

Termination of the Maintenance Contract

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Abstract

Objectives: The maintenance contract is a contract with a maintenance clause, which involve alienation of the asset, usually real estate, upon the death of the maintained and former owner. The paper attempts to establish what this maintenance entails and whether it is a typical contract with a clause or has other connotations, starting from the reasons for its termination. Proposals and methodology: To establish possible proposals, it is essential to know who the contractors are and what characteristics they must meet, because usually those who need permanent care are those without defense or who have a series of disabilities who are socially disadvantaged, but who through their behavioral diversity have other abilities or represent a symbol for society. For this reason, we have conducted extensive research and have found a lack of interest in society for this type of person. On the other hand, other contractors tend to obtain the asset more quickly and without too much expense, hence the lack of interest of some in taking the trouble to provide proper care. Results and implications: the maintenance obligation is not only carried out in terms of pure and simple material maintenance, but also in creating the perfect, warm, appropriate and sociable social environment regarding the maintenance of an elderly person in a special social status, which presupposes or more precisely implies a psychological compatibility between them, a compatibility that is not analyzed by anyone.

Keywords: maintenance, contract, clause, compatibility, supervision.

JEL Classification: K12, K15

1. Introduction

For the custodian, the maintenance contract represents the opportunity for an initial alternative to traditional investments. We can identify benefits such as: the lack of guarantees necessary to ensure the fulfillment of the obligation, the payment of a contribution in kind representing a low value compared to the value of the distribution of the property right, the ownership (usually) of a property that represents a perpetual investment, the expression of an option and full knowledge of the asset.

As for the dependent, he has a complementary way to ensure his health, to maintain the material and social status of his normal life. Also, by releasing his own financial resources dedicated to maintenance, this contracting party can aim at the rapid implementation of personal projects or to more easily bear difficult moments (chronic illnesses, hospitalization, fatigue, etc.). Finally, compliance represents a tax-free income.

Even analyzing in principle all the benefits of executing a maintenance agreement, the unique value of this contractual instrument is evident in the conditions of today's economic and social life.

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2. General considerations regarding the maintenance contract

If in the light of the old civil law, the maintenance contract is an anonymous contract, subject to its operation on the general rules applicable to the contract, the provision of the New Civil Code, under art. 2.254-2.263, of the legislation in question, indicating that, in this case, some provisions are not very well specified. With a simple definition of the maintenance contract, we can see that this agreement represents, under the control of the regulations of the old jurisprudence and the established doctrine, an anticipated sale with a special feature: the obligation to pay for the purchased good begins at the end of the contract and is terminated upon the death of the alienator. Taking into account the evolution of our society, the maintenance contract embodies a special solution for both the caregiver and the cared for.

So, according to the legal definition of this type of contract: “In the maintenance contract, one of the parties undertakes to provide the necessary services for the preservation and maintenance for the benefit of one of the parties, or of a specified third party, for a specified period of time. If the contract stipulated the duration of the maintenance or only stipulated its lifelong nature, then the maintenance should be for the entire duration of the respective custody”². The obligations of the debtor of the maintenance contract, have a legal character because they are included in the aforementioned articles, the methods of fulfilling them (the obligations) being provided for by the Civil Code, as well as the provisions referring to the institution of the annuity, the provisions referring to the capital of the contract being applicable in the maintenance contract.

It is the nature of legal relationships that they appear, change over time and even disappear, but the final fact is that this cannot be a coincidence, because this would disrupt, in an unacceptable way, the civil legal circuit.

Regarding the ways in which the effects of a maintenance contract cease, the current civil law comes with new problems compared to the regulations established by case law and doctrine oriented towards the old rule, but all are strictly related to pecuniary and not broadly related to the maintenance obligation.

3. Expiration of the maintenance contract

A first novelty brought by the New Civil Code is created by the possibility of executing the maintenance contract for a determined period, which brings with it one of the first ways of terminating the effects of the joint custody contract, which is until the date of the agreement's term.

