MINISTRY OF NATIONAL EDUCATION
"LUCIAN BLAGA" UNIVERSITY SIBIU
UNIVERSITY OF DOCTORAL STUDIES INSTITUTE
DOMAIN – LAW

DOCTORAL THESIS
CONTRACTUAL TRANSMISSION OF PATRIMONIAL RIGHTS, IN ACCORDANCE WITH LAW PROVISIONS NO. 8/1996 ON COPYRIGHT AND RELATED RIGHTS
(Summary)

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SIBIU
2017

MOTO

"The right of intellectual property is one of the most passionate, vivid and subtle subjects. Because it is tied, more than any other, creativity and commerce, that is, what makes people really rich. "

Viorel ROȘ, Bucharest, 2016.

THE DOCTORAL THESIS PLAN

INTRODUCTION

In an attempt to scientifically capitalize the professional experience of the last fifteen years, I consider captivating and even appropriate to carry out a monographic work, intended for the in-depth analysis of the provisions of Law no. 8/1996 on copyright and connected rights aimed to the contractual transfer of patrimonial copyrights through the cession contract and its species. The accomplishment of such a work, together with the implementation of professional solicitude, may also represent a theoretical and practical contribution, both in the effort to explain the field regulations, as well as to substantiate some future normative solutions.

The decision of this scientific approach was mainly determined by two realities that I faced in my practical work. Thus, on the one hand, I noticed that the regulation of the cession contract of patrimonial copyrights and its species within the framework of Law no. 8/1996 is exceedingly succint, in contradiction with the special value of these contracts' object and even with its practical complexity. In practice, this brief regulation generates severe, sometimes even insurmountable, interpretation problems.

On the other hand, the concernments of academic literature related to this contract and its species remain, as a rule, at a succint and even desirable stage. Under the first aspect, in order to seize upon the common elements, but also those of specificity, we found that the analysis of Law no. 8/1996 provisions devoted to the cession contract of patrimonial copyrights and its species, must be carried out in relation to the common law on contractual matters in general, and on the lease contract, in particular. This approach proves to be much more necessary since the Law no. 8/1996 was adopted almost fifteen years before the current Romanian Civil Code (2009) entered into force (October, 1st, 2011). Under the second aspect, apart from isolated cases, in the specialized works, the cession contract of the patrimonial copyrights and its species are analyzed briefly, sometimes the approaches being limited to the

slightly commented reproduction of these contracts legal provisions. Also, sometimes theses from foreign literature, especially French, being take over, diverse doctrinal approaches that are originated appear inappropriate to Romanian domestic regulations of in the field.

Consistent with the theme of the Doctoral Thesis, the research carried out has as the main objective of scientific research the in-depth, logical-legal, systemic and systematic, theoretical and practical analysis of Law no. 8/1996 provisions (Chapter III), as well as, in chronological order, the following species of this contract (Chapter IV): the publishing contract, the theatrical represenation or musical performance contract, the order contract and the lease work contract.

The analysis was conceived not only as an endpoint in itself, but as a contribution to the correct interpretation, according tolegislator will, of the respective legal provisions.

I have also been concerned with identifying possible legislative disaccord and substantiating some relevant *law ferenda* proposals to remedy them.

As far as contractual matters are concerned, the doctoral thesis contains, in its debut, a chapter devoted to general aspects related to the civil contract, such as the concept of civil contract, the principle of contractual freedom and its limits (public order and morality) the effects of the civil contract between the parties and third parties, as well as the remedies for the non-performance of the contractual obligations. In this regard, I have pointed out the existence of some Law no. 8/1996 provisions which, being outdated in relation to various normative solutions of the current Civil Code (2009) and even with some constitutional principles, requires the intervention of the legislator.

The II-nd chapter, intended for general copyright considerations, includes analyzes of copyright concept, of moral and patrimonial aspect of copyrights. Naturally, the effort of the analysis was centered on the theoretical and practical aspects related to the patrimonial rights of the author, especially the right to use work and its species, provided by art. 13 of the Law no. 8/1996.

For thesis elaboration, the works of Romanian prestigious specialists of law field, among which we evoke Yolanda Eminescu, Teodor Bodoaşca, Adrian Circa, Bujorel Florea and Viorel Roş, have been of great use to me. Also, when it was adequate, I called on works of foreign authors, especially French, such as Charles. Colombet, Alexander. Lucas and X. Linant by Bellefonds.

Although the contractual activity in the field of intellectual creation has experienced a significant dynamics in Romania, over the past two decades, the jurisprudence in the field does not provide sufficient practical solutions, the fact that determines me to consider that, in case of litigation, as a rule, those interested do not resort to Courts services. Therefore, in my thesis case, this aspect embodied in a real difficulty for various theses and practical solutions substantiating.

Keywords: civil contract, intellectual creation, work, moral copyright, patrimonial copyrights, contract for the transfer of the patrimonial copyrights, publishing contract, theatrical represenation or musical performance contract, order contract, lease work contract.

CHAPTER I
GENERAL ASPECTS CONCERNING THE CIVIL CONTRACT

SECTION 1.1.
CONSIDERATIONS CONCERNING THE CONCEPT OF CIVIL CONTRACT

1.1.1. Preliminary remarks

In an approach that we consider to be innate, the analysis of a theme whose object is "the contractual transmission of patrimonial copyrights" also involves the presentation of legal issues concerning the "civil contract" in general. Obviously, the analysis *in extenso* of almost all of the theoretical and practical aspects involved by the legal institution of the "civil contract", as well as their in-depth analysis, would constitute an approach that would, in fact, lead to another, distinct doctoral thesis.

For these reasons, in the following, we limited our approach only to the presentation of the aspects considered relevant to enter in "civil contract atmosphere", such as: definition of the contract and general aspects related to the classification of civil contracts; the process of forming the civil contract; civil contract effects ; general presentation of "remedies" for non-performance of contractual obligations.

1.1.2. Civil contract definition

Etymologically, the term "contract" derives from the ancient Latin word *contrato* (*contragere*), meaning to bear something together or to reunite or to gather or to bring together.

In the Romanian legal system, under the old Civil Code, the term "contract" has been used as a synonym for the term "convention". Moreover, there were some texts in the old Civil Code, in which the terms "convention" was used as a synonym for the "contract".

Also from a lexical point of view, the terms "contract" and "convention", although having different roots, express the same idea, that is, accordant meeting of two or more legal wills.

However, in doctrine, sometimes the distinction is made between these two terms, claiming that the first would bear particular meaning and the last, general meaning. Without insisting on this doctrinal dispute, we make it clear that the distinction is based on the provisions of art. 1101 Fr. Civ. C. However, the approaches in the Romanian doctrine, which seek to accredit the conception that there is a clear distinction between the legal notion of "contract" and "convention", are devoid of legal and scientific basis. In this context, we invoke that neither French terminology is used consistently.

At present, the current Civil Code, by art. 1166 provisions, defines the contract as "the will agreement of two or more individuals with the intention of creating, amending or extinguishing a legal relationship". Just as in the old regulation, the current Civil Code also uses the term "convention" as a synonym for the term "contract".

