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Convalidation of Real Estate Contracts Concluded Without Authentic Form in Romania

ABSTRACT: *Generally, in Romania, a real estate contract (i.e. a contract for the sale and purchase of real estate between two parties) can only take the form of an ad validitatem contract, which means that it must be concluded by a public notary, an authentic form required by law. Without an authentic form, the contract is absolutely void; however, according to the Romanian Civil Code, 'a contract that is absolutely void will still produce the effects of the legal act for which the conditions of substance and form laid down by law are fulfilled'. Therefore, it can be considered in terms of the convalidation of a real estate contract without an authentic form as a precontract. After Communism, because of the poor economic situation in the country and the lack of land registers, people only concluded real estate sales contracts between themselves, which were called "pocket contracts." This meant that the seller and buyer drafted the text of the contract themselves, writing it by hand. The contract was signed by two witnesses, usually local priests, teachers, or the neighbours of the parties. Obtaining land registers was not only time-consuming but also costly, as the probate procedure is handled by a public notary. This topic also raises several property rights issues.*
KEYWORDS: *property rights, real estate contracts, ad validitatem form, land register*

1. Historical Introduction

In Romania, the sale of real estate is subject to special rules. This section presents the specific rules for sales if the *ad validitatem* or *ad solemnitatem* form has not been respected. It was (and still is) quite common for contracts for the sale of immovable property to be concluded between the parties without a notarial form. This is mainly because of the lack of land registers. Romania can be divided into three historical parts: Transylvania, which was part of the Austro-Hungarian monarchy; Wallachia, which was under Turkish rule for a long time and, as a result, developed the land

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register system; and Moldavia, which was under Russian influence. The union of these three parts took place in 1918. A uniform and complete land register system has still not been established. After a historical overview, we will discuss why a complete and uniform land registry system has not been developed for more than one hundred years.

The beginnings of land books can be found in Western Europe as early as the 11th to the 14th centuries and are mainly linked to credit and the guarantees needed to grant it. The ancient German[1] and later Roman law played a decisive role in the development of land books. The competition between these systems of law led to a mixed system, which was consolidated in the French Civil Code. Over time, the mixed system, also known as "the French system," has been reformed several times.[2] The basic principles of the land registers first appear, in a clear outline, in the Austrian Civil Code.

In Romania, more precisely in Transylvania, the beginnings of the land register system can be identified in the record of movable assets. Thus, their transmission between the living was done before authorities called "loca credibilia," by a sale process called "passiones peremales." The transaction was carried out in a solemn setting and publicised. This was followed by possession, called "statutio."[3] Mortgages were made by handing over the use of the mortgaged property to the creditor for long periods, which could be up to 100 years. In most of the towns in Transylvania, records of changes in ownership of real estate and mortgages were kept.

Before the land registers, the name of the owner of the property and the title of the transfer had to be recorded in a so-called public book register. After 1855, the Austrian Civil Code transferred the keeping of land registers to the district courts in Transylvania.[4] The land registry system took time to develop, but it was one of Romania's most effective systems.

After 15 December 1855, the Ministry of Justice issued an ordinance establishing rules for land register procedures and protocol publicity.[5] The regulation did not become applicable at the same time throughout Transylvania. Thus, on territories such as Banat, Crișana, Maramureș, Satu Mare, incorporated at the time into the Hungarian state, the provisions of the Austrian Civil Code applied.[6] By the provisions of the Constitution of 1860[7], the Civil Code was repealed and replaced by the old Hungarian customary law.

1 Sztranyiczki, 2013, p. 7.
2 Nasaudean, 2011, p. 3.
3 Nasaudean, 2011, p. 4.
4 Veress, 2020, p. 440.
5 Mészáros, 1857, p. 12.
6 Nasaudean, 2011, p. 4.
7 Oktoberdiplom.

In 1869, land registers were transformed according to Regulation No. 2579, which outlined procedures involving land registry courts and managers.[8] The land registry court appointed a commission of a surveyor and a manager to verify the alignment between old and new land registry sheets. After checks, they prepared a report for the mayor's signature to submit to the court.[9]

The land registry court determined the correctness of the work, and the conversion of the land register was deemed definitive.[10] Any claims arising from errors in the conversion procedure could no longer be validated against *bona fide* third parties.

