

THE PURCHASE-SALE CONTRACT IN TOURISM

Bacter Ramona Vasilica*

*University of Oradea, Faculty of Environmental Protection, 26 Gen. Magheru St., 410048
Oradea, Romania, e-mail: ramonabacter@yahoo.com

Abstract

Beside the exchange contract, the purchase-sale contract pretends to be one of the oldest contracts known by the human civilization. The regulation of the purchase-sale contract terms extends on a developing period of about four thousand years. Once the private property notion emerges the contract appears, having a special scale, designed to ensure the exchange of goods from one household to another. From a juridical point of view, the sale looked like a more advanced alternative of the exchange, from which it draws its roots. Later, when the money appeared in a sense close to the actual one, the purchase-sale process get the meaning of changing something for a valuable account – price (pretium). The classic Roman law ascribed the consensus purchase-sale contracts. The private Roman law also settled the sales of the future goods, as, for instance, was considered the expect harvest. In this case, the purchase-sale contract was considered to be signed under a suspensive condition.

Key words: contract, purchase-sale, tourism, pension

INTRODUCTION

As the Romans, the consensus purchase-sale contract appeared only at the end of the republic because at the beginning, selling things at an equivalent measured in money was made either by *mancipatio* (an imaginary sale by copper and libra) or by giving the object in the moment when the buyer is counting the amount of money.

The first modality of alienation (*mancipatio*) is a Roman one, the second belongs to the natural law and it's a kind of barter, the only thing which differs being the money (coins).

The origin of the consensus purchase-sale contract seems to be initially as a mutual stipulation, that is: the seller was stipulating the price, and the buyer was stipulating the goods – that's why the double name of *emptio-venditio* which was kept until now.

MATERIAL AND METHOD

The used methods were of the most diversity: the juridical formal method, the historical method, the comparative method, the sociological method, the logical and analytical methods, methods which had as an aim

the systematically analysis of the information extracted from the studied sources to elaborate personal points of view and conclusions about the marked objectives.

RESULTS AND DISSCUSIONS

According to the article 1294 of the Civil Code, the selling is an agreement by which two parties agree, one to transmit the other the property of something, and the other to pay for it.

This definition is incomplete, because according to the purchase-sale contract you can transfer not only the property right, but also any other real right (for example, the usufruct or servitude right), a claim right or an intellectual property right (for example, a patent right). Also, according to this type of contract you can transfer the right over the property, too, to a juridical department; as, for instance an inheritance or even litigious rights.

However, the unpatrimonial personal rights, the strict personal patrimonial rights and those made up by the parts will or of the law can't be the objective of a sales contract.

The legal definition is also inaccurate, because the seller not only pledged himself to transfer the property or the right on the sold thing, but also does it.

In conclusion, the purchase-sale contract can be defined as being contractual because one of the parts, the seller transfers his property right or any other real right to the other part, the buyer in change, for an amount of money, named *price*.

The premises of the purchase-sale contract are in principle in the Civil Code, Book III, entitled "About different ways of getting property", Title V, "About sellings".

To these legal disposals, which sets up the common right of the sales contract, are also added other special settlements about different sellings, such as:

- Law number 247/2005 concerning the property and justice area's reform, and also some other enclosed measure, with further alteration and completions;
- Law number 18/1991 about the land funds, with further alteration and completions;
- Law number 85/1992 about selling houses and places with other destinations, built from the state's funds and from the economical units funds or from the state budget;
- Law number 312/2005 about getting the right of the private property on the plot of lands of foreign citizens and stateless persons, and of foreign juridical persons.

The purchase-sale contract is characterised by the fact that it is a bilateral (sinalagmatic) contract, with an onerous, commutative, consensus and translative legal base of property.

Thus, results that sales is neither a serious or a real contract.

As an exception from the consensus principle, the law requires to some sales the *autentica ad validitatem* (authentic and valid) form, and the sale becomes a serious contract. For example, article number 2 first paragraph from the X Title, *The Juridical circulation of the terms*, of the Law number 247/2005 foresees that the lands with or without buildings placed in or next to localities indifferently of their sizes or destination, could be estranged and got by juridical acts between the living, contracted in an authentical form, under the absolute nullity confirmation.

Also, according to Article number 2, paragraph 2 from the Law number 247/2005, in the case that among the juridical acts between the living it is made up a real right over a land with or without constructions, indifferently of its destination and size, the juridical act must be contracted, under the absolute nullity confirmation, in an authentic form.

Concerning the case of enstranging the buildings, the law doesn't stipulate the authentic form. When the enstranging concern a building consisting of constructives and the near by land we consider that the solemn form of the sale contract is necessary by itself, because of the indivisible object of the sale contract.

Thus, the judiciary practice decided that, although the buildings sales is consensus, because the parts agreement was to enstrange the building together with the land on which it is built, to classify this agreement as a sale contract it is necessary to respect the authentic form; in the absence of this form, the agreement should be just a pre-contract.

