OPTION AGREEMENT. PROMISE OF SALE. RIGHT OF PRE-RECEPTION

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Abstract: *In the case of the option pact regarding a sales contract on a determined individual asset (cert), between the date of conclusion of the pact and the date of exercise of the option or, as the case may be, that of the expiration of the option term, the asset that constitutes the object of the pact cannot be disposed of. The right of pre-emption is a priority right to purchase recognized by law for certain persons. The right of pre-emption is different from the right of preference which has a contractual nature. The right of preemption is a variant of the unilateral promise to sell, but in this situation the owner of the thing does not oblige himself to sell, but only to give preference to a person if he decides to sell a certain thing.*

Keywords: *preemption, option agreement, preemptor, preference.*
JEL Classification: *K0, K1.*

The sale-purchase contract produces effects from the moment of conclusion, i.e. from the moment of consent, the realization of the agreement of will of the parties on the good and the price, even if the thing has not been handed over and the price has not been paid yet, if the law does not provide or the parties I do not agree otherwise.

There are situations when, at the conclusion of the contract, the parties only assume the obligation to conclude the sale-purchase contract in the future. Thus, the situations are: the option pact; promise to sell; right of preemption.

a) the option agreement regarding the sale-purchase contract.

According to art. 1668 of the Civil Code, in the case of an option agreement regarding a contract for the sale of a specific individual asset (cert), between the date of conclusion of the agreement and the date of exercise of the option or, as the case may be, that of the expiration of the option term, no of the good that constitutes the object of the agreement.

Characteristics:

- the option agreement is a type of offer;
- the option agreement must contain the elements of the future contract that will be concluded;
- the option pact cannot be revoked unilaterally by the obligee;
- the beneficiary exercises his right to option in the sense that he accepts the promise made.

In the case of the sale with the right of option, the contract will be concluded by exercising the right of option by the beneficiary of the agreed pact.

The legal status of the asset is regulated during the existence of the pact and until the expiration of the option term, the asset cannot be alienated.

When the agreement concerns tabular rights, the option right is noted in the land register. The pact must be recorded in the land register, an operation that signifies the prohibition of the sale by the bidder to another person. If the beneficiary refuses the offer within the time frame set for the option, the bidder can ask for the notation to be deleted from the land register.

The right of option is canceled ex officio if, by the expiration of the option term, a declaration of exercise of the option has not been registered, accompanied by proof of its communication to the other party.

By reference to the provisions of art. 1278 of the Civil Code, the option agreement includes an irrevocable offer to contract, which in principle belongs to the owner, having the

effect of making the asset unavailable for this period until the exercise of the option, but no later than the expiration of the term fixed for option.

The object of the option agreement is the obligation to give, to transmit the ownership of a building by exercising the option to buy.

If the beneficiary accepts the offer, i.e. from the moment the pact is concluded, the offeror cannot go back on the offer to sell.

When the parties agree that one of them remains bound by their declaration of will, and the other can accept or refuse it, that declaration is considered an irrevocable offer and produces the effects provided for in art. 1191[12].

If the parties have not agreed on a deadline for acceptance, it can be established by the court by presidential ordinance, with the summons of the parties.

The option pact must contain all the elements of the contract that the parties aim to conclude, so that it can be concluded by the simple acceptance of the beneficiary of the option.

The contract is concluded by exercising the option in the sense of acceptance by the beneficiary of the declaration of intent of the other party, under the conditions agreed by the pact.

Both the option agreement and the declaration of acceptance must be concluded in the form prescribed by law for the contract that the parties seek to conclude.

b) The promise to sell and the promise to buy

A unilateral promise to sell is a contract by which a party called the promisor undertakes to sell a good, at a determined price, to the other party called the beneficiary, who accepts the promise.

The unilateral promise to sell or the "option to sell" or the promise to buy, represents a contract by which one party, the "promisor", undertakes to the other party, the "beneficiary", to sell him a certain good, on the day in which the latter will decide to buy it (Chirica, 1997, p.18).

The unilateral promise to sell should not be confused with the offer to contract (policy)[13],
because the first is a contract, while the second (offer) is only a unilateral manifestation of will, which may or may not be accepted by its recipient. Consequently, an option to sell cannot be withdrawn, unlike an offer which can be withdrawn before it is accepted by the offeree.
The promise to sell is not a contract of sale, being in fact a pre-contract[14].

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[12] Art. 1191 of the Civil Code
Irrevocable offer
The offer is irrevocable as soon as its author undertakes to maintain it for a certain period. The offer is also irrevocable when it can be considered as such based on the agreement of the parties, the established practices between them, the negotiations, the content of the offer or customs.
The declaration of revocation of an irrevocable offer has no effect.
Art.1192 The term of acceptance
The term of acceptance runs from the moment the offer reaches the recipient.

[13] A solicitation is an offer to contract, that is, an offer made to a person or the public to enter into a contract under certain conditions.

[14] Decision no. 12 of the ÎCCJ appealed in the interest of the law, published in M. Of. no. 678/07.09.2015.
Admits the appeal in the interest of the law formulated by the Management Board of the Suceava Court of Appeal and, consequently, establishes that:
In the interpretation and application of the provisions of art. 1073 and art. 1077 of the Civil Code of 1864, art. 5 para. (2) from title X of Law no. 247/2005 regarding the reform in the fields of property and justice, as well as some adjacent measures, art. 1.279 para. (3) thesis I and art. 1,669 para. (1) of the Civil Code, in the situation

According to art.1279 of the Civil Code, the promise to contract must contain all those clauses of the promised contract, without which the parties could not execute the promise.
In case of non-fulfillment of the promise, the beneficiary has the right to damages.
If the beneficiary opted and accepted the purchase of the good but the promisor sold the good or it no longer exists, the beneficiary has the right to damages to cover the damage suffered.
If the promisor sold the asset to a third party with his complicity, the beneficiary of the preferential agreement can bring an action to cancel the sale.