After the aforementioned union of the three parts in 1918,[11] the Romanian State issued several decrees with an impact on land registry activities. Decree No. 1 of 24 January 1919 of the Governing Council on the provisional functioning of public services, the application of laws,[12] civil servants, and the use of languages is worth mentioning. Article 1 of this decree states:

> *The foregoing laws, ordinances, regulations and legal statutes, enacted prior to October, 1918, shall remain in the interest of public order and to ensure continuity of law, until otherwise provided, in provisionally in force, with the exceptions contained in this decree, as and in such other decrees as may be issued.*

To implement Decree No. VII, the Ordinance from March 1919 designated the Cluj Court to handle cases involving state property alienated by the Hungarian Government. The Court, led by its president and consisting of five judges, made final and irrevocable decisions, with no option for extraordinary review. Appeals could be made to the Cluj Court of Appeal.[13] The Hungarian-speaking judiciary was dismissed after unification for refusing to take the oath of allegiance, citing unresolved peace treaty issues.[14]

8 Rendeletek Tára II. kiadás [Online]. Available at: URL https://library.hungaricana.hu/hu/view/OGYK_RT_1869/?pg=609&layout=s&query=2579
9 Nasaudean, 2020, p. 441.
10 Zlinszky, 1902, p. 46.
11 The union of Transylvania with Romania was declared on 1 December 1918 by the assembly of ethnic Romanian delegates held in Alba Iulia. The Great Union Day (also called Unification Day), celebrated on 1 December, is a national holiday in Romania that celebrates this event. The holiday was established after the Romanian Revolution and celebrates the unification of not only Transylvania but also Bessarabia and Bukovina and parts of Banat, Crișana, and Maramureș with the Romanian Kingdom. Bessarabia and Bukovina had joined with the Kingdom of Romania earlier in 1918.
12 Gazeta Oficială, 1919, p. 25.
13 Nasaudean, 2011, p. 9.
14 Veress, 2020, p. 568.

After the 1918 unification, Romania was a monarchy under Ferdinand I. Article 1 ratified the provisions of Decree No. VII in February 1919. Following the Trianon Peace Treaty, all former Austro-Hungarian real estate in annexed territories became Romanian state property, leading to Ordinance No. 27067 of 1921, which mandated the registration of these properties.[15] However, the compensation paid in the old Kingdom was higher than that paid in Transylvania (forty times the rent in the old Kingdom, and twenty times that in Transylvania).[16]

Authorities' focus on land reform slowed or abandoned cadastral work, resulting in a land register that no longer accurately reflected property conditions. In response, King Charles II enacted Law No. 93 on 12 April 1933 to organise the land cadastre and establish land registers in the Old Kingdom and Bessarabia (Wallachia).[17]

Article 72 of the law provided that 'The existing cadastral works in the united territories of the former Austro-Hungarian Monarchy shall remain in force until they can be revised, re-enacted and rectified in accordance with the principles laid down in this law', and Article 75 provided that 'The laws and regulations of the united territories relating to land registers shall remain in force until their revision and unification (...)'.[18] In the meantime, Dobrogea was not drawn up in cadastral plans and complete cadastral works were carried out only in a few communes around the capital. An important step in the legislative approach of the time was Decree-Law No. 478 of 1 October 1938 for the extension of the legislation of the old Kingdom to Bucovina.[19] The law was issued by the Council of Ministers and contains only seven articles.

The most significant point in Article 1 states that the Romanian Civil Code, Civil Procedure Code, and Commercial Code, along with all relevant laws from the old Kingdom, would extend to Bukovina. Upon the decree's enactment, any unifying laws and provisions were repealed.[20] Decree No. 115 in 1938 attempted to unify land registers in Romania; however, this proved unsuccessful, as it was only applied in parts of Bukovina (Suceava County).[21]

In 1940, Transylvania became part of Hungary again,[22] rendering land registry unification efforts futile until the end of World War II. Even in non-annexed areas,

15 Nasaudean, 2011, p. 11.
16 Veress, 2020, p. 570.
17 [Online]. Available at: https://lege5.ro/gratuit/g42tanjv/legea-nr-93-1933-pentru-organizarea-cadastrului-funciar-si-pentru-introducerea-cartilor-funciare-in-vechiul-regat-si-basarabia
18 [Online]. Available at: https://lege5.ro/gratuit/g42tanjv/legea-nr-93-1933-pentru-organizarea-cadastrului-funciar-si-pentru-introducerea-cartilor-funciare-in-vechiul-regat-si-basarabia
19 [Online]. Available at: https://legislatie.just.ro/Public/DetaliiDocument/30760
20 [Online]. Available at: https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=33569
21 [Online]. Available at: https://legislatie.just.ro/Public/DetaliiDocumentAfis/25
22 Vienna Diktat.

land registration remained incomplete until the end of the war. Following this war, a weak attempt at unification occurred through Law 241 of 1947.[23] Unfortunately, this law also did not have the desired effect.

