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The Option Agreement Between the Offer and the Unilateral Promise to Contract

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Abstract: The article analyzes the legal nature of the option agreement, placing it between two related institutions: the offer and the unilateral promise to contract. The paper examines the characteristics of each of these institutions and emphasizes the distinctive elements of the option agreement, with the aim of outlining its legal autonomy and its practical function in pre-contractual relations. The offer is presented as a unilateral manifestation of will, which, in dissonance with the legal provisions and the opinion of specialized doctrine, we have considered revocable, which is why the legislator and specialized doctrine have ruled on the possibility of establishing its irrevocability by agreement, taking the form of the option agreement. On the other hand, the unilateral promise to contract has been presented as an agreement of will that implies a firm commitment on the part of one party to conclude the contract in the future, which, unlike the option pact, which when the option is exercised, the contract projected by the irrevocable offer is considered concluded, in the case of the unilateral promise to contract, a new commitment on the part of the parties is necessary for the contract projected by the promise to be considered concluded. An option agreement is defined as a voluntary agreement whereby one party (the promisor) undertakes to maintain the offer for a certain period of time, giving the other party (the offeree) the right to accept within that period. The option pact combines elements of the offer to contract (through the existence of a contract proposal) with those of the unilateral promise (representing agreements of will, agreements of will are unilateral in character and through the firm commitment of the promisor not to revoke the offer). The purpose of this article is to analyze systematically the legal nature of the option pact, to delimit it conceptually from the close institutions and to highlight its practical and theoretical implications in the private law of the Republic of Moldova.

Keywords: antecontract; potestative; promissory; irrevocable; unavailability

1. Introduction

The process of concluding a contract is no longer, in contemporary law, a simple succession of actions starting with the issuance of the offer and its acceptance by the addressee, but often involves a complex pre-contractual stage, characterized by negotiations, consultations and preliminary commitments. In this context, pre-contractual mechanisms have become increasingly important as they respond to the need

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for legal certainty and predictability in the relations between the parties in the process of forming a contract (Beleiu, 1998, p. 295; Jugastru, 2011, p. 95).

Institutions such as option pacts, unilateral promises to contract, confidentiality agreements or letters of intent reflect the current trend to recognize and protect the legitimate interests of the parties even before the actual contract is concluded (Avram, 2016, p. 83). These instruments allow for a gradual management of consent and provide remedies in case one of the parties withdraws abusively from the negotiations or changes its intention without reasonable justification (Pop, 2006, p. 57). In general they are pre-contractual instruments used in civil law to regulate the pre-contractual stage of contract formation.

In particular, in areas characterized by a high degree of economic complexity - such as real estate transactions, distribution contracts, international trade agreements - pre-contractual mechanisms not only facilitate negotiation, but also contribute to structuring the contractual will and reducing the risk of disputes.

In the civil law of the Republic of Moldova, the enshrinement of these mechanisms in the reformed provisions of the Civil Code is a significant step towards alignment with European and international trends. Thus, the approach to the legal regime for the conclusion of contracts is not limited to the process of contract formation alone, but also integrates the pre-contractual, preliminary stages as part of the general dynamics of contractual obligation (Piperea, 2012, p. 7).

On this background, the option pact stands out as a pre-contractual instrument of balance, conceptually situated between an offer to contract and a unilateral promise to contract, contributing essentially to the consolidation of the autonomy of will and the reasonable protection of the legitimate expectations of the parties (Stătescu & Bîrsan, 2008, p. 142).

With regard to the role of the option pact in the civil law of the Republic of Moldova, it must be said that the option pact is one of the most significant innovations introduced by the reform of the Civil Code of the Republic of Moldova, operated by Law no. 133/2018. This institution enshrines a pre-contractual instrument by which one of the parties, called the promisor, undertakes to irrevocably maintain a firm offer for a certain duration, leaving the other party, the beneficiary of the option, free to accept or not that offer within this timeframe.

