in the absence of the sole owner of the promise-seller, so even less could be said such a decision when the promissory-seller sold the good and hence no longer owns the property.

Moreover, the considerations of that decision are apparently illustrating the fact that the decision which takes the place of a sale contract is constitutive of rights, which involves the transfer of the property from the date of its final stay. Thus, if the promissory-seller sold the object of the promise, the court could not issue a decision to take the place of the sale contract.

The issuance of a a decision to take the place of the sale contract it is not conditional upon the conclusion of a promise of sale in an authentic form, solution stemming from the Decision no. 23/2017 of the H.C.C.J., pronounced as a result of a complaint about the loosening of legal issues. We continue to reproduce part of the provisions of this decision: "... In interpreting and applying the provisions of art. 1.279 par. (3) first sentence and art. 1.669 par. (1) of the Civil Code, the authentic form is not mandatory upon the conclusion of the promise of sale of immovable property with a view to pronouncing a judgment which would take the place of an authentic act ... ". The promise has to be proven under the conditions of common law. The sale-purchase promise is a bilateral legal act, to be proved according to the rules provided by the law in the field of legal acts. For example, if the value of the object of the legal act is more than 250 lei, the proof is made with a document, under private signature.

3.2. The applicant has fulfilled his promised obligations.

The party entitled to request the court to adjudicate is the one that has fulfilled its obligations or is ready to do so. If the promissory-buyer has obtained a time limit for the payment of the price or part of the price, which would have been made after the court has delivered the ruling, it does not prevent the court from pronouncing the judgment.

As to the meaning of the phrase "at the request of the party who has fulfilled his own obligations", provided by art. 5 par. (2) of the Law no. 247/2005, Title XI (now abrogated, but applicable to the promises of a contract concluded as long as it was in force) and art. 1279 par. (3) Civ. Code, we consider the interpretation to be applicable as referring to the obligations established by the pre-contract and not by the contract to be concluded.

In this regard, we have to conclude that the prior payment of the sale price can not be a condition for the admission of the application. It is sufficient for the court to make mention of the price in the device, the advance paid and the remainder of the price due - even if, in the absence of a counterclaim, it can not oblige the applicant to pay that sum to the defendant - in order to make it possible to register the legal mortgage (Article

2386 (1) of the Civil Code). Given that the legal mortgage is a legal effect of the sale contract concluded without the full payment of the price, we consider that the court must state of its own motion not only the price of the contract, the price already paid and the price still due, but also the existence of the mortgage legal tender for the remaining price, for the benefit of the seller. The explanation for such a solution lies in the fact that the court, by issuing a judgment which takes the place of a contract, has quasi-notary powers, being required to record in the device at least the essential elements of the contract or the seller, the remaining price due and the legal mortgage guarantee payment constitutes such essential elements; the seller could not be deemed to have a counterclaim as he does not "request" anything from the court, the enrollment of the legal mortgage is a natural consequence of accepting the claimant's claim and concluding the contract by the court's judgment.

3.3. Unjustified refusal to sign the promised contract

One party refuses to conclude the sales contract and the refusal is unjustified. This condition is expressly provided for in art. 1669 par. (1) Civ. Code which stipulates that "when one of the parties who have concluded a bilateral sales promise unjustifiably refuses to conclude the promised contract, the other party may demand that a judgment be taken on the basis of a contract ... ". For example, the party did not appear before the public notary on the day and at the time fixed, for signing the contract of sale in authentic form for unjustified reasons.

As far as the proof of this refusal is concerned, we consider that the burden of proof is overturned, so that it does not come to the claimant but to the defendant, according to art. 249 Civ. Proc. Code. Thus, the plaintiff should only prove that, at the end of the term set in the contract for the sale, this did not happen. The defendant should prove either the justified nature of the refusal (proving the existence of one of the justified reasons for non-fulfillment of the contractual obligations provided by art.1555-1557 Civ. Code) or the applicant's fault according to art. 1517.

