STATE UNIVERSITY OF MOLDOVA
FACULTY OF LAW
DEPARTMENT OF PRIVATE LAW

As a manuscript
C.Z.U.: 347.441.86(043.2)

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CONVERSION – WAY OF CORRECTING THE CAUSES OF NULLITY OF THE CIVIL LEGAL ACT

SUMARRY

SPECIALIZATION 553.01 – Civil law

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Chișinău, 2022

The thesis was prepared at the Doctoral School of Legal Sciences, State University of Moldova.

This summary is a translation in English of the summary prepared in Romanian / Moldovan.

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The presentation will take place on June 23, 2020, at 11.00, building 2 of the State University of Moldova, room 119, Mihail Kogalniceanu Street, 67, Chisinau municipality.

The presentation will take place in mixed format. Connection details: zoom.
Link:
https://us04web.zoom.us/j/79848520098?pwd=wL3AHCkq8Z3SZBPm4paEykEND2NOSw.1

The PhD thesis and the summary could be consulted at the library of the State University of Moldova and on the ANACEC website.

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INTRODUCTION

The topicality of the researched topic lies in the role of the conversion of the civil legal act, as a way of mitigating the impact of nullity on the legal act affected by substantive or formal defects.

The nullity of the civil legal act is an important sanction of civil law, whose purpose is to neutralize the consequences of manifestations of will producing legal effects, if such manifestations of will are externalized disregarding the substantive or formal conditions established by law for their validity. This sanction of civil law is carried out by abolishing the civil legal act in which the manifestation of will considered is incorporated, as well as the legal effects to which the respective legal act was directed.

The abolition of all possible effects of the null and void civil legal act does not in all cases seem justified. In some cases, we will grant validity to the expression of will made on the occasion of the conclusion of a legal act struck by nullity, in so far as this expression of will is capable of producing certain legal effects, other than those considered at the conclusion of the null or void act, but which do not contradict the original intention of the party or parties to the legal act in question. In such cases, the institution of conversion of the civil legal act becomes applicable.

By providing efficiency to the manifestation of the will of the legal act struck by nullity and making it capable of producing certain legal effects, the conversion of the civil legal act ensures the continuity of the civil circuit, which would otherwise be blocked by the strict and severe sanction of nullity. The conversion of the civil legal act could thus be classified as an important tool for facilitating the civil circuit.

Despite this role attributed to conversion, it does not enjoy an express legal enshrinement in the civil legislation of the Republic of Moldova, being only allowed by the legislator through certain norms of the Civil Code[1], such as art. 1662 in matters of suretyship and art. 2216 in matters of wills, and subject to deduction from other rules of law. The modest regulation of the conversion determined the fact that the respective legal institution remains practically unexplored by the local doctrine. We identified only one scientific article published in the Moldovan area, dedicated to the research of this institution [2], the same researcher continuing the presentation in his doctoral thesis dedicated to the effects of the nullity of civil legal acts[3].

[1] Civil Code of the Republic of Moldova no. 1107/2002. Republished in the Official Gazette of the Republic of Moldova, 2019, no. 66-75.
[2] BOCA, Sergiu. Conversion as a way of removing the effects of the nullity of the civil legal act. In: *National Law Review*, 2012, no. 6, pp. 56-60.
[3] BOCA, Sergiu. *The effects of the nullity of civil legal acts.* Doctoral thesis in law. Chisinau, 2013.

This paper comes to fill the existing doctrinal gap and, based on a research both in terms of theoretical aspects and practical applications, to pave the way for a regulation of the conversion of the civil legal act in the legislation of the Republic of Moldova.

The general objective of the paper is to investigate the usefulness of the conversion of the civil legal act as a way of correcting the causes of nullity of the legal act. The usefulness of this legal institution derives from its very nature as a way of correcting the causes of nullity of the civil legal act, by virtue of which the cause of nullity that infests the legal act is neutralized and does not allow it to produce its legal effects. As a result of this neutralization, the will manifested at the conclusion of the legal act acquires the power to give rise to certain legal effects, compatible with the original intention and interests of the parties to the legal act or at least one of them, thus creating premises for the realization of those interests.

The research of the usefulness of the conversion of the civil legal act cannot be done, of course, in an abstract way, but starting from the construction of a theoretical construction that accurately reflects the essence of the researched phenomenon and the verification of this construction from the application value and its importance. practice. For this reason, the author has formulated a number of concrete ***research objectives***.

