Sale with a Right of Redemption – A Pignorative Operation at the Intersection of Formal Rigor and Anti-Usury Control

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Abstract

This article conducts an in-depth analysis of the legal framework governing the sale with a right of redemption (S.R.R.), exploring the dual nature of the contract and demonstrating that, although formally it is a sale subject to a resolutory condition, its economic substance qualifies it as a disguised pignorative operation intended to guarantee a loan (an efficient pactum commissorium). The S.R.R. manifests itself as a rapid financing instrument (a type of bridge financing), with relevant applicability in various economic fields, from urgent real estate transactions and trade in valuable movable goods (luxury items, equipment) to the financing of capital operations (through the sale and repurchase of shares/participating interests). However, this economic utility is constantly overshadowed by the major risk of usury and the circumvention of forced execution rules. A critical evaluation of the boundary between sale and loan is carried out, highlighting how the disproportion in price and the intent to secure a debt expose the contract to the sanction of absolute nullity due to illicit cause (usury/loan sharking), despite its formal validity. The article includes a detailed comparative analysis with foreign legal systems (Italian, English, German), emphasizing the more stringent solutions for economic control (price ceiling) and judicial requalification (equity mortgage). Finally, de lege ferenda proposals are formulated, aimed at strengthening the institution by introducing material control of the price and increased transparency of publicity (registration in the AEGRM – the Romanian Electronic Archive of Security Notices), thereby transforming the S.R.R. into a more ethical and resilient financing instrument against judicial challenges.

Keywords: *sale, varieties of sale, sale with right of redemption (or sale with option to repurchase), resolutory condition, credit instrument, pactum commissorium (or forfeiture clause), usury (or loan sharking), Civil Code.*

JEL Classification: K11, K12, K15

1. Introductory aspects and the legal nature of the institution

The Romanian legislator recognized the parties' possibility to conclude an atypical variety of sale, in the form of the sale with a right of redemption (regulated by Articles 1758-1762 of the Civil Code). The reintroduction of this institution marked the end of a long period during which it had been subjected to public opprobrium and prohibited, due to its association with usurious practices.

According to Article 1758 para. (1) of the Civil Code, the sale with a right of redemption is the contract of sale through which the seller reserves the right to take back the sold asset, by restoring the price and the expenses provided by law (Article 1759 Civil Code).

Its primary legal nature derives from its character as a sale-purchase contract — a consensual, bilateral (synallagmatic), and onerous contract. The defining element,

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enshrined by the legislator, is the potestative right of the seller, which functions as an express resolutory condition affecting the transfer of ownership.

Legal doctrine, both classic (under the 1864 Civil Code) and contemporary (under the current Civil Code), has elaborated definitions emphasizing either the modal character or the economic function of the institution.

1.1. Definition focused on modality (resolutory condition)

In its legal essence, this variety of sale is a pure and simple sale, but affected by a resolutory condition. This is the dominant view and underlies the current legal regime of the institution.

Thus, the sale with a right of redemption has been defined in doctrine as:

- a pure and simple sale, but affected by a contractual clause through which the seller reserves the faculty to unilaterally terminate the sale (a sale in which a pact of redemption has been stipulated)[2].

- a perfect sale from the moment of its conclusion, transferring ownership solo consensu. However, the buyer's right of ownership is not definitive, being under the threat of retroactive revocation if the seller decides to exercise the option. This threat gives the contract the character of a sale subject to a resolutory condition[3].

- the institution does not represent a mere promise of resale, but a sale under a potestative resolutory condition that terminates the initial contractual relationship. This is a crucial distinction from a simple promise, as the effect of exercising the option is retroactive (ex tunc), and not only for the future (*ex nunc*)[4].

The mechanism of the resolutory condition in the sale with a right of redemption is complex and rigorously codified, involving the existence of two distinct phases:

a) the *Pendente Conditione Phase* – before the expiration of the 5-year term. During this period, Owner I (the seller) is the holder of a potestative right (the option), whose economic value is essential for their patrimony, while Owner II (the buyer) holds an immediate but fragile right of ownership, subject to resolution. The buyer exercises all prerogatives of ownership *(usus, fructus, abusus*), but the rights they confer on third parties are automatically terminated upon the fulfillment of the condition (*resoluto jure dantis, resolvitur jus accipientis*).

b) the Termination/Consolidation Phase (Ex Tunc Regime). If the condition is met (redemption), i.e., if the seller notifies within the term and deposits the owed amounts (price + expenses according to Art. 1759 Civil Code), the retroactive termination of the contract occurs, the asset re-enters the seller's patrimony, and the buyer must return the fruits perceived from the date of redemption. If the condition is not met (expiration of the term), i.e., if the 5-year term expires without the seller

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[2] Francisc Deak, Liviu Mihai, Romeo Popescu, *Tratat de drept civil: contracte speciale, vol. I: Vânzarea și schimbul (Treatise on Civil Law: Special Contracts, Vol. I: Sale and Exchange*), 5th ed., Universul Juridic, Bucharest, 2017, p. 221.

[3] Ion Popa, *Contracte civile: de la teorie la practică (Civil Contracts: From Theory to Practice),* 2nd ed., rev. and updated, Universul Juridic, Bucharest, 2020, pp. 243-245.

[4] Georgiana Cimpu, „O varietate de vânzare controversată: vânzarea cu opțiune de răscumpărare" („A Controversial Variety of Sale: The Sale with a Right of Redemption"), *Analele Științifice ale Universității „Alexandru Ioan Cuza" din Iași*, Tom LXIX/2, 2023, p. 66. DOI: 10.47743/jss-2023-69-2-4.

exercising the option, or if the seller exercises the option but fails to deposit the sale price plus the expenses provided by law within one month, the right of redemption is extinguished by forfeiture. The buyer's ownership is irrevocably consolidated (ex nunc from the expiration of the term), and the sale becomes definitive[5].

This mechanism confirms that, although the contract is a sale, the modality (the condition) places it in a hybrid legal regime, where the security of the transaction is subordinated to a strict term and a regulated exercise procedure (notification and deposit).

