

ASSIGNMENT OF DEBTS AS PROVIDED BY THE NEW CIVIL CODE

CĂTĂLIN BOGDAN NAZAT*
IRINA ANGHEL**

Abstract

Assignment of debts is a procedure based on which a debt is transferred from an original creditor to a new creditor. This procedure consists in a bipartite agreement (free of charge or for consideration) concluded between the original creditor (acting as assignor) and the new creditor (acting as assignee); the debtor is not part of the agreement. Nevertheless, according to the provisions of the New Civil Code¹, there are certain situations when the consent of the debtor is required (e.g. the debt is essentially related to the assignor's person).

As mentioned above, the main function of the debts assignment consists in transferring the debt. However, the doctrine and jurisprudence have revealed other functions of this legal procedure, e.g. payment of a debt that the original creditor (assignor) owes to the new creditor (assignee), guarantee the achievement of a receivable.

Although extensively treated by Romanian scholars, the provisions of the New Civil Code bring certain amendments as regards the procedures to be observed in case of an assignment of debts. The purpose of this paper is to highlight the amendments brought by the New Civil Code and to explain their impact on the procedure under discussion.

Key words: assignment of debt, debt assignment, debt, assignor, assignee, creditor, original creditor, debtor, New Civil Code, transfers.

Introduction

A common business practice whereby a creditor in need of cash assigns his debt in exchange of the immediate cashing-in of its price or gives it for payment to his own creditor, assignment of debts dates back to the primitive law. Thus, according to Roman jurists, *inter vivos* transfer of a debt was in theory incompatible with the purely personal idea of the obligation rapport, both in terms of the active subject (creditor's right) and of the passive subject (debtor's obligation). For Roman jurists, debtor's obligation was inseparable from the person of the creditor as the beneficiary of the obligation, in exactly the same way as the creditor's right was inseparable from the person of the debtor from whom the creditor was entitled to claim a benefit, to the extent that substitution of either of them could only take the form of a novation, that is by replacing the old rapport coming to extinction by a new rapport having as object a new obligation, given that it was in the charge or in the benefit of another person².

After a long evolution³, modern law has finally come to accept the possibility of a direct transfer of the debt as an asset (alike any other proprietary item) under an agreement concluded between the original creditor and the person substituting him.⁴

** Lecturer, Ph.D, Law Faculty, "Nicolae Titulescu" University, Bucharest, (e-mail: irina.anghel.law@gmail.com)

¹ Law no. 287/2009, published in the Official Gazette of Romania, Part I, No. 511 of 24 July 2009;

² Ioan Adam on www.legalis.ro, excerpt of a work regarding the assignment of debts, a quote from D. Alexandresco, *Theoretical and practical explanation of the Romanian civil law by comparison with old legislation and main foreign legislation*, vol. VIII, p. 780.;

³ The idea of a debt assignment in the true sense of the term was recognised during the reign of Emperor Justinian. The French Civil Code of 1804 recognised fully and regulated the debt assignment, seen as a sale and buy

In this essay, we intend to highlight the changes brought to the assignment of debts, seen as a means of transmission of obligations, by the New Civil Code.

Similarly to other civil law institutions, in the case of assignment of debts, too, the New Civil Code has felt the need to respond to doctrinaires by including provisions on which they have delivered opinions over the time.

Definition. Relevant provisions. Also known by the name of “debt conveyance”⁵ in the relevant doctrine, the assignment of debts is the agreement under which the creditor transfers his right to claim (*drept de creanță* in Romanian language) to another person⁶. The creditor transferring his right is called *assignor* (*cedent* in Romanian language), the person acquiring the creditor’s right under the assignment agreement is called *assignee* (*cesionar* in Romanian language), and the debtor of the assigned debt is called *assigned debtor* (*debitor cedat* in Romanian language). Although the agreement produces its effects with respect to three persons (assignor, assignee and assigned debtor), the only parties in the agreement are actually the assignor and the assignee; the assigned debtor being third party to the assignment agreement⁷.

While the Old Civil Code⁸, in force at the date of this paper, regulates the assignment of debt in respect of the sale - purchase agreement (Articles from 1391 through 1398 and Articles from 1402 through 1404), the New Civil Code devotes an entire chapter to the institution in question – *Title VI Transmission and Conversion of Obligations, Chapter I – Assignment of debts, Articles 1566-1592*. The provisions under Articles from 1566 to 1586 are establishing the general framework of the debt assignment, while Articles from 1587 through 1592 are dealing with the assignment of debt incorporated into registered, promissory or a bearer security.