Likewise, if the promisor refuses to conclude the promised contract, the court, at the request of the party that has fulfilled its own obligations, can pronounce a decision that takes the place of the contract, when the nature of the contract allows it, and the requirements of the law for its validity are fulfilled. The provisions of the paragraph are not applicable in the case of the promise to conclude a real contract, if the law does not provide otherwise.
The agreement by which the parties undertake to negotiate in order to conclude or modify a contract does not constitute a promise to contract.

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where the promisor-seller has promised the sale of the entire building, although he does not have the capacity of its exclusive owner, the promise of sale cannot be executed in kind in the form of the pronouncement of a court decision that takes place by sales contract for the entire asset, in the absence of the consent of the other co-owners.

Mandatory, according to art. 517 para. (4) of the Civil Procedure Code.

Pronounced in public session, today, June 8, 2015. Decision no. 21/2016 of the ÎCCJ resolving some legal issues, published in M. Of. no. 774/04.10.2016.

It rejects, as inadmissible, the referral made by the Vâlcea Court — Civil Section I, in File no. 3.117/223/2014, regarding the pronouncement of a preliminary decision for the resolution of the following legal issue: the admissibility of the action for the pronouncement of a court decision that will take the place of an authentic deed of sale and purchase of an urban land, in the situation where the immovable property that is the object the bilateral promise of sale-purchase is not registered in the land register, as it results from the corroboration of the provisions of art. 57 of the Government Emergency Ordinance no. 80/2013 regarding judicial stamp duties, with subsequent amendments and additions, art. 35 para. (1) and art. 36 para. (2) from the Cadastre and Real Estate Advertising Law no. 7/1996, republished (3), with subsequent amendments and additions, art. 2 para. (1) from Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural land located outside the village and to amend Law no. 268/2001 regarding the privatization of commercial companies that manage public and private lands of the state for agricultural purposes and the establishment of the State Domains Agency, with subsequent amendments and additions, art. 885 para. (1), 887 par. (1), art. 1.676, art. 1.279 para. (3) and art. 1,669 of the Civil Code.

Mandatory, according to the provisions of art. 521 para. (3) of the Civil Procedure Code.

Pronounced in public session today, June 13, 2016.

Details: http://legeaz.net/monitorul-oficial-774-2016/decizie-iccj-21-2016-hotarare-act-autentic-imobil-neinscris-cartea-funciară

Decision no. 24/2016 of the ÎCCJ resolving some legal issues, published in M. Of. no. 936/22.11.2016

Admits the referral made by the Giurgiu Court — Civil Section, in File No. 4 929/236/2014, regarding the pronouncement of a preliminary decision and, consequently, establishes that: The provisions of art. 5 para. (1) from Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural land located outside the city and to amend Law no. 268/2001 regarding the privatization of commercial companies that hold under management public and private state-owned land for agricultural purposes and the establishment of the State Domains Agency, with subsequent amendments and additions, applies to bilateral promises of sale and purchase regarding agricultural land located outside the city, concluded before the entry into force of this normative act, regardless of the time of notification to the court

The court may order the fulfillment of the formalities in order to obtain the approvals provided for in art. 3 and art. 9 of Law no. 17/2014, with subsequent amendments and additions, from the competent authorities and the completion of the procedure regarding compliance with the right of pre-emption provided for by art. 4 of the same normative act, during the trial.

Mandatory, according to the provisions of art. 521 para. (3) of the Civil Procedure Code.

Pronounced in public session today, September 26, 2016.

When one of the parties who concluded a bilateral promise of sale refuses, unjustifiably, to conclude the promised contract, the other party can request the pronouncement of a court decision (declaratory action to take the place of the contract, if all other validity conditions are met).

The right to action is prescribed within 6 months from the date on which the contract should have been concluded.

These provisions apply accordingly to the unilateral promise to sell or to buy, as the case may be.

The High Court of Cassation and Justice decided that the court cannot pronounce a decision that takes the place of a sale-purchase contract in the conditions where the sale-purchase promise provides for a disclaimer clause in favor of the promisor-seller and which produced the effects under the conditions stipulated by the parties[15].

In the case of a unilateral promise to purchase a specific individual good, if, before the promise has been executed, his creditor disposes of the good or establishes a real right over it, the promisor's obligation is considered extinguished (art. 1669 of the Civil Code).

In the absence of a stipulation to the contrary, sums paid under a promise to sell are an advance on the agreed price.

The unilateral promise to buy is the symmetrical opposite of the unilateral promise to sell.

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[15] Decision no. 486 of March 6, 2019 issued by the First Civil Section of the High Court of Cassation and Justice.
In reality, the promise of sale gives rise, in the responsibility of the parties, to an obligation to do, respectively, to submit all the diligence for the completion of the contract to which they have committed themselves, without this obligation usually having as consideration the payment of a sum of money (a price of the promise).
the price mentioned in the sales promise is, in fact, an advance from the agreed sale price, as stipulated in art. 1670 C. civil ("in the absence of a contrary stipulation, the amounts paid under a promise to sell represent an advance of the agreed price") and as the parties provided in the content of their agreement.
Therefore, it is erroneous to claim that the payment of the advance, made on the date of conclusion of the promise, would represent an act of its execution (and as such, the termination clause could no longer be activated) and not an anticipatory clause regarding part of the sale price that it was to be perfected.
As such, the exercise of the discretionary right, arising from the unilateral termination clause, to withdraw from the contract until the date provided for its completion (1.12.2015) was done in compliance with the provisions of art. 1276 para. (1) Civil Code, i.e. before the start of the execution of the contract and without being abusive (the notification being sent before the mentioned date and also returning both the advance received and the agreed amount, as compensation, in case of cancellation) .
- Regarding the invocation of the difference between the criminal clause and the penalty charge, of the incompatibility between a commission pact and the insertion of a clause in the contract regarding the penalty charge, the appellant's assertions are irrelevant in relation to the facts of the case, to what fixed the limits of the judgment and could be subject to judicial review. Thus, the reference to the legal nature of the amount of 100,000 euros, the restitution of which had to be made in case of non-perfection of the contract, as representing interest damages and not the double of the arvuna (to be considered the price of dispossession, in the sense of art. 1545 C. civil.), the appellant does it also in the idea of qualifying the contractual clause in dispute as a commission agreement and not a termination clause.
- In this context, in which it was correctly held by the courts of the fund that the promise of sale between the parties had a termination clause inserted in favor of the promising seller, which produced its effects in the agreed terms (being returned the amount of 100,000 euros received as advance, as well as the amount of 100,000 euros in damages) the claim of the appellant according to which the conditions for the pronouncement of a judgment that would take the place of an authentic deed of sale were fulfilled, is devoid of any legal basis. According to art. 1669 para. (1) Civil Code, text relied on by the appellant-plaintiff, for the pronouncement of such a decision and therefore, the fulfillment by the court of the consent of one of the parties, it is necessary that the latter unjustifiably refused to conclude the promised contract, hypothesis that does not exist when the party has prevailed over the effects of the clause of disclaimer stipulated in its favor.

