**THE BUCHAREST UNIVERSITY OF ECONOMIC STUDIES**

**Doctoral School LAW**

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# SUMMARY OF THE

# DOCTORAL THESIS

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* **ABSTRACT-**

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**TABLE OF CONTENTS**

SUMMARY

ABSTRACT

ACKNOWLEDGMENTS

TABLE OF CONTENTS

INTRODUCTION

**CHAPTER 1. LEGAL BASIS, DEFINITION, AND EVOLUTION OF THE MAINTENANCE CONTRACT**

1.1. Regulation of the maintenance contract

1.2. The complex notion of “maintenance”. Definition of the maintenance contract

1.3. Historical perspective on the maintenance contract

1.4. Partial conclusions

**CHAPTER 2. LEGAL CHARACTERISTICS OF MAINTENANCE CONTRACT**

2.1. Onerous or gratuitous contract. Aleatory nature in the maintenance contract. Donation or disinterested contract?

2.1.1. The maintenance contract as an onerous contract—essentially aleatory

2.1.2. The aleatory element in the maintenance contract. Conceptual delimitation between contractual risk and “the risk of loss” depending “on a future and uncertain event”

2.1.3. Compatibility between aleatory nature and gratuitous title. Is the gratuitous maintenance contract a donation, a disinterested act, or a *sui generis contract*?

2.2. Synallagmatic or unilateral contract

2.2.1. Synallagmatic maintenance contract. Qualification of stipulation for another

2.2.2. Unilateral maintenance contract. Connection between unilateral nature and gratuitous title

2.3. Essentially Formal Contract

2.4. Successive Performance Contract. Exclusion of Imprevision

2.5. *Intuitu Personae* Contract

2.6. Delimitation of the Maintenance Contract from Similar Contracts

2.6.1. Life annuity contract

2.6.2. Sales contract

2.6.3. Donation with a burden

2.7. Partial conclusions

**CHAPTER 3. CONDITIONS FOR THE VALIDITY OF THE MAINTENANCE CONTRACT**

3.1. Capacity to conclude the maintenance contract

3.1.1. Capacity of the maintenance debtor

3.1.2. Capacity of the debtor's contracting party. Situation of the third-party beneficiary of maintenance. Particularities of an onerous maintenance contract

3.2. Consent

3.2.1. Concept and conditions of consent

3.2.2. Vices of consent in maintenance contracts

3.2.3. Structure of the agreement. Implications of the notarized form required for validity

3.3. Cause

3.3.1. Concept and legal characteristics. Conditions for validity of cause

3.3.2. The cause must exist. Lack of cause

3.3.3. The cause must be lawful and moral

3.3.4. Simulation and maintenance contract

3.4. Object

3.5. Special validity conditions

3.6. Partial conclusions

**CHAPTER 4. ELEMENTS OF THE OBLIGATIONAL RELATIONSHIP IN CONVENTIONAL MAINTENANCE**

4.1. Parties to the Maintenance Contract. Conventional Maintenance and Stipulation for Another

4.2. Reciprocity of Obligations and Performances. Exceptions

4.3. Active and Passive Indivisibility of Maintenance. Presumption of Indivisibility

4.4. Obligations of the Maintenance Creditor

4.4.1. Specific obligations in onerous maintenance contracts, involving transfer of real rights or claims

4.4.2. Invalid clauses obligating the creditor to provide services

4.5. OBLIGATIONS OF THE MAINTENANCE DEBTOR

4.5.1. Temporary nature of the maintenance obligation. Duration of the contract

4.5.2. Other legal characteristics of the maintenance obligation

4.5.3. Criteria for determining the scope of the maintenance obligation

4.5.4. Comparison between legal maintenance obligations and conventional maintenance

4.6. Rights of the creditors of the contracting parties. Exercise of oblique and *Paulian actions*

4.7. Partial conclusions

**CHAPTER 5. MODIFICATION AND TERMINATION OF THE MAINTENANCE CONTRACT**

5.1. Judicial and Conventional Modification of the Maintenance Contract. Replacement of Maintenance with an Annuity. Mitigation of the *Intuitu Personae* Feature of the Maintenance Obligation through Mortis Causa Transmission