1.2. Definition focused on the guarantee instrument (pignorative function)

Another doctrinal direction[6] emphasizes the economic function, defining it as a form of real guarantee for a loan in which the debtor (seller) offers the creditor (buyer) an absolute, though revisable, right of ownership over the asset, in exchange for a sum of money (the price). The movable or immovable asset thus becomes a first-ranking security for the repayment of the principal and the credit costs. This perspective addresses the economic essence of the contract, where the transfer of ownership to the buyer (creditor) serves as the supreme guarantee for the repayment of the sum (the price paid). Ownership is transferred to the creditor with a conditional encumbrance, allowing the debtor (seller) to redeem it. This definition is what generated the historical controversies related to usury and the pactum commissorium.

A similar opinion[7] analyzes the contract as a "credit technique at the limit of the law," stressing that contractual flexibility can mask a *de facto* pignorative intent. Although, formally, the sale with a right of redemption is a sale subject to a resolutory condition (as detailed above), teleologically (by the purpose pursued by the parties) and economically, it operates as a credit guarantee instrument. This interpretation is essential for understanding the controversy that led to its historical prohibition[8].

The pignorative function was intensely criticized because it represented a circumvention of the mandatory rules governing the execution of real guarantees

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[5] Bujorel Florea, „Vânzarea cu opţiune de răscumpărare” („The Sale with a Right of Redemption”), *Dreptul* (*The Law*), no. 1/2017, pp. 107-120.

[6] Oliviu Puie, *Tratat de contracte civile potrivit Codului civil, Codului de procedură civilă, Codului fiscal, Codului de procedură fiscală, Codului penal şi Codului de procedură penală (Treatise on Civil Contracts according to the Civil Code, Code of Civil Procedure, Fiscal Code, Code of Fiscal Procedure, Penal Code and Code of Penal Procedure),* Universul Juridic, Bucharest, 2017, pp. 371-372.

[7] Radu Rizoiu, Mihaela Gherghe, „Câte nuanţe de gri are creditul? Despre tehnici de creditare la limita legii şi dincolo de ea” („How Many Shades of Grey Does Credit Have? About Credit Techniques at the Limit of the Law and Beyond It”), *Revista Română de Drept Privat* (*Romanian Review of Private Law*), no. 1/2019, pp. 288-323.

[8] Legea contra cametei nr. 61/1931 (Law against Usury no. 61/1931), published in *Monitorul Oficial* (Official Gazette) no. 77 of 02.04.1931, subsequently abrogated by Decretul-lege nr. 1700 pentru stabilirea dobânzilor și înlăturarea cametei din data de 05.05.1938 (Decree-Law no. 1700 for the establishment of interest rates and the elimination of usury dated 05.05.1938), which aimed to regulate interest rates and eliminate the practice of usury, thereby replacing the 1931 law. At the time of the entry into force of Decreet no. 311/1954 for the establishment of the legal interest rate, a normative act that led to the abrogation of Decree-Law no. 1700/1938, and implicitly, the prohibition of the sale with a pact of redemption, the legislator's view was substantially modified. This new approach opened the way for the conclusion of the contract of sale with a pact of redemption once again, under the principle of contractual freedom.

(mortgage, pledge) and, in particular, the prohibition of pactum commissorium (the clause that allowed the creditor to automatically become the owner of the pledged/mortgaged asset in case of non-payment, without resorting to public sale). In the case of the sale with a right of redemption, if the seller does not exercise the option (i.e., does not repay the debt) within the forfeiture term (Art. 1761 NCC), the buyer's ownership consolidates automatically and without forced execution formalities. This mechanism offers the creditor (buyer) a much faster and less costly method of satisfying the claim than any forced execution procedure on a mortgage or pledge, as the asset enters directly into their full ownership.

The greatest danger associated with the pignorative function is its historical link with usury (loan sharking). On the one hand, the buyer (creditor) pays an initial price that is, as a rule, below the real market value of the asset. If the seller fails to redeem, the creditor consolidates ownership of the asset at an undervalued price, obtaining an unjustified profit. On the other hand, the total amount the seller must repay upon redemption (price + expenses + legal interest) might be insufficient to compensate for the real value of the money. However, in the past, under the guise of "useful and necessary expenses" or "penal clauses," creditors requested sums that far exceeded the legal interest ceiling, thus concealing a usurious profit. The historical prohibition in Law No. 61/1931 had precisely this goal: protecting the needy debtor against the abusive creditor.

In conclusion, although the current Civil Code reintroduced the institution, establishing a stricter framework (imperative forfeiture term - Art. 1758, and the obligation to restore legal interest - Arts. 1759 and 1762), modern doctrine continues to recognize that the essential role of this sale remains that of a real credit instrument, operating as an efficient guarantee for the creditor, but maintaining significant risks for the vulnerable debtor.

1.3. Definition by reference to the potestative right

In a strictly legal sense, the right of redemption is qualified as a potestative right, specifically, the faculty recognized by law to the seller to unilaterally modify the legal status of the asset, terminating the contract and obligating the buyer to submit to this manifestation of will, without a new consent being necessary[9].

In this context, the seller exercises such a faculty: by their simple decision (notified and accompanied by the payment of the amounts), they terminate the contract of sale and effect the return of the asset to their patrimony.

The buyer is, for the entire duration of the 5-year term, in a state of legal submission; they cannot impede the exercise of the right but are obligated to accept the legal consequence of the seller's unilateral manifestation.

Although it is a potestative right, it aims at the termination of a real right (the buyer's ownership) and, once noted in the Land Register (for immovables), becomes absolutely opposable to third parties (erga omnes). This opposability gives the option a

[9] Rodica Peptan, „Situaţia juridică actuală a contractului de vânzare afectat de opţiunea răscumpărării” („The Current Legal Status of the Contract of Sale Affected by the Option of Redemption”), *Analele Universităţii „Constantin Brâncuşi” din Târgu Jiu, Seria Ştiinţe Juridice* (*Annals of the "Constantin Brâncuşi" University of Târgu Jiu, Law Sciences Series*), no. 1/2012, pp. 153-166.

specific force of real rights, protecting the seller against any subsequent sub-acquirer.

Being a patrimonial right, not a strictly personal one, both the law (Art. 1762 Civil Code) and doctrine[10] recognize that the right of redemption is assignable (can be transferred inter vivos) and transferable to the seller's heirs (mortis causa). This confirms its subjective nature and its economic value in the seller's patrimony.