A unilateral promise to buy is a contract by which a person, called the "promisor", firmly undertakes to buy an asset if its owner decides to sell it.

In such a situation, "mutatis mutandis" (changing what needs to be changed), the validity conditions and effects of such a contract are similar to those regarding the unilateral promise to sell.

Bilateral promise of sale and purchase

The bilateral promise of sale and purchase is that synalagmatic contract by which one of the parties called the promisor undertakes to sell and the other party called the beneficiary undertakes to buy the respective good at a determined price, through a sale and purchase contract that will be concluded later.

The bilateral promise of sale-purchase is an ante-contract, but which does not have the effect of transferring ownership of the good to be sold.

The bilateral sale-purchase promise is a preliminary contract by which the parties oblige themselves to conclude a sale-purchase contract in the future, at a set price.

The agreement by which one of the parties or both parties undertakes to conclude a certain contract in the future, the essential content of which is determined at the date of conclusion.

The pre-sale contract (promise to sell) constitutes an obligation to perform which gives rise to a right of claim, one of the parties being obliged to the other party to sell a certain asset in the future. Therefore, regardless of the form of the preliminary contract, it represents a right of claim.

The persons who concluded preliminary sales contracts in authentic form, on the one hand, and the persons who concluded preliminary sales contracts either in the form of a document under a private signature, or in the form of a document certified by a lawyer, on the other hand, having as object agricultural lands located in the outskirts, are in the same legal situation, since the legal nature of the act - pre-sale contract, the effects produced by it - the obligation to conclude the sales contact in the future, as well as the moment of concluding the pre-contracts are identical. The only difference that can be noted between these two categories of persons refers to the form of concluding the pre-contract, an aspect that is not likely to create different legal situations for the parties of these two types of pre-contract considering the fact that, regardless of its form, the effects products are the same. Thus, both the pre-contract concluded in authentic form and the unauthenticated one did not themselves transfer the right of ownership, generating only the obligation of the parties to conclude the sales contract in the future.

In relation to the particular situation of pre-contracts concluded in authentic form, the Court notes that, by Law no. 127/2013 on the approval of GEO no. 121/121/2011 for the modification and completion of some normative acts, published in the Official Gazette of Romania, Part I , no. 246 of April 29, 2013, the obligation to conclude in authentic form the promise to conclude a contract having as its object the property right over the building or another real right in relation to it, under the penalty of absolute nullity, but subsequently, art. II of Law no. 221/2013 regarding the approval of GEO no. 12/2013 for the regulation of some financial-fiscal measures and the extension of some terms and of amending and supplementing some normative acts, published in the Official Gazette of Romania, Part I, no. 434 of July 17, 2013, expressly abrogated this obligation. Therefore, during the period May 2-July 19, 2013, there was the obligation to conclude the preliminary sales contracts in authentic form, under the penalty of absolute nullity of the act. However, this legal obligation to conclude pre-contracts in authentic form did not produce any different consequence in terms of the transferable effect of ownership, considering the fact that both the pre-contract

concluded in authentic form and the one not notarized did not themselves transfer ownership[16].

The pre-contract, for the sale and purchase of a property, is a bilateral promise to contract; in case of non-execution of the assumed obligation, the liability is contractual, and the forced execution in kind, of the obligation to do, is ensured by the personal action having as its object the pronouncement of a decision that takes the place of a sale-purchase deed, subject to the limitation period.

The prescription period runs from the moment the contract is concluded, but when the promising buyer has taken over the property, its possession, with the consent of the promising seller, is equivalent to the recognition of his right.

The prescription of the right to action begins to run when the promisor-seller manifests himself expressly in the sense of denying the right of the promisor-buyer[17].

The contract will be concluded in the future and the parties have agreed on both the work and the price.

If a party at fault does not comply with the assumed obligation to conclude the sale-purchase contract, it gives the other party the right to request the resolution of the contract which constitutes the bilateral promise with damages to cover the damage suffered by the party that is not at fault .

In the absence of a stipulation to the contrary, sums paid under a promise to sell are an advance on the agreed price.

This does not mean that the parties cannot, by their will, adopt a clear and unequivocal termination clause; otherwise, the clause has a confirmatory role in the sense that in case of non-realization of the sale due to the fault of one of the parties, the other party has the choice between asking for forced execution, or putting into operation the clause of arvuna[18].

According to art. 906 of the Civil Code, the promise to conclude a contract with the object of ownership of the property or another right in relation to it can be noted in the land register, if the promisor is registered in the land register as the holder of the right that is the object of the promise, and the pre-contract, under penalty of rejection of the scoring request, provides the term in which the contract is to be concluded. The notation can be made at any

[16] Decision no. 755/2014 of the Constitutional Court published in M. Of. no. 101/09.02.2015.