After the communist regime was established in Romania, land was removed from civilian control, and the land register reflected land use rather than ownership. Due to incomplete cadastral measurements, the Central Committee of the Romanian Workers' Party addressed the need for a socialist cadastral register in 1954.[24] A year later, Decree No. 281 of 15 July 1955 on the establishment of the land registry system was adopted.[25]

Land registry work occurred in two phases: first, land surveying and owner identification; and second, the creation of the land register, which included the land register, alphabetical indicator, possession sheets, and centralising sheets by owner and use category. It was also supplemented by cadastral plans and a register of removals.[26]

After the fall of communism following the events of December 1989, a series of legislative changes were required in the field of land registry and real estate advertising. These efforts resulted in Law No. 7 of 13 March 1996 on Cadastre and Real Estate Cadastre publication.

2. General Real Estate Contracts and Land Registry

2.1. General Real Estate Contracts in Romania

First, we discuss the general conditions of the contract for the sale of real estate: a contract for the sale and purchase of real estate between two parties can only take the form of an *ad validitatem* contract, which means that it must be concluded by a public notary, using an authentic form as required by law. Agreements that transfer or establish rights *in rem*, which will be entered in the land register, must be concluded with an authentic instrument, under the sanction of absolute nullity. An authentic instrument is a document drawn up or, as the case may be, received and authenticated by a public notary or other person invested with public authority by the State, in the form and under the conditions required by law.[27] As a rule, the solemn act must be concluded in authentic form. Every authentic act is a solemn act, but not in the opposite way. Authentic acts are only one form of solemn acts.[28] The requirement of solemn

23 [Online]. Available at: https://legislatie.just.ro/Public/DetaliiDocumentAfis/43
24 Nasudean, 2011, p. 14.
25 [Online]. Available at: https://lege5.ro/gratuit/gm2dgmrwge2a/decretul-nr-281-1955-privind-instituirea-regimului-de-evidenta-funciara
26 Nasaudean, 2011, p. 15.
27 Ungureanu and Toader, 2022, p. 238.
28 Vasilescu, 2017, p. 402.

form in the case of certain legal acts is intended to protect the interests of the parties, ensure full freedom of consent, or even, in certain cases, protect general interests. The form required for the validity of the legal act must meet the following conditions: the entire content of the civil legal act must be on the solemn form as required by law, and the content of the act must not be determined by reference to a source external to it; the legal act, which is interdependent with a solemn act, must also be on the solemn form, even if it is not a solemn act; according to Article 1243 of the Civil Code, any modification of the contract is subject to the formal conditions required by law for its conclusion, the principle of symmetry of form also applies here; the equivalence of different forms *ad validitatem* is not allowed, that is, when the legislator imposes a certain form, the legal act must be concluded on that form and not on another; the legal act that renders a solemn act ineffective must also take a solemn form.[29]

Absolute nullity sanctions non-compliance, at the conclusion of the civil legal act, with a mandatory legal rule of public policy. In legal practice and doctrine, absolute nullity is designated by formulas such as: "absolutely void"; "the act is void"; "the act is void as of right"; and "void as of right."

Absolute nullity may be invoked by any person who justifies an interest protected by law, which is related to the cause of nullity, by way of application or complaint.[30] These provisions can be found in Article 1247 paragraph (2) of the Civil Code. The parties to the legal act, the guarantors, other persons who did not participate in the conclusion of the legal act but who justify their own interest, the public prosecutor in certain situations, or other bodies expressly provided for by law have an interest. The court, of its own motion, is obliged to invoke absolute nullity on the basis of the active role (e.g. Article 1247 paragraph (3) Civil Code, or Articles 1560–1561 Civil Code).[31] Absolute nullity may be pleaded at any time by way of application or complaint, the action for a declaration of nullity not being time-barred. The violated legal norms, which lead to the sanction of absolute nullity, protect a general interest. The violated legal norms, which lead to the sanction of absolute nullity, protect a general interest.[32]

2.2. About Land Register in Romania

The implementation of Law No. 7/1996 laid the legal foundations for a topical and unique system of real estate advertising for the whole country, intended to replace the four systems of real estate registry applicable in Romanian law. Law No. 7/1996 only created the normative legal prerequisites for Romania to reach the European

29 Ungureanu and Toader, 2022, p. 240.
30 Boroi and Anghelescu, 2021, p. 259.
31 Vasilescu, 2012, p. 432.
32 Ungureanu and Toader, 2022, p. 286.

