BRIEF CONSIDERATIONS REGARDING RESOLUTION OF SALE PROMISES

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Abstract

The matter of resolution of sale promises poses practical problems arising from the interpretation of the Civil Code and that we intend to analyze in this study. Among the issues to analyze we can mention: specific aspects of the written stage, such as stamp tax; the criteria for establishing competence; the substantial conditions for the resolution of the promise of sale; the prescription of the material right to action. Regarding the conditions of operation of the resolution, it is necessary to determine what is significant execution in the context of the promise of sale, from what time is considered to be late the contractor of the party wishing to appeal the termination of the contract and what kind of contractual behavior who wishes to terminate contractually, whether or not the notion of contractual fault is incidental or it is sufficient that the adverse party does not prove one of the justified causes of non-performance provided by art. 1555-1557 Civil code. Also concerning the prescription of the substantive law of the action, it is necessary to analyze concretely the moment from which it starts to flow, with possible causes of interruption, taking into account the fact that the resolution usually appears after several steps to execute in nature of the contract, being an extreme solution.

Keywords: *art. 1549, art. 1669, promise of sale, resolution, prescription.*

1. Introduction

The provisions of art. 1516 of the Civil Code offers in the case of the promise of sale, besides the forced execution in kind in the form of pronouncing a decision that takes the place of the contract, the forced execution by equivalent, but also the extreme remedy, of last resort, of the resolution. In the case of the promise of sale, the mechanisms of the resolution remain apparently unchanged, but they have particularities both substantially and procedurally.

The resolution mechanism has a particular application in the field of sales promises given the specific nature of pre-contracts. The action in the resolution provoked discussions over time both on the conditions to be met for accessing this remedy, on the prescription of the material right to action, but also on the procedural level on the establishment of the stamp duty and jurisdiction. We consider it important to analyze the resolution mechanism in terms of sales promises as much as the sales promise is by its nature an intermediate stage and the application of the rules of resolution must be adapted by comparison with a sales contract, for example, the interpretation of applicable rules in the specific context of the pre-contractual phase. Thus, in addition to the difficulties in determining the object of the action in the resolution and its value when we speak of the promise to conclude a contract of sale in the future, there are subsequent difficulties in establishing the material jurisdiction of the court.

With regard to the conditions of operation of the resolution, it is necessary to determine what is significant execution in the context of the promise of sale, from what time is considered to be late the contractor of the party wishing to appeal the termination of the contract and what kind of contractual behavior who wishes to terminate contractually, whether or not the notion of contractual fault is incidental or it is sufficient that the adverse party does not prove one of the justified causes of non-performance provided by art. 1555-1557 Civil code.

Also, from the perspective of the prescription of the substantive law of the action, it is necessary to analyze concretely the moment from which it starts to flow, with possible causes of interruption, taking into account the fact that the resolution usually appears after several steps to execute in nature of the contract, being an extreme solution.

Thus, in the following pages, we will analyze the problems listed above regarding the resolution of sales promises, trying to capture the existing guidelines in judicial practice and legal literature, but also to offer our own solutions, from those already existing or starting from them to identify preferable alternatives.

2. Judicial stamp duty

The judicial stamp duty applicable to the analyzed request is calculated at the value according to art. 3 para. (1) and (2) letter a) of O.UG. no. 80/2013. It is also an incident of art. 31 para. (2) thesis I of O.U.G. no. 80/2013, according to which in the case of fees calculated according to the value of the object of the application, the value at which the judicial stamp duties are calculated is the one provided in the action or in the application.

The request regarding the reinstatement of the parties in the previous situation is exempted from stamp duty if it is ancillary to the action in resolution, according to art. 3 lit. a) Thesis II of O.U.G. 80/2013.

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According to art. 8 para. (2) of O.U.G. 80/2013, the request for reinstatement of the parties in the previous situation, when it is not ancillary to the action in finding nullity, cancellation or resolution or termination of a legal act is taxed with 50 lei, if the value of the request does not exceed 5,000 lei, and by 300 lei, for applications whose value exceeds 5,000 lei.

Similar to the action for a decision taking the place of a contract, for the resolution of the promise of sale the issue which arises in determining the stamp duty is related to the value of the object of the application. Thus, the action in the resolution of the promise of sale is evaluable in money, the determination of the amount of the judicial stamp duty being made by reference to the value limits established by art. 3 para. (1) of the mentioned normative act. According to art. 31 para. (2) of the O.U.G. no. 80/2013, the value taken into account for establishing the stamp duty is the one indicated in the content of the action (which may or may not coincide with the one indicated in the content of the promise of sale). The same text of the law establishes that if the value is contested or appreciated by the court as clearly derisory, the evaluation is made under the conditions of par. (3) of art. 98 Civil procedure code.