[17] Ú.C.C.J., civil and intellectual property section, Decision no. 1212 of February 17, 2005
Since the pre-contract is a bilateral promise to contract, in case of non-execution of the assumed obligation, the liability is contractual, and the forced execution in kind of the obligation to do is ensured by the personal action having as its object the pronouncement of a decision that takes the place of a deed of sale- purchase, subject to the limitation period.
This term runs from the moment the agreement is concluded, but when the promisor-buyer has taken over the property, its possession with the consent of the promisor-seller, is equivalent to the recognition of his right.
In such situations, the prescription of the right to action begins to run when the promisor-seller manifests himself expressly, in the sense of denying the right of the promisor-buyer.
However, in this case, the plaintiffs-appellants took over the property with the conclusion of the preliminary sale-purchase contract of September 1, 1986, having possession of it and in , and the defendant-respondent, in response, confirms this fact, states that it recognizes the plaintiffs' right and asks for a decision to be issued that will take the place of an authentic deed of sale and purchase.
Related to these circumstances, which prove the recognition by the respondent-defendant of the right of the appellants-plaintiffs, it was wrongly held that the exception invoked, ex officio, by the first instance, is founded.
For the stated reasons, the appeal was admitted, the judgment pronounced by the court of appeal was overturned and the case was sent to the same court for retrial, with the referring court proceeding according to art. 297 (1) Civil Procedure Code.

[18] Ú.C.C.J., Civil and Intellectual Property Section, decision no. 2688 of March 27, 2007.

time within the term stipulated in the preliminary contract for its execution, but no later than 6 months after its expiration.

The promise may be revoked, if the entitled person has not asked the court to pronounce a decision that will replace the contract, within 6 months from the expiry of the term set for its conclusion or if, in the meantime, the property has been definitively adjudicated in the sale enforced by a third party who is not held liable for the promisor's obligations.

The deletion will be ordered ex officio, if, until the expiration of the 6-month period, the registration of the right that was the object of the promise was not requested, except for the case when the entitled person requested the notation of the action in the land register. Also, the promise will automatically be revoked in all cases when, until the conclusion of the contract mentioned above or until the final settlement of the action, the property has been definitively awarded in the forced sale by a third party who is not held responsible for the obligations the promisee.

The provisions of the article apply by analogy to the option agreements noted in the land register. In these cases, if, until the expiry of the term stipulated in the contract for the exercise of the option, the beneficiary of the agreement does not request, based on the declaration of option and the proof of its communication to the other party, the tabulation of the right to be acquired, the deletion will be ordered ex officio the pact signed in his favor.

c) The right of pre-emption

Another aspect of unilateral manifestation of will, regarding the sale or purchase, is what the doctrine calls the "preference pact".

The preference pact is the contract by which one of the parties - the owner of a thing - commits to another person - the beneficiary -, who accepts this promise, to prefer it under equal price conditions, if the owner decides to sell (Chirica, 1997, p.19).

The practical utility of the preference pact appears especially in the case of lease relationships, when the landlord promises the tenant, and he accepts, that he will prefer the latter, if he decides to sell the rented property.

The right of pre-emption is a priority right to purchase recognized by law for certain persons. The right of pre-emption is different from the right of preference which has a contractual nature.

The right of preemption is a variant of the unilateral promise to sell, but in this situation the owner of the thing does not oblige himself to sell, but only to give preference to a person if he decides to sell a certain thing.

The right of pre-emption is regulated by art. 1730 – 1740 of the Civil Code.

According to art. 1730 of the Civil Code, under the conditions established by law or contract, the holder of the right of preemption, called preemptor, can buy a good with priority.

The provisions of the Civil Code regarding the right of preemption are applicable only if the law or contract does not establish otherwise.

The holder of the right of pre-emption who rejected a sale offer can no longer exercise this right with regard to the contract that was proposed to him. The offer is considered rejected if it was not accepted within a maximum of 10 days, in the case of the sale of movable goods, or of a maximum of 30 days, in the case of the sale of immovable goods. In both cases, the term runs from the communication of the offer to the preemptor.

Characteristics of the right of preemption

The right of preemption is indivisible and cannot be assigned.

The sale to a third party of goods subject to preemption

The sale of the asset with respect to which there is a legal or conventional right of pre-emption can be made to a third party only under the suspensive condition of the non-exercise of the right of pre-emption by the pre-emptor.

Conditions for exercising the right of preemption

According to art. 1732 of the Civil Code, the seller is obliged to immediately notify the preemptor of the contents of the contract concluded with a third party. The notification can also be made by the latter.

This notification will include the name and surname of the seller, the description of the good, the duties that encumber it, the terms and conditions of the sale, as well as the place where the good is located.

The pre-emptor can exercise his right by communicating to the seller his agreement to conclude the sales contract, accompanied by the recording of the price at the seller's disposal[19].

The right of pre-emption is exercised, in the case of the sale of movable goods, within a maximum of 10 days, and in the case of the sale of immovable goods, within a maximum of 30 days. In both cases, the term runs from the notification to the preemptor.

Effects of exercising preemption

By exercising preemption, the sales contract is considered concluded between the preemptor and the seller under the conditions contained in the contract concluded with the third party, and the latter contract is retroactively terminated. However, the seller is liable to the third party in good faith for the eviction resulting from the exercise of preemption.

The clauses of the contract concluded with the third party with the aim of preventing the exercise of the right of pre-emption do not produce effects against the pre-emptor.

Competition between preemptors

If several owners have exercised their preemption on the same asset, the sales contract is considered concluded:

a) with the holder of the legal right of pre-emption, when it is in competition with holders of conventional rights of pre-emption;

b) with the holder of the legal right of pre-emption chosen by the seller, when he is in competition with other holders of legal rights of pre-emption;

c) if the asset is immovable, with the holder of the conventional pre-emption right that was first entered in the land register, when he is in competition with other holders of conventional pre-emption rights;

d) if the asset is movable, with the holder of the conventional right of pre-emption having the earliest certain date, when he is in competition with other holders of conventional rights of pre-emption.

Any clause that contradicts the provisions mentioned above is considered unwritten.

According to art. 1735 of the Civil Code, when the preemption is exercised regarding a good purchased by a third party together with other goods for a single price, the seller can claim from the preemptor only a proportional part of this price.

In the event that goods other than the one subject to pre-emption were sold, but which could not be separated from it without damaging the seller, the exercise of the right of pre-emption can only be done if the pre-emptor records the price set for all the goods sold .

Expiration of the obligation to pay the price

[19] Art. 1006 - 1013 of the Code of Civil Procedure

When in the contract concluded with the third party, deadlines for payment of the price have been granted, the preemptor cannot avail himself of these deadlines.

Noting the right of preemption on a property in the land register.