Given that research by one or another legal institution must begin with an exposition of how the legal institution was born and evolved over time, we first set out to identify the genesis of the conversion. the civil legal act and to follow the way in which its regulation has evolved, on the one hand, its regulation in different legal systems, on the other hand, its approach in the doctrine of other states. As the doctrinal approaches to the conversion of the civil legal act are very diverse and sometimes contradictory, there is no unanimity in its definition, a factor determined by the relatively recent nature of the legal institution in question, compared to other concepts of private law that have a history of centuries or even millennia. This has led us to pay more attention to the analysis of the notions of conversion formulated by scholars in the field and by some legislators, as well as to propose our own notion, which sets out the essential and necessary features of conversion.

The diversity of doctrinal opinions is even more pronounced with reference to the legal nature of the conversion of the civil legal act, reason for which we chose as research objective and determine the legal nature of the conversion, in order to verify the opinions launched by the legal literature more accurately the specifics of this legal operation. Along with the determination of the legal nature, it is necessary to research the solid basis on which the entire construction of the conversion of the civil legal act or, more simply, of the justification of the legal institution of the conversion is built. This research objective consists in the theoretical substantiation of the conversion of the civil legal act.

Starting from the premise that the conversion of the civil legal act is based on the concept of complex legal fact, another prefigured research objective refers to the identification and exposition of the elements of the complex legal fact of the conversion, as well as the analysis of the general effects of this complex legal fact. produces at the meeting of its component elements.

An important research objective, which highlights the practical application of the conversion of the civil legal act, is to indicate the cases in which the conversion can operate, following the analysis of legal norms in various matters of civil law (contracts, performance guarantees, inheritance, etc.). This research objective is achieved by analyzing how the conversion operates in different identifiable cases and the concrete legal effects it can produce.

Also, the research of the conversion of the civil legal act and the appreciation of its usefulness would be incomplete if the functions of this legal institution were not reviewed, whose finality results, as reported above, in facilitating and dynamizing the civil circuit.

The research hypothesis consists in justifying the need to regulate the conversion of the civil legal act as a way of correcting the causes of nullity of the legal act, in view of the usefulness that this legal institution can present for dynamizing legal relations, when the nullity of the legal act is not necessary. to be a definitive solution on the way to satisfy some or other patrimonial interests.

The materialization of the nominated research hypothesis implies, of course, the achievement of the research objectives set out above, following a deep theoretical-practical analysis of the operation of the conversion of the civil legal act, its effects and the delimitation of the conversion of related legal institutions. it would be the nullity of the legal act, the effectiveness of the legal act, the confirmation of the legal act, the simulation, the novation and others.

Synthesis of the methodology. In order to carry out the research we proposed, the whole complex of specific research methods was used, namely: the method of historical analysis, the method of logical analysis, the method of systemic analysis, the method of comparative analysis, the method of synthesis, etc.

The method of historical analysis was used by the author in particular to identify the genesis of the conversion of the civil legal act and to investigate how the legal institution of conversion evolved, from its germs in Roman law to contemporary concepts regarding this method. to correct the causes of nullity of the civil legal act. The exposition of the aspects related to the historical evolution of the institution of conversion is indispensable for the synthesis of the level reached by the scientific investigations regarding the conversion, both in the doctrine from abroad and in the one of the Republic of Moldova, of course. - leaned on this legal institution.

The method of comparative analysis was used at each stage of the research and for the fulfillment of each individual research objective, starting from the premise that the conversion

does not have an express regulation in the Civil Code or in other normative acts of the civil legislation. Respectively, the justification of the need for its regulation in the Moldovan private law system can be achieved mainly by using the example of the rules on conversion from the Civil Codes of other states, how to apply them in the practice of foreign courts, and how to approach the conversion. by foreign doctrine. At the same time, the application of the comparative analysis method does not imply a mechanistic takeover of the legal or doctrinal notions, or of the theoretical concepts exposed in the specialized literature abroad. All these are to be analyzed and critically assessed and passed through the filter of the norms of the local legislation, in such a way that the possible proposals of regulation or application in practice of the conversion find their right place in the system of the Civil Code.

The method of systemic analysis also plays an important role in conducting research. This is explained by the fact that the proper application of the mechanism of conversion of the civil legal act, in order to obtain the effects of production through conversion, usually involves the incidence of several legal rules, which must be related to the respective conversion hypothesis and interpreted. suitable. An eloquent example in this sense would be the conversion of the testamentary form (art. 2216 Civil Code), the manifestations of which would be the conversion of an authentic will into a holographic will or a privileged will into a holographic will, or even a privileged will of a certain form. in a privileged will of another form. The analysis of all these conversion hypotheses necessarily implies the systemic application of the rules on the formal conditions of different types of wills, in order to identify concretely which formal conditions of a type of will are not met, which causes its nullity. , but are sufficient to produce the legal effects of another type of will, which, by way of conversion, could be recognized as valid.