According to art. 2.263 para. (1) Civil Code, a maintenance contract concluded for a fixed period expires at the end of this period, unless the maintenance creditor dies before the term.

Rather than a case of termination that presents specific problems, we must mention that reaching the last date determines the termination of the maintenance contract by law without the need for prior notice.

Indeed, as is apparent from the legal passage cited, it is not mandatory that a

² Grigore-Valentin G. Beleniciu, *Contractul de intretinere*, Universul Juridic Publishing House, Bucharest, 2019, p. 20.

maintenance contract concluded for a fixed period expires only when it has reached that time. Of course, upon the death of the trustee, the trustee's obligation becomes null and void by law with a view to terminating the contract. Even if the same legal document referred to does not refer to a second exception, the termination of the contract can also take place by mutual agreement of the parties (*mutuum consensus mutuum dissent*).

4. Agreement of the parties

This way of terminating the contract is also included in the list made by art. 1.321 Civil Code, through the perspective of "the contract, which, under the law, is terminated by execution, with the agreement of the parties, the criticism mutual agreement, expiration of the term, fulfillment only, to the extent possible, of the condition, accidental non-fulfillment, as well as any other causes provided by law".³ Regarding the cumulative effects of contract termination, the provisions of art. 1.322 Civil Code, according to which "upon termination of the contract, the parties are released from the obligations acquired". These may be retained for the repair of the damages caused and, depending on the circumstances, for the restitution, in kind or in equity, of the benefits in kind and which will be available after the conclusion of the contract.

Although at first glance, this method of contract termination would be unlikely to create conflicts that must be resolved by court, from a file of the Craiova Court of Appeal, as we will see, the results are contrary: "The penalty applied. by the unitary rules of art. 1.020-1.021 Civil Code (Old Civil Code n.n.), represents a cause for termination of the synallagmatic contract, with retroactive effect, at the request of the other party, as a result of the non-execution of the obligation of the other party from the listed causes"⁴.

In a certified statement, the dependent expressly stated that he waived the duty of care established by the agreement, claiming that he had received the maintenance payment and in this case no longer had any claims against the dependent.

Therefore, the maintenance contract was terminated by mutual agreement of the contracting parties (*mutuus dissensus*), as a result of the early performance of the obligation, so that the plaintiff would no longer be entitled to a contractual remedy for the non-performance of the maintenance obligation, because, according to the notaries' statement, the contract was revoked, therefore no longer exists.

The plaintiff's claim that the notarial character has a purely personal character cannot be maintained, because the force of truth of this true novel lies in the fact that the work as a whole delights in the idea of truth, if understood as having been created in accordance with the law. and the rules of form, and the references therein have full evidentiary authority, can only be removed in the event of registration. However, the

³ Flavius Sabău, *Contractul de întreținere – reglementare, aspecte teoretice, aspecte practice*, <https://www.juridice.ro/683627/contractul-de-intretinere-reglementare-aspecte-teoretice-aspecte-practice.html>, accessed on 21.02.2025; Florin Moțiu, *Contracte speciale*, 6th edn., revised and added, Universul Juridic Publishing House, Bucharest, 2015, p. 336; Liviu Stănciulescu, *Curs de drept civil. Contracte*, 2nd edn. revised and added, Hamangiu Publishing House, Bucharest, 2014, p. 163.

⁴ Luminița Cristina Stoica, *Contractul de întreținere și de renta viageră. Practica judiciară*, Hamangiu Publishing House, Bucharest, 2011, p. 75.

plaintiff himself indicated, both in the merits of the proceedings and in the merits of the complaint and appeal, that he agrees with what is recorded in his statement, which therefore represents its independence.