The conventional right of preemption in relation to a building is noted in the land register.

If such a notation has been made, the consent of the preemptor is not necessary for the one who bought under a suspensive condition to be able to register his right in the land register, based on the sales contract concluded with the owner. The registration is made under the suspensive condition that, within 30 days from the communication of the conclusion by which the registration was ordered, the preemptor does not notify the land registry office of the proof of recording the price at the disposal of the seller.

The notification made within the land registry office replaces the communication provided for in art. 1732 para. (3) and has the same effects.[20]

Pursuant to this notification, the preemptor may request the deletion of the third party's right from the land register and the registration of his right.

If the preemptor has not made the notification within the deadline, the right of preemption is extinguished and automatically deleted from the land register.

Exercising the right of preemption in the context of enforced execution

If the property is the object of forced pursuit or is put up for forced sale with the authorization of the syndic judge, the right of preemption is exercised under the conditions provided by the Code of Civil Procedure.

Extinction of the conventional right of preemption

According to the provisions of art. 1740 of the Civil Code, the conventional right of preemption is extinguished by the death of the preemptor, with the exception of the situation in which it was established for a specific term. In the latter case, the term is reduced to 5 years from the date of establishment, if a longer term was stipulated.

According to art. 848 of the Code of Civil Procedure, the holder of a right of preemption who did not participate in the auction will no longer be able to exercise his right after the adjudication of the immovable property.

In the case of movable assets, the holder of the right of preemption who did not participate in the auction will no longer be able to exercise his right after the award of the asset (art. 770 of the Code of Civil Procedure).

The right of preemption provided by special laws.

- According to art. 17 of Law no. 10/2001, tenants of buildings having the destinations shown in annex no. 2 lit. a) and lit. b) point 1, they have the right of pre-emption to purchase them[21].

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[20] Art. 1732 paragraph 3 of the Civil Code
The pre-emptor can exercise his right by communicating to the seller his agreement to conclude the sales contract, accompanied by the recording of the price at the seller's disposal.

[21] 1. Buildings occupied by educational units and institutions from the state system (kindergartens, schools, high schools, colleges, professional schools, post-secondary schools, higher education institutions)
2. Buildings occupied by sanitary units and medico-social assistance from the public system (nurseries, homes-hospitals for the elderly, hospitals, foster care centers, children's homes)
3. Buildings occupied by financial administrations, treasurers, ministries and other authorities of the central public administration, prosecutors' offices, judges, courts of appeal, police, border police, gendarmerie, community public services for emergency situations, customs offices, national archives , county directorates, health insurance companies, town halls, prefectures, local and county councils, school inspectorates;
4. Buildings occupied by public cultural institutions: theaters, opera houses, libraries, museums, philharmonics, cultural centers.
b) The list of buildings falling under art. 13 para. (2) from Law no. 10/2001, republished:

This right can be exercised, under penalty of forfeiture, within 90 days from the date of receipt of the notification regarding the intention to sell.

The notification is made through the bailiff.

Sales-purchase contracts concluded in violation of the right of pre-emption are null and void.

According to art. 19 of Law no. 10/2001, in the case of buildings-constructions that are the subject of the notifications formulated and to which were added, horizontally and/or vertically, in relation to the initial form, additional independent bodies, the former owners or, as the case may be, to their heirs, the surface held in ownership on the date of transfer to state ownership shall be returned to them in kind.

The owner of the area added to the property taken over has the right of pre-emption to purchase the area returned to the former owner or, as the case may be, to his heir.

The new owner of the area returned to ownership has a right of preemption to purchase the area added to the building after it has passed into state ownership.

According to art. 42 of Law no. 10/2001, the buildings that, following the procedures, are not returned to the entitled persons remain under the administration of the current owners[22].

Real estate with a different purpose than residential can be alienated according to the legislation in force. Holders with a valid title have the right of preemption.

Residential buildings can be alienated according to the legislation in force, with tenants having the right of pre-emption.

- According to art. 45 par. 6 of Law no. 46/2008 Forestry Code[23], co-owners and neighboring forest property owners, natural or legal persons, under public or private law, have a right of preemption, in the order provided in art. 1,746 of the Civil Code[24] and under the terms of Law no. 46/2008, when purchasing privately owned forest land at the same price and under equal conditions.

The seller has the obligation to notify all the preemptors in writing, through the bailiff or the notary public, about the intention to sell, showing the price requested for the land to be sold. If the co-owners or neighbors of the fund, other than the administrator of the public forests of the state, do not have a known domicile or headquarters, the notification of the sale offer is registered at the town hall or, as the case may be, the town halls within which the land is located and is displayed, in the same day, at the town hall headquarters, through the care of the secretary of the local council.

Holders of the right of pre-emption must express in writing their intention to buy and communicate their acceptance of the sale offer or, as the case may be, register it at the town

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1. Buildings occupied by headquarters of legally registered political parties

[22] Law no. 10/2001 on the legal regime of some immovable property taken over abusively between March 6, 1945 - December 22, 1989, republished in M.Of. no. 798/02.09.2005, amended by GEO no. 209/2005, Law no. 263/2006, Law no. 74/2007, Law no. 1/2009 published in M. Of. no. 63/03.02.2009.

[23] Law no. 46/2008 Forestry Code, republished in M.Of. no. 611/12.08.2015, amended by Law no. 232/2016 published in M. Of. no. 972/05.12.2016/, by Law no. 175/2017 published in M.Of. no. 569/18.07.2017.

Art. 1746 of the Civil Code

Privately owned forest land can be sold in compliance with the right of pre-emption of the co-owners or neighbors.

[24] Art. 1746 of the Civil Code

Privately owned forest land can be sold in compliance with the right of pre-emption of the co-owners or neighbors.

hall office where it was displayed, within 30 days from the communication of the sale offer or , as the case may be, from its display at the town hall headquarters.

In the situation where the land to be sold is adjacent to the forest fund, public property of the state or administrative-territorial units, the exercise of the right of pre-emption of the state or administrative-territorial units within the term of 30 days prevails in relation to the right to neighbors' preemption.