Although the seller's right is potestative, it is not absolute, but is subject to rigid limits, especially under the sanction of forfeiture, limits relating to the term within which the seller's option must be exercised (Art. 1758 Civil Code) and the deposit of sums of money (Art. 1760 para. 3 Civil Code).

Therefore, defining the sale through the lens of the potestative right emphasizes not only the seller's power to unilaterally terminate the contract but also the formal rigor and strict term imposed by the Civil Code, intended to balance the parties' interests.

2. Delimitation from other legal institutions

The delimitation of the sale with a right of redemption (SRR) from other contracts is vital for the correct application of the legal regime, especially due to its dual nature: it is formally a sale, but economically a credit and guarantee instrument. Modern doctrine focuses on structural and legal effect differences.

Unilateral Promise to Sell: This is a contract where one party, the promisor, undertakes to sell an asset to the other party, the beneficiary, upon the latter's request, within a set term. This is a distinct contract from the contract of sale, creating an obligation to do – the promisor's obligation to sell – without transferring ownership. SRR is a definitive and perfect contract of sale from the outset, but affected by a resolutory condition. In SRR, the transfer of ownership occurs immediately upon conclusion of the contract. In the case of a unilateral promise to sell, the transfer only occurs at the moment of concluding the final sale-purchase contract, at the beneficiary's request[11].

Pact of Redemption (Sale of the Option): This refers to a hypothetical, though rare, situation where the right to redeem is sold as an option right separate from the initial sale-purchase contract. In SRR, the option is an accessory clause and a modality of the principal contract, being contemporaneous with it. In an ordinary sale followed by a separate pact of redemption, the pact is a subsequent or distinct contract, subject to other rules of form and publicity[12].

Delimitation from Real Guarantees (Mortgage and Pledge): This is the most important, given the pignorative function of SRR (a disguised guarantee operation). Real guarantees are accessory contracts that grant the creditor a right of preference and a right to follow the asset, but do not transfer ownership of the asset. In SRR, ownership is transferred to the creditor (buyer) subject to a resolutory condition. In the

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[10] Francisc Deak, Liviu Mihai, Romeo Popescu, *op. cit.,* p. 222.

[11] Ion Lulă, „Natura juridică a promisiunii unilaterale de vânzare” („The Legal Nature of the Unilateral Promise to Sell”), *Dreptul* (*The Law*) no. 6/1998, p. 49.

[12] Florin Ciutacu, Artin Sarchizian, „Vanzarea cu optiune de rascumparare” („The Sale with a Right of Redemption”), Juridice.ro: *Revista de note, studii și opinii juridice* (*Review of Legal Notes, Studies and Opinions*), 15.11.2011, https://www.juridice.ro/174836/vanzarea-cu-optiune-de-rascumparare.html, accessed on 15 December 2025.

case of a mortgage or pledge, ownership remains with the debtor. In SRR, the execution of the guarantee, in case of non-payment, occurs automatically through the consolidation of ownership, without the need for a forced execution procedure, a fact that generates the risk of usury. In the case of a mortgage/pledge, the creditor must initiate complex forced execution procedures. Economically, although SRR functions as a mortgage, its legal structure is much more advantageous for the creditor, as it circumvents the forced execution procedure, being a form of pactum commissorium tolerated under the guise of sale.

Sale on Trial or on Taste: This is a variety of sale where the contract is considered concluded under a suspensive condition (sale on taste) or a resolutory condition (sale on trial), consisting of the buyer's satisfaction regarding the quality or adequacy of the asset. In SRR, the resolutory condition is potestative and depends exclusively on the seller's will and their capacity to pay. In a sale on trial, the condition depends on objective (quality) or subjective (buyer's taste) criteria related to the asset itself. SRR has a financial, guarantee purpose. The sale on trial has a qualitative purpose, namely verifying the asset's adequacy.

In conclusion, the delimitation of SRR from other legal institutions reconfirms its nature as a **hybrid contract**: a perfect contract of sale which, through the mechanism of the resolutory condition, assumes the economic function of a real guarantee, but with specific legal and procedural effects that distinguish it from the strict regime of mortgage and pledge.

3. The legal regime of SRR according to the Civil Code

The Civil Code, through Articles 1758-1762, established a firm legal framework for the institution renamed the sale with a right of redemption. The current legislator considered that its advantages as a credit instrument outweigh the risks, adopting simultaneously more severe measures to combat usury at the penal level (Art. 351 Penal Code).

The current regime is defined by the imperative nature of the term and the rigorous procedure for exercising the potestative right.

Article 1758 para. (2) provides that the right of redemption cannot be stipulated for a term longer than five years. Doctrine[13] qualifies this term as a forfeiture term (a decădere term), not a term of extinctive prescription. Unlike prescription, which extinguishes the right of action, forfeiture extinguishes the subjective right itself – the potestative right of redemption. From this legal nature, imperative consequences arise: the forfeiture term is insusceptible to suspension or interruption (with the strictly provided exceptions) and is, in essence, a term of public order regarding its maximum limit of 5 years. The strictness of the term aims to ensure the stability and certainty of the buyer's right of ownership. Without an absolute limit, the asset would remain permanently outside the normal civil circuit, under the uncertainty of a retroactive termination.

The sanction of forfeiture is the most severe legal consequence of non-compliance with the term or the exercise formalities. Forfeiture operates in two main

[13] Rodica Peptan, *op.cit.,* pp. 153-166 and Ion Popa, *op. cit.,* pp. 243-245.

situations: when the contractual term expires (maximum 5 years) without the seller having notified the intention to redeem, or when the seller, although having notified within the term, failed to effectively deposit the owed amounts within the additional term of one month provided by law. The sanction of forfeiture leads to the definitive and irrevocable consolidation of the buyer's right of ownership. Although consolidation occurs upon the expiration of the term (ex nunc), it has retroactive effect from the date of the contract's conclusion. The sale becomes a pure and simple sale from the outset, retroactively eliminating the resolutory condition.

In conclusion, the regime of the forfeiture term is an expression of the modern legislative option to permit the institution of the sale with a right of redemption, but only under the strict control of time and publicity, to prevent the risk of prolonged uncertainty and exploitation.