Summary of the paper. This paper is structured in four *Chapters*, preceded by an *Introduction*. Each chapter contains the necessary conclusions, and at the end of the research the *General conclusions and recommendations* are presented.

Chapter 1, entitled *"Analysis of the scientific situation in the field of conversion of civil law"*, begins with some considerations on the genesis of the institution of conversion of civil law, followed by exposing the level of theoretical investigations into conversion in the doctrine of the Republic of Moldova and other states. the scientific problem and the research objectives that we have proposed in the elaboration of this paper.

In *Chapter 2*, *"The legal nature and theoretical basis of the conversion of the civil legal act"*, we submit to research in a synthetic way the ways of correcting the causes of nullity of the civil legal act, in the category to which the conversion of the civil legal act affected by nullity. Also here, starting from the research objectives formulated in *Chapter 1*, we will insist on determining

the legal nature of the conversion of the civil legal act and on the theoretical substantiation of the conversion as a way to correct the causes of nullity of the civil legal act.

The following chapters of the paper are, in fact, the essence of our research. Thus, *Chapter 3*, entitled *"Theoretical aspects of conversion as a way of correcting the causes of nullity of the civil legal act"*, is dedicated to the theoretical approaches of the legal institution of the conversion of the civil legal act, in the absence of which this institution can not be put into practice. . Here we have insisted on the notion of conversion and the classification of different applications of this legal mechanism depending on the criteria nominated by the doctrine. The following is an analysis of the elements of conversion as a complex civil legal fact and the effects that conversion produces with the combination of its elements.

In *Chapter 4, "Approaching the Applicable Value and Practical Importance of Conversion as a Way of Addressing the Nullity of Civil Legal Acts,"* we focus on the applicable aspects of conversion, beginning with the investigation of identifiable civil legal conversion cases. through the prism of different norms of our civil legislation. They are grouped into conversion and inheritance conversion cases. We also focus on the delimitation of the conversion of related legal institutions. The *Chapter* concludes with an exposition of the functions of conversion as a way of correcting the causes of nullity of the civil legal act, through the prism of which are passed some examples from the local judicial practice.

1. ANALYSIS OF THE SCIENTIFIC SITUATION IN THE FIELD OF CONVERSION OF THE CIVIL LEGAL ACT

The genesis of the institution of conversion of the civil legal act is due to the effort of the German pandectists from the 15th century. XIX, who developed the concept of conversion based on isolated hypotheses of the so-called transformation of legal acts, which can be found in classical Roman jurisprudence. Roman law consistently promoted the principle *quod nullum est, nullum producit effectum*, which is why the idea of converting a null act into a valid one was foreign to the Roman legal system.

The German law school is the one that would have made conversion a concern of legal science, and consequently the first modern civil code that expressly enshrined the institution of conversion was the German Civil Code of 1896. In this normative act, the conversion is known under the name of "reinterpretation" ("Umdeutung") and is found in art. 140.

Interpreting the norm from art. 140 German Civil Code, the doctrine held that where the legal act originally concluded is void, it may be retained as another legal act if the conditions for its validity, including the formal requirements, are met. This legal operation has been called in the literature "conversion", after the model of the term used in the works dedicated to Roman law. Namely in German law the conversion was "linked" to the nullity of the civil legal act, becoming an institution connected with the nullity of the legal act.

Inspired by the German Civil Code model, the institution of conversion was later expressly provided for in other civil codes, such as the Italian Civil Code of 1942 and the Hungarian Civil Code of 1959. However, other legislation does not contain an express consecration of the conversion, such as The French Civil Code of 1804 and other French-inspired civil codes. However, despite the lack of express general provisions on the legal status of the conversion, the French legal system and the French-speaking legal systems allow doctrinal approaches.

The Romanian Civil Code of 1864, in force since 1865 (repealed in 2011) is not an exception to the situation of French-speaking civil codes, but in the Civil Code of Alexandru Ioan Cuza could be identified some provisions on the basis of which today were built true theories regarding the classification of conversion into formal and substantial. Here we have in mind the regulation from art. 1172 of the Romanian Civil Code of 1864, according to which the authentic document is in fact null and void due to the incompetence of the official or the defects of the authentication forms can be considered as a document under private signature, seen as a case of formal conversion.

Only the new Civil Code of Romania from 2009, which entered into force in 2011, intended articles for the concrete ways of correcting the causes of nullity of the civil legal act, expressly regulating in addition to restoration and confirmation and conversion. Thus, the new Romanian

Civil Code of 2009 includes two articles dedicated to conversion. It is about art. 1260 and art. 1050. The first of them regulates with principle value the conversion of the null contract, and the second article regulates the conversion of the testamentary form.