The option pact contributes to the strengthening of the parties' autonomy of will by offering them the possibility of postponing the conclusion of the actual contract, without losing sight of the stability of the legal relationship being formed. It thus responds to a practical need which is particularly frequent in modern transactions, especially those of a real estate or commercial nature, where one of the parties has an interest in reserving a contractual possibility without immediately committing itself. This mechanism ensures not only flexibility but also legal certainty by protecting the beneficiary's interests against arbitrary or untimely revocation by the promisor (Boroi & Stănciulescu, 2017, p. 281).

The option pact fulfills an essential legal function in the pre-contractual phase, that of protecting the stability of the will to contract and guaranteeing the possibility of subsequent conclusion of the contract, at the initiative of the beneficiary, under the conditions already agreed. It therefore lies at the intersection between the principle of freedom of contract and the need for security of the legal relationships being formed.

From this perspective, the option pact fulfills a twofold function:

a) The function of preserving the offer - the promisor undertakes not to revoke the offer within the agreed period, which ensures stability in relation to the contractual intention expressed (Avram, 2019, p. 121);

b) The function of creating a discretionary right - the beneficiary acquires an exclusive right to decide whether and when to enter into the contract, within an already negotiated legal framework (Boroi & Stănciulescu, 2017, p. 281).

Through these functions, the option pact contributes to reducing contractual risk and avoiding disputes over arbitrary withdrawal of the offer or lack of clarity in the negotiations. Moreover, the institution provides an effective tool for managing uncertainty in commercial or real estate relationships, where decisions to contract are often postponed in order to obtain additional guarantees or administrative approvals (Terré & Chénedé, 2022, p. 74).

In the civil law of the Republic of Moldova, the institution of the option pact is expressly regulated in art. 1001 and art. 1142 of the Civil Code, provisions which are complemented by the provisions of art. 999 and 1000 of the Civil Code, in a wording that reflects influences from the French Civil Code and from the models of unification of contract law promoted at European level. (Terré & Chénedé, 2022, p. 73).

The purpose of this article is to make a conceptual and practical delimitation of the option pact from other conceptually related institutions.

Thus, in the landscape of pre-contractual institutions in the civil law of the Republic of Moldova, the option pact occupies a distinct position, but is often confused in doctrine and practice with other forms of pre-contractual commitments, such as the offer to contract or the unilateral promise to contract. This confusion is partly explained by the functional proximity of these institutions - all of which are intended to protect the contract formation process and balance the positions of the negotiating parties (Jugastru, 2011, p. 96; Chirică, 2008, p. 40).

From a legal perspective, however, there are significant differences between these institutions in terms of the nature of the commitments, the legal effects and the enforcement mechanisms.

The purpose of this article is to analyze systematically the legal nature of the option pact, to delimit it conceptually in relation to similar institutions and to highlight its practical and theoretical implications in the private law of the Republic of Moldova. The analysis will be based both on the provisions of the Civil Code of the Republic of Moldova, hereinafter C. civ. mld, and on elements of comparative doctrine, in particular the Romanian Civil Code, hereinafter NCC and the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, hereinafter Vienna Convention.

2. The Concept and Regulation of the Option Agreement in Civil Law

The option agreement is defined in legal doctrine as a pre-contractual agreement by which one of the parties (the promisor) undertakes to maintain the offer to contract for a certain duration, giving the other party (the beneficiary) the exclusive right to accept the contract under the same conditions, within the agreed period. The essence of the pact is to establish the irrevocability of the offer to contract and to grant a discretionary right to the beneficiary, who, by exercising the option, will automatically lead to the formation of the contract in question (Avram, 2019, p. 120; Boroi & Stănciulescu, 2017, p. 281).