The civil contract may be defined as being a *bi-or multilateral legal act by which two or more parties, in a position of legal equality, respecting public order and morality, agree to the establishment, amendment, transfer or extinguishing of civil legal relations.*

1.1.3. General Aspects Concerning Classification of Civil Contracts

The term "civil contract" is a general concept that has been achieved through an abstraction and generalization process of the common characters of the various special contracts that this term subsumes. As regards the modalities of the civil contract, they are likely to be grouped according to various general criteria. Obviously, along with its theoretical connotations, civil contracts classification facilitates the process of characterizing each type of contract and, as a consequence, the identification of the applicable legal regime.

The unity of the contracts is given by their common features, namely the fact that, according to the Civil Code, all contracts represent will agreements of the contracting parties (article 1166), meet the four essential conditions (article 1179) and respect the limits of contract's freedom (article 1169). Instead, the diversity of civil contracts is determined by their multitude, their specificity and even by the very principle of contractual freedom.

In field doctrine, as a rule, the following criteria for the classification of civil contracts are proposed: as with or without explicit regulation by law, there are nominative or innominate contracts; according to their content, there are sinalagmatic or bilateral contracts and unilateral contracts; according to the intended purpose, there are contracts for pecuniary interest and voluntary settlement contracts. Therefore, contracts for pecuniary interest are subclassified in commutative contracts and aleatory contracts, and voluntary settlement contracts in uninterested contracts and liberties; by mode or performance duration, there are contracts with a instant performance (*uno ictu*) and contracts with successive performance; after the correlations that exist between them, there are main contracts and accessories contracts; according to other criteria.

We note that some of these doctrinal classification criteria have been legally established. Also, the current Civil Code regulates some special civil contracts. The scientific value and practical utility of classifying contracts depends on the observance of two fundamental rules established by logic science for any approach whose result consist in a classification. Thus, this classification must be complete (*exhaustive)*, that is, as far as possible, leave no remnant. Similarities must also prevail between two contracts in the same category, and not the differences. "

SECTION 1.2.
PRINCIPLE OF CONTRACTUAL FREEDOM

1.2.1. Preliminary remarks

Civil legislation in the field establishes "the principle of contractual freedom" as a consequence of "will autonomy".

From the legal point of view, the freedom to contract is part of the content of the exercise capacity of the individual and of the legal person or, in other words, of person ability to enter into civil legal acts by himself/herself.

The role of the contracting parties' will is essential in the dynamics of any civil contract, materializing in the creation and establishment of its content and effects.

Under the first aspect, the current Romanian Civil Code regulates, as a matter of principle, negotiated contracts, which, without exception, are the exclusive fruit of the joint will of the contracting parties. In this respect, according to art. 1182 par. (1) Civ. C. "the contract is concluded by parties negotiation or by the unconditional acceptance of an offer to contract".

Under the second aspect, in case of non-negotiated contracts, the parties shall decide by agreement their content and effects.

The freedom to contract does not act as a freedom of the will, it manifests within the limits imposed by law. The provisions of art. 11 Civ. C., according to which, "it can not be derogated, from the laws that concern the public order or morality by conventions or unilateral acts. ", also have the significance to set the limits of the contractual freedom, which are "the public order "and"morality ".

The principle of contractual freedom dovetail with the principle of contract’s binding force.

1.2.2. Public order and contractual freedom

The public order contains all imperative provisions of public law and private law defending the basic institutions and values of society, ensuring the development of the market economy and the social protection of all individuals.

From a normative point of view, public order is expressed by imperative legal norms, which establish the political, economic and social order of the Romanian society.

The contract conclusion with inobservance of public order legal provisions determines its absolute nullity. In this respect, art. 1247 par. (1) Civ. C. rules that "the contract concluded in violation of a legal provision established for general interest's protection of a is null".

1.2.3. Morality and contractual freedom

Morality designates all rules of conduct that have emerged in society's consciousness, and whose observance has necessarily been imposed by a long experience and practice.

In terms of content, morality, just as public order, are variable in time and space, from one society to another. Since both constitute limitations of human behavior, it is absolutely innate for their dynamics to be similar.

SECTION 1.3.
GENERAL ASPECTS REGARDING THE CIVIL CONTRACT CONCLUSION

1.3.1. Preliminary remarks

The contract conclusion consists of the legal operation done in order to achieve will agreement of the contracting parties on the contractual clauses, through the concurrent meeting between the offer to contract and its acceptance.

1.3.2. Offer to contract

In the mechanism of contract conclusion, the offer has an essential role.

Basically, the contract is deemed to have been concluded at the time and place where the acceptance reaches the tenderer, even if he does not know about it, for reasons beyond his control.

The offer to contract must meet the general requirements of the consent and some specific conditions. As a rule, the following requirements of the offer to contract are analyzed: to come from a person with a discernment in the case of a natural person and, in the case of a legal person, from its legal representative; to be

real, serious, unvitiated and with the intention of legal engagement; to be firm, unambiguous, precise and complete. Currently, most of these requirements are legally established in the current Civil Code.

1.3.3. Accepting the offer to contract.

The acceptance of offer to contract is the second part of the will agreement and consists in the unilateral manifestation of recipient's will, by which he agrees with the received offer and the contract conclusion under the conditions established by the tender.

Acceptance may be express or tacit. The authors of current Civil Code have put into practice a concept lacking in formalism, in which the acts or deeds committed by the recipient after the receipt of the offer prevail.

Being the mirror of offer, basically, accepting it must meet the same requirements, that is, be: real; conscious; unvitiated; serious; done with intent of legal engagement; firm, unambiguous, precise and complete; pure and simple.

1.3.4. The moment and place of civil contract conclusion.

The moment of contract conclusion is the that in which the offer is met with acceptance. The determination of the moment and place of contract conclusion must be analyzed differently according to two typical practical situations, namely[1]: the tenderer and the acceptant are in the presence of the other or communicate by telephone or by other means of distance communication; the tenderer and the acceptant are not in the same place and communicate by mail/post. In both cases there is no deadline for offer accepting. Determining the moment of contract conclusion is of practical importance under various and many aspects.

SECTION 1.4.
EFFECTS OF THE CONTRACT

[1] See, C. Stătescu and C. Bârsan, quotes pag. 50.

1.4.1. The binding force of the contract between the contracting parties

1.4.1.1. Preliminary remarks

1.4.1.2. Content of binding force of contract between the contracting parties principle

A. General Aspects.

B. Obligation of the parties to execute the contract precisely.

C. Contract reversal only by mutual consent (*mutuus dissensus or contrarius consensus).*

D. Good faith contract performance

1.4.2. Effects of the contract on third parties

1.4.2.1. Principle of relativity of the effects of the contract on third parties

1.4.2.2. Application area of relativity of the effects principle towards third parties

SECTION 1.5.
THE REMEDIES OF CONTRACT NON PERFORMANCE

1.5.1. Preliminary remarks

1.5.2. Additional term for execution

This remedy is regulated in the context of "delaying the debtor" (art. 1522 par. (3) Civ. C.) and consists in the obligation of the creditor to grant the debtor an additional period for obligation's execution, if it is not executed within the term established by the contract.

1.5.3. Forced enforcement in nature

Forced enforcement in nature is regulated by art. 1527-1529 Civ.C., article inspired by art. 1601-1603 of the Civil Code of the Province of Quebec (Cic. C. Q.).