The Civil Code of the Russian Federal Socialist Soviet Republic of 1922 did not provide for conversion, but the possibility of transforming one legal act into another legal act was allowed by doctrine and judicial practice. The situation is similar with regard to the Civil Code of the Moldovan Soviet Socialist Republic of 1964 (repealed in 2003).

Currently, the 1994 Civil Code of the Russian Federation does not enshrine the rules on conversion, but this does not mean that at the conceptual level the conversion is not known to Russian civil law, or the conversion mechanism can be deduced from certain rules of the Russian Civil Code.

Following the theoretical developments, the conversion evolved from a predominantly formal way of transforming a legal act of a certain legal nature, not necessarily struck by nullity, into a legal act of another legal nature, to a mechanism of limiting the effects of the nullity of the legal act. by maintaining the legal force of the manifestation of will expressed on the occasion of the conclusion of the legal act infested by a cause of nullity. Thus, the conversion was recognized as having the capacity to produce substantial (not only formal) legal effects, the result of which is the birth by conversion of a legal act distinct from that considered by the party or parties to the initial manifestation of the will.

Subsequent doctrinal and jurisprudential efforts have continued to focus on the in-depth investigation of this legal phenomenon, with numerous attempts to define the conversion, determine its legal nature, and establish a theoretical basis.

At the same time, a lack of a uniform approach to the researched phenomenon is identified in the foreign literature. The doctrine admits the existence of the conversion of the civil legal act even in the absence of legal norms that expressly enshrine it, but when it comes to discussions on the legal nature of this operation, its justification, the conditions in which it operates, doctrinal opinions are divided and practically each The author comes up with his own vision on these issues.

In the doctrine of the Republic of Moldova, the conversion had little theoretical research. This legal institution did not stop at civil law courses or monographic research, except for some works by the author S. Boca, but he also addressed the conversion in the context of his research on the effects of the nullity of civil law.

The lack of a proper theoretical approach in the local doctrine, which deserves the conversion of the civil legal act, does not detract from the practical importance of this legal operation, which ultimately achieves the civilian circuit of goods.

All the above determined the present research on the conversion of the civil legal act and the formulation of the corresponding research objectives, in particular the definition of the conversion of the legal act, the determination of its legal nature, the theoretical substantiation of the conversion of the null legal act into a valid legal act. conversion operation. The practical aspect of the research of the conversion of the civil legal act concerns the analysis of the effects of the conversion, the identification of the possible cases of conversion, but also the elucidation of the conversion functions, as fundamental directions (orientations) of the action of this legal mechanism.

2. THE LEGAL NATURE AND THE THEORETICAL BASIS OF THE CONVERSION OF THE CIVIL LEGAL ACT

As we have shown, the justification of the causes of nullity of the civil legal act is a less explored scientific reality, as long as the format of social relations has not proved sufficiently convincing in determining the subjects of civil law relations to clearly state the "necessity" of their application. and the legal significance of it, in fact. This legal amorphous oscillates mainly in the doctrine and legislation of the Republic of Moldova, as long as the civil legislation here paying attention to this aspect only in brief semantics, and Moldovan doctrinaires not fully identifying the relevance of a possible scientific approach in the field.

A doctrinal definition and, even more so, a legal one of the modalities for correcting the causes of nullity of the civil legal act is not formulated in a legal system either, which signals several difficulties, but also imperatives in terms of the semantic substantiation of this concept claimed by a valence with a deep legal emphasis.

However, we can see that the doctrine almost unanimously concluded that the parties to a civil legal act tainted by a cause of invalidity would be legally entitled to have the option of treating the legal act, trying to replace it with a valid one (restoration of the legal operation) or to capitalize on the old one in a legal way (confirmation of the legal act or its conversion). We share the same vision, provided that this would ensure the avoidance of hostile relations between legal subjects, the avoidance of irrational consumption of time and material resources, the promotion of the supreme principles of civil law: contractual freedom, only *libertas est potestas faciendi id quod jure licet* (freedom means being able to do what the law allows you) and the supremacy of the will of the parties, all of which contribute to the catalysis of the civil circuit.

Thus, by ways of correcting the causes of nullity of the civil legal act we mean those means or methods by which the parties of a civil legal act struck by a cause of nullity have the option of remedying the civil legal act, trying to replace it with a valid one (restoration of the legal operation) or to capitalize on the old one in a legal way (confirmation of the legal act or its conversion).

The restoration, generally speaking, resembles a kind of "capital reparation" of the civil legal act struck by nullity, because in the latter there is almost nothing left, being replaced by a new valid civil act. *In concreto*, restitution means nothing more than the legal process by which the parties are free to conclude a new legal act, similar to the first, whereby the valid will expressed in a null legal act to produce legal effects by another act, the conditions of which validity are fully respected.