5.1.1. Conditions

5.1.2. Effects

5.2. Expiration of the Term

5.3. “Revocation” of the Maintenance Contract under Article 2260 Civil Code

5.4. Termination of the Maintenance Contract

5.4.1. General Legal Regime. Legal Nature of Contract Termination Due to Culpable Non-Performance

5.4.2. Particularities of Termination in Special Cases

5.5. Other Grounds for Ineffectiveness of the Maintenance Contract

5.5.1. Agreement of the Parties

5.5.2. Creditor’s Renunciation of Maintenance Rights through Debt Remission

5.5.3. Unilateral Denunciation

5.5.4. Revocation of Gratuitous Maintenance Contract

5.5.5. Nullity

5.7. Partial Conclusions

**CHAPTER 6. MAINTENANCE CONTRACT IN OTHER LEGAL SYSTEMS**

6.1. Switzerland

6.2. France

6.3. Moldova

6.4. Poland

6.5. Spain

6.6. Partial Conclusions

Conclusions and Proposals for Legislative Reform

**Bibliographic References**

1. Legal Acts
2. Treatises, Courses, Monographs
3. Specialized Articles
4. Case Law

4.1. European Court of Human Rights

4.2. Romania

4.3. Switzerland

4.4. France

4.5. Moldova

4.6. Poland

4.7. Spain

1. Digital Sources

**KEYWORDS:** maintenance; origin; contract; solemn nature; onerous title; gratuitous title; sui generis nature; aleatory nature; stipulation for another; intuitu personae; essential validity conditions; simulation; capital; life annuity; modification; termination; comparative law.

**ABSTRACT**

The maintenance contract, first regulated in Romanian law by the Civil Code that came into force in 2011, has attracted the attention of legal doctrine and jurisprudence even before this regulation, due to its considerable practical utility. These elements have constituted essential benchmarks in the process of drafting the current legal norms in this matter.

The aim of this scientific endeavor is to provide a broad and in-depth analysis of the maintenance contract, both in the context of national law and within other legal systems, through criticism of judicial practice in Romania and other European states, and relevant doctrinal interpretations. Additionally, the provisions of the Civil Code are examined in detail, including from a historical perspective, to clearly highlight the theoretical and practical framework of this legal institution. Furthermore, the efficiency and clarity of current regulations are evaluated, both in relation to the doctrine and jurisprudence that formed the basis of the legal norms in force and through the analysis of opinions expressed later by legal theorists and practitioners regarding these legal provisions.

The relevance of the chosen topic stems from the need for a structured, integrated, and comparative in-depth analysis of the maintenance contract, achieved by leveraging legal provisions, doctrine, and jurisprudence from Romanian law as well as other legal systems. Such an approach has allowed the identification and outline of comparative law elements concerning the legal nature of the contract, its validity conditions, effects, and the causes leading to its termination.

The structure of the study follows the “classic” model of analyzing special contracts.

The first chapter is dedicated to examining the legal framework, defining the maintenance contract, and its evolution, with a special emphasis on the concept of “maintenance”—a complex notion that, in turn, determines an increased degree of complexity in the obligation consisting of the specific benefits of this type of contract.

On this occasion, a definition of the maintenance contract has been proposed, highlighting its solemn and lifetime nature, the names assigned by law to the contracting parties, as well as the reciprocal obligations they hold, in accordance with the way other special contracts are generally defined. The conclusion is that the correct definition of this contract should reflect the rule, not the exception. This is because, in the analyzed legal systems, the maintenance contract has an onerous and lifetime character, even when it appears as an unnamed contract.

Most of the prestations exemplified in Article 2254 of the Civil Code have been analyzed and detailed, considering also those not expressly provided by law, such as personal obligations. The complexity of these prestations arises from the need for them to be equitable, in relation to both the value of the transferred capital and the prior standard of living of the maintenance creditor. Determining this equitable nature is challenging, as the precise value of the prestations can only be established at the time of their execution, and the total value of the maintenance obligation becomes clear only upon contract termination.

The second chapter focuses on the legal characteristics of the maintenance contract, highlighting the distinction between one that is onerous and essentially aleatory and one that is gratuitous, lacking the aleatory element specific to such contracts. Within this context, a delineation is made between the specific risks associated with this category of contracts and other risks commonly encountered in contract law.