If, within 30 days, none of the pre-emptors shows their intention to buy, the sale of the land is free. In front of the public notary, the proof of the notification of the preemptors is made with a copy of the communications made or, if applicable, with the certificate issued by the town hall, after the expiration of the 30-day period in which the intention to purchase had to be expressed.

Failure by the seller to notify all preemptors in writing or selling the land at a lower price or under more favorable conditions than those shown in the sale offer results in the cancellation of the sale.

These provisions of Law no. 46/2008, regarding the exercise of the right of preemption, are supplemented by the provisions of common law.

- The priority right to acquire the expropriated property.

According to art. 37 of Law no. 33/1994 on expropriation for reasons of public utility, if the works for which the expropriation was carried out have not been completed, and the expropriator wishes to alienate the building, the expropriated - former owner - has a priority right upon acquisition, at a price that cannot be higher than the updated compensation.

For this purpose, the expropriator will notify the former owner under the terms of art. 35, and if he does not opt for the purchase within two months of receiving the notification, the property can be disposed of freely.

If the priority right of acquisition is violated, the former owner can substitute himself in the rights of the buyer, paying him the price, as well as the expenses caused by the sale. The right of substitution is exercised within two months from the date of communication of the conclusion ordering the entry in the land register in favor of the buyer.

In this case, the former owner takes the place of the buyer, replacing the latter in all rights and obligations arising from the contract concluded in violation of the priority right of acquisition.

The provisions regarding the offer of payment followed by registration apply accordingly.

The minutes concluded by the bailiff to ascertain the receipt of payment by the third party buyer or, as the case may be, the conclusion of the bailiff confirming the recording of the payment of the price by the third party buyer, which remains final, takes the place of title. The provisions regarding the land register remain applicable[25].

- according to art. 36 of Law no. 182/2000, movable cultural goods, property of natural or legal persons under private law, classified in the treasury, can be the subject of a public sale only under the conditions of exercising the right of pre-emption by the Romanian

[25] Law no. 33/1994 on expropriation for reasons of public utility, republished in M. Of. no. 472/05.07.2011.
Article 35
If, within one year, the expropriated real estate has not been used according to the purpose for which it was taken from the expropriated or, as the case may be, the works have not been started, the former owners can request their return, if a new declaration of public utility. For this purpose, the former owners will be notified at the initial address communicated to the expropriator in order to pay the due compensation for the expropriated building.

state, through The Ministry of Culture, and in compliance with the provisions of art. 35 para. (7)[26].

Failure to comply with these provisions results in the absolute nullity of the sale.

The decentralized public services of the Ministry of Culture are obliged to transmit to the Ministry of Culture, within 3 days of receiving the written communication of the authorized economic operator, the registration regarding the sale of a movable cultural asset classified in the treasury.

The term for exercising the state's right of preemption is a maximum of 30 days, calculated from the date of registration of the communication, and the purchase value is the one negotiated with the seller or with the authorized economic operator or the one resulting from the public auction.

The Ministry of Culture will provide in its own budget the necessary sums intended for the exercise of the right of pre-emption.

- According to art. 4 of Law no. 422/2001[27], historical monuments belong either to the public or private domain of the state, counties, cities or communes, or are the private property of natural or legal persons.

Historical monuments public property of the state or administrative-territorial units are inalienable, imprescriptible and inalienable; these historical monuments can be administered to public institutions, they can be concessioned, given for free use to institutions of public utility or rented, under the law, with the approval of the Ministry of Culture and Cults or, as the case may be, of the decentralized public services of the Ministry of Culture and Cults .

Historical monuments belonging to the private domain can be subject to the civil circuit under the conditions established by law.

Historical monuments owned by individuals or legal entities under private law can only be sold under the conditions of exercising the right of pre-emption of the Romanian state, through the Ministry of Culture and Religion, for historical monuments classified in group A, or through the decentralized public services of the Ministry of Culture and Religion , for historical monuments classified in group B, or of administrative-territorial units, as the case may be, under the penalty of absolute nullity of the sale.

The owners, natural or legal persons under private law, who intend to sell historical monuments, send to the decentralized public services of the Ministry of Culture and Cults the notification regarding the intention to sell, accompanied by the documentation established by order of the Minister of Culture and Cults.

The decentralized public services of the Ministry of Culture and Cults transmit the notification, documentation and response proposal to the Ministry of Culture and Cults, within 5 working days of receiving them.

The deadline for exercising the state's right of pre-emption is a maximum of 25 days from the date of registration of the notification, documentation and response proposal to the Ministry of Culture and Religion or, as the case may be, to the decentralized public services

[26] Law no. 182/2000 on the protection of movable national cultural heritage, republished in M. Of. no. 259/09.04.2014.
Art. 35 paragraph 7
The economic operators authorized to sell movable cultural goods are obliged to, within 3 days from the date of registration in their own register of the goods placed in the treasury, communicate in writing to the decentralized public service of the Ministry of Culture, in whose territorial radius they are based, putting them up for sale, as well as, as the case may be, to send a copy of the catalog edited for the purpose of organizing a public auction, regardless of whether the goods put up for auction are or are not classified as movable national cultural heritage.
[27] Law no. 422/2001 on the protection of historical monuments, republished in M. Of. no. 938/20.11.2006.

of the Ministry of Culture and Religion; the holders of the right of pre-emption shall provide in their own budget the necessary sums intended for the exercise of the right of pre-emption; the purchase value is negotiated with the seller.

If the Ministry of Culture and Religions or the decentralized public services of the Ministry of Culture and Religions do not exercise their right of pre-emption within a maximum of 25 days, this right is transferred to the local public authorities, who can exercise it in a maximum of 15 days.

Communications regarding the non-exercise of the right of pre-emption are valid for the entire calendar year in which they were issued, including for situations in which the historical monument is sold several times.

Under the law, in order to protect historical monuments, in extreme cases, they can be relocated.

- according to art. 15 of Law no. 16/1996 on National Archives[28] private organizations and individuals who hold documents from the National Archives Fund of Romania can deposit them at the National Archives in the form of custody or donation, exempt from fees and taxes.