Terms of the Assignment of debts. While until the passing of the New Civil Code, the only debt assignment expressly regulated was the assignment of debt for consideration in the form of a sale – purchase agreement⁹, the new Civil Code comes to answer the doctrine by implementing what it has unanimously accepted in the specialised literature. Thus, according to the provisions of Article 1567 of the New Civil Code, debt assignment may be both for consideration and for free. If the debt assignment is for free, the validity conditions established in the matter of donation contract must be observed¹⁰. Also, in the case of assignment of debt for consideration, the parties must comply with the legal provisions governing the type of instrument chosen by them for the execution of the obligation (sale – purchase agreement, exchange agreement etc.).

Since the assignment of debt is a bipartite agreement concluded between the assignor and the assignee, where the simple will as such of the parties is enough to ensure its valid conclusion¹¹, the consent of the assigned debtor is, in principle, not required. However, the New Civil Code establishes the obligation to obtain the consent of the assigned debtor, for the assignment to be effective even between the assignor and the assignee, there where, as the case may be, the debt is essentially linked to the creditor’s person.

transaction. For details, see Liviu Pop, *Civil Law Treaty. Obligations. Vol. I. General legal regime* (Bucharest: CH Beck, 2006), pages 217 and 218;

⁴ Ioan Adam on www.legalis.ro, excerpt of a work regarding the assignment of debts;

⁵ Liviu Pop, *cited work*, p. 223

⁶ Costatin Stătescu and Corneliu Bîrsan, *Civil Law. General obligations theory*, (Bucharest: Hamangiu 2008), p. 363;

⁷ Liviu Pop, *cited work*, p. 223

⁸ The former Romanian Civil Code was adopted in 1864 and came in effect on 1 December 1865;

⁹ Liviu Pop, *cited work*, p. 224. Cristina Zamșa, *Civil Law. General obligations theory. Workshop manual*. CH Beck Publishing, 2010, p. 165;

¹⁰ Supreme Court, Commercial Section, Decision no. 5103 of 28 October 2010;

¹¹ Prahova Tribunal, decision No. 101 of 27 January 2010;

As regards the object of the assignment, basically, any debt may be subject of debt assignment, and not only the debts having a pecuniary value (i.e. debts that have as their object a sum of money)¹². Moreover, a debt assignment may cover both present and future debts. For the latter category, the New Civil Code has expressly provided that the deed of assignment should include elements allowing the identification of the debt so assigned. Future debt is deemed transferred right upon the execution of the assignment agreement, and not from the time the debt as such is born.

However, there are categories of debts declared by law as unassignable, such as, for example, the alimony¹³, the debts arising from a mutually binding agreement - synallagmatic agreement (unassignability, in this case, comes from the fact that the creditor is concomitantly a debtor, these two functions being inseparable)¹⁴.

With regard to assignment of debts that have as object other obligation than the payment of an amount of money, the New Civil Code provides that such assignment may only take place unless the obligation subject to the assignment becomes substantially more onerous for the assigned debtor.

Although not regulated by the Old Civil Code, yet unanimously accepted by the doctrine¹⁵, conventional unassignability is explicitly regulated under Article 1570 of the New Civil Code. Thus, debt assignment may be prohibited or restricted by assignor and debtor by an express clause incorporated in the text of the legal instrument giving birth to the debt. Nevertheless, even in the case of conventional unassignability, debt assignment may still have effects on the assigned debtor, if: (i) the debtor has consented to the assignment, (ii) the prohibition is not expressly stipulated in the document acknowledging the debt and the assignee was not aware nor was he expected to be aware of the existence of such prohibition as at the time of assignment, (iii) the assignment deals with an obligation to pay an amount of money.

Further on, the New Civil Code resumes the provisions of Article 1391 of the Old Civil Code and establishes under Article 1574 an obligation *to do* (*obligație de a face* in Romanian language) on the part of the assignor, whereby the assignor is required to submit to the assignee the deed acknowledging the existence of the debt, held by the debtor, as well as any other documentary proofs of the right being assigned. With regard to this obligation, the relevant doctrine has rightfully established, in our opinion, that failure of the assignor to fulfil this obligation entitles the assignee to abstain to fulfil his own obligations and to claim a rescission of assignment in court, there where the assignment has occurred under a mutually binding agreement¹⁶.