Additionally, the legal nature of the gratuitous maintenance contract is examined, considering its classification within the category of liberality. In conclusion, this type of contract possesses *a sui generis* character, situated at the boundary between acts of liberality and disinterested transactions, while also discussing the applicability of legal norms specific to liberality.

Another important aspect in the study is the essentially formal nature of the maintenance contract. Finally, a necessary distinction is drawn between this contract and other special contracts with similarities, in order to highlight its distinctive features.

The third chapter is dedicated to analyzing the essential validity conditions of the maintenance contract, based on the provisions of Article 1179 of the Civil Code. Whenever necessary, these general provisions have been correlated with applications and specific particularities of this type of contract.

The examination of the contractual capacity of people entering into such agreements has been conducted with due consideration of amendments introduced by Law No. 140/2022 regarding protective measures for persons with intellectual and psychosocial disabilities, as well as modifications to other legislative acts. Additionally, particularities arising from the protective norms stipulated in Law No. 17/2000 concerning social assistance for elderly persons have been emphasized.

The consent is examined starting from its definition and validity conditions, with a detailed analysis of defects that may affect the manifestation of will in concluding the maintenance contract. Subsequently, attention is directed toward the structure of the will agreement and the effects generated by the solemn form imposed by law for the validity of this type of contract.

The analysis of vice of consent emphasizes that the institution of lesion does not apply to the maintenance contract. When the contract is aleatory, it is expressly excluded from the scope of this defect under Article 1224 of the Civil Code or due to its classification within contractual categories that do not meet the required conditions. For each analyzed vices of consent, definitions, applicability conditions, and examples from judicial practice have been provided. Where such examples were lacking, hypothetical scenarios were proposed to illustrate the applicability or inapplicability of these vices.

Additionally, the implications of the authentic form required for the validity of the maintenance contract have been examined, along with aspects related to the offer to conclude a maintenance contract and the corresponding option pact.

The cause, the third essential condition for the validity of contracts, including the maintenance contract, has been analyzed from the perspective of its concept, legal characteristics, and validity conditions. In this context, the hypothesis of simulating a maintenance contract has also been examined.

The main conclusion drawn is that the aleatory element (*alea*) is an integral part of the contract's cause, even if it is associated with different purposes pursued individually by the contracting parties.

The fourth chapter analyzes specific elements of the legal obligation arising from the conclusion of the maintenance contract, focusing on the conventional maintenance obligation and its distinction from the legal maintenance obligation. It also addresses aspects related to the contracting parties and the conventional maintenance relationship, the obligations of the third-party co-contractor of the maintenance debtor, and the rights of the creditors of the contracting parties. Regarding the obligations of the maintenance debtor, their invariably temporary nature has been highlighted, concluding that the presumption of the lifetime nature of maintenance is absolute. The legal characteristics of the maintenance obligation, which were not developed in other sections of the study, have also been analyzed, revealing that it is always aleatory and personal—unlike the correlative right, which is strictly personal—and is executed successively.

The distinction between the legal and conventional maintenance obligations has been made through an in-depth analysis of the former. The primary conclusion is that the source of the legal maintenance obligation is a complex legal fact, and the application of the law occurs only when the entitlement to legal maintenance becomes a perfect right, granting the holder the ability to demand its execution.

The modification and termination of the maintenance contract are addressed in the fifth chapter, both from the perspective of special norms and general contract law principles.

The transformation of the conventional maintenance obligation into an annuity can be requested by either party, in the absence of a contrary agreement, and for certain reasons specified by law. It has been concluded that an objective novation occurs only when the transformation is carried out conventionally, is definitive, and the parties' intent to novate is unequivocal. The conditions and effects of this modification of the maintenance contract have been analyzed, revealing that the rules governing life annuities apply only in cases of judicial transformation, not when the transformation is conventional. In all situations, however, the transformation primarily aims to safeguard the maintenance contract, especially in cases where the parties are at fault and there is a risk of rescission, which would lead, at least regarding the transfer of capital, to restoring the parties to their previous state. Additionally, it has been determined that there is a certain temporal order regarding the request for this transformation, meaning that if it is based on objective reasons, there should not be an unjustified delay between the emergence of these reasons and the request for this remedy.