1.5.4. Exception of non-execution

When the obligations arising out of a sinalagmatic contract are exigible and one of the parties fails to perform or does not perform the obligation, the other party may, to an appropriate extent, refuse to perform its own obligation, unless when by law, by parties'will or by usages show that the other party is required to execute first. Enforcement may not be refused if, in the circumstances and in view of the low significance of the unexecuted benefit, such refusal would be contrary to good faith. The *exception of non-execution* is also analized as a form of lawful non-performance of the contract.

1.5.5. Contractual resolution and rescission

1.5.5.1. Preliminary remarks

1.5.5.2.Contractual resolution or rescission application area

1.5.5.3. Modalities of contract resolution and rescission

1.5.5.4. Effects of contract resolution and rescission and termination

SECTION 1.6.
GENERAL ASPECTS OF CONTRACT NULITY

1.6.1. Preliminary remarks

Nullity is a sanction that deprives the civil legal act of the effects contrary to the legal requirements imposed for its valid conclusion.

1.6.1. Preliminary remarks

1.6.2. Delimitation of nullity to other civil law sanctions

1.6.2.1. Nullity and resolution or rescission

1.6.2.2. Nullity and revocation

1.6.2.3. Nullity and caducity

1.6.2.4. Nullity and inopposablity

1.6.2.5. Nullity and reduction

1.6.2.6. Nullity and incapacity

1.6.3. Classification of contract nullity

1.6.4. Absolute nullity

1.6.5. Relative Nullity

1.6.6. Effects of contract nullity

1.6.6.1. Preliminary remarks

1.6.6.2. Principle of retroactivity of the effects of contract nullity

1.6.6.3. The principle of parties re-entry in the situation prior to the contract conclusion

1.6.6.4. Principle of the subsequent contract invalidation

CHAPTER II
GENERAL CONSIDERATIONS ON COPYRIGHT

SECTION 2.1.
GENERAL ASPECTS ON COPYRIGHT

2.1.1. Preliminary remarks

Art. 10-23 of the Law no. 8/1996, being set up under the marginal *term the content of the copyright*, contain provisions on moral rights (article 10,11) and on patrimonial copy-rights (article 12-16, article 21-23).

2.1.2. Definition of copyright

Copyrights are those moral or patrimonial prerogatives recognized by law to the author of a work or to other natural or legal person that, within the limits of public order and morality, to have a certain conduct and claim a conduct appropriate to the other subjects of law, and as the need to appeal to state's coercive force.

SECTION 2.2.
MORAL RIGHTS OF AUTHOR

2.2.1. *The Concept of Author Moral Rights*

2.2.2. The regulation of author moral rights according to Law provisions no. 8/1996

2.2.2.1. Preliminary remarks

2.2.2.2. The right to divulge the work

2.2.2.3. The authorship right on the work

2.2.2.4. The right to decide under which name the work is advertised to public

2.2.2.5. The right to claim respect for work integrity

2.2.2.6. The right to revoke the work

SECTION 2.3.

PATRIMONIAL COPYRIGHTS

2.3.1. The concept of patrimonial copyrights

2.3.2. The Right to use the Opera

2.3.3. The suite right

CHAPTER III
THE CESSION CONTRACT REGARDING PATRIMONIAL COPYRIGHTS

SECTION 3.1.
GENERAL ASPECTS ON CESSION CONTRACT REGARDING PATRIMONIAL CORIGHTS

3.1.1. Preliminary remarks

According to Law no. 8/1996 provisions, the indirect exploitation of works is mostly accomplished by means of the cession contract of the patrimonial copyrights and its modalities.

3.1.2. The legal nature of cession contract regarding patrimonial copyrights

In the Romanian doctrine, in an opinion of foreign inspiration, in an attempt to capture the specificity of this contract, the question arises whether a distinction can be made between cession and concession. By agreeing that it is a matter of two different legal institutions, it is considered that by assignment a real right is transferred whereas, by concession, a personal right is transferred.

Accepting that the assignment is radically different from the concession, we consider that, in the context of the Romanian legislation, the argument undertaken from the foreign academic literature implies some particular emphasis.

On the other hand, in spite of some uncompromising doctrinal theses, the patrimonial copyrights cession, as a rule, can not be considered without reservation a way of the lease.

3.1.3. Definition of cession contract regarding patrimonial copyrights

As far as we are concerned, we define the cession contract "that nominative contract, under which a party, called the releasor, engages to provide the other party, referred to as the releasee, for a determined period of time and in return for remuneration, the possession of one or many patrimonial copyrights on a work ".

3.1.4. Regulation of cession contract regarding patrimonial copyrights

Under the afore-mentioned limitations, the "transfer of patrimonial copyrights", being a "form of the lease contract" under common law provisions, is also subject of "general provisions" regarding the "lease" provided by art. 1777-1823 Civ. C.

Finally, being a form of the civil contract, to the extent that the rules stipulated by art. 39-63 of the Law no. 8/1996 and those stipulated in art. 1777-1823 Civ. C. does not provide, under art. 153 of this law, these provisions are supplemented with the provisions of the Civil Code regarding the civil contract,in general. (article 1166 -1323).

3.1.5. The legal characters of the cession contract

3.1.5.1. Preliminary remarks

Although the approach to the legal character of the assignment contract seems to be an easy subject, we have found it inappropriate to avoid it, as it can be noticed from the following lines, that, from this perspective there ar some questionable issues in doctrine.

3.1.5.2. The consensual character

3.1.5.3. The sinalagmatic character

3.1.5.4. The onerous character

3.1.5.5. The character of contract with successive performance

3.1.5.6. The *Intuitu personae* character

3.1.5.7. The Limited character

3.1.5.8. The exclusive character

SECTION 3.2.
THE SUBJECT OF CESSION CONTRACT REGARDING PATRIMONIAL COPYRIGHTS

3.2.1. Preliminary remarks

As a rule, in doctrine, when the issue of cession contract of patrimonial copyrights' object is approached, almost all the authors identify it exclusively with the patrimonial rights derived from work possesion.

However, at present, art. 1225 Civ. C., under the marginal term of contract's subject, stipulates that "the object of the contract is the legal transaction, such as sale, lease, loan, agreed by parties, as this arises from ensemble of all the contractual rights and obligations" (sn).

In default of special legal requirements, the object of the cession contract must meet the general conditions provided by art. 1225 par. (2) Civ. C., that is to say, determined and lawful.

3.2.2. The rights which represent liability's subject, in the case of cession contract

In a clear disagreement with the current regulations of the Civil Code, art. 39 par. (1) of Law no. 8/1996 stipulates that "the author or the copyright owner may deliver to other persons only his patrimonial rights".

Notwithstanding the outdated nature of the text, but also the defective manner in which it is drafted, in terms of releasor's person and in terms of the legal operation, we note that, through this contract, only the use of patrimonial copyrightscan be transmitted. *Per a contrario,* the moral rights of author may not be the subject of this agreement.