The object of the sale promise is an obligation to make, namely to conclude the sales contract on a date agreed by the parties. Given that the object is an obligation to perform, the difficulty that arises procedurally is to determine whether this obligation is assessable in money and in the case of an affirmative answer which is the actual value by reference to which the stamp duty will be set.

With regard to the first question, both legal doctrine and practice are unanimous in considering that the action for the resolution of a promise to sell is assessable in money. However, there are different opinions about the value to which we must relate.

In a first approach, the circulation value of the good whose sale was promised by the parties through the pre-contract is relevant for determining the stamp duty. This conception is based on the premise that through the promise concluded, the parties established the conclusion of a future contract of sale, and the objective value of this contract is the value of the good. This reasoning is similar to that applied when determining the value of a sales contract, in order to calculate the stamp duty. For the resolution of the sale, the circulating value of the good is considered to be an objective benchmark as opposed to the price set by the parties by contract or the value indicated by the plaintiff in the request, which are subjective, depending on several factors.

A second approach considers the value criterion that enters the patrimony of each of the co-contractors by concluding the contract. This reasoning is applied somewhat by analogy from the termination of a contract of sale. In this case, by resolution, the seller would regain in his patrimony the good, and the buyer, the price paid. Consequently, in the event of the action being taken for the judicial termination of a contract of sale by the buyer, he would pay the judicial stamp duty at the value of the price paid, and if the plaintiff is the seller he will pay the stamp duty at the value of the sale price. This algorithm is also applicable in the case of the resolution of the sale promise insofar as we consider that its value is equivalent to the value of the patrimonial gain predicted by the parties in the event of concluding the sale contract.

Starting from these two approaches, we can observe an overlap, at least apparent, between the object of the promise of sale and the object of the contract of sale. Thus, although the promise of sale is an intermediate stage set by the parties before the sale is concluded, it is equivalent to the sale in terms of the applicable stamp duty treatment. So we have on the one hand the firm commitment of the parties to sell and buy a good, which resulted in the acquisition by each co-contractor of the good, respectively of the price in its patrimony. In this case, it appears natural to tax the share in the resolution either at the taxable value of the good or at the value with which the patrimony of each of the parties is to be increased, the price paid or the value of the good.

However, the reasoning set out is no longer justified in determining the value of the object of the request in the termination of a pre-contract whose legal object is the future conclusion of a sale. In order to determine the value of the object of a pre-contract, the obligation to perform assumed by each of the parties should be effectively assessed. From this perspective, the simple obligation to appear at a certain date for the conclusion of the contract is not assessable in money. On the other hand, the pre-contractual determination of the obligatory elements of the sales contract, such as its object and price, as well as the payment of a price advance or a deposit, is a reason to give the promise of sale a patrimonial value at most equal to the advance. or arvuna paid, because as a result of the resolution they will return to the patrimony of the promising buyer. The action in resolution formulated by the promising seller would be considered invaluable in money because his patrimony will not increase in any way after the resolution, he can win at most the right to alienate the promised good, in case of the existence of a clause of inalienability implied or expressed in the promise.

In conclusion, regarding the way of setting the stamp duty, we identified a problem from the perspective of the value of the request for resolution of the promise of sale. Thus, despite the unanimous practice of setting the stamp duty at the circulating value of the good, this reasoning has the weakness of equating the promise with an actual sale in terms of the value of the object. However, the solution adopted in practice has the advantage of not creating problems, providing a constant criterion for calculating the stamp duty, although from the applicant's point of view it could be seen as an unjustified taxation on the value of the property.

3. Competence of the court

Regarding the material competence of settlement in the first instance, the request in question belongs to the court, as the case may be to the court, by reference to art. 94 pt. 1 lit. k) and art. 95 pt. 1 C. proc. civ, taking into account the establishment of the value of the object of the application, art. 101 para. (2), para. (1) Civil procedure code.

Regarding the territorial competence to solve the mentioned request, this is the one of common law, regulated by art. 107 Civil procedure code or, as the case may be, the alternative one, according to art. 113 para. (1) § 3 Civil procedure code, in the event that the contract expressly provides for a place of execution of the obligation covered by the application.