In the civil law of the Republic of Moldova, the option pact is expressly regulated in Art. 1001 and Art. 1142 of the Civil Code, introduced by the Modernization Law No. 133/2018. According to the legal

text: "By the antecontract the parties may expressly provide that the promisor maintains an irrevocable offer, within the meaning of art. 1032, to enter into the final contract, and the beneficiary has the option to accept or refuse it". Specifically, in the matter of the contract of sale, the legislator defines the option agreement in Art. 1142 as the possibility for the parties to: ... agree on the unilateral right of the buyer to acquire a good up to a certain time (purchase option) or on the right of the seller to sell a good to the buyer on the same terms (sale option)". This legal provision nuances the object of the offer to contract provided for in the option agreement, i.e. the offer to sell in the first case or the offer to buy in the second case. Although we could interpret the content of the provisions as a unilateral promise to contract, with its variants, the unilateral promise to sell and the unilateral promise to buy, the legislator removes this difficulty by establishing, in the second sentence of the above-mentioned article (1142 Civil Code), that: "With regard to option contracts, the provisions on the option to contract shall apply," respectively the provisions of art. 1001, Civil Code, supplemented by the provisions of art. 999 and art. 1000 Civil Code.

In Romanian law, the institution of the option pact (Chirică, 2023, pp. 196-205; Ionescu, 2012, pp. 97-210) was regulated in the provision of art. 1278 of the New Civil Code (NCC) (Boroi & Stănciulescu, 2017, pp. 281-282). This provision does not define the option pact but only establishes the content of the main obligation resulting from the conclusion of such a contract, namely the irrevocability of the declaration of will of one of the parties.

From a comparative perspective, both legislations reveal a conceptual, legal and technical approximation. They both define the option agreement as a pre-contractual instrument conferring on the beneficiary the right to accept, in the future, the offer to contract.

In order for an option agreement to be valid and to produce legal effects, it must fulfill certain essential constitutive elements, both of a general nature (valid for any contract) and specific to this pre-contractual institution.

Thus, the specific constitutive elements of the option agreement are the following:

(a) in terms of its subject matter, the content of the option agreement is twofold. On the one hand, it relates to an offer to contract which is capable of leading to the conclusion of the contract by its acceptance pure and simple. On the other hand, the option pact is concluded in order to make it irrevocable; the promisor, during the period laid down in the pact, will not be able, with minor exceptions, to revoke its effectiveness.

b) The option pact results in the inalienability of the object derived from the offer to contract, in this respect the provisions on the contractual inalienability of the property apply.

c) by the conclusion of the option agreement, the exclusive right of the other party to accept or reject the offer takes the form of a right of discretion which may lead to the automatic formation of the contract by the mere exercise of the option (Boroi & Stănciulescu, 2017, pp. 281-282).

d) the option pact will be concluded for a fixed or determinable period, since the perpetual nature of the obligation to maintain the offer would be contrary to the principle of the security of legal relations.

e) the valid consent of the parties and the clear intention to conclude a pre-contractual contract, which will produce binding effects in the phase prior to the conclusion of the main contract (Avram, 2019, p. 121).

3. The Option Agreement and the Offer to Contract

Although the option agreement and the offer to contract produce similar effects, i.e. lead to the conclusion of the intended contract within a certain timeframe, they differ fundamentally in terms of their legal nature, binding force (effects) and the way in which they are formed.

An offer to contract (Bîtcă, 2014, pp. 42-55, 45-49; Chirică, 1999, pp. 41-56) is a proposal that a person makes to another person or to the public in general to enter into a contract under certain conditions (Pop, 1998, p. 46; Chirică, 1999, pp. 41-42). The definition of offer to contract is set out in Art. 1029, para. 1 of the Civil Code, according to which: "An offer to contract is a proposal addressed to one or more persons which contains all the essential terms of the future contract and which reflects the offeror's willingness to be bound by acceptance." The law makes a clear distinction between the actual offer and the invitation to negotiate - the latter not being susceptible of acceptance for the purpose of producing the legal effect of the conclusion of the contract.

The offer to contract is a unilateral legal act and belongs to the category of acts subject to communication, since it will take effect only when it reaches the addressee - Art. 1020 para. 2, Civil Code.