The exercise of the potestative right is not achieved by a simple manifestation of will, but by a complex procedure, imposed to prevent litigation and certify the seller's good faith. The seller must communicate in writing (usually through a judicial or notarial executor) to the buyer their intention to exercise the option. This is a condition ad validitatem for triggering the resolution mechanism. The most rigorous aspect introduced by the Civil Code is the seller's obligation to deposit (effectively hand over) the owed amounts at a bank or judicial executor, within one month from the notification date. This procedural requirement aims at the seriousness of the seller's manifestation of will. Mere intention is not enough; the seller must prove that they effectively possess the necessary liquidity, thus eliminating delays and maintaining uncertainty over the buyer's right.

The current legal regime exhaustively defines the amounts the seller must restore to the buyer upon redemption:the price paid (the restitution of the price is a direct consequence of the contract's resolution with retroactive effect, ex tunc, restoring the parties to the prior situation), the expenses for the conclusion of the sale contract and those for redemption (e.g., notarial fee, publicity taxes, property transfer taxes), the necessary and useful expenses incurred by the buyer (with legal limitations), the legal interest (or a higher conventional interest, if stipulated) related to the sale price, calculated from the day of its payment. The inclusion of legal interest in the body of the law is an effort to increase cost transparency and combat usury, as any other sum claimed by the buyer (that would unjustly exceed the actual costs) can be considered an indication of illicit cause or lesion. If these claims are excessive and prove an illicit cause (usury or loan sharking), the entire contract can be sanctioned with absolute nullity, according to the general principles of the Civil Code and the Penal Code (Art. 351).

If the seller fails to fully deposit all these sums (price + expenses + interest) within the one-month term from the notification, the sanction is forfeiture of the right of redemption. Non-compliance with the restitution obligations, no matter how small the unpaid amounts, leads to the definitive consolidation of the buyer's right of ownership, eliminating any legal remedy for the seller.

Thus, the content of the restitution obligations represents a condition of validity for the exercise of the option, rigorously regulated to protect both the creditor's investment and the debtor from the risk of paying hidden or abusive costs.

To produce legal effects against third parties (erga omnes), the right of

redemption must be brought to public knowledge, according to the rules of real estate publicity. By noting it, the potestative right becomes opposable to any third party who would subsequently acquire rights from the buyer (for example, a sub-acquirer or a mortgage creditor). If the seller exercises the option, the rights of third parties are terminated by virtue of the principle of retroactive resolution (resoluto jure dantis, resolvitur jus accipientis). Publicity ensures that all participants in the civil circuit know the risk of resolution and cannot invoke good faith if their right is subsequently annulled. Non-noting (for immovables) risks the seller being unable to redeem the asset from a good-faith third-party sub-acquirer who has registered their right. In this case, the sanction of forfeiture operates de facto against the seller in relation to the third party, although they might have an action for damages against the original buyer.

In conclusion, the current legal regime of the redemption clause is a model of procedural rigor, where the exercise of a powerful potestative right (the retroactive termination of the sale) is subject to strict forfeiture terms and imperative payment and publicity formalities, thus ensuring a balance between the autonomy of will and economic public order.

4. The economic function of SRR: a real credit instrument

Beyond its purely civil legal qualification, the sale with a right of redemption possesses a particularly important economic function: that of a real credit instrument.

A person in temporary need of liquidity has the opportunity to obtain the necessary funds from the sale, while also retaining the possibility of recovering the asset within a determined term. Essentially, the sold asset serves as an informal real guarantee for the repayment of the price paid by the buyer, plus associated expenses. This structure gives the buyer increased security because, if the seller does not exercise the option, the buyer consolidates their right of ownership over the asset.

Modern doctrine accepts that the immediate purpose of the parties is not necessarily the definitive transfer of ownership, but the creation of a contractual framework that allows for the rapid obtaining of liquidity, guaranteed by a valuable asset[14]. The sale with a right of redemption is often considered a contract at the intersection of special contractual law (sale) and guarantee law (loan/credit). Although formally a sale subject to a resolutory condition, its economic substance is often that of a loan guaranteed by the sold asset.

The essential difference between SRR and a loan contract secured by a mortgage is the holder of the right of ownership. In SRR, ownership is transferred to the creditor (buyer) subject to a resolutory condition. In a mortgage loan, ownership remains with the debtor, and the creditor only has an accessory right to follow the asset.

The boundary between sale and loan becomes a serious legal problem when the disguised loan becomes usurious. The risk of usury (loan sharking) arises when the redemption price unjustly exceeds the initial price plus costs and legal interest. The excess represents usurious interest, disguised as a capital loss for the seller if they do not redeem, or an excessive cost of redemption if they do redeem. The current Civil

[14] Ion Popa, *op. cit.,* p. 244.

Code has attempted to control this risk by mandating the restitution of legal interest (Art. 1762 Civil Code), thus making the financing cost transparent and limiting the scope for including fictitious or usurious costs[15].

5. The redemption clause in sale: economic applicability

Although regulated by the Civil Code, the redemption clause (retroactive sale) derives its relevance from its direct applicability in the economy, operating as a solution for rapid financing and asset management in various sectors, being used as a bridge financing or distressed asset management instrument.

The primary applicability of the redemption clause is in scenarios where the seller (debtor) is facing a financial emergency and needs to quickly obtain funds, but wishes to retain a path to recover the valuable asset (e.g., home, land). The institution offers an economic safety valve for people in distress, giving them the opportunity to use real property as a bailout instrument. The debtor sells the asset at a price that covers the urgent need for liquidity, while simultaneously maintaining the hope (the option) that they will improve their financial situation within the legal term of 5 years and be able to exercise the redemption.

The economic applicability also extends to the area of risk arbitrage and contractual flexibility. The sale with a right of redemption operates as an alternative to mortgage bank credit, being used when the seller either does not meet creditworthiness conditions or wishes to avoid bank bureaucracy. The flexibility of this clause, especially regarding the setting of the price and associated costs of redemption (within the limits of the law), makes it attractive for ad-hoc transactions. For the seller, the redemption clause is an instrument for controlling the risk of definitive loss. They assume the risk of the sale, but are granted a legal term (maximum 5 years) in which they can strategically decide if the market or their financial situation allows them to recover the asset. This variety offers the seller the possibility to recover from a precarious financial situation while keeping the door open for re-entering possession of the property.