Discussions concerning jurisdiction overlap almost entirely, with the arguments presented in the analysis of the judicial stamp duty being valid.

From the point of view of substantive competence, an inconvenience would arise if the seller's request for termination of the promise were considered to be invaluable in cash and the buyer's claim would have the value of the price advance paid under the promise. Thus, the request formulated by the seller, according to art. 94 para. (1) Civil procedure code, regarding an obligation to make it invaluable in money, would always be within the material competence of the court, while the request made by the buyer would attract the competence of the court or tribunal, by reference to the amount of the advance paid, according to art. 94 pt. 1 lit. k) and art. 95 pt. 1 Civil procedure code However, in that situation, the termination of the same contract would attract the material jurisdiction of different courts depending on its holder, which would lead to the possibility of mandatory rules governing substantive jurisdiction, which is unacceptable.

Thus, although the logical fracture we identified seems important to us, not being able to equate the value of the object of a promise of sale with the object of a sale, at least for the moment, it seems preferable to establish material competence and stamp duty by reporting. to the circulating value of the good, in the absence of an alternative that does not present shortcomings.

4. The conditions of the judicial resolution of the promise of sale

According to art. 1550 alin. (1) of the Civil Code "the resolution may be ordered by the court, upon request, or, as the case may be, may be declared unilaterally by the entitled party". The second paragraph of the same article also states that "in specific cases provided for by law or if the parties have so agreed, the resolution may operate in its own right". This is the legal classification of the forms of the resolution according to their mode of operation.

Thus, the Civil Code provides the creditor, regarding the resolution, a right of option between resorting to the intervention of the court to terminate the contract as a result of non-performance and declaring himself, by unilateral expression of will, the termination of the contract. Therefore, pursuant to art. 1516 of the Civil Code, the creditor may choose between several consequences of non-performance of contractual obligations. As an exception to this principle, the creditor may choose the resolution only in particular cases, when the non-execution is sufficiently significant.

Pursuant to art. 1550 of the Civil Code, the full resolution is either legal or conventional. Regarding the full resolution of the conventional law, it operates in the presence of an express commission commission agreement regulated by art. 1553 of the Civil Code. The utility of such commissioners' pacts is that they remove the arbitrariness of assessing the significant character of the non-execution; thus, the parties stipulate from the outset which obligations, once violated, give rise to the right to request the resolution.

Finally, the option that the creditor has regarding the application of the resolution results from the very manner of formulating art. 1,549 of the Civil Code. So, according to him, "if he does not demand the forced execution of the contractual obligations, the creditor has the right to resolution". Thus, the exercise of the right to opt enshrined by the phrase "if he does not ask" used in the cited legal text will be exercised by the creditor through the declaration invoking the resolution.

For the hypothesis of inserting a commission pact, art. 1553 of the Civil Code allows the parties to derogate from the rule of the need for delay, in which case the resolution intervenes by "the mere fact of non-execution". The contrast with the variant of the resolution by unilateral declaration is striking and undeniable: when the parties derogate from the rule of the need to delay (the same hypothesis above) the resolution - provides art. 1552 - intervenes by "written notification of the debtor"[1].

By the phrase "by right" we should understand that non-performance gives rise to the possibility of the creditor to prevail or not the termination of the contract - the termination operates automatically, but the creditor can choose whether to proceed with this cancellation that operated automatically or not. The peculiarity compared to the other forms of resolution would be that this option does not imply a declaration of resolution, in the sense of art. 1552 of the Civil Code, but it can be done anyway, as long as it is univocal. In this way, the direct execution regulated by art. 1726 of the Civil Code is a particular application of the full legal resolution. In other words, in the case of full resolution, as in the case of resolution by unilateral

[1] V. Diaconiță, Condițiile substanțiale ale rezoluțiunii în noul Cod civil, Revista Romana de Drept Privat 6 din 2012, p. 9.

declaration, the creditor has full power over the fate of the contract, but, unlike the latter, the option must not be notified in writing to the debtor.

A first condition of the resolution is the significant nature of the non-execution which is considered to be the only substantial condition of the resolution, for all types of resolution. This condition is deduced from the a contrario interpretation of art. 1551 para. (1) It follows from the second sentence of the same article that in the case of contracts with successive execution the termination can be obtained by the creditor for a non-execution that is not serious enough to be considered significant, but is repeated.