The general regime offered by the Civil Code with regard to the offer to contract reflects an alignment with the European models, in particular with the regulations of the Principles of European Contract Law (PECL) and the UNIDROIT Principles. Thus, Moldovan law provides a balanced regulation between the freedom of will of the offeror and the protection of the addressee in the pre-contractual phase.

Some particularities are necessary regarding the binding force of the offer to contract. Thus, in contradiction with what is established in Rep. Moldova and not only (Albu, 1995, pp. 40-41), we have expressed, on another occasion (Bîtcă, 2009 pp. 32-37), another point of view on the binding force of the offer to contract, and therefore on its irrevocability. Although Article 1032 of the Civil Code provides that: "a stipulation by which one party undertakes to enter into a particular contract with another party ... constitutes an irrevocable offer," we consider that the provision of this article does not reflect the hypothesis. Irrevocability does not result from the proposal that a person makes to enter into a particular contract but only if there is a declaration of will to that effect. Thus, the mere proposal to enter into a contract does not give rise to its irrevocability. However, the text of the law does refer to the "party who is to be bound", or this suggests the existence of a contract. Following the logic of these provisions would result in the existence of a contract whereby a party issuing a "stipulation" to "enter into" a contract with "another party, at the latter's request," is an offer to contract. But according to the legislation in force, the legal nature of the offer to contract is that of a unilateral legal act, which is a manifestation of a person's will to enter into a contract by accepting it - Art. 1029, para. 1, Civil Code, mld. The contract may also establish provisions that exceed the substantive and formal, binding, legal conditions that finalize the legal nature of the offer to contract. These provisions may concern its effectiveness, such as those relating to the time limit, condition or obligation, those relating to the unavailability of the object, but they may also include provisions relating to its binding force, namely its irrevocability. Interpretation of this article would show that "it constitutes an irrevocable offer" if "a party undertakes to enter into a particular contract with another party at the latter's request." Thus this provision does little to suggest the contractual nature of the irrevocability of the offer to contract. In other words, the provision set out in art. 1032, Civil Code, would be an indirect way of enshrining the option pact.

However, why would it be necessary to have an option pact to establish the irrevocability of the offer, since, according to the legislation, the offer to contract itself has such an effect. I would point out that,

according to our legislation, the offer to contract cannot be revoked within the express option period and, if there is no express option period, until the expiry of the tacit option period. Therefore, any proposal to contract which fulfills the conditions to be considered as an offer is irrevocable on these grounds, given that any offer to contract contains such a term, if not an express term then an implied term of option. In these circumstances, what will be the hypotheses in which the offer to contract may be revoked, having regard to the provisions of Art. 1031, para. 1, Civil Code, which provides that : "An offer may be revoked ...", provisions also laid down in the Romanian Civil Code Art. 1193 and the Vienna Convention, which in Art. 16, para. 1 provides for the revocability of the offer to contract. The fact that the issuer of the proposal may withdraw the offer until it has reached the addressee does not mean that the offer is being revoked. The offer to contract is part of the documents subject to communication and will only take effect when it reaches the addressee. Until it reaches the addressee, it may be withdrawn, and the offeror's manifestation of his intention will take the form of withdrawal of the offer, Article 1199 NCC and Article 22 of the Vienna Convention. But the legislator of Rep. Moldova expressly provides in Art. 1031, para. 1, first part of prop. that: "An offer may be revoked ...", a principle laid down both by the Romanian NCC (Art. 1193, para. 2) and by the Vienna Convention (Art. 16, para. 1).

The same principle also emerges from the provisions of the Romanian Civil Code, which allows the revocation of the offer if it is addressed to persons who are not specified (Art. 1189, para. 2) or if the offer is addressed to a person who is absent (Art. 1193, para. 2), regardless of whether the offer contains an express or tacit term of option. In the first case, the fact that the offer to contract is addressed to a definite or indefinite person is a condition of its effectiveness and not the source of its irrevocability. In the second case, it is not legally correct, on the one hand, to declare an offer with an express term of option to be an irrevocable offer (Art. 1191, para. 1, first proposition of the Civil Code), and, on the other hand, to declare an offer with a tacit term of option to be an irrevocable offer by virtue of Art. 1193, para. 2 to provide for its revocability. This is a legislative inadvertence. The time limit is a modality of the civil legal act and concerns the effectiveness in time of the offer to contract - the extinctive term of performance. It is not the time limit that can render the legal act, in this case the offer to contract, irrevocable, but the will of a legal or natural person, materialized in law or in a legal act.