The purchase-sale contract by/after a public auction requires, also, to respect some formalities, when the auction is taking place during a constrained fulfilment and a juridical distribution, departing from the consensus law.

Concerning the consensus or solemn character of the cars sales contracts between physical persons, in the juridical literature was maintained that this kind of sale is a solemn one, but the courts of law consistently applied, during the given solutions, the principle of consensus. Nowadays, the cars purchase-sale contract is a consensus one because the police don't pretend anymore the authentic purchase-sale contract, and, the new rule, about the formalities of erasing and registering a car, stipulates the elaboration of a sale contract under a private signature, for which exists a standard form.

In some situations, the law requires to elaborate an apply/registration. We may have as an example the case of the houses from

the Decree – Law number 61/1990, in which the property right transfers to the buyer only after the purchase-sale contract has been already written down and after it was signed the report of handing-taking over the building (Article number 16, paragraph 1). Moreover, referring to the sale building, although the sale is realised between the parts, by their both agreement, and their will and without any application, for a third person this gained property right of the buyer is not contrasting beside the situation that it is registered (Article number 1295, paragraph 2, Civil Code); this law disposal makes the sale buildings to be constant by written acts (either authentic, or private).

According to H. G. number 280/1990, the purchase-sale contract by instalments is closed in written and it has an executory legal base value.

The disposals of the 1295 Article, paragraph 1 – Civil Code are suppletive, therefore, the parts can agree that a consensus contract signed by themselves should be complied *ad validitatem* to the writing form or they can give a solemn character to the sale, contracting an authentic act. If the sides decided to have an authentic form contract, until this, the agreeing is a purchase-sale pre-contract.

There are situations in which the valability of some sales is conditioned by getting first a licence.

Thus, Article number 12, paragraph 2 from Decree – Law number 61/1990 stipulates that a house bought by credit can't be estranged until the credit is entirely repayed, only if it exists a beforehand permit of the Saving Bank. Further more, Article number 15, paragraph 4, Law number 85/1992, about houses sale and spaces with other destination built with state funds, are funds of the economic institutions or state budget funds, stipulates that “until the totally repayment of the price, the house got under the conditions of the present law can't be estranged or reshaped without the initial/beforehand permit of the sale institution. Both standard acts established the penalty of the relative nullity of the contracts signed with the encroaching upon the law taxes already mentioned.

The law concerning the mortgage credit for the building investments number 190/1999 stipulates in the 5 article that, until the credit is totally repayed, the mortgaged buildings will be estranged only after a beforehand agreeing of the mortgage creditor. The signed contracts without this disposal are absolute nullity.

The translative form of property of the purchase-sale contract is according to the disposals of the 971 article and 1295, the first paragraph, Civil Code, that is, as soon as the parts agreed over something and over the price, the property is transferred from the seller's patrimony to the buyer's, even if this thing hasn't been done, yet, and the price hasn't been payed.

More exact, article 1295, paragraph 1, Civil Code stipulates: the property is legally transferred to the buyer as soon as the parts agreed about

the thing and about the price, although the thing is not transferred and the price hasn't been counted.

With all the stipulations article 1295, paragraph 1, Civil Code refers only to the transfer of the property; the rule of the translative effect to the sale contract is applied not only for the right on a property, but also for all the other rights, real rights.

The rule of momentary transfer of the right on a property and the risk of the contract from the moment of the agreement between the parts assumes the cumulative achievements under the following conditions:

- a) The seller to be the owner of the sold good in the moment of signing the contract (or to be the holder of the transferred good) and the purchase-sale contract to be legitimately signed.
- b) The sale objects to be an individual good, established if the object of the contract is of a kind; the transfer of the property and the risks perform only, when the individualization by weighing counting or measuring. Thus, for instance, the agreement for signing a sale contract for barley is on 25th June 2008, but the individualization of the barley which is sold, by weighing, it is made only on the 25th August 2008. The transfer may be realised only at the second date/at the last date.

In the case of selling some amounts of goods, global private, individualization, however, only on the setting place (for example, the wheat from a barn) and which are sold at a global stability price for the whole amount, the sale named wholesale or in a lump, the transfer of the right on a property from the seller to the buyer performs at the time of signing the contract, that is at the moment of their will agreement.

- c) The parts not to be postponed, by an express rider, the transfer of the property right for a further date to the signing of the contract (for example, the transfer of the property takes place when the payment is done).

According to the rule *res perit domino* from the moment of gaining the right on a property, so from the moment you signed the contract, the buyer bears the risk of losing the thing that wasn't given yet.