A second condition for obtaining the resolution is the delay of the debtor under the conditions of art. 1521 and the following Civil Code, i.e. the granting of an additional term to it by the creditor in order to execute the contractual obligations. Although it is not expressly provided as a condition in the regulation of the judicial resolution, its obligatory character results from several legal texts such as art. 1516 alin. (2) and art. 1522 para. (5) The Civil Code If the debtor has not been granted the additional term for execution, the request for summons itself produces such an effect, and the consequence of the fact that the defendant was not delayed prior to the formulation of the request for summons is the possibility the debtor to execute the obligation within a reasonable time from the date of communication of the summons, as provided by art. 1522 para. (5) of the Civil Code. As an exception, in case the debtor is legally in arrears, the granting of an additional term of execution is no longer necessary and the creditor is entitled to request the resolution directly in court.

4.1. The need for guilt for pronouncing the resolution

The only requirement provided by art. 1516 alin. (2) point 2 of the Civil Code is that the non-execution of the obligation is "without justification". From the evidentiary point of view, the debtor has the task of proving the existence of one of the causes that justify the non-execution, provided by art. 1555-1557 of the Civil Code There is no reason to believe that the phrase "fortuitous event" used in art. 1557 alin. (1) sentence I of the Civil Code would take into account other events than those specified by art. 1634 Civil Code, with reference to art. 1351 and 1352 of the Civil Code, respectively force majeure and fortuitous case, as well as the deed of the victim, the creditor and the deed of a third party, but only if the latter have the characteristics of force majeure or fortuitous event[2].

The verification or not of the debtor's fault exceeds the legal provisions, there being in general rule no coincidence between the non-execution without justification and the culpable non-execution of the obligation, aspect that results even more clearly from the provisions of art. 1530 Civil Code which in its final thesis mentions them alternately.

However, the notion of non-execution without justification, used in art. 1350 alin. 2 Civil Code and in art. 1516 alin. 2 of the Civil Code usually overlaps, in contractual matters, with the notion of culpable non-execution[3].

In this context, there is the problem of identifying those hypotheses that differentiate the scope of the two phrases, i.e. those situations in which non-execution is unjustified and innocent.

In this respect, it was considered that the non-execution without justification no longer expresses the idea of fault whenever, on the basis of an express legal provision or a contractual clause, the fortuitous case does not remove the liability of the debtor. In such a situation, the scope of non-enforcement without justification expands, including cases of non-performance without fault, and the scope of justified non-enforcement is reduced accordingly, excluding cases of non-performance without fault. As long as the fortuitous case justifies non-execution, it means that in the absence of proof, non-execution without justification overlaps with culpable non-execution[4].

4. Prescription of the action in the resolution of the promise of sale

The limitation period of the right to action in the resolution of the sale-purchase promise starts to run only from the moment when the interested party has acquired the certainty that the defendant is unable to fulfill his main obligation.

When the plaintiff requested within the legal term the capitalization of the sale-purchase promise, and after the final settlement of the action he promoted the action in resolution, his entire conduct was an active and diligent one, all these qualities being incompatible with the application, against him, of the sanction of extinctive prescription. Therefore, only from the date of finality of the court decision rejecting the action requesting the execution in kind of the obligation assumed by the promisor-seller, the promisor-buyer has acquired the certainty that the defendant is unable to execute his principal obligation assumed, so that the limitation period of the right to action in the resolution of the sale-purchase promise starts to run only from this moment[5].

Otherwise, the plaintiff would be sanctioned by rejecting the present action as prescribed, although he, proving diligence, requested, within the legal term, the capitalization of the sale-purchase promise, and after the final settlement of the initial action, of the action in resolution.

[2] V. Stoica, Înțelesul noțiunilor de rezoluțiune și reziliere în Codul Civil român. Între dezideratul clarității și fatalitatea ambiguității, R.R.D.P. nr. 4/2013.

[3] V. Stoica, *Idem.*

[4] V. Stoica, *Idem.*

[5] V. Terzea, Promisiune de vânzare-cumpărare. Acțiune în rezoluțiune. Prescripție, Revista Dreptul nr. 8 din 2020, p. 1.

4.2. Timely application of the extinctive prescription

In order to establish the legal norms applicable to the extinctive prescription, a special relevance is represented, in a first stage, by the determination of the beginning moment of the extinctive prescription term, considering the transitional norm contained in art. 201 of Law no. 71/2011 implementing the Civil Code1, as interpreted by the Decision in the interest of law no. 1/2014, pronounced by the High Court of Cassation and Justice.