Despite the generic reference of art. 39 par. (1) of Law no. 8/1996 on the patrimonial rights, only the rights subsequent to the right of work usage may be subject to the cession contract. Thus, we reiterate that, according to art. 13 of

Law no. 8/1996, the usage of a work gives rise to distinct and exclusive rights to its author, to authorize or prohibit the following operations: the reproduction of the work [letter a)]; work distribution [letter b)]; import for the purpose of commercialization on the domestic market of opera duplicates, made with the author consent [letter c)];opera renting [letter d)]; work loan borrowing [letter e)]; work public communication, directly or indirectly (letter f)]; the opera broadcasting [letter g)]; cable transmission of the work [letter h)]; creation of derivative works "[letter I)] (s.n.).

SECTION 3.3.
THE PARTIES OF CESSION CONTRACT REGARDING PATRIMONIAL COPYRIGHTS

3.3.1. Preliminary remarks

It is unanimously accepted that the parties to the cession contract of the patrimonial copyrights are the releasor and the releasee.

3.3.2. The releasor

Under art. 39 par. (1) of Law no. 8/1996, the author or the copyright holder may only transfer by contract, to other persons, the patrimonial rights of the author.

We reiterate that the alternative use of the afore-mentioned notions denotes the fact that, according to the legislator, these two notions are synonymous. However, the copyright holder's expression does not have the same legal meaning as the term author.

In order to be a releasor, it is necessary for a natural or legal person to obtain, prior to the assignment, under the conditions of Law no. 8/1996 or the common law, the transferred copyrights.

3.3.3. The releasee

As far as the releasee is concerned, in the absence of special requirements laid down by the special or by common law, he/she may be any natural or legal person who has the ability to contract.

SECTION 3.4.
THE REMUNERATION IN THE CASE OF CESSION CONTRACT REGARDING PATRIMONIAL CORIGHTS

In the case of the assignment contract for the patrimonial copyrights, its price is called remuneration.The establishment of remuneration by the parties represents the rule, while the exception is set by the jurisdiction organ. In default of a restriction imposed by the law provisions, the releasor and the releasee have the possibility to determine the remuneration at contract conclusion, but also subsequent of that moment. If the remuneration has not been set by contract provisions, the author may request the competent judicial bodies, according to the law, to set the remuneration.

The parties may calculate the amount of the remuneration either in proportion to the proceeds from work usage, eitherin fixed amount or in any other way. Instead, the jurisdictional body is required to set the remuneration only in relation to the amounts normally paid for the same category of work, the destination and duration of use, or other circumstances of the case.

SECTION 3.5.
THE REVIEW IN THE CASE OF CESSION CONTRACT REGARDING PATRIMONIAL COPYRIGHTS

3.5.1. *Preliminary remarks*

3.5.2. Particular aspects regarding the cession contract review regarding patrimonial copyrights

In the case of a clear disproportion between author remuneration and the benefits of the person who obtained the cession of patrimonial copyrights, the

author may request the competent judicial bodies to review the contract or to increase the remuneration.

The manifest discrepancy will have to be based on the exceptional change in the circumstances contemplated at cession contract conclusion, changes that must lead to an excessively onerous performance of the contract and, in the mean time, the debtor's obligation to fulfill the contract to be obviously unfair.

The court may order the cessation of the contract, when comes to cession contract, too.

Because art. 43 par. (3) of the Law no. 8/1996 refers alternatively to the revision of the contract and to the appropriate increase of remuneration, we should admit that the legislator gives the releasor the possibility to opt for one of the afore-mentioned alternatives. In fact, when the releasor's remuneration is less than the releasee's benefits, the contract may be revised either, by taking measures to reduce benefits as a result of limiting the releasee's use of the transfered rights or by increasing the releasor's remuneration to at a level corresponding to the benefits obtained by cession means. In other words, the appropriate increase in remuneration is one of the possible consequences of the revision and is equivalent to the typical measure in the common law, that is the adaptation of the contract, provided by art. 1271 par. a) Civ. C.

We appreciate that the revision of the cession contract is based exclusively on unpredictability and not on the lesion.

On the other hand, even if art. 43 par. (3) of the Law no. 8/1996 refers only to the right of the author to request contract revision, the principle of equality before the law, stipulated by art. 16 par. (1) of the Constitution requires that this right to be recognized, on the one hand, to any natural or legal person who, as holder of patrimonial rights of the author, assigns them and thus acquires the status of releasor (party) in the assignment contract and, on the other hand, the releasee.

Even if art. 43 par. (3) of the Law no. 8/1996 refers only to the judicial review, there is nothing to encumber the parties, by mutual agreement to "set the agreement amicably", without court intervention, because, in the matter under discussion, the principle of will autonomy of the contracting parties applies.

SECTION 3.6.
CESSATION OF ASSIGNMENT CONTRACT REGARDING PATRIMONIAL COPYRIGHTS

3.6.1. Cessation of the assignment contract regarding patrimonial copyrights

According to art. 47 par. (1) of Law no. 8/1996, "the author may request the termination of assignment contract of patrimonial copyrights if the releasee does not use them or use them to an insufficient extent and if, under these circumstances, the justified interests of the author are thereby substantively affected".

3.6.2. Nullity of the cession contract regarding patrimonial copyrights

According to Law no. 8/1996, "the nullity of the assignment contract of the patrimonial copyrights may be absolute [art. 41 par. (2)] or relative (art. 41 par. (1)].

Absolute nullity occurs when, under art. 41 par. (2) of the Law no. 8/1996, "the cession contract has as its object the patrimonial rights regarding all the future works of the author, nominative or non-nominative".

Instead, the relative nullity of the contract for the assignment of the patrimonial copyrights intervenes only under the conditions of the common law (article 1251 Civ. C.)

SECTION 3.7.

PROCEDURAL ASPECTS REGARDING LITIGATION SETTLEMENT CONCERNING CESSION CONTRACT ON PATRIMONIAL COPYRIGHTS

The contracting parties have the possibility to promote the following legal actions: rescission of the contract; in absolute nullity, in determining remuneration; in contract review; in contract reversal.

In the case of actions for contract rescission, absolute nullity and reversal of the assignment contract, the legislator merely mentions the possibility of their promotion, without indicating, even in general terms, the competent authorities to resolve them.

Instead, the competent jurisdictional bodies are generally indicated for remuneration establishment and contract review actions.

CHAPTER IV
VARIETIES OF CESSION CONTRACT REGARDING PATRIMONIAL COPYRIGHTS, ACCORDING TO LAW NO. 8/1996 REGULATIONS

SECTION 4.1.
PUBLISHING CONTRACT

4.1.1. Preliminary remarks

4.1.2. Publishing contract regulations viewed in historical process

4.1.2.1. The publishing contract in the regulation Law no. 596/19

4.1.2.2. The publishing contract in the regulation of Decree no. 17/1948

4.1.2.3. The publishing contract in the regulation of Decree no. 19/1950

4.1.2.4. The publishing contract in the regulation of Decree no. 321/1956

4.1.3. The publishing contract in the regulation of Law no. 8/1996

4.1.3.1. The legal regime applicable to the publishing contract

At present, the publishing contract is regulated by art. 48-57 of the Law no. 8/1996. This contract, being a genre of the assignment contract, is appropriately subject to the provisions of art. 39-47 of the Law no. 8/1996, on general rules, related to the assignment of patrimonial copyrights. In turn, the contract for the assignment of patrimonial copyrights is a form of the lease contract. As a result, the publishing contract is subject to art. 1777-1823 civ. C. provisions, which regulates the lease contract, in general. Finally, the lease contract, being a form of the civil contract, is governed generally by the provisions of art. 1166-1323 Civ. C. on the contract.