Partial assignment. Governed by Article 1571 of the New Civil Code, partial assignment occurs when the assignor assigns only a part of his debt towards the debtor. Partial assignment can always take place when the debt deals with payment of an amount of money. Therefore, when the subject of a debt is other than a pecuniary benefit, such debt can be transferred provided only that the debt is divisible and unless it becomes more onerous for the debtor after the transfer.

In the case of partial assignment, the assignor's obligation to handover the document acknowledging the debt ceases, the assignee being entitled to receive a notarized (authenticated) copy of such document and to have the assignment mentioned and duly signed by both parties on the original document. If after the partial transfer the assignee acquires the rest of the debt as well, thus becoming the sole creditor of the assigned debtor, the assignor shall have the obligation to submit the document acknowledging the debt.

¹² For more details, see Liviu Pop, *cited work*, p. 226;

¹³ Constantin Stătescu, Corneliu Bîrsan, *cited work*, p. 363. Liviu Pop, *cited work*, p. 226;

¹⁴ Gabriel Boroi, *Civil Law. General part. Persons*. Forth Edition, revised and completed. Hamangiu Publishing, 2010, p. 53. The author considers also that any party in the synallagmatic agreement may, in principle, make an assignment in favour of a third party (a debt, in this case), subject only to prior consent of the other party in the agreement;

¹⁵ Liviu Pop, *cited work*, p. 227;

¹⁶ Liviu Pop, *cited work*, p. 239;

Opposability of the assignment of debts. As mentioned above, the validity of debt assignment does not, in principle, depend on obtaining the prior consent of the assigned debtor, as the assigned debtor is a third party in relation to the agreement between the assignor and the assignee. However, for the debt assignment to become enforceable also against all categories of third parties, including the assigned debtor¹⁷, certain publicity formalities need to be fulfilled, as follows:

a) *Acceptance of assignment by the assigned debtor* - regulated by Article 1578 paragraph (1) letter (a) of the New Civil Code, meaning that the assigned debtor has been made aware of the assignment occurring between his original creditor and the new creditor¹⁸.

Under the new regulation, in order to be enforceable against all categories of third parties, the acceptance by the assigned debtor has to take the form of a writ carrying a certified date (*dată certă* in Romanian language).

Under the former regulation, acceptance by the debtor had to be given in the form of an authenticated document, in order to become enforceable against all categories of third parties¹⁹. However, the doctrine and, in particular, the jurisprudence have admitted that the consent may also be given in the form of a deed made under private signature, or even tacitly²⁰, yet, in this case, the assignment is enforceable only against the assigned debtor.

Basically, by the new regulation the lawmaker has intended to satisfy the longstanding practice in this matter, according to which what the law sought by requiring that acceptance of the assignment should derive from an authentic act was not to confer the acceptance as such the character of solemn formality, but to establish the certainty of the date of acceptance, since it is the date that establishes the precise moment in time when the assignment can be deemed to have actually occurred in relation to third parties; in other words, an acceptance, even if given in the form of a deed made under private signature and registered with a public authority and, thus, acquiring a certified date, is sufficient to ensure compliance with the provisions of Article 1393 Civil Code²¹.

b) *By written notice to the assigned debtor* (Article 1578 paragraph (1) letter (b) of the New Civil Code). Written notice submitted by the assignor or the assignee is another way by which the assigned debtor may be made aware of the debt assignment.

Notice may be given on paper or electronic support and must necessarily specify the following information: identification data of the assignee, identification of the debt being assigned and, in the case of partial assignment, the extent of the assignment. Most of the times, notification takes the form of an order of payment (*somație de plată* in Romanian language) sent through a bailiff, especially in cases where the debt is or has become due²².

To protect the assigned debtor against possible frauds, the New Civil Code gives him the possibility, upon receipt of a notification from the assignee, to request the latter to produce a written proof of assignment, failing which renders the notification given by the assignee ineffective. Moreover, the assigned debtor is entitled to suspend payment pending receipt of such proof.

c) *Notification submitted together with the application of summons (cererea de chemare în judecată* in Romanian language). This way of notification of assignment of debt to the assigned

¹⁷ Supreme Court, Commercial Section, Decision No. 75 dated 13 January 2006 "Debt assignment is not enforceable against the assigned debtor as long as the formalities required by law regarding notification and acceptance are not fulfilled...";

¹⁸ Constantin Stătescu, Corneliu Bîrsan, *cited work*, p 364;

¹⁹ Article 1393 of the Old Civil Code stipulates: "(1) Assignee may not enforce his right against a third party unless he has notified the debtor about the assignment. (2) The same effect applies also in the case of acceptance of assignment by the debtor under an authenticated deed";

²⁰ Liviu Pop, *Cited work*, p 230. Corneliu Bîrsan, Constantin Stătescu, *cited work*, p. 364;

²¹ Cas. II, Civil decision No. 915 of 22 November 1937;

²² Liviu Pop, *cited work*, p 228;

debtor reveals from the provisions of Article 1580 of the New Civil Code, establishing that when the assignment is communicated together with the application of summons against the debtor, the latter may not be required to pay legal charges, if he pays the debt before the date of the first hearing, unless, at the time of notification of assignment, the debtor is already in default.