The rule is the following: the seller and the buyer are dealing about the contract's object, that is about the thing and the price, signing the purchase-sale contract. At the same time is taking place the transfer from the seller to the buyer, the transfer of the property right. In the case that, after signing the contract, the thing disappears before being given to the buyer, this is still obliged to pay the price. The fact that delivery belated (strange of any seller's behaviour) doesn't change the state conclusion, because not giving the good transfer the property, but the expressed agreement of the parts about sale contract.

In the case that the seller would be late to sent the good, the situation would be on the contrary, because he doesn't perform, at the fixed time, the delivery obligation.

In the case of selling the kind goods, the risks are supported by the seller, the debtor of the obligee until the real handing, by counting, weighing or measuring.

The Civil Code contains also some other specific regulations of sale, at which the translative effect of propriety doesn't produce and it doesn't produce in the moment of the parts will, these being: selling some future goods, alternative sales, tasting sales and tried sales.

A PURCHASE-SALE CONTRACT

I. CONTRACTING PARTS

I.1. Mr. Popescu Ion, resided in Vadu Crișului, Lalelelor street, number 158, block -, staircase -, floor -, apartment -, sector/county Bihor, born at (day, month, year) 12.03.1972 in (location) Vadu Crișului sector/county Bihor, son of Petrică and Mărioara, owner of the I. D. (identity card), series XH, number 329154, CNP (personal code number) 1720312526892, as a seller, on one side, and

I.2. Mr. Liut Alexandru, resided in Vadu Crișului, Ioan Cuza street, number 658, block -,staircase -, floor -, apartment -, sector/county Bihor, born at (day, month, year) 13.06.1992 in (location) Oradea sector/county Bihor, son of Viorel and Ecaterina, owner of the I. D. (identity card), series XH, number 546842, CNP (personal code number) 1920613356127, as a buyer, on the other side, agreed to sign the present sale contract respecting the following riders:

II. THE CONTRACT OBJECT

II.1. I, the seller, I sale the buyer the following good ("Roua Munților" Pension). The good which I'm selling is my property (owned by sale contract, donation, transfer, etc) certified under number 125 from 12.07.2000.

III. THE CONTRACT VALUE

III.1. The sale value is 120.000 E, which was totally paid, the certified date of the present contract.

IV. THE PARTS OBLIGATIONS

IV.1. The seller guarantees the buyer against any hidden vices.

IV.2. Further more, the seller guarantees the buyer that the sold good is not distraint, mortgaged or pledged.

IV.3. The buyer declared that he bought the described good for 120.000 E and must pay in totally (or in earlier described conditions).

V. FINAL RIDES

V.1. The taxes concerning the sale expenses (the act certification, charges, transport, etc.), would be payed according to the parts' agreement.

V.2. The present purchase-sale contract was signed in two copies, one for the seller, one for the buyer, today 03.06.2015, the date of its signing.

SELLER

BUYER

Situated at the Crisul Repede going out narrow path, there is a spacious holiday hut/chalet with eleven bedrooms (double and triple), with their own bathrooms bar and restaurant, conference hall, wireless internet, kids playing ground – an ideal place for spending holidays, weekends or bussiness meetings. The hut can be rent in a hotel system, both for rooms or as all – inclusive. Restaurant and bar for 35 persons. Parking for ten cars.

Conference hall for 40 persons with internet and TV.

2500 square meters yard with a covered terrace, pizza oven and barbecue.

11 rooms with balconies on three levels and view to Crişul Repede River and its narrow path. They have own central heating, TVs with over 30 channels, own bathroom with shower cabin, wireless internet.

Location

Vadu Crisului (*Rév, Nagyrév* in Hungarian language) is a village in the East of Bihor county, Transilvania, Romania.

The village is situated at the going out narrow path of the Crişul Repede River. Both, Romanian Vlad and Hungarian Rév, mean the place of a riverbed where the edge being low and the water not too deep, made walking on foot across the river possible.

The village marks the South-East limit of the ford depression, the golf depression between *Pădurea Craiului* Mountains and *Plopişului* Mountains (or *Şes* - plain), depression which has the name of the location and is the greatest in the area.

It is traversed by the European Road E60 (DN1), Oradea – Cluj-Napoca at 50 km from Oradea and 100 km from Cluj-Napoca, and by the railway Oradea – Cluj-Napoca.

Touristic Objectives

The natural reservation “Crişul Repede narrow path” (219,7 ha) makes possible rafting, body jumping, clasic climbing and abseiling, canoeing and speology.

CONCLUSIONS

The sale contract pretends to be one of the oldest contracts, that are known by the human civilization. The settlement of the sale contracts relations are certified over a period of development of about four thousand years.

From an economic point of view, the sale looks like a more evaluated choice from which it has its roots. It's true the sale contract in an economic way, at the beginning, took the transfer contract form from which one of it has the general equivalent value.

Gaius considered that the purchase-sale contract is a will agreement of the parts over the contract object and its value; the rides were referring to the good and its price, being considered essential conditions of the value.

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