Confirmation is the way to correct the causes of nullity of the detailed civil legal act analyzed in the doctrine, but also fully reflected in the legislation, both national and foreign. After all, confirmation is that legal transaction or declaration by which a person, entitled to seek the annulment of an act, recognizes it as valid. At the same time, by analyzing the objective, the confirmation must not prejudice the rights obtained by third parties.

The third way of correcting the causes of nullity of the civil legal act remains to be the conversion, as I mentioned and to which the present scientific research is exclusively dedicated.

Despite the many hypotheses in the doctrine, we state with certainty that the most appropriate legal nature of the legal concept under discussion and that unites conversion, confirmation and restoration is the way to correct the causes of nullity of the civil legal act. We argue our opinion by the fact that, first of all, confirmation, conversion and restoration are some ways, ways, methods by which we can direct a cause of nullity, and through this legal procedure we achieve the expected goal: to capitalize on a legal act null, in a valid manner. Secondly, after being convinced that nullity in itself cannot be rectified, we find, in principle, that, in fact, the cause of nullity is in fact being rectified; the cause that led to the nullity of the legal act is changed to a valid one, keeping the other contractual provisions, according to the law, for the valid legal act constituted, due to a concrete way of correcting the causes of nullity of the legal act. It should be noted that the cause of the legal act, which is the purpose and the reason for concluding the contract, is not considered, but the cause of nullity of the legal act, or the reason why a legal act is not valid.

By challenging all the existing theories in the doctrine regarding the substantiation of the conversion, we consider that the basis of the conversion lies in the dimension of the complex legal fact, the system of which consists of three elements:

- invalidity of the original civil legal act. Being a cause for rectification of the causes of nullity of the civil legal act, the conversion has its reason to exist specifically in connection with the annulment or finding of the nullity of the civil legal act. Thus, the kind of nullity which strikes the original legal act is not relevant. The conversion can operate both in case of absolute nullity of the original legal act and in case of its relative nullity;

- the valid expression of will expressed in the original legal act struck down by nullity, still capable of producing certain legal effects. It is this capacity of the manifestation of will from the original legal act and is intended to capitalize on the conversion. We emphasize that this case should not be confused with the situation in which we speak of the theory of substantiation of the conversion regarding the imperative of maintaining the legal act, related to the rule of partial nullity, considering that the conversion will capitalize on the initial manifestation of will in a transformed manner. it still produces full legal effects in the event of total annulment of the original act, in another subsequent legal act. But this reminiscence of the initial manifestation of will is not

in itself sufficient to produce an effect, it only contains in itself the power of legal effects. In order for this power to turn into a genuine legal effect, it is absolutely necessary to realize the third element of the legal fact, namely

- the express manifestation of the will to operate the conversion, manifestation that is carried out before the court, taking into account the judicial character of the conversion. This third element of the legal fact completes the conversion as an operation to rectify the cause of invalidity of the civil legal act and produces the legal effects intended by the party or parties. Without this third element of the complex legal fact analyzed, the other elements represent only a cumulation of facts without any legal purpose. Thanks to the will to operate the conversion, there is a qualitative leap from a simple accumulation of facts to a true legal fact, producing legal effects. So this is the key element of the conversion, which, with the intention of producing legal effects, imprints on the conversion the quality of a civil legal act. The main effect of the conversion is to neutralize the cause of invalidity of the original civil legal act and the birth of a new legal act (subsequent legal act) and a legal relationship, the object and content of which is determined by the extent to which the will incorporated in the original act produces effects.

3. THEORETICAL ASPECTS REGARDING THE CONVERSION AS A WAY OF CORRECTING THE CAUSES OF NULLITY OF THE CIVIL LEGAL ACT

The nullity of the civil legal act occurs as a sanction aimed at restoring the previous legal situation, in order to protect the rights and interests of the subjects of civil law relations. However, in many cases, the nullity of the legal act does not occur as a result of the defect of the manifestation of the will, which means that the manifestation of the will of either all parties or only one of the parties remains valid, so that the act is repealed. legal operation following the sanctioning effects of nullity would constitute an injustice rather than a reconstitution of justice. Thus, in such a situation we find ourselves in case of a conflict between the principle of nullity aimed at restoring the parties to the previous situation (*restitutio in integrum*), which materializes by restitution of benefits made under the act of nullity and another principle of law of saving the manifestation of will. The legal figure of conversion comes to remove this collision of principles, presenting itself as a solution in this regard and marking the dimension of the lexeme "conversion" in terms of law.

In the specialized literature of the Republic of Moldova there is no proper notion dedicated to conversion, however, in the Romanian doctrine a consensus is identified, understanding by conversion the legal operation which consists in considering a legal act affected by nullity as another legal act, whose conditions of validity, substance and form are fulfilled, an operation by which the manifestation of invalid will as a legal act is considered and produces effects as another legal act, whose own requirements of validity, substance and form are met.