stage of having a national cadastre and land registers throughout the country, since the preparation of the cadastre and the new land registers is a long-term issue that depends on the allocation of the necessary financial, technical, and human resources to carry out and complete the cadastral works. Subsequently, based on the cadastral documents, land registers, and other land register documents will be drawn up. Without the necessary measurements and cadastral records, it is not possible to move to a real system of real estate advertising in which legal records are kept by property and not by person. The implementation of a general cadastre throughout the country is a topical and important issue because Law No. 7/1996 duly provided for a gradual and progressive extension of the system of real estate advertising based on land registers, as cadastral works are completed in each administrative-territorial unit. This process is about the introduction of land registers at the level of each administrative-territorial unit that would entirely replace the old land registers because Law No. 7/1996, prior to the republication of 3 March 2006, provides for the immediate establishment of land registers for the entire country, which would gradually replace the old registers. The former Article 61 of Law 7/1996 put into effect Law Decree No. 115/1938 across Transylvania, by which the unification of the rules regarding land registers has been achieved. In addition, the laws, ordinances, and local regulations in this area were brought into force, putting an end to the differences in the legal regime of land registers. If a territorial unit is made up of two or more villages, land registers are numbered by village, each having its own land register.

In accordance with Article 4 of Law Decree No. 115/1938, the land register consists of a title and three parts. The title of the land register includes the number of the land register and the name of the commune, town, or municipality in which the property is located.[33]

Part I, Property description[34]: The first part, the property description sheet, describes the property, including the property's order number, topographic number, area in hectares or square meters, and any observations.

Part II, Property ownership[35]: The second part, the property ownership sheet, records the entries regarding the ownership of the property, including the order number, entries regarding ownership, and any observations.

Part III, Charges[36]: The third part, the charges sheet, includes the order number, the entries, the amount of debt, and any observations.

In accordance with Article 6 of Law Decree No. 115/1938, the land register itself was supplemented with auxiliary registers:

33 Chiş, 2012, p. 310.
34 *Foaia de avere*.
35 *Foaia de proprietate*.
36 *Foaia de sarcin*.

Plan: The plan (cadastral map) includes all parcels in a locality, with a topographic number for each parcel. Records relating to entries: These records contain the documents that support the entries in the land register. Entry register: This register lists all the entries that have been made in the land register.[37]

In addition to the above, the following existed as well[38]:

Alphabetical indexes: These indexes contain the names and surnames of the owners, with the number of the land register in which they are registered.

Parcel indexes: These indexes show the topographic number of the parcels, the number of the plan on which each parcel is located, and the number of the land register in which they are registered.

2.3. Regulating the System of Real Estate Registration in the Civil Code

Articles 875–15 of the Civil Code regulate the real estate advertising system through land registers. Through the system of land registers, which is based on the topographical identification of real estate, real estate publicity and the full transmission and establishment of real property rights are achieved.[39] Article 876 paragraphs (1)–(2) of the Civil Code provides the following legal definition of land registers:

> *the land register describes the immovable property and shows the rights in rem relating to this property. In the cases provided for by the law, other rights, facts or legal relationships may also be entered in the land register, if they are related to the properties included in the land register.*

Starting from this incomplete definition, but taking into account the provisions of Article 883 of the Civil Code, which enshrines the public nature; Article 885 of the Civil Code, which gives entries in the land register the constitutive or translational effect of rights *in rem*; Article 887 of the Civil Code, which makes it possible to acquire rights *in rem* acquired by inheritance, natural accession, compulsory sale, expropriation for public utility, as well as in other cases provided by law or in the case of compulsory sale; Article 902 of the Civil Code, from which it follows that rights, acts, or other legal relationships become enforceable against third parties exclusively by notarial deeds; and Article 903 of the Civil Code, from which it follows that certain legal acts and deeds may be noted in the land register with the effect of information only, that is, the incapacity or restriction, by operation of law, of the capacity to exercise the right to

37 Sztranyiczki, 2012, p. 22.
38 Chiş, 2012, p. 504.
39 Sztranyiczki, 2012, p. 45.

use the land.[40] Land registers are drawn up and numbered by communes, towns, and municipalities. Land registers regarding properties in the same commune, town, or municipality form the cadastral register of real estate publicity of that administrative unit.[41] This register is completed with an entry register, a cadastral plan of the properties indicating the cadastral number of the properties and the order number of the land registers in which they are registered, an alphabetical index of owners, and a copy of the records of the acts or legal facts subject to registration.[42]

The land register itself is composed of a title, indicating its number and the name of the locality, as well as three parts in accordance with the provisions of Article 23 of Law No. 7/1996.