Thus, although in court practice the applicant is admitted to witness evidence and documents to prove that the defendant was not present at the date fixed for signing the sale contract, in reality the plaintiff's support that the promised contract was not concluded reverses the burden of proof so that the defendant is bound to prove the conclusion of the contract or the reason that prevented it.

3.4. The submission of the land registry excerpt, of the fiscal certificate attesting the payment of all payment obligations due to the local budget and proof of the current debits regarding the contribution rates to the owners' association

According to art. 57 par. (1) from E.G.O. no. 80/2013, in the case of applications for a decision that takes the place of an authentic act of alienation of immovable property, the court will request a land registry excerpt for the immovable properties registered in the land book or a certificate of tasks for the immovable properties who do not have an open land book, tax certificate issued by the specialized department of the local public administration authority and proof of the current debits regarding the contribution rates to the owners' association.

Also, according to art. 159 par. (5) of the Law no. 207/2015 on the Fiscal Procedure Code, "for the alienation of ownership of buildings, land and means of transport, the owners of the assets to be alienated must present tax attestations certifying that all payment obligations due to the local budget of the administrative-territorial unit in whose rayon is registered the taxable asset, according to par. (2). For the asset that is being alienated, the owner of the property must pay the tax due for the year in which the good is sold, except for the fact that the asset to which the tax is transferred is owed to another person than the owner "and, in accordance with par. (6): "The acts by which the buildings, land and means of transport are alienated, in violation of the provisions of para. (5) are null ". Although the legal texts directly concern the voluntary act of alienation, it is obvious that the court can not ignore their existence. The solution that will be applicable in case of non-compliance with the requirements of par. (5) is the rejection of the request for a judgment that takes the place of a contract of sale as unfounded.

The foregoing conclusion also follows from Decision no. 42/2017 pronounced by the H.C.C.J - The Law Enforcement Assembly, stating that in the interpretation and application of the provisions of art. 159 par. (5) of the Law no. 207/2015 on the Fiscal Procedure Code, in the case of an action requesting the determination of the validity of a bilateral exchange promise relating to goods subject to taxation and the delivery of a judgment which takes the place of an authentic act, it is mandatory that the owners of the goods submit a certificate of tax certification and have paid all the payment obligations due to the local budget of the administrative-territorial unit in which the asset is located, irrespective of whether the goods have equal value or different values. In the recitals of that decision, it was noted that in order for the defendant not to paralyze the efficiency of the action by refusing to present the tax attestation certificate, 57 of the Government Emergency Ordinance no. 80/2013 imposed on the court the obligation to apply for the certificate of tax attestation regarding the good; in order to avoid abusive conduct on the part of the defendant defendant, the complainant's petitioner (if he formulates a petition in this respect) should be given the opportunity to pay himself the obligations owed to the local budget by the other party, simultaneously with the ability to seeks, in the same or separate proceedings, to order the latter to pay damages equal to the amount of the obligations paid.

Regarding the proof of the daily debits of the contribution allowances to the expenses of the owners' association, this is in accordance with art. 20 par. (2) of the Law no. 230/2007, a condition whose non-fulfillment is sanctioned with absolute nullity of the act of alienation. The previously held regarding the non-compliance with the requirements regarding the existence and the content of the tax certificate are also properly applied in the present case.

Another proving relevant provision is art. 57 par. (3) from G.E.O. no. 80/2013, according to which the technical expertise (topographical) must be endorsed by the cadastre office and real estate publicity.

According to art. 5 par. (1) of the Law no. 17/2014, in all cases where a court decision is required for a sale-purchase contract, the action is admissible only if the pre-contract is concluded according to the provisions of Law no. 287/2009, republished, as subsequently amended, and the relevant legislation, as well as if the conditions stipulated in art. 3, art. 4 and art. 9 of this law, and the building that is the subject of the pre-contract is registered in the fiscal role and in the land book. The provisions of art. 5 of Law no. 17/2014, legal text which, from the perspective of art. 20 of the same normative act (as it was created following the Constitutional Court's Decision No. 755/2014) hall apply to all pre-contracts, whether prior to or after the entry into force of this Act, that they are concluded in the form of a document in private or in authentic form.