The legal analysis of the conditions of substance, form and effectiveness of the offer to contract does not reveal its irrevocability.

From the analysis of the provisions of the Romanian Civil Code, the revocation of the offer to contract will be possible under the following conditions:

- the revocation must reach "the addressee before the offeror receives the acceptance or, as the case may be, before the act or fact which, according to the provisions of 1186, para. (2) , the conclusion of the contract".

- the offer is without express term. In connection with this condition, according to Art. 1193, para. 1, NCC, an offer made to an absent person or persons without specifying the period of acceptance is presumed to be maintained until such time as the offeror can expect the offeree to accept it. Therefore, any offer addressed to absent persons contains a time limit for acceptance, the time necessary for the addressee to analyze the offer and transmit the declaration of acceptance, which has been identified in the specialized literature as a tacit time limit.

- the offer must be addressed to absent persons. An offer addressed to a person present, without a time limit, becomes ineffective if it is not accepted immediately - Art. 1194 para. 1, NCC.

- the revocation of the offer must be in "the same form as the offer itself or in such a way that it may be known to the same extent as the offer" - art. 1189, para. 2, NCC.

Such a principle is also laid down by the Vienna Convention, when Article 16, para. 1 states that: "the offer may be revoked until the contract has been concluded ...". This provision does not concern the withdrawal of an offer to contract because, according to Article 15 para. 2 of the Vienna Convention, the offer may be withdrawn: "if the withdrawal reaches the addressee before or at the same time as the offer". Which is not the case here, the offer has already reached the addressee.

However, the provisions governing the principle of revocability of the offer are of a dispositive nature. The offeror may "bind himself" by making his offer irrevocable. Irrevocability may be established either on the basis of an express expression of intent for a fixed period of time, which may not be less than the tacit option period, which is a minimum legal term (e.g. "I undertake to maintain my offer for 30 days"), or on the basis of an agreement with a third party. Such a voluntary agreement whereby the parties agree on the irrevocability of the offer to contract is called an option agreement. Thus, in the first case, irrevocability is assumed without prior agreement of will with the offeree (Chirică, 2008, p. 89; Boroi & Stănciulescu, 2017, p. 268), in the second case, irrevocability is established by agreement of will between two parties, whereby one party undertakes not to revoke the offer and the other party acquires a contractual right to accept it.

The option pact also enjoys a superior legal force, since being the result of an agreement of will, the legal regime of its non-performance is subject to different conditions than the offer to contract. Thus, according to the law, the offer to contract may be revoked in certain circumstances, even in the presence of the term, if the revocation occurs before the acceptance has been made known (Terré & Chénedé, 2022, p. 73), art. 1193, para. 2, Romanian Civil Code, or reaches the addressee before he has dispatched the acceptance - art. 16 para. 1 of the Vienna Convention. The option agreement may be revoked only if it contains a disclaimer clause, the legal regime of which is different from the action to revoke the offer.

Also, the option agreement differs from the offer to contract in several aspects, including its legal nature, legal effects, the possibility of revocation and, they contain some particularities in terms of sanctions in case of non-compliance.

Thus, in terms of its legal nature, an option agreement is a unilateral contract in which one of the parties undertakes not to revoke its offer for a certain period and the other party acquires the right to accept the offer within a fixed period. An offer to contract, on the other hand, is a unilateral legal act, a unilateral manifestation of a party's will, whereby the party undertakes to contact the addressee who will accept the offer.