The holder who wants to sell documents that are part of the National Archives Fund of Romania is obliged to communicate this to the National Archives or, as the case may be, to the county services of the National Archives, which have priority when buying any documents that are part of the National Archives Fund of Romania and which must be pronounced within 60 days from the date of registration of the communication.

- Law no. 112/1995 establishes another case of limitation of the will of the seller in the choice of the co-contractor, in the sense that the sale of houses passed under the title of state property can only be done by the tenants.[29]

- Right of preemption according to Law no. 17/2014.[30]

Agricultural lands located in urban areas do not fall under the provisions of Law no. 17/2014.

The provisions of Law no. 17/2014 apply to Romanian citizens, respectively citizens of a member state of the European Union, of the states that are party to the Agreement on the European Economic Area (EEA) or of the Swiss Confederation, as well as stateless persons residing in Romania, in a member state of the European Union, in a state that is a party to the ASEE or the Swiss Confederation, as well as to legal entities having Romanian nationality, respectively of a member state of the European Union, of the states that are a party to the ASEE or the Swiss Confederation.

The citizen of a third country and the stateless person domiciled in a third country, as well as legal entities having the nationality of a third country can acquire the right of ownership over agricultural land located outside the city under the conditions regulated by international treaties, on the basis of reciprocity, under the conditions of Law no. .17/2014.

Sale-purchase of agricultural land located outside the village

According to art. 3 of Law no. 17/2014, agricultural lands located outside the city at a depth of 30 km from the state border and the Black Sea shore, inland, as well as those located

[28] Law no. 16/1996 on National Archives, republished in M. Of. no. 293/22.04.2014.
[29] Law no. 112/1995 for the regulation of the legal situation of some residential buildings, passed into state ownership, published in M. Of. no. 279/29.11.1995.
[30] Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural land located outside the village, published in M.Of. no. 178/12.03.2014, amended by Law no. 68/2014, published in M.Of. no. 352/13.05.2014, Law no. 138/2014 published in M. Of. no. 753/16.10.2014.

outside the city at a distance of up to 2,400 m against the special objectives can be alienated by sale-purchase only with the specific approval of the Ministry of National Defense, issued following consultation with the state bodies with attributions in the field of national security, through the specialized internal structures mentioned in art. 6 para. 1 of Law no. 51/1991 on the national security of Romania, with subsequent amendments and additions[31].

These provisions do not apply to preemptors.

The notices will be communicated within 20 working days from the registration of the request by the seller. The procedure and other elements regarding obtaining the specific opinion of the Ministry of National Defense are regulated by the methodological norms of law enforcement[32].

In case of non-fulfillment of this obligation to issue the opinion, it is considered favorable.

Agricultural lands located outside the village, where there are archaeological sites, where areas with archaeological heritage have been established or areas with archaeological potential highlighted by chance, can be alienated by sale only with the specific approval of the Ministry of Culture, respectively of the decentralized public services of to him, as the case may be, issued within 20 working days from the registration of the request by the seller. The procedure and other elements regarding obtaining the specific opinion of the Ministry of Culture are regulated by the methodological norms of law enforcement. In case of non-fulfillment of this obligation, the opinion is considered favorable.

Exercising the right of preemption

The alienation, by sale, of agricultural land located outside the village is done in compliance with the substantive and formal conditions provided by the Civil Code, and the right of preemption of the co-owners, lessees, neighboring owners, as well as the Romanian state, through the State Domains Agency, in this order, at the same price and under equal conditions.

By way of exception, the alienation, by sale, of agricultural land located outside the village on which classified archaeological sites are located is done according to the provisions of Law no. 422/2001 on the protection of historical monuments[33].

The request and use of the land book certificate in transferable property contracts regarding real estate and other real rights fully prove the good faith of both the parties to the contract and for the instrument professional, regarding the seller's ownership of the property subject to sale according to the description in the land register.

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[31] By Decision no. 24/2016, ÎCCJ (Complete DCD/C), published in M.Of.nr.936/22.11.2016, admitted the referral made by the Giurgiu Court – Civil Section, in File no. 4.929/236/2014, by which a preliminary decision is requested to resolve a question of law and, consequently, establishes that:
The provisions of art. 5 para. (1) from Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural land located outside the village and to amend Law no. 268/2001 regarding the privatization of commercial companies that manage public and private lands of the state for agricultural purposes and the establishment of the State Domains Agency, with subsequent amendments and additions, applies to bilateral promises of sale and purchase regarding agricultural land located outside the city, concluded previously the entry into force of this normative act, regardless of the time of notification to the court.
The court may order the fulfillment of the formalities in order to obtain the approvals provided for in art. 3 and art. 9 of Law no. 17/2014, with subsequent amendments and additions, from the competent authorities and the completion of the procedure regarding compliance with the right of pre-emption provided for by art. 4 of the same normative act, during the trial.

[32] Order no. 2333/2014 for the approval of Methodological Norms for the application of Law no. 17/2014, published in M. Of. no. 401/30.05.2014.

[33] Law no. 422/2001 on the protection of historical monuments, republished in M. Of. no. 938/20.11.2006.

In all cases where a court decision is requested that takes the place of a sale-purchase contract, the action is admissible only if the pre-contract is concluded according to the provisions of the Civil Code and the relevant legislation, and the property that is the subject of the pre-contract is registered in the role fiscal and in the land register.

The application for registration in the land register of the ownership right is rejected if the conditions provided by Law no. 17/2014 are not met.

According to art. 6 of Law no. 17/2014, by way of derogation from art. 1.730 et seq. of the Civil Code regarding the right of pre-emption, the seller registers, at the town hall within the administrative-territorial unit where the land is located, a request requesting the display of the offer for sale of the agricultural land located outside the village, in order to bring it to the attention of the pre-emptors . The request is accompanied by the offer to sell the agricultural land and the supporting documents provided by the methodological norms.

Within one working day from the date of registration of the request, the town hall has the obligation to display the sale offer at its headquarters and, as the case may be, on its website for 30 days.

The town hall has the obligation to transmit to the structure within the central apparatus of the Ministry of Agriculture and Rural Development, hereinafter referred to as the central structure, respectively to its territorial structures, hereinafter referred to as territorial structures, as the case may be, a file containing the list of preemptors, respectively the copies of the request of the display, of the sales offer and of the supporting documents within 3 working days from the date of registration of the application.