Part I refers to the description of the properties, which includes the following: first, the cadastral number is unique to each property and assigned by the Cadastre and Land Registry Office; second, the area of the property, the destination, the categories of use and, if applicable, the buildings. The area of the land is expressed in current units of measurement, in which, after cay, the previous areas registered in "*jugăre,*"[43] "*stânjeni,*"[44] and "*ari*"[45] will be transformed, as appropriate.[46] The destination and categories of use of the land are those established in accordance with the legal provisions: forest land; land permanently under water; intravilan land; and land with special destinations; third, the description of the property with the neighbours constitutes the annex to Part I of the land register, drawn up in accordance with the regulation approved by the order with the normative character of the general director of the National Agency, which is published in the Official Gazette of Romania.

Part II[47] refers to the registrations regarding the right of ownership and includes:

- The name of the owner;
- The act or legal fact that constitutes the title of the right of ownership, as well as the mention of the documents on which this right is based;
- The transfer of ownership;
- The servitudes established in favour of the property;
- Legal acts, personal rights, or other legal relationships, as well as actions relating to ownership;

40 Chiş, 2013, p. 885.
41 Sztranyiczki, 2012, p. 46.
42 Article 21 of Law No. 7/1996
43 A unit of measurement for agricultural areas.
44 Unitate de măsură pentru lungime, folosită înaintea introducerii sistemului metric, care a variat, după epocă și regiune.
45 A unit of measurement for land areas, equal to 100 m^2.
46 Sztranyiczki, 2012, p. 53.
47 Boroi and Anghelescu and Nazat, 2012, p. 289.

- Any modifications, corrections, or annotations that may be made in the title, in Part I, or in Part II.

Part III[48] refers to the registrations regarding the dismemberments of the right of ownership and charges, which include:

- The right of superficies, usufruct, use, habitation, concession, administration, servitudes in the charge of the subservient fund, mortgage and real privileges, as well as lease and assignment of debt;
- Legal acts, personal rights or other legal relationships, as well as actions relating to the real rights entered in this part;
- Seizure or pursuit of the property or its revenues;
- Any modifications, corrections, or annotations that may be made with regard to the registrations made in this part.

2.4. Land Registration Procedure in Romania

In the terminology of current land registers, governed by the Civil Code, there are three types of registration, depending on their subject matter: definitive registration; provisional registration (imperfect, non-definitive registration); and registration of legal acts and deeds, personal rights, and legal relationships related to the property.[49]

Registration is the entry[50] by which a right *in rem* is transferred, constituted, or extinguished, with a definitive title, from the date of registration of the application for registration. The right of subsequent registration is definitive registration and can be considered perfect in that it does not require any subsequent procedure.[51] The registration of a property right, based on a contract of sale, cannot be accepted when that contract does not meet the conditions required by law to be considered valid. The entry in the land register is made on the basis of a notarial deed, a final court decision, a certificate of inheritance, or another document where the law so provides.[52]

Provisional registration[53] is the registration by which a right *in rem* in immovable property is acquired, modified, or extinguished only on condition and to the extent that it is subsequently justified. It is also called prenotation or imperfect

48 Boroi and Anghelescu and Nazat, 2012, p. 290.
49 Chiş, 2012, p. 344.
50 *Intabulare.*
51 Sztranyiczki, 2013, p. 70.
52 Chiş, 2008, p. 341.
53 *Înscrierea provizorie.*

registration and takes place in cases where[54] the real right acquired is affected by a suspensive or resolutory condition or if it concerns or encumbers future construction; in the case of provisional registration having future construction as its object, its justification is made under the conditions of the law; the debtor has consigned the amounts for which the mortgage has been registered; a tabular right, which has been registered provisionally, is acquired; and both parties consent only to the making of provisional registration, and in the other cases provided for in Article 899 of the Civil Code.[55]

Notation[56] is the process of making rights, facts, or other legal relationships related to tabular rights, that is, information that exists independently of the registration, enforceable against third parties.[57] Third parties are subject to notation in the land register in 20 cases provided for in Article 902 of the Civil Code, for example, a sale made with reservation of ownership; a preliminary contract and option agreement; and a right of preemption arising from the convention.[58]

Article 906 of the Romanian Civil Code outlines the procedures for registering preliminary contracts and options.

A promise to enter into a contract having as its object the ownership of real estate or any other right related to it may be registered 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 preliminary contract, under penalty of the rejection of the registration request, provides the term within which the contract is to be concluded. The registration may be carried out at any time within the term stipulated in the preliminary contract for its execution, but not later than six months after its expiration.[59] The promise will be cancelled if the person entitled has not requested the court to issue a decision that will take the place of the contract, within six months of the deadline for its conclusion, or if, in the meantime, the property has been definitively awarded in the framework of the forced sale to a third party who is to be responsible for the obligations of the promisor. The cancellation will be ordered ex officio if, before the expiry of the six-month period, the registration of the right that was the object of the promise has not been requested, with the exception of the case in which the person entitled has requested the registration of the action in the land register.[60]

54 Sztranzicki, 2013, p. 71.
55 Chiş, 2012, p. 610.
56 *Notarea*.
57 Sztranyiczki, 2013, p. 73.
58 Chiş, 2012, p. 782.
59 Sztranyiczki, 2013, p. 74.
60 Chiş, 2012, p. 908.