In the case of an option agreement, the right of the offeree to accept the offer is of a contractual legal nature and takes the form of a discretionary right (Reghine, 2003, pp. 236-241), whereas in the case of an offer to contract, the right of the offeree to accept the offer is of a legal nature and forms part of the content of the principle of freedom of contract (Chirică, 1999, pp. 44-49).

In terms of legal effects, the option agreement produces direct legal effects on both parties. The promisor is under certain legal obligations, including the obligation not to revoke his offer until the option agreement expires, and the obligation to contract with the promisee when the promisee exercises the option. The offer to contract also produces effects which are, however, marked by its unilateral character. Thus, by issuing an offer to contract, the offeror undertakes to contact the person or persons who will accept the offer, and the offeree acquires an optional right of acceptance, which, when exercised, becomes a party to a contract, under the conditions set out in the offer.

In terms of revocability, the option pact is, by its nature, as stated above, irrevocable for the duration of the agreed term, except for clauses allowing revocation in exceptional cases or for reasons provided by law.

The offer to contract, on the other hand, is, as stated above, generally revocable until acceptance by the offeree, except in cases where the offer is made irrevocable (for example, by express stipulation or by law.

In terms of the sanction for revocation or non-performance of the option agreement:

According to Moldovan legislation, the failure of the promisor to comply with the option pact and the revocation of the offer to contract are sanctioned in the same way, namely the payment of damages - art. art. 1001, para. 5, prop. second, Civil Code, mld. Although, in the case of the option agreement, according to the principle of execution in kind, which is the principle governing the matter of contractual liability, the solution should also be the possibility of enforcing the contract concluded by lifting the option, the beneficiary having the right to ask the court to issue a judgment that would take the place of the final contract, however, the legislator of Rep. Moldova excludes such a possibility.

As the option pact involves a conventional unavailability of the property, object of the offer to contract, in case of breach of the pact by alienation of the property to a third person, the provisions of Articles 507 and 508 of the Civil Code will apply.

Thus it is necessary to differentiate according to whether the object of the offer was an asset subject to registration or not.

If the property was subject to registration, the option agreement, in order to ensure its enforceability, must be subject to the same requirements of art. 999, para. 2 and 1001, para. 3, Mld. Civil Code, as the contract designed by the offer to contract, failure to comply with this requirement renders the legal act concluded by the promisor with the third party sub-grantors unenforceable. The beneficiary may only claim damages. If the option agreement has been registered, the beneficiary may, in addition to the payment of damages, also claim the annulment of the act on the basis of which the sub-owner acquired the property, so that the property will revert to the promisor.

If the asset is one not subject to registration in the event of breach of the option pact by alienation by the promisor of the material object of the offer to contract, the solution will depend on the good or bad faith of the third party contracting. If he is in good faith, which is presumed until proven otherwise, the contract on the basis of which the third party acquired the good will remain valid, on the basis of Art. 527, para. 1 of the Civil Code, the beneficiary of the pact may only claim damages. If the third party is in bad faith, the beneficiary of the option will be able to claim damages, including the annulment of the alienation and the return of the property to the promisor's estate.

So, according to Moldovan law, failure to comply with the option pact will entail the civil liability of the promising bidder, and if he refuses to honor his obligation to maintain the offer to contract, he will be sanctioned with the obligation to pay damages or other measures established by the parties in the pact. Failure by the promisor to comply with the option pact shall not entitle the beneficiary to ask the court to issue a judgment in lieu of a definitive contract, Art. 1001, para. 5, second proposition, c. civ.

Failure to comply with the offer to contract does not in itself give rise to sanctions, as long as the addressee had an interest in accepting it. If the addressee proves that the revocation has caused damage, he may claim damages.

4. The Option Pact and the Unilateral Promise to Contract

In the civil law of the Republic of Moldova, the unilateral promise to contract and the option pact are two distinct institutions regulating pre-contractual relations, but which differ significantly in terms of legal nature, legal effects, revocability and conditions of formation. The regulation of these two pre-contractual mechanisms has a considerable impact on the interpretation and application of civil rules in various areas.