4.1.3.2. Definition of publishng contract

Consonant with those expressed in field doctrine, the editorial agreement can be defined as a modality of the contract for assignment of patrimonial copyrights, under which the copyright holder engages to transmit to another person, called editor, for a determined period of time, in return for remuneration the possession of the right to reproduce, distribute and eventually translate and adapt a work at its expense.

4.1.3.3. The legal characters of the editing contract

A. Preliminary remarks

In the doctrine, the following legal characters of the publishng contract are analyzed: nominative, negotiated, consensual, sinalagmatic, onerous, commutative, translational, with successive performance, limited, exclusive, *intuitu personae.*

B. The nominative character

C. The negotiated character

D. The consensual character

E. The sinalagmatic character

F. The onerous character

G. The commutative character

H. Transferable of rights character

I. The character of a contract with successive performance

L. The limited character

M. The exclusive character

N. *Intuitu personae* character

4.1.3.4. Publishing Contract Domain

Any intellectual creation work, susceptible of duplicate, may be edited in a variety of ways, in relation to the material support it attaches, i.e. paper, disk, cassette, compact disc (CD), computer, etc. This rule also applies to the other three rights whose usage may be transfer by ways of the publishing

contract (distribution, translation, adaptation) in the sense that these prerogatives are also likely to be accomplished in several ways.

Instead, we can not agree with the judgement that "the publishing contract domain does not include the exercise of the translation or adaptation rights of the work" or in other terms, "editing only concerns *stricto sensu* reproduction of the work, not its *lato sensu* reproduction. "

4.1.4. Parties of the publishing contract

4.1.4.1. Preliminary remarks

Parties of the publishing contract are the copyright holder and the publisher.

4.1.4.2. Copyright Titular

The term "copyright titular" refers primarily to the author and subsidiarily, to other natural or legal persons who, under Law no. 8/1996, acquire patrimonial copyrights that may be the object of this contract.

4.1.4.3. The publisher

As to the publisher, in the absence of particular requirements, stipulated by special or by common law, it may be any natural or legal person who has the ability to contract. The publisher, as a rule, is a legal person and, in most cases, a trading company.

4.1.5. Subject of the editing contract

4.1.5.1. Preliminary remarks

Generally, the subject of the contract is the legal transaction, such as sale, lease, loan, and other similar, agreed by the parties, as they arise from contractual rights and obligations esembly.

By way of the publishing contract, the use of patrimonial rights by the author is transmitted from the copyright assigned to the publisher. As a result,

this contract is, as well as the assignment of patrimonial rights of the author, basically, a species of the lease contract.

Strictly legal, the subject of the publishing contract consists of patrimonial copyrights lease, whose possession is transmitted from the copyright assigned to the publisher.

4.1.5.2. The patrimonial copyrights whose use can be transmitted by the publishing contract's means

From the content of art. 48 par. (1) and art. 49 of Law no. 8/1996, it is clear that the possession of the right to reproduce, distribute, translate and possibly adapt the work may be subject to the editorial agreement. *Per a contrario*, the authorship moral rights may not be the subject of the publishing contract, even though some of them may be transfered according to inheritance law provisions, nor any other patrimonial author's prerogatives provided by art. 13 of Law no. 8/1996.

4.1.5.3. Work reproduction

4.1.5.4 Work distribution

4.1.5.5. Work translating and adapting

4.1.5.6. Work publication of in electronic form

4.1.5.7. Work destruction or duplicates made after work destruction

4.1.6. Establishment and payment of remuneration

4.1.6.1. Remuneration determination

In the context of the regulations devoted to this contract, there are no derogating rules from the common law as regards the determination of remuneration. Thus, art. 51 par. (1) of Law no. 8/1996, laying down the clauses to be included in the publishing contract, d)-letter refers to the author's remuneration, *established according to law provisions*. The expression- established according to law provisions- is in fact a norm referring to the

common law, that is, art. 43 par. (1) and (2) of Law no. 8/1996 for the assignment contract in general.

4.1.6.2. Remuneration payment

As regards payment of remuneration, in the absence of special rules provided in the context of the regulations established by Law no. 8/1996 of the publishing contract, the provisions of the common law are also applicable.

4.1.7. Form and terms of the publishing contract

Law no. 8/1996 does not contain special rules on the form of the publishing contract. However, being in the presence of a species of the assignment contract of the patrimonial copyrights, in this respect, the provisions of art. 42 sentence I of Law no. 8/1996 applies correspondingly. Practically, and in case of this contract, the written form is required only *ad probationem* and, nowise, *ad validitatem*.

As regards the terms of the publishing contract, art. 51 par. (1) of Law no. 8/1996 sets out some mandatory clauses. Under par. (2) of the same article, the absence of any of the clauses referred to in a), b) and d) entitles the interested party to request contract annulling.

4.1.8. Effects of the publishing contract

4.1.8.1. Preliminary remarks

As a rule, in doctrine, the copyright assigned is subject of obligation to hand over the work and to guarantee the work. Instead, the editor has the following obligations: to reproduce the work, to broadcast the work, to exploit the work, to pay the remuneration, to return the original, and to provide the author with the remaining copies.

The analysis of Law no. 8/1996 provisions states that the guarantee obligation, analyzed in the doctrine, does not have special rules, in the context of the regulations for the publishing contract or the assignment contract, in

general. As a consequence, an eventual guarantee obligation should be subject to the rules of common law, in the field of lease contract.

Contrary to this normative reality, by taking theses from the French doctrine, the obligation to guarantee the copyright holder, in the case of the publishing contract, is analyzed as if we were in the presence of a sale-purchase contract.

Examining the general provisions of the Civil Code, devoted to lease contract (article 1777-1823), we find that art. 1786 letter c) obliges the lessor to provide the lodger with the quiet and effective use of property, throughout the period of the lease, while art. 1789 Civ. C provisions detail the content of this obligation. Moreover, the Civil Code regulates the guarantee for the lack of agreed qualities (article 1792), the factual disturbances (article 1793) and the legal disturbances (article 1793). Also, in the same regulatory context, the Civil Code includes provisions on the guarantee against vices (article 1790) and the effects of the guarantee against vices (Article 1791).

4.1.8.2. Copyright holder obligation to deliver the publisher the original work, at the appointed term

4.1.8.3. Publisher's obligations

A. Obligation to allow the author to make improvements or other changes to the work

B. Obligation to return the original work

C. Obligation to provide copies of the work

4.1.9. Publishing contract review

Law no. 8/1996 does not contain special rules regarding the revision of the publishing contract. As a consequence, in this contract, the norms of the common law, namely the provisions of art. 43 par. (3) regarding the revision of the contract for the assignment of the patrimonial copyrights apply.

4.1.10 Publishing contract cession

In an obviously lapidary manner, art. 54 of Law no. 8/1996 stipulates that the publisher may only transfer the publishing contract with the consent of the author.

4.1.11. Publishing contract cessation

4.1.11.1. Preliminary remarks

From the content of the established regulations, the publishing contract ceases by the fulfillment of the term, the exhaustion of the last edition agreed, its nullity and its voidance. The common law modality is the contract cessation by parties agreement.