In summary, the economic applicability of the redemption clause is defined by its dual role: it is a source of last-resort financing for the debtor and an automatically satisfied ownership guarantee for the creditor. The balance between these functions is what necessitated the rigorous intervention of the Civil Code.

The redemption clause is not specific to a single sector but is valuable wherever the owner of an asset requires urgent liquidity but does not wish to permanently lose the asset.

In real estate and construction, this mechanism often manifests as an informal sale-and-leaseback or for the rapid financing of developers. The clause's role is that a developer or owner quickly sells land or a building at a reduced price to an investor (creditor), reserving the right to redeem it within the legal term of 5 years, after obtaining bank financing or project completion. In production and industry, the operation is used for the guarantee of tangible assets (machinery, production lines). A company facing a cash flow crisis sells expensive equipment (without physically

[15] Georgiana Cimpu, *op. cit.*, p. 68.

moving it or by doing an immediate leaseback) to a private equity firm or another company, guaranteeing that they will repurchase it once production contracts stabilize. In the trade and retail sector, the clause serves as a guarantee for high-value stocks or luxury goods (works of art, precious metals). Merchants with valuable stocks use the assets (legally transferred) as collateral for short-term loans, essential for covering the inventory cycle or supplier payments. Finally, in agriculture and forestry, the mechanism provides a guarantee for agricultural land or standing timber. It is used by farmers or forestry companies to access urgent working capital outside the agricultural or forestry cycle, with the possibility of recovering the land after harvest or the completion of an exploitation cycle.

In economics, the notion of bridge financing refers to a short-term loan obtained to cover a financial gap (a "bridge") between an immediate need for funds and the moment when a larger, more stable, and long-term financing source (permanent financing) will become available.

Bridge financing is defined as a transitional financial solution, characterized by rapidity and relatively high cost, but essential to prevent the interruption of operations or the loss of an opportunity. Bridge financing covers the period between the moment a company or individual needs capital (e.g., to purchase an asset, pay an urgent debt, or launch a project) and the moment a complex long-term financing process is completed (e.g., approval of a mortgage loan, a bond issuance, or an *equity financing* round).

The redemption clause functions as a form of informal bridge financing (or non-standardized, outside the classic banking market), providing rapid liquidity secured by an asset. The seller (debtor) sells the asset (e.g., land or equipment) at a reduced price to the investor (creditor). This sale immediately generates the necessary liquidity. The legal period of maximum 5 years, according to Article 1758 of the Civil Code, acts as the time bridge. During this period, the seller works to obtain permanent financing (e.g., awaits credit approval or finalizes a development project that will generate income). Once permanent financing is secured (e.g., the bank loan is approved), the seller uses those funds to exercise the option of redemption, restoring the price and costs according to Article 1759 of the Civil Code. Through this act, the asset reverts to their patrimony, and the bridge financing is closed.

Using the sale with a right of redemption as bridge financing presents distinct economic advantages and disadvantages. It is much faster than obtaining a mortgage bank loan, which requires months of analysis and approval. It can be accessed by entities or individuals who do not meet strict banking creditworthiness criteria. For the creditor, the transfer of ownership offers superior security (automatic satisfaction of the claim through the consolidation of ownership). On the other hand, bridge financing is, by its nature, expensive. In this case, the cost manifests as an undervalued price, as the seller sells the asset at a price below market value (immediate capital loss), and the costs of redemption, legal interest, and expenses paid upon redemption. The major risk for the debtor is that if they fail to obtain permanent financing before the expiration of the 5 years, they forfeit the right of redemption, and the asset is definitively lost to the creditor.

In conclusion, the sale with a right of redemption is an efficient mechanism of bridge financing in the informal economy, used to maintain control over the asset during the critical period of searching for a long-term financial solution.

The capacity to quickly transform assets (immovables, equipment, valuable goods) into liquidity (Asset Monetization Tool), while maintaining a path for recovering ownership, represents one of the most important economic functions of the sale with a right of redemption. This function is especially valuable in markets where assets are illiquid (difficult to sell quickly) or where the owner wishes to use them as a financing source without irrevocably alienating them.

Asset liquidity is the economic process by which an asset with intrinsic value (immobilized capital) is converted into cash within a short term, without requiring a definitive sale. This instrument is particularly relevant for real estate assets and large tangible assets (industrial machinery, vehicle fleets, art collections), which, by their nature, cannot be quickly sold at market price.

The sale with a right of redemption creates a unique monetization mechanism by economically dissociating ownership from the strategic control over the asset. Through the sale, the owner immediately obtains the desired capital—the price paid by the buyer. This represents the necessary cash flow to resolve a crisis, invest, or cover urgent obligations. Through the redemption clause, the seller retains the potestative right to cancel the transaction. Although the right of ownership is formally transferred, de facto control and the hope of recovery are not lost.

This liquidity mechanism differs essentially from a simple mortgage, which does not transfer ownership. In the case of a mortgage, obtaining liquidity requires a bank appraisal and approval process, and the asset remains in the debtor's patrimony, with the risk of execution. Conversely, the sale with a right of redemption offers a quicker path: ownership is transferred, which grants maximum security to the creditor, but is accompanied by a unilateral promise of restitution — the option. This legal and economic hybrid makes it an efficient rapid collateralized credit instrument.

Unlike a standard commercial sale-and-leaseback, where a new re-purchase contract exists, in this case, the exercise of redemption terminates the initial transaction with retroactive effect (ex tunc), which simplifies subsequent formalities and consolidates the status of the initial owner.

From the perspective of the Buyer-Creditor, by immediately acquiring ownership, they reduce the risk of asset deterioration or value diminution. During the period of uncertainty (pendente conditione), the buyer is the owner and, as such, benefits from the legal actions specific to the owner to protect the asset against third parties or even against the seller himself (should the seller attempt to damage it). This direct legal control over the asset represents superior protection compared to a simple mortgage creditor[16]. The buyer (creditor) has the right to perceive the fruits of the asset (rents, leases, dividends) during the pendente conditione period, which contributes to covering the capital's opportunity cost.