The analysis of the above mentioned article reveals that the assignee, upon submitting the application of summons, also provides the court with the agreement executed with the original creditor. The court thus invested, once having satisfied itself that all legal requirements regarding the application of summons are met, establishes the date of the first hearing and orders the summoning of the assigned debtor, while submitting the assigned debtor copies of the application of summons and of other documents in the case file.

d) *Registration of assignment in the Electronic Archive of Secured Movables (Arhiva Electronică de Garanții Reale Mobiliare* in Romanian language). This method of debt assignment publicity, regulated by Law no. 99 of May 26, 1999 on some measures for accelerating economic reform²³ and extensively tackled by specialized doctrine, is now expressly regulated by the New Civil Code under the articles regarding assignment of a universality of debts, on one hand, and successive assignments, on the other hand.

Thus, according to the provisions of Article 1579 of the New Civil Code, assignment of a present or future universality of debts is not enforceable against third parties unless it is registered in the Electronic Archive of Secured Movables. However, debt assignment becomes binding on assigned debtors only from the moment of its communication. Therefore, in the case of assignment of a universality of debts we are dealing with a complex, two-step procedure. On the one hand, we are dealing with the obligation to notify third parties other than the assigned debtors, by registering the assignment in the Electronic Archive of Secured Movables, and, on the other hand, the obligation to communicate the assignment to the assigned debtors by any of the means of notification provided by law and described herein.

As regards the successive assignments, Article 1583 paragraph (2) of the New Civil Code provides that the prevailing assignee is the one who registered the first the assignment in the Electronic Archive of Secured Movables, irrespective of the date of the assignment or of the date of communication thereof to the debtor.

Effects of debt assignment. It should be noted that the assignment of debts has, first and furthestmost, the same effects as the effects normally associated with the type of the legal instrument enshrining the assignment: sale – purchase agreement, donation, exchange agreement etc. Secondly, debt assignment produces a number of specific effects on the parties in the assignment, on the one hand, and towards third parties, on the other hand²⁴. Third parties in a debt assignment transaction are: (i) the assigned debtor, (ii) the subsequent and successive assignees and (iii) the creditors of the assignor.

For purpose of this paper we will confine our analysis to the effects of debt assignment: a) between the parties; and b) between the assignee and the assigned debtor.

a) *Effect of debt assignment between the parties.* Between the parties, the main effect of the debt assignment is the transfer of the debt from the patrimony of the assignor into that of the assignee, with the debt retaining its civil or commercial nature²⁵. Thus, the assignee acquires all of the rights that the assignor enjoys in relation to that debt. The assignee may ask the assigned debtor

²³ Published in the Official Gazette of Romania no. 236 of 27 May 1999;

²⁴ For more details on effects of assignment on third parties see Liviu Pop, *cited work*, p. 236. Corneliu Bîrsan, Constantin Stătescu, *cited work*, p. 365;

²⁵ Prahova Court Tribunal, civil decision No. 101 of 27 January 2010;

to pay the debt at its par value, regardless of the price paid to the assignor and irrespective of whether the assignment was for consideration or for free²⁶.

According to the provisions of Article 1568 of the New Civil Code, the assignment of debt will result not only in the transfer of all of the rights enjoyed by the assignor in connection with the debt, but also in the transfer of the guarantees and accessories associated to the debt²⁷. However, when payment is secured by a pledge on a movable asset, the assignor cannot surrender the pledged asset to the assignee without the consent of the pledgor. Where the consent of the pledgor cannot be obtained or the pledgor raises objections, the pledged asset remains in the assignor's custody.

Suppose that, in the lapse of time from when the agreement between the assignor and the assignee is concluded and the time when the debt assignment becomes enforceable against the assigned debtor, the assigned debtor makes payments to the original creditor (the assignor), the assignee is entitled, in this case, to claim and receive all that the assignor receives from the assigned debtor. Moreover, under the same circumstances, the assignee is entitled to take actions in order to conserve the assigned right, such as, for example, interruption of the course of extinctive prescription.