Therefore, in the case of prescriptions started to run before the entry into force of the current Civil Code, i.e. before October 1, 2011, fulfilled or not fulfilled on that date, the legal regime applicable to the extinctive prescription will be the one provided by Decree no. 167/1958 regarding the extinctive prescription.

4.3. The moment of beginning for the extinctive prescription

In the case of a pre-contract of sale-purchase concluded prior to the entry into force of the Civil Code, to determine the legal regime of the extinctive prescription it is necessary to establish when the limitation period began to run in which the creditor's right could be exercised.

In this sense, it is worth mentioning that through art. 7 para. (1) thesis I of Decree no. 167/1958 regarding the extinctive prescription, the rule was established according to which the prescription right starts to run from the moment the creditor's right to action arises, and by exception, in case of a suspensive term, the prescription term started to run from the expiration of the term. suspensive, according to art. 7 para. (3) the final thesis from Decree no. 167/1958.

Also, through art. 3 para. (1) of the same normative act established the general duration of the prescription as 3 years.

In the event of concluding a sale-purchase pre-contract, the promisor-buyer acquires a right of claim correlative to the obligation to do what is incumbent on the promisor-buyer and has as object the obligation to transfer the property right either immediately after concluding the sale-purchase pre-contract or at a later date[6].

The term of capitalization of the right to action of the promising-buyer under the incidence of the Decree no. 167/1958 regarding the extinctive prescription was 3 years regardless of the nature of the good that was the object of the pre-contract of sale-purchase, a term that starts to run either from the conclusion of the pre-contract of sale-purchase, or from the fulfillment of the suspensive term in which the promisor-seller had to fulfill its obligation, according to the distinctions provided by art. 7 of the Decree no. 167/1958 regarding the extinctive prescription, in the hypothesis of the pre-contracts concluded before October 1, 2011.

4.4. Interruption of the term of extinctive prescription or extension of the moment of beginning of the term of extinctive prescription

Both in the specialized literature[7] and in the judicial practice[8] it was considered, under the incidence of Decree no. 167/1958, that in the event that the parties have handed over the use of the property, either at the time of concluding the pre-contract, or later, there will be either the extension of the start of the term of extinction, or an interruption of the term of extinction by art. 16 para. (1) lit. a) of Decree no. 167/1958 regarding the extinctive prescription.

If the use of the good was handed over at the time of concluding the pre-sale-purchase contract, extending the beginning of the term of extinctive prescription until after the entry into force of the current Civil Code, the term of extinctive prescription of capitalization of the promisor-buyer began to flow at the moment when the promising seller undoubtedly challenged that right of claim. In such a case, as an effect of the introduction of a first request for a summons requesting the issuance of a court decision to take the place of a sale-purchase contract, there is an interruption of the term of extinctive prescription according to art. 2537 point 2 of the Civil Code reported to art. 2539 Civil Code.

The interruption of the limitation period will maintain its effects even if the first action has been rejected provided that a second action is brought within 6 months from the date when the decision resolving the action remained final and the second action to be admitted, in relation to the provisions of art. 2539 para. (2) final thesis Civil Code.

Furthermore, if the second action having as object the resolution of the pre-sale-purchase contract was formulated within the term of 6 months from the date of finality of the court decision rejecting the action having as object the pronouncement of a court decision place of sale-purchase contract, so that the extinctive prescription did not operate, in relation to the provisions of art. 2539 para. (2) final thesis Civil Code.

Under the current Civil Code it has been argued that since the claim contains a plurality of coercive prerogatives (material rights of action), the object of which is a remedy, there will be a different prescription for each of these material rights to action, which may flow different in relation to each remedy. Regarding the

[6] M.M. Costin, C.M. Costin, Natura juridică a obligaţiei asumate de promitentul-vânzător şi a acţiunii în justiţie pe care o poate promova promitentul-cumpărător împotriva acestuia în caz de neîndeplinire a obligaţiei asumate. Prescripţia dreptului la acţiune, în "Pandectele române" nr. 9/2015, p. 98. See also Înalta Curte de Casaţie şi Justiţie, Decizia în interesul legii nr. 8/2013, publicată în Monitorul Oficial al României, Partea I, nr. 581 din 12 septembrie 2013.