Thus, trying our own formulation of the notion, we are of the opinion that by conversion is to be understood that way of correcting the causes of nullity of the civil legal act which consists in capitalizing in a transformed manner the manifestation of valid will expressed in an act. civil law struck by nullity in a subsequent civil legal act, whose substantive and formal conditions are legally met and which produces legal effects different from those pursued by the conclusion of the original legal act.

In order to harmonize the legal normative framework with the theoretical-practical tendencies in the matter, we propose to introduce in the Civil Code the notion of conversion, which would have the following content: *The conversion consists in capitalizing - a subsequent civil legal act, the substantive and formal conditions of which are legally met and which produces legal effects different from those pursued by the conclusion of the initial legal act.*

Given the existing classifications in the doctrine regarding conversion, we are of the opinion that none of the proposed classifications, namely the classification of conversion into substantial, formal, legal or judicial, is resistant to criticism. At the same time, this does not mean the

impossibility of identifying some criteria for classifying the conversion, and the criterion proposed by the author is that of the legislative consecration of the conversion. In this sense, the conversion is presented as express (explicit) or virtual (default), following the example of express or virtual nullities. Thus, the conversion is expressed when it is provided by a legal and virtual provision when it is not provided by a legal provision, but the party or parts of the original legal act struck by nullity can invoke it, if the manifestation of will expressed in the original legal act hit by nullity is still capable of producing certain legal effects and the other conditions of validity of the subsequent legal act are met.

The doctrine does not reflect a unanimous view regarding the elements of conversion of the civil legal act, but, as far as we are concerned, we believe that the elements of conversion can be analyzed only in the context of the complex legal fact, by considering the nullity of the original legal act. (total and effective nullity), the manifestation of the will expressed in the original legal act struck by the nullity, still capable of producing certain legal effects and the express manifestation of the will to operate the conversion.

In the context of total and effective nullity we mention that the conversion cannot exist when a legal act is partially invalidated and in case the total nullity of the legal act has not been declared by the competent court.

With regard to the expression of will expressed in the initial act struck down by nullity, we emphasize that the subsequent legal act results from the original legal act struck down by nullity, which has a legal existence from a purely theoretical point of view. In other words, the subsequent legal act capitalizes on the manifestation of the initial will, capable of producing valid legal effects in another legal act, which will give rise to, modify and extinguish rights and obligations other than those envisaged by the party or parties. at the conclusion of the original legal act.

As long as the conversion capitalizes on the manifestation of will incorporated in the first act, struck by nullity, the possible identity of the parties in the initial and subsequent act is naturally questioned. Following the analysis carried out in this chapter, I came to the conclusion that the legal fact of the conversion can operate both between the same parts of the original bilateral act, struck by nullity, and in favor of only a part of the initial bilateral act, giving rise to a legal act. subsequent unilateral. But I have also identified the possibility of hypotheses in which other persons than the party or parts of the original legal act may prevail for conversion.

We state that, undoubtedly, the conversion will not be applied if the party or parties to the original act do not wish to do so, given the principle of relativity of the effects of the civil legal act. Therefore, the will regarding the operation of the conversion must be expressly expressed, in order to be opposable to third parties, but also to ensure the verification of the real will of the party or parties.

In the context of the above, we consider that the will of a single party is sufficient for the conversion to take place, as the conversion must not be invoked by the party responsible for the nullity of the original act. Thus, the conclusion by one of the parties in full knowledge of the facts of a civil contract which was known to be infested with a cause of invalidity could be regarded as an unlawful act. If this party were allowed to invoke the conversion against the innocent party, we would find ourselves in the situation where the latter party will be obliged to execute another civil legal act than the one it would have wanted in the first place. , not to mention the fact that in this way the approach of a contrary behavior within the civil circuit would be encouraged.

In addition, a perfectly valid subsequent legal act must result from the express exercise of the expression of intent regarding the operation of the conversion. The very reason for the conversion is to direct the cause of nullity from the original act to the subsequent act, not to perpetuate it from the original act to the subsequent act. In other words, we will not be in the presence of a conversion in the last case, because the latter can only make sense if the subsequent act will produce its legal effects.

It should be noted that the subsequent valid act, in order to be an integral part of the conversion structure, will have to contain an element of difference from the original act. The element of the difference between the original legal act and the subsequent legal act may consist of any element of the legal act, such as type, nature, content, effects or at least form.