The assignee, once acquiring the debt as is in the assignor's patrimony, shall be entitled to receive all the interest amounts and any other proceeds associated with the debt as are due from the moment of assignment²⁸. Also, according to Article 1576 of the New Civil Code, unless the assignor and the assignee agree otherwise, the latter is entitled to charge interest and any other debt-related proceeds, which are due but not yet collected by the assignor by the date of assignment.

Where the debt is assigned for consideration, the assignor has also a guarantee obligation to the assignee. Therefore, according to the provisions of Article 1585 of the New Civil Code, the assignor is obliged to guarantee the existence of the debt and its accessories as of the date of the assignment²⁹. In other words, the assignor is obliged to guarantee that at the time of the assignment agreement, the debt being assigned is actually existent, that the assignor is the holder of the debt as such, and that no debt extinction³⁰ has occurred to that date, such as, for example, debt payment or an extinctive prescription.

According to the same Article 1585 of the New Civil Code, the assignor is not liable for the assigned debtor's creditworthiness (*solvabilitate* in Romanian language). It means that, if the assignee cannot obtain payment from the assigned debtor due to the latter's insolvency, the assignee has no right of recourse against the assignor³¹. However, if at the time of debt transfer, the assignor was aware of the assigned debtor's insolvency, the former shall be held liable in the same way as a bad-faith seller is liable for hidden flaws in the sold good.

Nevertheless, given that the rules of guarantee described above are suppletive, the parties may amend them through explicit provisions, called *conventional guarantee clauses*³². Such clauses may enhance or restrict the obligation to guarantee.

Under a provision for enhanced warranty obligation, the assignor undertakes to also warrant for the creditworthiness of the assigned debtor. By an express provision to that effect, the assignor may further undertake to warrant the future solvency of the assigned debtor; otherwise, it is presumed that only the creditworthiness of assigned debtor as at the time of assignment is warranted.

Regardless of the extent of the warranty for the assigned debtor's creditworthiness, the assignor's liability is strictly limited to the price of the assignment plus any expenses incurred by the assignee in connection thereof (Article 1585 paragraph (3) of the New Civil Code).

²⁶ Liviu Pop, *cited work*, p 237;

²⁷ Liviu Pop, *cited work*, 236;

²⁸ Liviu Pop, *cited work*, 237;

²⁹ Corneliu Bîrsan, Constantin Stătescu, *cited work*, p. 366;

³⁰ Corneliu Bîrsan, Constantin Stătescu, *cited work*, p. 366;

³¹ Liviu Pop, *cited work*, p. 240;

³² Corneliu Bîrsan, Constantin Stătescu, *cited work*, p. 367;

By a limitation clause the parties may restrict the warranty obligation of the assignor under the law, releasing the assignor from any such obligation³³.

The assignor under a debt assignment for free may not be held liable for guaranteeing the existence of the debt at the time of the transfer or the assigned debtor's creditworthiness. Also, in this case, the parties may agree to establish warranty obligations on the part of the assigned debtor.

However, even where the parties agree to limit the assignor's guarantee obligation, the assignor shall nevertheless be held liable to the assignee for the impossibility of the assignee to acquire the debt in its own patrimony or to make the debt enforceable against third parties due to a personal fault of the assignor. In this case, too, the assignor shall be held liable in just the same way as a bad-faith seller is liable for hidden flaws in the sold good (Article 1586 of the New Civil Code).

In case of a partial assignment, where both the assignor and the assignee are the creditors of one and the same debtor, they will be paid proportionally with the value of each one's debt. This rule applies also in the case of assignees acquiring the same debt in common (Article 1584 of the New Civil Code).

b) *Effects of debt assignment between the assignee and the assigned debtor.* With regard to assigned debtor, debt assignment becomes effective only after fulfilling the publicity procedures, even where there are reasons to believe that the assigned debtor may have indirectly found out about the existence of the assignment agreement³⁴. Until the publicity procedures are fulfilled, even if the debt assignment is effective between assignor and assignee, it will not be enforceable against the assigned debtor as well, the latter having the freedom to simply ignore the assignment of the debt and proceed to valid payment thereof directly in the hand of the assignor.