[7] G. Boroi, Drept civil. Partea generală. Persoanele, ediţia a III-a, revizuită şi adăugită, Editura Hamangiu, Bucureşti, 2018, p. 398; M. Nicolae, *op. cit.*, p. 513 apud V. Terzea, Promisiune de vânzare-cumpărare. Acţiune în rezoluţiune. Prescripţie, Revista Dreptul nr. 8 din 2020.

[8] C. Ap. laşi, S. civ., Dec. nr. 937/1998, în V. Terzea, Noul Cod civil, vol. II (art. 1164-2664), adnotat cu doctrină şi jurisprudenţă, ediţia a II-a, Editura Universul Juridic, Bucureşti, 2014, nr. 6, p. 1322. See also case law cited în M. Nicolae, *op. cit.*, p. 597, nota 4 apud V. Terzea, Promisiune de vânzare-cumpărare. Acţiune în rezoluţiune. Prescripţie, Revista Dreptul nr. 8 din 2020.

limitation period for the action in resolution, this is the general term of 3 years according to art. 2501 of the Civil Code, correlated with art. 2517 of the Civil Code and it will begin to flow according to the mechanism analyzed above, from the moment when to the moment when, for example, the promising-seller undoubtedly challenged the right of claim of the promising buyer.

5. Conclusions

The resolution mechanism has a particular application in the field of sales promises given the specific nature of pre-contracts. The action in the resolution provoked discussions over time both on the conditions to be met for accessing this remedy, on the prescription of the material right to action, but also on the procedural level on the establishment of the stamp duty and jurisdiction.

Thus, we analyzed in our study the difficulties in establishing the object of the action in resolution and its value when we talk about the promise to conclude a sales contract in the future, as well as the problems that arise in establishing the material jurisdiction of the court. Regarding the operating conditions of the resolution, the notion of significant execution in the context of the promise of sale was analyzed, from which moment the contractor of the party wishing to appeal the termination of the contract is considered to be late and what kind of contractual behavior the party must have wishes to terminate contractually, whether or not the notion of contractual fault is incidental or it is sufficient that the adverse party does not prove one of the justified causes of non-performance provided by art. 1555-1557 Civil code.

Regarding the value for establishing the stamp duty or the jurisdiction, it is preferable to report the market value of the good. The circulation value of the good is related to the moment of filing the lawsuit. If the value indicated by the plaintiff is contested, the value is established according to the documents submitted and the explanations given by the parties, according to art. 98 para. (3) Civil procedure code, within which the data regarding the taxable value of the good or, as the case may be, the grids of the notaries public could be capitalized.

Regarding the conditions that must be met for the resolution of the promise of sale, these are: the significant character of the non-execution which is considered to be the only substantial condition of the resolution, for all types of resolution; delaying the debtor under the conditions of 1521 and the following Civil Code, i.e. the granting of an additional term to it by the creditor in order to execute the contractual obligations. Although it is not expressly provided as a condition in the regulation of the judicial resolution, its obligatory character results from several legal texts such as art. 1516 alin. (2) and art. 1522 para. (5) Civil Code If the debtor has not been granted the additional term for execution, the request for summons itself produces such an effect.

Of course, in order to operate the resolution, it is necessary to conclude a valid pre-contract, in case of contract the rules on nullity are incidental, which are to be applied with priority over the resolution.

We also showed above that we support the opinion that the verification of the debtor's fault exceeds the legal provisions, there is generally no coincidence between non-execution without justification and culpable non-execution of the obligation, an aspect that results even more clearly from the provisions of art. 1530 Civil Code which in its final thesis mentions them alternately. However, the notion of non-execution without justification, used in art. 1350 alin. 2 Civil Code and in art. 1516 alin. 2 of the Civil Code usually overlaps, in contractual matters, with the notion of culpable non-execution.

Regarding the prescription of the material right to action in the resolution of the promise of sale in case of prescriptions started to run before the entry into force of the current Civil Code, i.e. before October 1, 2011, fulfilled or not fulfilled on that date, the legal regime applicable to the extinctive prescription will be provided by Decree no. 167/1958 regarding the extinctive prescription, being subject to the provisions of the Civil Code the prescriptions started later given on October 1, 2011. On the other hand, the limitation period regarding the action in resolution will not run if the use of the good was handed over at the time of concluding the pre-contract. sale-purchase, operating the extension of the beginning of the term of extinctive prescription until after the entry into force of the current Civil Code, the term of extinctive prescription starting to run at the moment when the promising-seller undoubtedly challenged the respective claim.

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