With reference to the effects of the conversion, we have identified its obligatory character, or the subsequent legal act, whose conditions of validity are met, produces obligatory effects through the birth of rights of claim and correlative obligations. For example, in the event of the cancellation of a sale-purchase contract, which may be converted into a pre-sale-purchase contract, the resulting pre-contract will give rise to the related rights and obligations of the parties regarding the conclusion of the future contract, but with respect. all the conditions prescribed for the contract in question.

However, the binding effect of the conversion is the rule from which there may be exceptions. If a translational act of rights is struck by nullity, but in the light of the components of the legal fact of the conversion it is possible for a subsequent equally translational act of rights to arise, then the conversion will have real effect.

The conversion is judicial in nature, and in order to operate, on the one hand, it is necessary to effectively and completely invalidate the original legal act in a procedural framework opened by a nullity action, on the other hand, it is equally necessary to invoke the conversion into before the court. And, of course, for reasons of practicality, it is welcome to invoke the conversion of the legal act struck by nullity in the same judicial process in which nullity is discussed, but this is not

an imperative requirement. However, we have identified situations in which the conversion can be carried out with full effect in a separate judicial process.

The judicial nature of the conversion is not impaired even when the possibility of converting a null act into another act is provided by law. In all cases, the need for the actual and total invalidation of the original legal act persists in order to make it possible to convert it into another legal act. And such an invalidation of the original legal act is all the more necessary if that legal act has produced its effects by giving rise to the rights and obligations for which it was concluded. And the total and effective invalidation, as a premise of the conversion, must take place in court.

From a procedural point of view, the conversion can take place either by way of exception, the court will find the existence of the conversion and on this basis reject the action brought against the party in favor of the conversion, or by way of a main claim. And the action for conversion is a finding, which can be promoted both in an already open procedural framework, by way of a counterclaim, and as a main action in finding the existence or non-existence of a legal relationship (subjective right).

The effect of the conversion, as well as that of nullity, occurs with retroactive effect (*ex tunc*), from the moment of the manifestation of the will of the party or parties, incorporated in the initial act struck by nullity.

As a finality of the considerations regarding the effects of the conversion of the civil legal act, we consider it opportune to include in the Civil Code some norms regarding the judicial character of the conversion and the moment from which the conversion of the civil legal act takes effect. In textual form, this proposed *lege ferenda* would be as follows: *The conversion takes effect retroactively, from the moment of the manifestation of the will of the party or parties in the original act struck by nullity. The conversion is found by the court, both by way of action and by way of exception, only at the request of the person in whose favor the conversion operates.*

4. ADDRESSING THE APPLICABLE VALUE AND PRACTICAL IMPORTANCE OF THE CONVERSION AS A WAY TO CORRECT THE CAUSES OF NULLITY OF THE CIVIL LEGAL ACT

Conversion cases that can be deduced from the economy of the rules of the Civil Code can be grouped into two categories: conversion cases in matters of inheritance and cases of conversion in matters of obligations. The first category is attributed to the conversion of the testamentary form, the tacit acceptance of the succession by an act of alienation of the succession property struck by nullity and the revocation of the legatee by an act of alienation of the object of the legatee struck by nullity. The second is the conversion of a contract for the alienation of an asset into a pre-contract, the conversion of an independent personal guarantee into a surety and the conversion of a bill of exchange into a confirmation of the debt.

With regard to the conversion of a testamentary form, it may take place if a will that is void because of a defect in form meets the formal requirements of another type of will. At first sight, this case of conversion of the testamentary form should not be considered a conversion in the light of the notion I have formulated, or, in the case of the conversion of the testamentary form, both the initial act and the subsequent one have the same legal effect - the transmission for the cause of death. However, what is really relevant in this situation is that the common legal effect of all varieties of wills, namely the transmission for the cause of death in favor of those indicated in the will, is essentially the purpose of the will, but the legal force of the will is different. depending on the shape of that. From this perspective, the conversion hypothesis cannot be denied.

Following the analysis, we found that the conversion of the testamentary form will most often occur precisely in the sense of recognizing the validity of a holographic will, if a will of greater complexity (authentic or privileged) is struck by nullity for formal defects. Of course, provided that the will in question meets the conditions established for a holographic will - to be written in full, dated and signed by the testator. The most probable hypotheses for converting the testamentary form are those of converting a privileged will into a holographic one, for example, in situations where a privileged will written, signed and dated by the testator's hand, does not meet all the requirements of the privileged will, even if the overwriting formalities are carried out by an incompetent investigating agent, either due to the incompatibility of some witnesses present at its preparation or the absence of the signature of a witness on the text of the will. We also consider it possible to convert a privileged will of a certain form into another equally privileged will.