Therefore, in order for the action to be admissible, the applicant must submit the opinion of the Ministry of National Defense (if the land is located at a depth of 30 km from the state border and the Black Sea coast); the opinion of the Ministry of Culture (for the lands where the archaeological sites are located, where listed sites of archaeological patrimony or areas of potentially archaeological potential have been established), the opinion of the territorial or central structure of the Ministry of Agriculture and Rural Development or the certificate issued by the City Hall at the location of the land (the latter attesting the completion of the procedures necessary for the exercise of the pre-emptive right). The abovementioned law stipulates that the action will also be rejected if the complainant fails to prove that the real estate is registered for tax purposes in the land register.

4. The limitation of the action for delivery of a judgment in lieu of contract of sale

According to art. 1669 par. (2) Civ. Code, the right of action for the delivery of a judgment in lieu of contract shall be prescribed within 6 months from the date on which the sale has to be completed.

When the parties expressly promised the date on which the sales contract is to be concluded, the obligation to do of the parties can not be executed immediately, because it was postponed until the agreed date. Consequently, the obligation to conclude the sale contract and, in addition, the right to request the conclusion of the sale contract, are affected by a standstill period for the benefit of both parties. If one of the parties has refused to conclude the sale agreement on the due date, the other party is entitled to bring a civil action before the court to request a judgment to be given by the contract. As is clear from art. 2524 par. (2) Civ. Code, the limitation period of 6 months will start to run from the day after the deadline for the contract .

If the parties have not promised the date on which the sales contract has to be concluded and subsequently can not agree on it, 1182 par. (3) and art. 1415 par. (2) Civ. Code, the court may order, at the request of either party, to complete the promise with that date. According to art. 1415 par. (3) the civil request for settlement of the date shall be settled according to the rules applicable to the presidential ordinance, subject to prescription, which shall start to run from the date of promulgation. In the absence of a special legal provision, the 3-year general limitation period provided for in art. 2517 Civ. Code shall apply.

Regarding the moment when the limitation period of the action under art. 1415 par. (3) Civ. Code in which the court may be required to settle the term in which the contract is to be concluded, it flows according to the said text, from the date of the conclusion of the "contract", i.e. the promise of sale, because the obligation affected by the term is that of concluding in the future the contract prefigured by the parties by the promise made.

During the period in which the promissory-buyer is in possession of the promised asset, the prescription is interrupted, according to art. 2538 par. (2) Civ. Code. The handing over of the good to the promissory buyer and the exercise by the latter of the ownership of the promised asset is an act of tacit acknowledgment by the promissor-seller of the claim in the forced execution of the pre-contract in the way of a judgment in lieu of sale. In this case, the prescription of the right to action begins to run again when the promissory-seller expressly manifests himself in the sense of denying the promissory-buyer's right.

5. The inalienability clause

According to art. 627 par. (4) Civ. Code, the inalienability clause is understood in the conventions from which it is the obligation to pass on the property in the future to a determined or determinable person. The scope of this law was subject of controversy as to whether the promise of a translative property contract "gives rise to the obligation to pass on the property in the future", or whether this condition refers to the translative contract itself, in where, for various reasons (e.g. good future, suspensive condition, etc.), the property is not transmitted at the time of the conclusion of the contract.

This controversy was solved by art. 601 of Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code, as modified by G.E.O. no. 60/2012, according to which "in the category of

conventions provided by art. 627 par. (4) of the Civil Code, which implies the obligation to pass on the property in the future to a determined or determinable person, also includes the pre-contracts for the future transmission of the right to ownership of a movable or immovable property by concluding contracts, as the case may be, unless otherwise provided by law. "

The implicit existence of the inalienability clause in pre-contracts is not without significant practical consequences. Thus, the promissory-buyer, as a beneficiary of the inalienability clause in the pre-contract, may request the cancellation of the translative or constitutive act of real rights concluded without respecting the clause marked for opposability in the land book. In the absence of this note, the action for annulment is to be dismissed.