4.1.11.1. Preliminary remarks

4.1.11.2. Publishing contract term fulfillment

4.1.11.3. Exhaustion of last agreed edition

4.1.11.4. Publishing contract nullity

4.1.11.5.Publishing contract reversal

4.1.12. Jurisdiction of courts to settle litigation of the publishing contract

According to Law no. 8/1996, the parties of publishing agreement have the possibility to promote the following legal actions: in relative nullity (art. 51 par. (2)], in absolute nullity (art. 41 par. (2)), in determining the remuneration (art. 43 par. (3) and (4)), in the review of the contract [Art. 43 par. (3)) and in voidance of the contract (art. 56 par. (3)].

Generally, art. 151 of Law no. 8/1996 provides that litigations regarding copyright and related rights are within the jurisdiction of the judicial bodies, according to this law and the common law.

SECTION 4.2.

THEATRICAL REPRESENTATION CONTRACT ORMUSICAL PERFORMANCE CONTRACT

4.2.1. Law Headquarters

Art. 58-62 of the Law no. 8/1996 regulates the theatrical or musical performance contract as a means of the transfer of the patrimonial rights of the author. As a way of transferring the property copyrights, in so far as the provisions of art. 58-62 of Law no. 8/1996 does not cover all the legal aspects of this contract, there are incidents the provisions of art. 39-47 of the Law no. 8/1996. Also, because the assignment of patrimonial copyrights is a form of the lease contract, in so far as the provisions of art. 39-47 of the Law no. 8/1996 do not stipulate, the theatrical representation contract or the musical performance is submitted, according to art. 153 of Law no. 8/1996, to the provisions of art. 1777 1823 Civ. C., concerning general provisions regarding lease contract. Finally, as we are in the presence of a civil contract, the general provisions on contracts or conventions provided for in art. 1166-1323 C. civ apply correspondingly.

4.2.2. Definition of the theatrical representation or of musical performance contract

The theatrical or musical performance contract is the contract whereby a party, called a releasor, undertakes to transfer to the other party, appointed as a releasee, in exchange for remuneration, for a determined period of time, or for a certain determined number of representations or executions, the possession of public theatrical representation right or of public performance, of a current or future work, of literary or artistic gender.

4.2.3. The object of the theatrical representation or of musical performance contract

Under art. 58 par. (1) of Law no. 8/1996, through the theatrical representation or musical performance contract, the copyright holder gives to a

natural or legal person the right to represent or to perform in public a current or future work, of literary, dramatic, musical, dramatically musical, choreographic or pantomime gender, in return for a salary, and the transferee undertakes to represent or execute it, under the agreed conditions.

Basically, the question arises whether the right to represent theatrical or musical performances is or not a patrimonial right of author within the meaning of the provisions of art. 12-22 of the Law no. 8/1996. It is also a matter of establishing the legal nature of the right to represent theatrical and musical performances.

The analysis of the provisions of art. 12-22, devoted to the patrimonial rights of the author, reveals that the author or the copyright holder has two patrimonial rights, namely the right to use the work (article 12-16) and the suite right (article 21-23). In turn, the right to use, having a complex content, gives rise, according to art. 13 of Law no. 8/1996, to certain distinct and exclusive patrimonial rights (patrimonial rights subsequent to the right of use). The analysis of the normative content of art. 13 of Law no. 8/1996 leads to the indubitable conclusion that the right of theatrical representation or musical performance can not be classified in any of these modes of the right of use.

In this context, we admit that we are in the presence of a *sui generis* patrimonial copyright, distinct from the patrimonial rights, subsequent to the right to use the work, stipulated by art. 13 of Law no. 8/1996.

4.2.4. Delimitation of the theatrical representation or of musical performance contract to other contracts

4.2.4.1. Preliminary remarks

Obviously, being in the presence of a species of the patrimonial copyrights assignment contract, which in turn is a modality of the lease contract, the legal issue of the theatrical representation or musical contract interferes, both with that of the other species of the assignment contract and the terms of the lease.

In order to avoid the risk of confusion, it is useful to analyze the connection points, as well as the normative differences, between this contract and certain types of patrimonial copyrights assignment contracts, as well as some modalities of the lease contract or even the civil contract in general .

4.2.4.2. Delimitation of the theatrical representation or of musical performance contract to the undertaking contract

4.2.4.3 Delimitation of the theatrical representation or of musical performance contract to the mandate contract

4.2.4.4. Delimitation of the theatrical representation or of musical performance contract to the joint venture contract

4.2.4.5. Delimitation of the theatrical representation or of musical performance contract to the sales contract

4.2.4.6. Delimitation of the theatrical representation or of musical performance contract to the order contract

4.2.5. The legal characters of the theatrical or musical performance contract

4.2.5.1. Preliminary remarks

As a rule, in the doctrine of the field, the following legal characters of the theatrical or musical performance contract are considered: nominative, consensual, sinalagmatic, for onerous consideration, commutative, translative of use, with successive performance, *intuitu personae*, limited.

4.2.5.2. The character called

4.2.5.3.The consensual character

4.2.5.4. The sinalagmatic character

4.2.5.5. The onerous character

4.2.5.6. The commutative character

4.2.5.7. The character of a translatable contract of use

4.2.5.8. The character of a contract with successive performance

4.2.5.9. *Intuitu personae* character

4.2.6. The modalities of the theatrical or musical performance contract

As a species of the assignment contract for the patrimonial copyrights, the assignment of the right to represent theatrical or musical performances may, as the case may be, be limited, unlimited, exclusive or non-exclusive.

4.2.7. Parties to the theatrical or musical performance contract

4.2.7.1. Preliminary remarks

The parties to this contract are the copyright assigned, as releasor, and any natural or legal person as an releasee.

4.2.7.2. Owner of patrimonial copyrights (releasor)

4.2.7.3. Releasee

4.2.8. The form of the theatrical representation or musical performance contract

In terms of form, art. 59 paragraph (1) of Law no. 8/1996 is unambiguous. According to him, the theatrical and musical performance contract *is concluded in writing,* for a fixed period or for a certain number of public communications.

4.2.9. The content of the theatrical or musical performance contract

According to art. 59 paragraph (2) of the Law no. 8/1996, the contract shall stipulate the term in which the premiere or the only representation or execution of the work will take place, as the case may be, the exclusive or non-exclusive character of the assignment, the territory, as well as the remuneration of the author.

4.2.10. The effects of the theatrical or musical performance contract

4.2.10.1. Obligations of the releasee

A. Preliminary remarks

According to Law no. 8/1996, the relaese has the following obligations: to represent or execute the work under the established conditions; not to transfer the contract to third parties without the consent of the author or his representative; to allow the author to control the representation or execution of the work and to adequately support the realization of the technical conditions for the interpretation of the work; to send the program, posters, public reviews about the show and other printed materials to the author; to ensure the representation or public execution of the work under appropriate technical conditions; to respect the author's rights; to periodically communicate to the copyright assigned the number of musical performances or performances and the status of the proceeds; to pay the author, at the time stipulated in the contract, the agreed amounts.