Although efficient, the economic applicability of the redemption clause is permanently subjected to the analysis of social risk. In the real economy, the price paid by the buyer (creditor) within this sale is, as a rule, set below the fair market value of the asset (e.g., 60–80% of the value). This difference represents the creditor's risk premium. For the debtor, this difference, combined with the costs of redemption provided by Article 1759 of the Civil Code, can lead to an extremely high Effective

[16] Francisc Deak, Liviu Mihai, Romeo Popescu, *op. cit.,* p. 222.

Interest Rate (EIR) of the financing cost, close to or even masked below the threshold of usury (loan sharking), despite the legal regulations. The most serious social impact is that the seller, most often vulnerable, definitively loses the asset (the good) because they fail to raise the entire sum (the initial price plus costs and interest) within the legal term. This definitive loss of a valuable asset (e.g., their home) generates serious social consequences.

Thus, although the clause offers a rapid financing solution in various sectors, its economic efficacy is indissolubly linked to the vulnerability of the selling party, which is why the Civil Code imposed a strict regulatory framework. The reintroduction of the institution in the Civil Code (Art. 1758 et seq.) has not eliminated the risks but has attempted to manage them through measures of transparency and procedural rigor. Article 1759 of the Civil Code mandates the obligatory restitution of legal interest (if a higher interest was not agreed upon), thereby bringing the cost of credit into the open. This cost transparency is an attempt to limit usurious practices. Any amount that strictly exceeds the price, legitimate expenses, and legal interest can be considered an indication of illicit cause.

The social risk is also controlled by penal sanctions. The criminalization of the offense of loan sharking (usury), provided for and punished according to Article 351 of the Penal Code, acts as a legal barrier against abuse.

Regarding relationships with third parties, although Article 1760 of the Civil Code imposed publicity, the economic risk exists for third parties dealing with the buyer. If the right of redemption is not noted in the Land Register, a good-faith sub-acquirer is protected. However, if the option is noted, any subsequent transaction (sale, mortgage) concluded by the buyer is threatened with retroactive resolution (resoluto jure dantis, resolvitur jus accipientis), generating uncertainty in the economic circuit.

The risk analysis shows that the institution is a double-edged sword: economically useful for rapid financing, but socially extremely dangerous, requiring constant legal control of the cause and the equivalence of performance to prevent it from degenerating into a mechanism of exploitation.

In conclusion, SRR operates on a fine legal boundary: it is permitted as a variety of sale but is viewed with maximum caution as an atypical credit instrument, where the transfer of ownership serves as a guarantee. The recognition of this pignorative function is essential for applying the rules protecting the debtor against usury.

6. Comparative analysis: sale with a right of redemption in other legal systems

The sale with a right of redemption, historically known as pactum de retrovendendo or réméré, is an institution recognized in most civil law tradition systems but has been treated with suspicion in common law (Anglo-Saxon) systems due to the risk of usury.

French Law Regulation, contained in Articles 1659-1673 of the French Civil Code[17], represents the classic and most influential model. *Vente à réméré* is defined as

[17]https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006150283/?anchor=LEGIARTI000020616218#LEGIARTI000020616218, accessed on 15 December 2025.

an agreement by which the seller reserves the right to take back the sold asset, restoring the principal price and associated costs. Article 1660 of the French Civil Code sets a maximum term of five years, identical to that adopted by the Romanian Civil Code. Similar to Romania, French doctrine[18] recognizes this term as a forfeiture term (*délai préfixe*), essential for ensuring the security of the civil circuit and the buyer's ownership. Although it has not prohibited the institution, French doctrine and jurisprudence are constantly vigilant against its use as a disguised pignorative credit (*crédit pignoratif*). The main risk is the redemption price being artificially set high, concealing usurious interest.

Belgian Law closely aligns with the French model, having an almost identical regulation in the Belgian Civil Code[19]. Article 1660 of the Belgian Civil Code adopts the maximum term of five years for exercising the redemption option. Similar to France, the major issue debated in Belgian doctrine[20] is not the legality of the institution, but the re-qualification of abusive transactions. If it is demonstrated that the exclusive purpose of the ownership transfer was to guarantee a loan at an excessive cost, courts can intervene to protect the seller/debtor.

Italian Law (Codice Civile[21]) is the most restrictive and explicit in combating the risk of usury, offering a model of stronger control than the Romanian one. Article 1501 of the Italian Civil Code establishes strict terms: five years for immovable goods and two years for movable goods, terms that are shorter for movables compared to other systems. The most important difference lies in Article 1500 para. (2) of the Italian Civil Code: "The agreement to restore a price superior to that stipulated for the sale is void for the excess." This article sanctions with absolute nullity any clause that requires the seller to restore a redemption sum greater than the initially stipulated sale price (to which only legitimate expenses are added). This provision nullifies the economic effectiveness of usury, as it prohibits masking excessive interest as a redemption premium or guaranteed profit. The redemption price is capped, forcing the creditor to limit their gain to legitimate sums (price + legal expenses).

Latin tradition systems recognize the utility of the institution but differ in the mode of control: while Romania relies on procedural rigor and penal sanctions to prevent abuse, Italy opted for a direct material restriction of the redemption price.

Continental legal systems (Germany, Netherlands) treat the institution differently, either through a less formalistic perspective or by classifying it under other types of contracts.

German Civil Code (BGB § 456 et seq.)[22] regulates the right of repurchase (Right of Re-Purchase) not necessarily as a resolutory condition of the initial sale, but as a right of formation (Gestaltungsrecht) to create a new obligation to sell for the

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[18] Alain Bénabent, *Droit des contrats spéciaux civils et commerciaux (Law of Special Civil and Commercial Contracts)*, 15th edition, Librairie Générale de Droit et de Jurisprudence, Paris, 2024, p. 112.

[19] https://www.ejustice.just.fgov.be/cgi_loi/article.pl?language=fr&sum_date=&pd_search=1807-09-03&numac_search=1804032154&page=2&lg_txt=F&caller=list&1804032154=3&trier=promulgation&vie_numac=1804032130fr&dt=CODE+CIVIL&fr=f&choix1=ET#LNK0014, accessed on 15 December 2025.

[20] Patrick Wéry, *Droit des contrats spéciaux – Tome I: La vente, l'échange (Law of Special Contracts – Volume I: Sale, Exchange),* 2nd ed., Larcier, 2018, p. 442.