3. Convalidation of Real Estate Contracts Concluded Without Authentic Form

Without an authentic form, the contract is null and void, but based on the provisions of the Romanian Civil Code, 'a contract that is absolutely void will still produce the effects of the legal act for which the conditions of substance and form laid down by law are fulfilled'.[61] Therefore, in terms of convalidation, we can consider a real estate contract without an authentic form a precontract.[62]

The precontract or the promise to contract to sell or buy, respectively, represents an agreement of will prior to the sale by which the parties undertake to conclude the sale in the future or to cause a third party to consent to the sale or purchase. The sale promise represents the agreement of the parties to commit themselves to the conclusion of a sale contract under predetermined conditions from the moment of the conclusion of this promise. In the absence of a contrary stipulation, the sums paid under a sale promise represent a repayment from the agreed price, which, in principle, in the event of a culpable breach of the sale, must be returned, with the exception of a contrary agreement.[63]

In the case of the so-called "pocket contracts," the parties are objectively prevented from concluding the contract immediately and, therefore, in order to give legal effect to their will, they agree to conclude a synallagmatic sale contract. Such a contract, which is not concluded formally, is "just" a sale promise. In practice, the parties agree on the price and the object of the sale; however, the lack of cadastral works prevents the conclusion of their contract in the authentic form required by law for validity. In such a case, the parties will be content to conclude a synallagmatic promise by which they mutually commit to sell and buy after the completion of the cadastral works.[64]

The legal literature has different views regarding the need for the conclusion in an authentic form of the bilateral sale promise when the authentic form is a condition for the validity of the intended sale; for example, when the parties to the contract agree on the future sale of land.[65] Some scholars do not share the Italian, Swiss, or German opinion, which refers to the rule of identity of form between the two contracts at a legal or jurisprudential level, that is, an authentic form is not required for the precontracts. In the current Civil Code, there is no express legal provision requiring an *ad validitatem* authentic form for the promise to contract. Where it has been considered

61 Romanian Civil Code, Article 1260
62 Veress, 2020, p. 67.
63 Tăbăraş, 2013, p. 15–21.
64 Dincă, 2013, p. 61.
65 Ionescu, 2012, p. 135.

that an authentic form is required *ad validitatem* for a particular type of promise to contract, for example, promise of gift, this has been expressly provided for.

In reality, people use real estate for 10 years under a precontract and simply wait for usucaption time. Such a procedure requires much less time and is also less expensive.

3.1. Real Estate Usucaption

Usucaption is the mode of acquiring the right of ownership and other principal rights *in rem* by exercising uninterrupted possession of a property, by virtue of and under conditions laid down by law. The institution of usucaption is justified, first, by reference to the situation of the possesser, in the sense that the need for the stability of situations and legal relationships requires, at a given time and with legal effects, the long appearance of ownership, until the transformation of a factual situation into a state of law. Second, usucaption is also a sanction against the passivity of the former owner, who has long been inactive, leaving the property in the possession of another person who has acted as owner or holder of another principal right *in rem*.[66]

Under the terms of the Romanian Civil Code of 1864, usucaption was the only absolute proof of ownership, because it offered the possibility of proving ownership by possession within the legal term and in compliance with the other conditions established by law.[67] If the fulfilment of the conditions required by law for usucaption to be applicable was proven, from the day on which possession began, an absolute legal presumption of ownership in favour of the usurper operated retroactively, a presumption that could not be overturned.[68]

By usucaption, only the property which formed the object of possession and only the principal right *in rem* corresponding to the possession exercised may be acquired, depending on the *animus* element.[69] According to the provisions of Article 929 of the Civil Code, property which, before or after the entry into possession, has been declared inalienable cannot be usucaptured. Similarly, according to the provisions of Article 939 of the Civil Code, a person who possesses another person's movable property for 10 years may acquire, by usucaption, the right of ownership.[70]

In addition, only individual private goods, *ut singuli*, that are susceptible to possession, and not legal or factual universalities, can be acquired by usucaption.[71] To be

66 Spanu, 2012, p. 272.
67 Jora and Ciochină-Barbu and Corbu, 2015, p. 294.
68 Stoica, 2017, p. 359.
69 Stoica, 2017, p. 455.
70 Jora and Ciochină-Barbu and Corbu, 2015, p. 295.
71 Jora and Ciochină-Barbu and Corbu, 2015, p. 296.

acquired by usucaption, the main real rights must be over corporeal goods, individually determined, that are susceptible to possession and are in the civil circulation.[72] Only immovable property over which private property is located can be acquired by usucaption, regardless of whether the holder of this right is the state, a local authority, or a private individual. Inalienable goods and public domain goods cannot be acquired by usucaption.