B. Obligation to represent or perform the work as agreed

C. Obligation of the releasee not to transfer the contract to a third party without the consent of the transferor

D. Obligation to allow the releasor to control the theatrical representation or execution of the work

E. Obligation to ensure respect for the rights of the author

E Obligation of the transferee to pay the releasor's remuneration

4.2.10.2. Obligations of the copyright assigned (releasor)

A. Preliminary remarks

In the absence of special legal provisions, with the exception of the obligation to transmit to the releasee the right to theatrical representation or to the musical performance of the work, the obligations of the transferor are those of common law, that is, those derived from the provisions of art. 39 47 of the Law no. 8/1996 and the provisions of the Civil Code regarding the common law of the contract.

B. Obligation to place the work at transferee disposal

4.2.11. Cessation of the theatrical representation or musical performance contract

4.2.11.1. Preliminary remarks

Law no. 8/1996 establishes two special causes of termination of the theatrical or musical performance contract, namely: rescission if the transferee discontinues representations or executions; the voidance if the transferee does not represent or does not execute the work within the set deadline.

4.2.11.2. Rescission of the theatrical or musical performance contract

4.2.11.3. Reversal of the theatrical or musical performance contract

SECTION 4.3.
THE ORDER CONTRACT

4.3.1. Legal nature and regulation of the order contract

Art. 46 of the Law no. 8/1996, being placed in the context of the common provisions (articles 39-47), devoted to the assignment of patrimonial copyrights contract, contains some norms which are incident only for order contract. Despite this topography (uninspired), in our opinion, we are in the presence of a contract that borrows both elements of the undertaking contract, and of the assignment of patrimonial copyrights contract.

4.3.2. Order contract definition

The order contract is that nominative contract whereby the author undertakes, in return for remuneration, to perform a work at the request of the other party as a beneficiary and possibly, as a transferee.

4.3.3. The legal characters of the order contract

As a rule, in doctrine, the following legal characters of the order contract are considered: consensual, sinalagmatic, onerous, *intuitu personae*, commutative, translative of rights, nominative.

4.3.4. Order contarct parties

From the content of art. 46 of the Law no. 8/1996 results that the parties to this contract are the author and the person who order the work.

4.3.5. Order contract object

In doctrine, this aspect is usually avoided. In our opinion, the identification of the subject of the contract is important in several respects.

4.3.6. Order contract content

The order for a future work must include both the term of the lecture and the acceptance of the work. Being also a modalities of the assignment contract, the contract must include clauses relating to: the patrimonial rights transferred, the manner of using each right, the duration and extent of the assignment, as well as the author's remuneration.

4.3.7. Order contract effects

4.3.7.1. Preliminary remarks

Regarding the author, as a rule, in doctrine, the following obligations arising from the order contract are analyzed: to create the work, to guarantee inner vices, to ensure the proper functioning of the work, to hand over the work. Instead, for the recipient of the ordered work, they are required to pay the price, to receive and take over the work, and to pay for the preparatory work.

4.3.7.1. Preliminary remarks

4.3.7.2. Obligation to accomplish the work

4.3.7.3. Obligation to hand over the work

4.3.7.4. Obligation to pay the price

4.3.7.5. Obligation to pay for preparatory work

4.3.8. Cessation of order contract

The modalities of order contract cessation of a literary, artistic or scientific work are the general ones applicable to any civil and private conventions specific to the type of contract examined. Among the general causes are the execution of the contract, the agreement of the parties, the unilateral denunciation, and the resolution. Among the particular causes we enumerate the author's death or his inability to execute the contract, the author's refusal to create the work and the contract denunciation by the beneficiary.

SECTION 4.4.
THE LEASE WORK CONTRACT

4.4.1. Preliminary remarks

Law no. 8/1996 regulates the lease of the work as a way of transferring the patrimonial rights of the author. Moreover, in accordance with the doctrine, due to the normative features that are reserved for us, we are in the presence of a *sui-generis* lease contract.

4.4.2. The legal regime applicable to the lease of the work contract

Law no. 8/1996 enshrines *expressis verbis* this contract only art. 63. In agreement with the doctrine, the possibility for the author of the work to conclude the lease also arises from his exclusive right to place his work at another person's disposal for use for a specified length of time and for a direct economic advantage Indirectly, according to art. 13 letter d), art. 143 and art. 145 of the Law no. 8/1996. In the case of this contract, other texts of Law no. 8/1996, even if art. 63 par. (2) of the Law no. 8/19966 refers exclusively to the provisions of the common law on lease, the contract for the rental of the work, being a way of transferring the patrimonial rights of the author, is appropriately subject to the common provisions foreseen for the assignment, generally stipulated by art. 39-45 and art. 47 of Law no. 8/1996. Also, the contract for

renting the work, being a convention, is also incumbent and the provisions of art. 1166-1323 Civ. C. regarding the contract, in general. This contract, although it is called lease, is not subject to the particular rules for lease, as stipulated by art. 1824-1835 Civ. C. Indeed, on the one hand, art. 63 par. (2) of the Law no. 8/1996 refers only to the provisions of the common law on lease, i.e art. 1777 1823 Civ. C and, on the other hand, art. 1824-1835 Civ. C. refers to the rental of dwellings.

4.4.3. Definition of lease work contract

As far as we are concerned, we define this contract as the one of the contract for the assignment of patrimonial rights by the author, whereby one of the parties, called assignor, undertakes to give the other party, called the transferee, the right to use, for a determined period of time, at least one copy of his work, in original or copy, in exchange for a direct or indirect economic advantage, called renumbering.

4.4.4. Delimitation of lease work contract to the other contracts

4.4.4.1. Preliminary remarks

Given the similarities, it is necessary to delimit the contract for the lease of the work, especially by the public loan contract and the commodatum contract.

4.4.4.2. The delimitation of the lease of the work from the public loan contract

4.4.4.3. The delimitation of the lease of the work of the commodatum contract

4.4.5. The legal characters of the lease of the work contract

4.4.5.1. Preliminary remarks

In the doctrine, as a rule, the following legal characters of the contract for the lease of the work are called: consensual, sinalagmatic, commutative, for

onerous consideration, non-translational copyright and with successive performance.

4.4.5.2. The nominative character

4.4.5.3. The consensual character

4.4.5.4. The sinalagmatic character

4.4.5.5. The commutative character

4.4.5.6. The onerous character

4.4.5.7. The non-translational nature of copyright

4.4.5.8. The character of a contract with successive performance

4.4.6. Object of the lease of the work contract

Consistent with the provisions of art. 1225 par. (1) and art. 1777 Civ. C., as well as of art. 63 par. (1) of Law no. 8/1996, the object of the lease of work contract represents work hiring, i.e the assignment by the assignor of the use of the work by the transferee, for a determined period of time and in exchange for an economic advantage.

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RESULTS OF SCIENTIFIC RESEARCH

Elaboration of doctoral dissertation on "Contractual transmission of patrimonial rights by author, according to Law no. 8/1996 on copyright and related rights" would not have been possible if we had not substantiated our analyzes, conclusions, *law ferenda* proposals and even some criticisms on this topic, accurately expressed in scientific Romanian reference papers, by specialists of the field, among whom we evoke, in this context, too, the teachers Viorel Roş, T. Bodoşcă, A. Circa and B. Florea.