For the purpose of extended transparency, within 3 working days from the registration of the file, the central structure, respectively the territorial structures, as the case may be, have the obligation to display the sale offer on their websites, for 15 days.

The holder of the right of pre-emption must, within the term of 30 days, express in writing his intention to buy, communicate the acceptance of the seller's offer and register it at the town hall where it was posted. The city hall will display, within 24 hours from the registration of the acceptance of the sale offer, the data provided in the methodological norms, respectively it will send them for display on the website to the central structure, respectively the territorial structures, as the case may be. If, within the 30-day period, several pre-emptors of different rank express in writing their intention to buy, at the same price and under the same conditions, the seller will choose the pre-emptor, potential buyer, and communicate his name to the town hall.

If, within the 30-day period, several pre-emptors of the same rank express in writing their intention to buy and no other pre-emptor of a higher rank has accepted the offer, at the same price and under the same conditions, the seller will choose from among them and will communicate his name to the town hall.

If, within the 30-day period, a lower-ranking preemptor offers a higher price than the one in the sale offer or that offered by the other higher-ranking preemptors who accept the offer, the seller can resume the procedure, with the registration of the sale offer with this price, with higher preemptors. This procedure will be carried out only once, within 10 days from the completion of the 30-day deadline. At the end of the 10 days, the seller will notify the town hall of the name of the preemptor.

Within 3 working days from the communication, the town hall has the obligation to transmit to the central structure, respectively to the territorial structures, as the case may be, the identification data of the chosen preemptor, potential buyer, in order to verify the fulfillment of the legal conditions.

If, within the period of 30 days, none of the holders of the right of pre-emption expresses their intention to buy the land, the sale of the land is free, in compliance with the provisions of this law and the methodological norms, and the seller must notify the town hall about this in writing . The free sale of the land at a price lower than that requested in the sale offer or under more advantageous conditions than those shown in it attracts absolute nullity.

If, within the 30-day period or within the 10-day period, the seller modifies the data entered in the sales offer, he resumes the registration procedure.

Control of the application of the right of preemption procedure

The final approval necessary for the conclusion of the sale contract in authentic form by the notary public or the court's pronouncement of a court decision that takes the place of the sale contract is issued by the territorial structures for lands with an area of up to 30 hectares inclusive, and for lands with an area of over 30 hectares, by the central structure.

The verification of the fulfillment of the conditions will be done by the central structure, respectively by the territorial structures at the location of the building, as the case may be, within 5 working days from the receipt of the data and documents. If the legal conditions are met, within two working days from the expiry of the verification deadline, the central structure, respectively the territorial structures, as the case may be, will issue the notice necessary to conclude the sale-purchase contract. In the event that no pre-emptor expresses his intention to purchase by submitting the offer within the term provided by this law, it is not necessary to issue the opinion. In this case, the sales contract is concluded based on the certificate issued by the town hall.

In the event that, following checks by the central structure, respectively the territorial structures, as the case may be, it is found that the chosen preemptor does not meet the conditions provided by this law, a negative opinion will be issued within two working days from the expiration of the term for 5-day verification.

The notices will be issued by the territorial structures. The notices will be published on their own websites, within two working days of their issuance.

In the situation where there is no longer any purchase offer from the holders of the right of pre-emption who have shown their acceptance of the offer within the legal term, the sale is free.

In the situation where there is no longer any of the holders of the right of pre-emption who have expressed their acceptance of the offer within the 30-day period, the sale of the land is free.

The lessee who wants to buy the agricultural land located outside the village must have this quality for the respective land, established by a valid lease contract concluded and registered at the time the sale offer is displayed at the town hall.

In the exercise of its duties, the Ministry of Agriculture and Rural Development, together with the subordinate structures, as the case may be:

a) ensures the publication of sale-purchase offers on its own website;

b) ensures the verification of the exercise of the right of pre-emption;

c) verifies the fulfillment of the legal sale-purchase conditions by the potential buyer pre-emptor;

d) issue the necessary notice for the conclusion of the sale-purchase contract of agricultural land located outside the village;

e) establish, manage and administer the database of agricultural lands located outside the city, according to the methodological norms;

f) ascertains the contraventions and applies the sanctions provided by this law, through the authorized personnel.

Violation of the provisions of Law no. 17/2014 attracts administrative, contraventional or civil liability, as the case may be.

The following acts constitute contraventions:

a) the sale-purchase of agricultural land located outside the village, where there are archaeological sites, where areas with identified archaeological heritage or areas with archaeological potential highlighted by chance were established, without the specific approval of the Ministry of Culture, respectively of its decentralized public services , as the case;

b) the sale-purchase of agricultural land located outside the village without the specific approval of the Ministry of National Defense, if this situation was noted in the land register at the time of requesting the land register extract for authentication;

c) the sale-purchase of agricultural land located outside the village without the approval of the central structure, respectively of the territorial structures of the Ministry of Agriculture and Rural Development, as the case may be;

d) non-compliance with the right of pre-emption under the conditions provided for in art. 4.

According to art. 16 of Law no. 17/2014, alienation by sale-purchase of agricultural land located outside the village without respecting the right of pre-emption, or without obtaining approvals, is prohibited and is sanctioned with relative nullity.

Finding and sanctioning contraventions are done by the authorized personnel from the central and local structures with attributions in the field, subordinated to the Ministry of Agriculture and Rural Development.

The provisions of Law no. 17/2014 do not apply to alienations between co-owners, spouses, relatives and relatives up to the third degree, inclusive.

The provisions of Law no. 17/2014 do not apply in the framework of forced execution procedures and sales contracts concluded as a result of public auction formalities, such as those carried out in the insolvency prevention and insolvency procedure or as a result of belonging of the building to the private domain of local or county interest of the administrative-territorial units.

References:

1. Chirică, D., 1997. *Civil law, Special contracts*. Bucharest: Lumina Lex.
2. Grădinaru, N., 2022. *Civil law. Civil contracts*. Galati: Danubius.