[21] https://www.codice-civile-online.it/codice-civile/articolo-1501-del-codice-civile, accessed on 15 December 2025.

[22] https://www.gesetze-im-internet.de/englisch_bgb/, accessed on 15 December 2025.

buyer. The German view[23] is less tied to the mechanism of the resolutory condition (ex tunc) and more to an optional right (reverse sales option). By exercising this right, the seller does not retroactively cancel the first sale but creates a new obligation to sell for the buyer. This perspective strictly separates the two acts: the initial sale is a definitive transfer, and redemption is a new sale imposed on the buyer. This differs from the retroactive effect (ex tunc) in Romanian and French law.

Although the Dutch Civil Code (Burgerlijk Wetboek)[24] does not expressly regulate the sale with a right of redemption as such, Dutch private law focuses on the prohibition of using the transfer of ownership as a mere guarantee (fiducia verbod). Article 3:84 para. (3) BW Dutch law prohibits the transfer of ownership that serves exclusively as security for a debt (fiduciary transfer). If a sale with a right of redemption is considered by the court to have an exclusive guarantee purpose (*disguised pignorative operation*), it will be considered void in the Netherlands. This legal provision compels parties to use recognized guarantee instruments, such as mortgage or pledge, not the transfer of ownership. The Dutch prohibition on using the transfer of ownership solely for guarantee purposes (fiducia cum creditore) limits the use of SRR for pignorative purposes. In the Netherlands, the purpose of the transfer must be real, not just for guarantee.

The German and Dutch legal systems, based on a more analytical and less formalistic logic than the French one, treat operations of the sale with redemption type through the lens of their real function and publicity principles.

Common Law systems, especially English Law, approach transactions of the sale with a right of redemption type not through the contractual form (sale under condition), but through the lens of the real economic purpose and the principles of *Equity*. Contracts that look like a sale with redemption are often interpreted by Equity Courts as an *equitable mortgage*, if the real economic purpose is that of guaranteeing a loan. In English law, courts look at the substance of the transaction. If it is proven that the parties intended to create a debtor-creditor relationship, and the ownership transfer was made only to secure the debt, the transaction is re-qualified as a mortgage, granting the debtor (seller) the specific procedural protections of a mortgage (including the right of redemption for an unlimited time, the equity of redemption). This re-qualification explicitly aims to protect the debtor (mortgagor) against the abusive loss of property. Once a transaction is re-qualified as an equitable mortgage, the debtor (the original seller) automatically obtains a fundamental and inextinguishable right: the *Equity of Redemption*. This right is much stronger than the option of redemption in Civil Law. English courts prohibit any clause that would seek to impede or obstruct this right (clogging the equity of redemption). Unlike Romania, where the right of redemption is limited to 5 years, in English Law, the Equity of Redemption exists independently of any contractual or legal term and can be exercised even after the payment term.

English Law avoids social risk through the judicial re-qualification of pignorative operations, focusing on the real intention of the parties rather than the contractual form.

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[23] Dieter Medicus and Jens Petersen, *Bürgerliches Recht (Civil Law),* 30th edition, Verlag Franz Vahlen, 2025, p. 490.

[24] http://www.dutchcivillaw.com/civilcodebook033.htm, accessed on 15 December 2025.

In conclusion, the comparative analysis shows that, although SRR is widespread, all systems (Civil and Common Law) recognize the social risk of usury. Solutions vary: from explicit sanctions (Italy) to judicial re-qualification (England) and limitations of purpose (Netherlands), Romania opting for the imperative term and procedural rigidity as the main control measures.

7. *De lege ferenda* proposals for the sale with a right of redemption

The proposals focus on three main directions: economic control of the price, increased procedural rigor, and clarification of the legal nature in relation to guarantees.

The most important proposal aims to eliminate the risk of disguised loan sharking by adopting a rule similar to that in the Italian Civil Code (Art. 1500 CC). In this regard, Article 1762 could have the following content: "The clause by which the sum established for redemption exceeds the sum of the sale price plus the contract expenses, the necessary and useful expenses incurred by the buyer, and the legal interest is null and void. Any other sum stipulated beyond these legitimate costs is presumed to be a disguised interest and is subject to the sanction of nullity."

This proposal would have a dual and major impact on the SRR mechanism: it would increase the social protection of the debtor, but it could decrease the investment security of the creditor. By prohibiting the imposition of an unjustly increased redemption price, the proposal automatically eliminates the risk of disguised usury (loan sharking). The seller knows with certainty that they cannot be obligated to pay a speculative profit under the guise of redemption. The sanction of absolute nullity applied directly to the clause (not the entire contract) offers a simple and quick remedy. The complex proof of illicit cause or the crime of loan sharking (as happens today) is no longer necessary, thus increasing legal certainty for the courts in applying the law.

Although it protects the debtor, capping the price can have negative effects on the rapid financing market. The main reason a creditor (buyer) chooses SRR instead of a mortgage is risk arbitrage — obtaining a higher profit or rapid compensation for the invested capital. If the profit is capped strictly at the legal interest (which is generally lower than the commercial interest), the attractiveness of SRR for financiers drastically decreases.

Another *de lege ferenda* proposal would be the insertion of an article establishing the obligation of the notary, under the sanction of disciplinary liability, to insert in the contract an express and distinct declaration by the seller confirming that they have been informed about the forfeiture nature of the term, the risk of definitive loss of ownership, and the estimated market value of the asset at the date of sale.

This proposal aims to consolidate preventive legal security and would have a major impact on the validity and probative force of the contract. The main function of this proposal is to protect the seller's consent, who is often the vulnerable party in a state of need. The proposal significantly reduces the risk of the seller later invoking defects of consent (error, deceit, or lesion). If the seller confirmed the market value and the risk of loss, it is much more difficult for them to prove the disproportion of value or misleading. If the most vulnerable party has been protected ex-ante through a solemn information, the courts will be more inclined to maintain the validity of the contract

and apply procedural rigor (forfeiture) without resorting to annulment for illicit cause.

The most important impact is that it increases general legal security by shifting the burden of proof and by the preventive protection of the seller. The instrument remains economically viable but becomes more ethical and more resilient to judicial challenges.