Although the unilateral promise to contract (Cimil, 2011, pp. 2-7) does not benefit from a legal definition, there are texts in the Civil Code of the Mld which refer to it, by regulating the legal regime of the antecontract. Thus, by interpreting and adapting the provisions of art. 999 and art. 1000 of the Civil Code, which regulate the antecontract, we can legally configure the institution of the unilateral promise of contract. According to Art. 999 para. 1, first proposition, "An antecontract is a contract by which one party (promisor) undertakes to the other party (beneficiary) to conclude in the future another contract (definitive contract) at the request of the beneficiary."

The unilateral promise of contract (Chirică, 1999, pp. 36-45; Chirică, 2023, pp. 205-223), being a species of the antecontract (Dumitrache, 2002, pp. 53-55), in the light of the above definition of antecontract given by the legislator, we will define the unilateral promise of contract as that agreement of will by which the promisor undertakes to contact the beneficiary in the event that the latter will manifest his will to do so, under the conditions stipulated in the agreement.

Although both the option option agreement and the unilateral promise to contract are an antecontractual contract (Chirică, 2023, p. 196; Dumitrache, 2002, p. 53; Cimil, 2011, p. 4), their legal regime differs.

In terms of the legal nature of the obligations arising, in the case of the option agreement a negative obligation arises not to do (Chirică, 2023, p. 186; Dumitrache, 2002, p. 53), not to revoke the offer to contract, in the case of the unilateral promise a positive obligation arises to do (Vlahide, 1994, p. 117; Popa, 2002, pp. 49-50), to conclude a new contract, the contract designed by the promise.

In terms of the content of the obligation created by the antecontract, in the case of a unilateral promise to contract, the promisor undertakes to consent to the conclusion of a new contract, whereas in the case of a pact of option, the obligation assumed is irrevocability and the property is unavailable.

In terms of the legal nature, in the case of a unilateral promise to enter into a contract, a positive obligation to do, to conclude the planned contract in the future, in the case of an option agreement, a negative obligation not to do, not to revoke the offer and not to enter into a contract with third parties during the option period.

From the point of view of the legal nature of the agreement formed by exercising the option, in the case of the unilateral promise to contract, the exercise of the option to contract between the parties gives rise to a synallagmatic antecontract (Chirică, 2000, pp. 6-17), in the case of the option agreement, the acceptance of the addressee leads to the conclusion of the intended contract.

In the case of a unilateral promise to contract, the obligation to contract is an effect of the contract of promise; in the case of an option agreement, the obligation to contract is not an effect of the agreement but of the offer to contract, the subject of the option agreement.

In the case of a unilateral promise to contract, the obligation to enter into a new contract arises if the beneficiary has expressed his wish to do so, and is performed after acceptance by the beneficiary, whereas in the case of a contract option, in the presence of a firm offer to contract, the obligation to contract is performed when the beneficiary accepts the option option.

From the perspective of the moment of the formation of the projected contract, as a result of the exercise of the beneficiary's right, in the case of the promise to contract this will be the moment when both parties manifest their will to conclude the definitive contract, which is a moment after the option has been exercised, in the case of the option pact this is marked by the moment when the beneficiary has exercised the option, or when his acceptance has reached the promisor (offeror), in the case of the conclusion of the contract between absentees. Thus, while in the case of the option agreement, the acceptance of the beneficiary is sufficient for the formation of the contract, in the case of the unilateral promise to contract, a new agreement of will is required.

The legal sanction for breach (Albu, 1995, pp. 44-45) of an antecontractual obligation is different.

In the case of a unilateral promise, the beneficiary of the promise has the right to ask the court to give a judgment in lieu of a contract - Art. 100, para. 1, Civil Code, art. 1279, para. 3, NCC. Nothing prevents the beneficiary from claiming damages.

In the case of an option pact, the beneficiary of the pact is only entitled to the payment of damages and, under certain conditions, the possibility of annulment of the alienation of the property seized.

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