In the Civil Code, the legislator makes a distinction between tabular and extratabular usucaption. In addition, under the new regulation, movable property can also be acquired by prescription.

Extratabular immovable prescription is regulated by Article 930 of the Civil Code, which provides that the right of property over immovable property and its easements can be registered in the land register, on the basis of prescription, in favour of the person who has possessed it for 10 years, when the owner registered in the land register has died or ceased to exist (in the case of a legal entity), the declaration of renunciation of ownership has been registered in the land register, or the immovable property was not registered in any land register.[73] According to paragraph (2) of the same Article, in all these cases, the acquirer can acquire the right only if he has registered his request for registration in the land register before another third party has registered his own request for registration of the right in his favour, on the basis of a legitimate cause, during or even after the expiration of the prescription period.[74]

At the time of the expiration of the prescription period, to acquire the right of property by this means, it is necessary for those who invoke the prescription to register their request for registration of the right in the land register, thereby demonstrating their intention to prescribe and acquire the right.[75]

In accordance with the provisions of Article 931 of the Civil Code, the rights of a person who has been registered, without legitimate cause, in the land register, either as the owner of an immovable property or as the holder of another real right, cannot be challenged if the person registered in good faith has possessed the immovable for five years after the date of registration of the application for registration, provided that their possession is not vitiated.[76] Paragraph (2) of Article 931 of the Civil Code specifies that it is sufficient for good faith to exist at the time of registration of the application for registration and at the time of entry into possession. The right of ownership is acquired in accordance with the title that is registered in the land register,

72 Cantacuzino, 1998, p. 129.
73 Jora and Ciochină-Barbu and Cobru, 2015, p. 297.
74 Florea, 2012, p. 173.
75 Jora and Ciochină-Barbu and Cobru, 2015, p. 297.
76 Jora and Ciochină-Barbu and Cobru, 2015, p. 298.

the date of acquisition being the date of registration of the application for registration of the right in the land register.[77]

Therefore, in practice, there are countless cases in which the parties concluded a "pocket contract" with each other, that is, a preliminary agreement on the basis of which they acquired the ownership right by applying the prescription rules.

The legal landscape is continually evolving, shaped by landmark court decisions that reflect societal values, legal principles, and the dynamics of the judicial system. This paper explores several significant legal cases that have had a profound impact on specific areas of law. By analysing these cases, we can gain insights into the interpretation of laws and their implications for future legal proceedings.

The first case[78] revolved around a land dispute between a private individual, Tinca, and a municipality. Tinca was claiming ownership of a piece of land adjacent to her property through adverse possession, arguing that she and her family had continuously used the land for over 30 years. However, the municipality maintained that the land was public property and had not been legally transferred to Tinca. In a case concerning adverse possession, Tinca claimed to have openly, continuously, and exclusively possessed a piece of land for over 30 years, a requirement that can lead to ownership under Romanian law. However, the municipality contended that the land was part of its public domain, arguing that Tinca's possession lacked legitimacy. Additionally, two individuals, Valeria and Alexandru, intervened, asserting that they also utilised the land and challenging Tinca's claim.

Both parties presented various forms of evidence, including witness testimonies, property documents, and expert reports, to substantiate their arguments. The case raised complex legal questions surrounding property rights, adverse possession, and the interpretation of municipal regulations. Based on the preliminary summary, it appears that the court ruled in favour of Tinca, concluding that her possession was indeed open, continuous, and exclusive for the statutory period required. The court found insufficient evidence to support the municipality's claim of public ownership and regarded the intervenors' assertions as lacking credibility, which did not undermine Tinca's case. Additionally, parts of the municipal regulations regarding the land were declared invalid.

The court's decision likely hinged on several key factors: the strength of Tinca's evidence, including compelling witness testimonies and expert reports, contrasted with the municipality's lack of clear evidence to back its ownership claim. Furthermore, the court may have deemed the intervenors' claims inconsistent and

77 Florea, 2012, p. 174

78 Sentinţă civilă 2 din 01.04.2016. Judecătoria Buzău, https://www.jurisprudenta.com/jurisprudenta/speta-bbsslz4/

unsupported. Finally, it ruled that the municipal regulation categorising the land as public property was unlawful.