Legislative changes could also aim to introduce a modern and generalized publicity mechanism for movables, so that, in the case of movable goods, the exercise of the right of redemption cannot be opposed to good-faith third-party acquirers unless the redemption clause has been registered in the Electronic Archive of Security Notices (AEGRM). Given its pignorative function, the AEGRM is the most appropriate register. Registration in the AEGRM would ensure uniform erga omnes opposability, overcoming the uncertainty given by the application of the rule possession vaut titre (possession is equivalent to title) or by various sectoral registers.

Registration in the AEGRM would ensure that third-party sub-acquirers who wish to acquire a movable good or accept a guarantee on it have a single and easy way to verify if the asset is affected by the right of redemption. Thus, third parties could no longer invoke good faith if the registration was performed. Registration could, in the future, allow for the establishment of a priority rank between the redemption clause and other movable real guarantees constituted over the same asset, increasing complexity but also the precision of the civil circuit.

8. Conclusions

The sale with a right of redemption has followed an arduous path, constantly at the intersection of legal innovation and the risk of abuse. Under the current Civil Code (Arts. 1758-1762), the institution has (re)gained its legitimacy, benefiting from a legal framework much more rigorous than that offered by the 1864 Code.

The current regulation, by establishing a strict forfeiture term of five years, by imposing notification and effective deposit of the necessary sums, and by registration in the Land Register, offers increased protection. To a large extent, the "dark spots" of loan sharking practices that hovered over this variety have been successfully removed. Consequently, the sale with a right of redemption proves to be a useful and efficient instrument, offering the seller the possibility to recover from a precarious financial situation, and the buyer an advantageous guarantee alternative.

Despite the procedural rigor, SRR remains vulnerable to the greatest historical problem: disguised usury and the circumvention of forced execution. Systems such as the Italian one, which explicitly cap the redemption price, or the English one, which re-qualifies the operation as a mortgage, offer more direct and less ambiguous solutions for combating abuse, demonstrating that formalism alone is insufficient.

To transform SRR from a controversial instrument into a transparent and viable mechanism, the following legislative directions are required: adoption of a legal text that sanctions with absolute nullity the clause by which the redemption sum exceeds the legitimate costs and legal interest. This would neutralize the usurious effect and ensure that SRR is used at an equitable cost; imposition, under the sanction of nullity, of the mandatory registration of the redemption clause in the AEGRM for movable goods, thus aligning the publicity regime with the economic function of the

guarantee; establishment of an explicit notarial obligation to warn about the risk of forfeiture and the real value of the asset, to protect the seller in a state of need.

In conclusion, although the current regulation of SRR is an important step forward, the future of the institution in Romanian law depends on the legislator's capacity to integrate economic control (price capping) with the existing procedural rigor, thus ensuring that a permitted legal instrument does not become a gateway for abusive financial practices.

Bibliography

1. Bénabent, Alain*, Droit des contrats spéciaux civils et commerciaux (Law of Special Civil and Commercial Contracts)*, 15th edition, Librairie Générale de Droit et de Jurisprudence, Paris, 2024.
2. Cimpu, Georgiana, „O varietate de vânzare controversată: vânzarea cu opțiune de răscumpărare" („A Controversial Variety of Sale: The Sale with a Right of Redemption"), *Analele Științifice ale Universității „Alexandru Ioan Cuza" din Iași*, Tom LXIX/2, 2023. DOI: 10.47743/jss-2023-69-2-4.
3. Ciutacu, Florin & Artin Sarchizian, „Vanzarea cu optiune de rascumparare" („The Sale with a Right of Redemption"), Juridice.ro: *Revista de note, studii și opinii juridice* (*Review of Legal Notes, Studies and Opinions*), 15.11.2011, https://www.juridice.ro/174836/vanzarea-cu-optiune-de-rascumparare.html, accessed on 15 December 2025.
4. Deak, Francisc, Liviu Mihai & Romeo Popescu, *Tratat de drept civil: contracte speciale, vol. I: Vânzarea și schimbul (Treatise on Civil Law: Special Contracts, Vol. I: Sale and Exchange*), 5th ed., Universul Juridic, Bucharest, 2017.
5. Florea, Bujorel, „Vânzarea cu opţiune de răscumpărare" („The Sale with a Right of Redemption"), *Dreptul* (*The Law*), no. 1/2017, pp. 107-120.
6. Lulă, Ion, „Natura juridică a promisiunii unilaterale de vânzare" („The Legal Nature of the Unilateral Promise to Sell"), *Dreptul* (*The Law*) no. 6/1998.
7. Medicus, Dieter and Jens Petersen, *Bürgerliches Recht (Civil Law),* 30th edition, Verlag Franz Vahlen, 2025.
8. Peptan, Rodica, „Situaţia juridică actuală a contractului de vânzare afectat de opţiunea răscumpărării" („The Current Legal Status of the Contract of Sale Affected by the Option of Redemption"), *Analele Universităţii „Constantin Brâncuşi" din Târgu Jiu, Seria Ştiinţe Juridice* (*Annals of the "Constantin Brâncuşi" University of Târgu Jiu, Law Sciences Series*), no. 1/2012, pp. 153-166.
9. Popa, Ion, *Contracte civile: de la teorie la practică (Civil Contracts: From Theory to Practice),* 2nd ed., rev. and updated, Universul Juridic, Bucharest, 2020.
10. Puie, Oliviu*, Tratat de contracte civile potrivit Codului civil, Codului de procedură civilă, Codului fiscal, Codului de procedură fiscală, Codului penal şi Codului de procedură penală (Treatise on Civil Contracts according to the Civil Code, Code of Civil Procedure, Fiscal Code, Code of Fiscal Procedure, Penal Code and Code of Penal Procedure),* Universul Juridic, Bucharest, 2017.
11. Rizoiu, Radu & Mihaela Gherghe, „Câte nuanţe de gri are creditul? Despre tehnici de creditare la limita legii şi dincolo de ea" („How Many Shades of Grey Does Credit Have? About Credit Techniques at the Limit of the Law and Beyond It"), *Revista Română de Drept Privat* (*Romanian Review of Private Law*), no. 1/2019, pp. 288-323.
12. Wéry, Patrick, *Droit des contrats spéciaux – Tome I: La vente, l'échange (Law of Special Contracts – Volume I: Sale, Exchange),* 2nd ed., Larcier, 2018.