Statements regarding the statements of the parties in the factual documents have probative force until proven otherwise, but the court must admit the request for the annulment of these documents.⁵

We state that the agreement of the parties to terminate the maintenance contract does not contravene the provisions of art. 2.252 paragraph (1) of the Civil Code, which also applies accordingly to the maintenance contract (according to art. 2.256 paragraph (1) of the Civil Code), according to which the annuitant cannot be released from the payment of the annuity (the provision of maintenance) by offering the return of the capital and waiving the return of the paid installments.

We maintain that the agreement of the parties to terminate the maintenance contract does not violate the provisions of art. 2.252 paragraph (1) of the Civil Code, which also applies accordingly to the maintenance agreement (according to art. 2.256 paragraph (1) of the Civil Code), according to which the debtor cannot be exempted from the payment of the annuity (the maintenance order) by returning the capital and the return of the dividends paid.

5. Resolution of the contract

As we have already seen, the maintenance contract can have a synallagmatic character in that the resulting obligations are exchanged between the representatives of the two contracting parties and, at the same time, mutually dependent. This creates the so-called specific effects of synallagmatic contracts, namely: except that the contract is not enforceable⁶; the resolution or termination of the contractual agreement⁷ or implicitly the idea of risk of the contract⁸.

The seat of the issue regarding the settlement of contracts is represented by art. 1.549-1.554 Civil Code. Therefore, according to art. 1.549 paragraph. (1) Civil Code, if

⁵ Craiova Court of Appeal, Section I civil and for cases with minors and family, decision no. 1055/2008, in Luminița Cristina Stoica, *op. cit.*, p. 210-211. See also, Ion Necșulescu, „Rezoluțiunea contractului de întreținere din perspectiva noului Cod Civil”, *Acta Universitatis George Bacovia. Juridica*, Volume 8. Issue 2/2019, https://www.ugb.ro/Juridica/Issue16ROEN/12_Rezolutiunea_contractului_de_intretinere_Ion_Necsulescu.RO.pdf, accessed on 21.02.2025

⁶ The exception of non-performance is a form of protection available to one of the parties in a synallagmatic contract when it requests “the performance of its obligation, without the party requesting this performance in the performance of its own obligations”. By invoking this exception, the party invoking it obtains a suspension of its own obligations until one of the parties performs its remaining obligations. Once these obligations are fulfilled, the suspensive effect of the exception of non-performance ceases.

⁷ If either party to the synallagmatic agreement refuses to perform the contract, the other party has the possibility to invoke the exception of non-performance of a contract, the possibility to claim mandatory performance of the contract, and finally, there is the possibility to claim and resolve the contract.

⁸ From this point of view, it should be noted that in the case of a transfer agreement that is no longer in force, known rule *res perit domino*, currently the rules of art. 1.274 al. (1) Civil Code, specifying that, in the absence of a contrary provision, as long as the good is not handed over, it remains in person and the double duty passes the risk of the contract, even if the goods have been transferred to the recipient. In the event of accidental loss of the goods, the debtor of the delivery obligation loses his right to payment and, if he had received it, is obliged to return it.

the performance of the contractual obligations is not necessary, the creditor has the right to a judgment or, as the case may be, to the termination of the contract, as well as to consequential damages, if applicable. The following paragraph, (2) of the same article shows us that the provision can be part of the contract, only when the performance is divided. Also, in the case of a contract with several parties, the non-performance of the obligation by any of the parties does not constitute the termination of a contract in other respects, except in the case where the performance in default of the obligations is to be carried out, subject to certain conditions, which are considered important⁹ Regarding the rule, as it is being amended, it is noted that the resolution may be decided by the courts, upon request or depending on the circumstances, it may be formally declared by the entitled person - art. 1.550 para. (1). C.: "There is an exception to this rule which, consequently, in the cases provided for by law, or if the parties have agreed, the resolution applies in full right."

Regarding the modification or termination of the contract, these may be unilateral, carried out by written notification of the debtor when agreed by the parties, when the debtor is legally liable or when he does not perform his obligation on the specified basis, putting him in delay.