According to the provisions of Article 1582 of the New Civil Code, the assigned debtor may oppose the payment made to the assignor, before the assignment becomes enforceable against him as well, or of any other causes of extinction of obligations as may have occurred to that date, whether or not the assigned debtor is aware of the existence of other assignments. If court proceedings are commenced against the assigned debtor by the assignee, the assigned debtor can defend himself by presenting proofs of payment, obtained from the assignor following the payment, even if the proof is bearing a later date than the date of assignment, provided however that proof must bear a date before the date of notification or acceptance of the debt assignment³⁵. Consequently, the validity of these proofs does not depend on the date on which the assignment occurs, in so far as even though the debtor has paid the assignor after the date of assignment, the debtor will still be released of obligation, if the payment has been made before the fulfilment of the publicity procedures³⁶.

Moreover, the debtor may enforce against the assignee the payment made personally or by its trustee (fideiussor) in good faith to an apparent creditor, irrespective of whether the formalities required by law for enforceability of debt assignment against the debtor or other interested third parties have been fulfilled or not. Payment made to an apparent creditor is distinctly regulated by the New Civil Code under Article 1478³⁷, whereby payment made in good - faith to an apparent creditor is deemed a valid payment, even if it is later determined that the apparent creditor was not the true creditor.

After fulfilling the publicity procedures, the assigned debtor becomes the debtor of the assignee and, consequently, he may make a valid payment only directly in the hand of the assignee. Also, according to Article 1582 of the New Civil Code, where the debt assignment has become enforceable against the debtor following acceptance, the assigned debtor can no longer enforce

³³ Corneliu Bîrsan, Constantin Stătescu, *cited work*, p. 366;

³⁴ Prahova County Tribunal, civil decision No. 101 of 27 January 2010;

³⁵ Liviu Pop, *cited work*, p. 243. ;

³⁶ Prahova County Tribunal, civil decision No. 101 of 27 January 2010;

³⁷ Article 1478 of the New Civil Code– "(1) Payment made in good faith to a known creditor is a valid payment, even if later it is determined that the known creditor was not the true creditor. (2) The known creditor shall be held liable to refund the true creditor the payment received, as per the rules regarding restitution of obligations";

against the assignee the compensation³⁸ which he could otherwise invoke in relation with the assignor. While Article 1582 refers strictly to the case where enforceability of debt assignment occurs through acceptance of assignment by the assigned debtor, this article is further expanded by the provisions of the second paragraph of Article 1623 of the New Civil Code, according to which a debt assignment which is not accepted by the debtor but which has nevertheless become enforceable against him by any of the other means permitted shall only prevent the netting off (compensation) of those debts of the original creditor that are subsequent to the date the assignment has become enforceable against the debtor.

Note should be made that, in case of successive assignments, the debtor is released of obligation by making the payment under the assignment that has first been communicated to him or which the debtor has accepted first by a written document with certified date.

Assignment of a debt established by registered securities, promissory or bearer securities.

Assignment of a debt established by a credit instrument is now explicitly regulated by the New Civil Code, in the Articles from 1587 to 1592. By their circulation, credit instruments are divided into: registered, promissory notes or bearer securities.

According to Article 1587 of the New Civil Code, to transfer debts incorporated in registered, promissory or bearer securities, the simple free will of the parties is not suffice; the New Civil Code establish a set of rules governing such transfers:

a) in the case of registered securities (*titluri nominative* in Romanian language), the transfer of right by assignment of the debt must be specified both on the transfer document and in the register kept for this purpose by the issuer.

b) in respect of promissory securities (*titluri la ordin* in Romanian language), the endorsement is mandatory, i.e. the assignor (endorser) must sign on the back of the document, specifying (optional) the name of the assignee (endorsee) followed by the handing over of the title³⁹.

c) in the case of bearer securities (*titluri la putător* in Romanian language), the debt contained by the bearer security is transferred by the simple physical remittance of the title, with the debtor following to make payment to the bearer of the title. In the case of misappropriation of a bearer security, the person deprived of the security cannot prevent the debtor from paying the debt to the person who produces the security concerned, other than by a court sentence delivered to this effect.

Conclusion

It is our view that, by its provisions in the field of assignment of debts, the New Civil Code successfully clarifies most of the inconstancies occurred in the past between the legal provisions and the legal practice.

Furthermore, the New Civil Code provides an answer to the critics formulated by Romanian scholars to the former regulation of assignment of debts in the Old Civil Code, by implementing through its provisions most of the suggestions formulated in the doctrine.

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³⁸ Compensation is regulated by the New Civil Code under Title VII – Extinguishment of Obligations, Chapter II, Articles 1616 – 1623;

³⁹ Liviu Pop, *cited work*, p 235.

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