This ruling had significant implications, as it established Tinca's legal ownership of the land, while the municipality had forfeited its potential claim. The case underscores the importance of property rights and highlights the complexities inherent in resolving land disputes.

The second case[79] involved a real estate claim concerning adverse possession and the connection of possessions. The ruling, which was finalised on 12 May 12 2022, involved plaintiffs C.V. and C.I. who sued defendants C.M., C.C., C.G., C.Ș., and C.Co. They sought a court ruling to recognise their ownership of a 267 m^2 plot of land located in the village of Vânători, Galați County, asserting the need to establish property boundaries between their land and that of the defendants.

The court acknowledged that a real estate claim allows an owner who has lost possession of their property to seek its recovery from an unlawful possessor. The success of such a claim hinges on the Plaintiff's ability to prove their ownership and that the property is held by another party. The court emphasised the legal obligation of neighbouring landowners to collaborate on property boundary demarcation and shared costs.

Furthermore, the court noted that adverse possession is based on uninterrupted possession for a continuous period, as established by civil law. A successful adverse possession claim requires public, uninterrupted, and peaceful possession under the claim of ownership for a period of 30 years.

In this case, the defendants had possessed the disputed land continuously since 1954. The court also considered the effect of laws enacted in 1974 that removed land from civil circulation, determining that this resulted in a natural interruption of the acquisition prescription. Following the repeal of those laws in 1989, the possession period resumed.

Ultimately, the court found that the defendants had exercised effective possession of the land for a total of 48 years, thus satisfying the 30-year requirement for adverse possession. The court established that the plaintiffs failed to prove that the defendants' possession was not valid or effective. The defendants acted as true owners of the land, which they had maintained and included within their property boundaries.

The ruling concluded that the plaintiffs' passive approach over the years, allowing the defendants to occupy and utilise the land without contest, led to the forfeiture of their ownership rights through adverse possession. As a result, the court rejected the plaintiffs' claim and accepted the defendants' counterclaim, recognising their ownership of the land through adverse possession.

79 Summary of Civil Ruling No. 795 from 3 March 2021, https://www.jurisprudenta.com/jurisprudenta/speta-19lpiwsi/

4. Conclusion

Based on Article 1674 of the Civil Code, except in cases provided by law or if the parties' intention is to the contrary, ownership is transferred by law to the buyer from the moment the contract is concluded, even if the property has not been delivered or the price has not yet been paid.

In this case, the buyer acts as the owner immediately after the conclusion of the "pocket contract"; however, in reality, it may take several years for the buyer to become the owner of the property.

Therefore, why do people still use "pocket contracts," or why do they not simply enter into a notarial form of real estate sales contracts? After Communism, because of the poor economic situation in the country and the lack of land registers, people only concluded real estate sales contracts between themselves, which were called "pocket contracts." This meant that the seller and buyer drafted the text of the contract themselves, writing it by hand. The contract was signed by two witnesses, usually local priests, teachers, or the neighbours of the parties. Obtaining the land registers was not only time-consuming but also costly, as the probate procedure was handled by a public notary. This is why people tried to make things as simple as possible and simply made a sales contract between themselves, which we can only interpret as a precontract, thanks to the convalidation. People still use this contracting option today, though less frequently.

One of the main reasons for doing so is the lack of land registries. The land registration process itself can take several years, or at least several months, and it is a costly process. The second important reason is that in Romania, real estate sales contracts can only be concluded with a notary, which is also very expensive. Therefore, in poorer rural areas, where agricultural land was mainly exchanged, people tried to solve the matter among themselves with two witnesses, thus saving money. However, this would have negative implications in the future. Even if "pocket contracts" are not common today, the land registration process of "pocket contracts" that have already been concluded poses serious challenges to both the land registration authority and the owner, and in some cases, even to notaries in the case of an inheritance procedure.

The conversion of a contract into a precontract is a genuine hypothesis of conversion and, from a practical point of view, seems to be the preferred field of manifestation of this legal procedure. Thus, it is considered that the expression of intent that is not valid as a contract of sale because of the lack of the authentic form required by the law *ad validitatem* or because of the lack of express consent of one of the spouses, when the sale relates to a piece of land or a building which is common property, or because of a breach of temporary legal inalienability, is considered a precontract or, as the case may be, a unilateral promise of sale.

It has been argued that the possibility of converting the contract into a precontract cannot be based on the idea of the practical equivalence of the effects of the initial act and the subsequent act, since the precontract would be "less" than the contract of sale, but on the idea of the progressive formation of the contract of sale.

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