Regarding the possibility of introducing commission agreements into conventions, we must recall that according to art. 1.553 para. (1) Civil Code, "a commissory pact produces effects if it expressly imposes obligations whose non-performance results in the legal resolution or termination of the contract". In this case, the order or termination is based on the debtor's delay, unless it was agreed that this will arise from the simple fact of non-performance.

A contract terminated by stipulation is considered unexecuted and, unless the law provides otherwise, each party is obliged, in this case, to return to the other party the benefits received. Regarding the difference between resolution and termination, we must say that the latter produces its effects only for the future.

Returning to the essential aspects of the maintenance contract, we must say that the order will be necessary when the conduct of the other party cannot execute the contract in accordance with good morals (art. 2.263 Civil Code).

An exception to the general rules applicable to the order, in the case of the maintenance contract provision mentioned above, as well as when it is based on the fact that the duty of diligence was not unjustified, the order can only be issued by the court, any contrary clause is considered unwritten - art. 2.263 Civil Code. If, for any of the two reasons mentioned above, the trustee requests the modification of the agreement through court mediation, the delivery of the defendant debtor cannot provide for the maintenance, which was made after the start of the employment, in order to prevent the modification of the contract.

Another important aspect regarding the regulatory effects at the level of the maintenance contract is represented by the fact that the wrongful debtor cannot obtain reimbursement for maintenance services already provided - art. 2.263 paragraph (5) Civil Code, although it is a fact that, as we have emphasized above, the resolution produces both *ex tunc* and *ex nunc* effects.

⁹ The New Civil Code - Law no. 287/2009 was published in the Official Gazette of Romania, Part I, no. 511 of July 24, 2009, was amended by Law no. 71/2011 and rectified in the Official Gazette of Romania, Part I, no. 427 of June 17, 2011 and in the Official Gazette of Romania, Part I, no. 489 of July 8, 2011.

Faced with the need to determine whether a resolution or termination operates in custody, courts have ruled in the past that resolution does. Relevant in this regard is a case of the Craiova Court of Appeal: "For contracts executed consecutively, in the event of the negligent non-performance of an obligation by one of the parties, the termination is certain, which means that the termination of the contract has occurred."¹⁰ But in the case of a maintenance contract, for the negligent non-performance of the obligation by the maintenance debtor, although executed consecutively, the specific penalty is rehabilitation, and not termination of the contract, because its main result, „the displacement of property rights, occurs *uno ictu*”¹¹.

It should also be said that, from a procedural point of view, the heirs also have a procedural status in force - art. 2.243 paragraph (6) Civil Code. In this sense, the judicial process, from which we reproduce a relevant case: "the formal nature of the maintenance claim does not affect the "patrimonial nature of the action in contractual remedy for non-execution". The approval of the rule, even if it is intended for a private benefit, has a patrimonial nature, since it is likely to establish the patrimonial balance of the contracting parties. Therefore, the action in the sense of the maintenance contract can also be formulated by the heirs.

The plaintiff, after the death of the second maintenance creditor, did not have the procedural capacity to request the settlement of the maintenance contract in its entirety, but only 3/8 of the share in the home, which he owned.

For category 5/8 the plaintiff had to prove the quality of the inheritance, that the succession of the deceased must be contested, and after establishing the soundness of the party's strategy, it can be discussed whether the co-individual is entitled to request. modification of the entire contract only or *pro parte*, in this case, against the heirs of the other person and taking into account the views and the previous court decision. After establishing the quality of the procedure, it can be decided whether, in this case, the indivisible liability can still be put into question that is, if at the time of filing the action there is no longer a plurality of creditors.¹²

As for the situation in which the provision cannot be continued or found in the category of detention for objective reasons or if "the maintenance debtor dies without the consent of the parties, it should be noted that no one can speak of settlement" by contract - art. 2.263 paragraph (7) Civil Code, the aforementioned conditions are specific to the replacement of guardianship with a curatorship.