The termination of the contract upon the creditor's death has also been analyzed, along with scenarios where the maintenance creditor or the person whose lifetime the contract was based upon is missing, as well as cases where this person has been legally declared deceased, through the lens of their effects

Regarding the so-called “revocation” requested by individuals who, under the law, have the right to maintenance (“alimony”) from the creditor of the conventional maintenance obligation but cannot benefit from it because the creditor has deprived themselves of the necessary means by entering into the contract, it has been concluded that this is not a revocation in the strict legal sense but rather a special *Paulian action*. The particularities of this action have been identified and analyzed in relation to common law, both in terms of the conditions for exercising it and its effects.

Special cases of rescission of the maintenance contract have also been examined, emphasizing that its termination is not exclusively determined by these situations but can occur due to any non-performance, provided the general conditions for admitting a rescission action are met. It has been highlighted that, in cases where the maintenance obligation is not fulfilled due to the fault of one of the parties, rescission is possible only if the debtor is at fault. In situations where the creditor unjustifiably refuses the offered prestation, maintenance can be converted into a monetary payment as an alternative form of execution.

The sixth chapter presents an analysis of the maintenance contract in the legal systems of Switzerland, France, Moldova, Poland, and Spain, approached from three perspectives: legislative, doctrinal, and jurisprudential. As a rule, the analyzed legislations contain special provisions regarding contracts that give rise to a maintenance obligation. Consequently, the study primarily focuses on these special provisions rather than general contract law norms, which are considered only in exceptional cases where their inclusion is deemed absolutely necessary.

A notable distinction is observed in French law, where the maintenance contract is an unnamed contract. However, there exists a well-structured theory of aleatory contracts, along with extensive doctrine and judicial practice concerning this type of contract. Naturally, terminological differences exist, starting with the legal or doctrinal names assigned to these contracts.

One of the key observations is the lifetime nature of the analyzed contracts, which differs from Romanian law, where the maintenance contract inherently possesses this characteristic. Article 2254(2) of the Romanian Civil Code stipulates that its duration is determined by the parties either as a fixed term or by specifying its lifetime nature. In the absence of an explicit stipulation, the contract is presumed to be concluded for the entire lifetime of the maintenance creditor.

From the analyzed definitions, it is evident that this contract is inherently onerous. Regardless of the national legal system considered, the debtor's obligation cannot consist solely of monetary payments; maintenance is an essential component of the contract in all cases.

Invariably, the right to maintenance is inalienable in all the legal systems examined, including Romanian law. It cannot be transferred through *acte inter vivos* or transmitted *mortis causa*. Thus, regardless of whether the contract is lifetime or not, the death of the maintenance creditor results in the termination of the contract and the extinction of the corresponding right and obligation. The successors of the maintenance beneficiary cannot demand the continuation of maintenance in kind, not even for prestations that were not fulfilled during the creditor's lifetime.

In all the national legal systems considered, including Romanian law, judicial transformation of maintenance into a life annuity is permitted. However, this does not constitute a novation, as the legal maintenance relationship continues to exist. In Swiss law, this transformation can occur at the request of one of the parties or ex officio, but not when the impossibility of providing maintenance is due to the debtor's serious fault or their inability to pay the annuity.

The thesis concludes with a chapter dedicated to synthesizing the main conclusions formulated throughout the research, which have been thoroughly presented and argued within each chapter. This section also brings together *de lege ferenda* proposals made throughout the analysis.

The undertaken analysis has led to the primary conclusion of the autonomy of this contract, distinguishing it from other named legal acts, even in cases where specific rules of those acts apply to the maintenance contract. Thus, it emerges as a distinct legal figure with its own regulation and evident particularities, both in relation to general contract law and special contract law, while also sharing points of convergence with some of these and with the legal maintenance obligation. It turned out that these characteristics are even more evident when the maintenance contract is gratuitous, being *a sui generis* contract, on the border between liberalities and disinterested acts.

The work formulates, with arguments, opinions that are totally or partially contrary to certain doctrinal and jurisprudential solutions. Additionally, *de lege ferenda* proposals have been made concerning legal norms related to the maintenance contract, life annuity contract, and legal maintenance obligation, as highlighted in the Civil Code and Law No. 17/2000 on social assistance for elderly persons.