The analysis of the provisions of art. 39-63 of the Law no. 8/1996 on the assignment of the patrimonial copyrights and its species has revealed to us the necessity of intervening, in many aspects, so that the legislator to harmonize with some general principles of law, and also with the new determined normative context settled by the entry into force of the current Civil Code (2009) and the Code of Civil Procedure (2010).

In particular, in the thesis, we have umphasize the existence, within the Law no. 8/1996, of norms uncorrelated with the constitutional principle of equality before the law and with the legal equality of the contracting parties. Thus, for example, although the capacity as the releasee of patrimonial copyrights may, basically, belong to any natural or legal person who has acquired such rights under the law, most of the legal norms regulating the matter refer only to the author.

Under many other aspects, some provisions of Law no. 8/1996 became outdated in relation to the provisions of the current Civil Code regarding the civil contract in general (articles 1166-1395), and to the lease contract, in particular (art. 1777-1850).

Lastly, in terms of norms dedicated to the contractual transfer of patrimonial copyrights, there are used terms or words lacking legal consecration or conflicting with other provisions of Law no. 8/1996.

All these aspects formed the reasons that led us to substantiate different *law ferenda* proposals, in the conviction that we will, thus, contribute to the improvement of the legal regulations devoted to the assignment contract and their species.

In fact, we are convinced that, virtually, any scientific analysis in the field of law should circumscribe at least three plans: legal regulations in the field, jurisprudence and doctrine in the field. Synthetically, such research should aim at the scientific monitoring of the legislator, the judge and the doctrinaire.

1. In the following lines, by way of example, we briefly present only a part of the *law ferenda* proposals substantiated in the thesis content:

- the provisions of art. 39 et seq. of Law no. 8/1996 are incomplete, in the sense that it refers only to *patrimonial rights of the author*, without mentioning the work, that is, *the opera*, which reprents their subject. For these reasons, we suggest that the legislator, by *law ferenda* provisions, shall modify art. 39 et seq. of Law no. 8/1996, in the sense that "the patrimonial copyrights on the work are transferred through the assignment contract". In this way, the assignment contract would, basically, become, without reservation, a way of lease contract in common law;

-despite the fact that art. 39 par. (1) and following. of Law no. 8/1996 refers without distinction to *the assignment* of patrimonial copyrights, as a result of the assignment contract only *the possession* of these rights and, in no case, the rights, *per se*, is transmited. For the accuracy of legal text provisions and the avoidance of various interpretations on this issue, I suggested to legislator that, by *law ferenda* regulations, to amend accordingly all the texts of Law no. 8/1996 which, referring to various aspects of the assignment contract, stipulate without distinction *the transfer* or *the cession* of the patrimonial

copyrights, by replacing these terms with the expression of the *transfer of possession*;

- *the consensual character* of the assignment contract, affirmed *in corpore* by the doctrine, is inferred from the provisions of art. 42 sentence I-st of Law no. 8/1996. In particular, according to these, "*the existence and content* of the contract for the transfer of patrimonial rights can be proved only by its written form" (s.n). As a result, in doctrine, it is generally claimed that *the written form* is required only *ad probationem* and, in any case, *ad validitatem.* As far as we are concerned, we consider that, on the contrary, by reference to the provisions of art. 42 of the Law no. 8/19966, the consensual form of this contract is not so clear. Thus, by reference to the provisions of art. 1175 par. (2) Civ. C., *consensualism* excludes *any formality* in connection with the realization of parties will. Legal provisions, such as those of art. 42 of the Law no. 8/1996, which impose *various formal requirements* for proving the existence of the contract, that is, in fact, *the will agreement*, are contrary to the principle of consensualism. In concrete, such rules regulate cases where *the form kills the content*(legal act). Indeed, interpreted *per a contrario*, the provisions of art. 42 of the Law no. 8/1996 lead to the conclusion that, in the absence of written form, the existence and content of the assignment contract can not be proved or, in other words, although the contract is legally concluded, it does not produce any effect, as if we were in the presence of a non-existent legal act . If this agreement is expected to be truly consensual, we suggest that the legislator, by *law ferenda* regulations shall find a normative solution in agreement with the provisions of art. 1175 par. (2) Civ. C. Eventually, the written form may be imposed only in order to prove the rights and obligations of the contracting parties;

-in the case of "assignment of the right to reproduce a work", according to art. 40 of the Law no. 8/1996, it is presumed that "the right to distribute the work duplicates was also transfered, except for the right to import, unless stipulated otherwise by the contract provisions." However, the analysis of the

content of art. 13 of Law no. 8/1996 does not confirm the existence of the "right to the distribution duplicates". Practically, art. 40 evokes a right which does not have an express regulation in the content of Law no. 8/1996. In order to avoid various interpretations on this issue, we suggest to the legislator that, by *law ferenda* provisions shall introduce a corresponding norm in the art. 13 of Law no. 8/1996.

-other natural persons than the author, or even some legal person, may become the assigned of the various moral or patrimonial prerogatives resulting from work realization. Thus, with principle value, according to art. 3 par. (3) of the Law no. 8/1996, the quality of the copyright subject can be transmitted according to the law. Regarding this normative situation, we consider it appropriate, by *law ferenda* provisions, to amend all Law no. 8/1996 regulations, which designates the releasor person, so that they refer exclusively to the *copyright assigned* and not to the "author or copyright assigned";

-since "the remuneration increase to an appropriate extent" represents a possible consequence of admittance of revision summons of the assignment contract, we can conclude that, in fact, 43 par. (3) of the Law no. 8/1996 only gives the assignor the possibility of asking for "contract adaptation". Indeed, in the content of this text, the effect is put in the same legal plane as its cause. For these reasons, we consider that, by *law ferenda* provisions, it is necessary to amend the regulations of art. 43 par. (3) of the Law no. 8/1996, so that they refer only to "adaptation of the assignment contract", depending on the circumstances, the jurisdictional body will decide to use one of the two ways of "fairly distributing the losses between the parties and benefits resulting from changing circumstances ";

-by *law ferenda*, the provisions of art. 43 par. (3) and par. (4) of the Law no. 8/1996 shall harmonize with those of art. 1271 Civ. C. Thus, the incidence of the provisions of art. 1271 Civ. C. in the matter of the assignment contract of the patrimonial copyrights, on the difficult and uncertain way of interpretation, shall be avoided. A unitary legal regime would also be

developed to promote the action for the adaptation or cessation of the assignment contract, both for the assignor and for the transferee. At present, the transferor has the provisions of art. 43 par. (3) and par. (4) of the Law no. 8/1996 and those of art. 1271 Cic. C, while the transferee only those of art. 1271 Civ. C.

2. On the other hand, I have noticed a somewhat modest doctrine concern for the in-depth, systematic and systemic analysis of the provisions of Law no. 8/1996 on the contractual transfer of patrimonial copyrights. In fact, in the Romanian doctrine, under this aspect, I have identified only one monography devoted to this field, elaborated by the prestigious author B. Florea.

In fact, this was one of the reasons that entailed me to elaborate this doctoral hesis.

3. Finally, jurisprudence in the field has given us relatively few solutions at court highest level of the judiciary hierarchy for litigation on contractual transfer of patrimonial rights of the author, which may support the conclusion of the somewhat sporadic nature of such litigation.