Although reference is made to guardianship and curatorship, the termination of the maintenance contract is discussed only with regard to the pecuniary aspects of the contract itself, without discussing the human element, in the same manner as when concluding the contract. It would seem that everyone, legislators and applicants, have forgotten that in fact the maintenance contract implies the existence of a contractor with self-maintenance problems and who should obtain help through it, from all points of view, including moral, and this aspect, if missing, should influence the existence of

¹⁰ Craiova Court of Appeal, decision no. 119 of January 13, 2000, in the Bulletin of Jurisprudence, Collection of Judicial Practice 2000. See also, Francisc Deak, Lucian Mihai, Romeo Popescu, *Tratat de drept civil. Contracte speciale*, Vol. II, Universul Juridic Publishing House, Bucharest, 2023, p. 211.

¹¹ Craiova Court of Appeal, decision no. 119 of January 13, 2000, in the Bulletin of Jurisprudence, Collection of Judicial Practice 2000, p. 106-107

¹² Bucharest Court of Appeal, 4th civil division, decision no. 1915 of September 19, 2002, in *Pandectele Romane* no. 3 of 2003, p. 142-144.

the contract.

It must also be confirmed with regard to the termination of the maintenance contract by a decision, that from the corroborated application of art. 2.256 paragraph (1) and art. 2.251 paragraph (1) of the Civil Code, it follows that the creditor may request the guardian appointed for a fee to modify the contract if the debtor does not deposit the promised guarantee to fulfill his obligation or reduce it.

6. Death of the maintenance creditor

Given that the role of the trustee remains without object, the situation seems to no longer work, the agreement is something that happens. At this stage, it must be established that all maintenance creditors (if there are many) must die, so that the effects of the maintenance contract cease, this being also a result of the indivisibility of the care responsibility. But is it from proving the lack of care, or from another moral aspect? The maintenance contract based only on purely contractual aspects, in which the interest is purely pecuniary, raises the issue of a loose legality of its conclusion. Entrusting the conduct of a person's life to an unknown person, without professional training, with the obvious desire to acquire a most often very valuable asset, raises a major issue of social responsibility from the very way it is concluded.

7. Conclusions

The changes that have occurred, at the economic level, but also at the political and social level, have determined civil society to develop legal instruments capable of meeting the needs of contemporary society.

The maintenance contract, as well as its provisions in the Civil Code, have become a more versatile legal instrument, capable of accommodating a wider range of requests from participants in the civil circuit. In this regard, in response to the need for a unified approach to the provisions applicable to the maintenance contract, the New Civil Code redefines this opinion, establishing conditions that restrict it from similar contracts and determine its specific status, both in terms of living conditions and legal effects.

So, currently, the maintenance contract can be concluded not only for the life of the dependent, but also for a certain period of time, a position that can attract those subjects of law with a certain difficulty in the face of extreme uncertainty regarding the chance of winning or losing.

We say this because, in this case, that element of the maintenance contract no longer depends on the moment of the death of the dependent, but as the number of needs of the dependent fluctuates. Of course, they also do not allow an exact calculation, so even in this case, the size of the obligation is unknown to the holder, but they allow an appreciation of this quantity, closer to its true value.

But, drawing a parallel between entrusting a child for adoption and concluding such a maintenance contract, we believe that the legislator dealt primarily only with the pecuniary aspect, which also has weight when concluding the contract, and neglected the social, humanitarian aspect, which was essential by virtue of respecting the Fundamental Human Rights, present in the Charter, a component part of the Treaty of

Lisbon, with a constitutional role at the level of the European Union¹³.

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¹³ Charter of Fundamental Rights of the European Union, <https://eur-lex.europa.eu/RO/legal-content/summary/charter-of-fundamental-rights-of-the-european-union.html> accessed on 21.04.2025.