In order to ensure the irrevocability of the ineligibility clause, it is sufficient to note in the land book the pre-contract pursuant to art. 902 par. (2) point 12 Civ. Code, without the necessity of enforcing the ineligibility clause under art. 902 par. (2) point 8 Civ. Code. This text applies only to the situation of expressive inalienability.

Conclusions

The forced execution in nature of the promise of sale takes on the atypical form of the contract which, by virtue of its particular nature of the form of execution in nature of the contracts, has a number of peculiarities which translate into the substantial plan by the conditions to be met for obtaining of such a judgment.

Interpretation of the legal framework in the matter of the contract decision may reveal difficulties such as those we have dealt with in the foregoing.

With regard to the value of the stamp duty the market value of the good is preferable. The value of the movement of the good is related to the time of the filing of the petition. If the amount indicated by the claimant is contested, the amount shall be determined by the documents submitted and the explanations given by the parties, according to art. 98 par. (3) Civ. Proc. Code in which the data on the taxable value of the asset or, where appropriate, the grids of the notaries public could be used.

With regard to the conditions to be met for the award of a contract, they are: the conclusion of a valid pre-contract and the fulfillment of the terms of the sale at the date of the delivery of the contract (including the condition that the property be retained in the promise of the seller at the date the award of the contract which takes place); the applicant has fulfilled his promised obligations; the unjustified refusal of one of the parties to conclude the promised contract. To these substantial conditions are added formal obligations established by the law regarding the submission of the land book excerpt on the immovable property subject to the promise of sale, the fiscal certificate certifying the payment of all payment obligations due to the local budget and the proof of current debts of the contribution rates to the owners' association.

According to art. 1669 par. (2) Civ. Code, when the parties expressly promised the date on which the contract of sale must be concluded and one of the parties refused to conclude the contract of sale on the established date, the other party has the right to address to the court, to file an application in civil matters, requesting a decision to be taken, within 6 months of the date fixed for the conclusion of the contract.

If the parties have not promised the date on which the sale contract has to be concluded and subsequently can not agree on it, 1182 par. (3) and art. 1415 par. (2) Civ. Code, the court may order, at the request of either party, to complete the promise with that date. Regarding the moment when the limitation period of the action under art. 1415 par. (3) Civ. Code in which the court may be required to settle the term in which the contract is to be concluded, it flows according to the said text, from the date of the conclusion of the "contract", i.e. the promise of sale, because the obligation affected by the term is that of concluding in the future the contract prefigured by the parties by the promise made.

Under art. 627 par. (4) Civ. Code, the inalienability clause is understood in the conventions from which it is the obligation to pass on the property in the future to a determined or determinable person. The implicit existence of the inalienability clause in the pre-contracts entitles the promissory-buyer, as a beneficiary of the inalienability clause in the pre-contract, to demand the cancellation of the translative or constitutive act of real rights concluded without respecting the clause marked for opposability in the land book.

References

- G. Boroi, M. Stancu, Drept procesual civil, Ed. Hamangiu, 2017;
- G. Boroi (coord.), O. Spineanu-Matei, D. N. Theohari, A. Constanda, M. Stancu, C. Negrilă, D.M. Gavriș, V. Dănăilă, F.G. Păncescu, M. Eftimie, Noul Cod de procedură civilă. Comentariu pe articole, vol. I, Ed. Hamangiu, 2016;
- G. Boroi, C.A. Anghelescu, B. Nazat, „Curs de drept civil. Drepturile reale principale", ed. a II-a, Ed. Hamangiu, 2013;
- I.F. Popa, „Promisiunile unilaterale și sinalagmatice de înstrăinare imobiliară", în Revista Română de Drept Privat nr. 5/2013, pp. 146-189;
- R. Dincă, „Promisiunea de a vinde un teren agricol situat în intravilan", Revista Română de Drept Privat nr. 3/2015, pp. 46-77.
- I. Urs, Condiţiile cerute pentru pronunţarea unei hotărâri judecătoreşti care ţine loc de contract în materia promisiunilor de vânzare, Pandectele Romane 10/2015.