The conversion of the act of alienation of a property from the estate, struck by nullity, into tacit acceptance of the inheritance can be imagined only in the legal context of the old wording of

the Civil Code, which regulated the right of succession in the form of acceptance or renunciation. In the current legal context, following the reform of the Civil Code by Law no. 133/2018, there was a paradigm shift in terms of succession option: the inheritance passes to the entitled heir subject to his right to renounce the inheritance. In this way, the transmission of the inheritance occurs automatically when the inheritance is opened. A possible declaration of acceptance of the inheritance is only a consolidation of the quality of heir, which can also occur by itself by not renouncing the inheritance within the indicated term. Respectively, the possibility of converting an act of alienation struck by nullity regarding a successor asset into a tacit acceptance of the inheritance can be analyzed only in relation to the inheritances opened until March 1, 2019, the date of entry into force of the Law on Modernization of Civil Code.

With regard to the alienation of the object of the bequest by the testator, which even if struck by nullity could amount to tacit voluntary revocation of the bequest, in view of the norms of the Civil Code, as a result of such an act of the testator occurs *the expiration* of the will. We notice that our legislator opted for the consequence of the expiration of the bequest in case the testator concludes the disposition documents on the object of the bequest, and not for the consequence of the revocation, which does not seem correct to us. At a glance, the revocation of the legal act means the voluntary termination for the future of a legally concluded legal act, and the expiration - the ineffectiveness of a legal act due to an event independent of the will or fault of the parties, which occurs after the valid conclusion of the act. We critically appreciate the legislator's option to qualify as expired the legatee whose object is alienated by the testator during his lifetime. We consider that in this case the tacit voluntary revocation of the bequest operates, since the alienation of the object of the bequest is an intentional act of the testator which implicitly aims at the ineffectiveness of the testamentary disposition considered. Respectively, the legatee will be tacitly revoked even by an act of alienation of his object struck by nullity, being present a case of conversion. However, what is relevant for a tacit revocation of the bequest is the real intention to alienate its object by the testator, an intention that is also present when the act of alienation is struck by nullity.

Considering the retained ones, we propose to include the provisions from art. 2381 Civil Code in par. (1) and to include a new paragraph in the cited article, as follows: *" that he intended to revoke the testamentary disposition "*. As well as to expose art. 2388 lit. c) Civil Code in a new wording, as follows: *"the tested property did not belong to the testator"*.

With regard to the conversion in terms of obligations, I have noted that the expression of will, void as a sale, may be worth the pre-contract of sale. At the same time, the hypothesis most often mentioned in the doctrine, namely the pre-contract value of the invalid expression of will as a contract of sale due to the lack of authentic form required by law *ad validitatem*, is not applicable

under the legal conditions imposed by our Civil Code. due to the fact that the pre-contract must be concluded in the form required by law for the final contract, under the same sanction. Thus, a sale-purchase contract of a null building for non-compliance with the authentic form cannot be converted into a pre-contract of sale-purchase, for the same reason: non-compliance with the authentic form.

Another possible hypothesis of conversion in terms of obligations, attributing it to the conversion of a legal act of disposition over an asset, concluded in violation of the prohibition of alienation, which is struck by relative nullity, in a pre-contract, which will result in the obligation of the alienator to dispose of the property provided the ban is lifted. A similar situation from the point of view of converting a null and void legal act into a pre-contract can be attested in case of concluding an act of alienation of the property in disregard of the inalienability clause. Thus, a sale-purchase canceled for the breach of the inalienability clause by the seller may be worth the pre-contract of sale-purchase, which may be enforced following the termination of the inalienability clause stipulated, either by the expiration of its term or by court authorization or the waiver of the clause of the one who stipulated it. The conversion of a contract into a pre-contract may also occur in the event of the nullity of the alienation of a common property in inheritance made by one spouse, without the consent of the other spouse. This pre-contract will result in the obligation of the alienator to obtain the consent of the other co-owner for the final alienation of the property.

We are also in the presence of a case of conversion of the legal act in the situation in which the act of constituting an autonomous personal guarantee, struck by absolute nullity will be able to be valid act of constituting a guarantee. The legal effect that the conversion will produce in such a case results from the fact that the guarantee itself produces legal effects distinct from those of an autonomous personal guarantee. In this respect, in addition to the fact that the guarantee is an accessory personal guarantee and the autonomous personal guarantee - non-accessory, in case of guarantee the guarantor may oppose to the creditor the own exceptions of the guaranteed debtor, while in case of autonomous personal guarantee the guarantor does not have such prerogative .

The conversion can also take place in case of cancellation of the bill of exchange, which can be valued as a document certifying a claim (confirmation of debt). At first sight, in this case the conversion has a purely formal effect in the sense that a bill of exchange is converted into a simple document under private signature, but in reality the conversion also produces substantial effects. And this by virtue of the fact that the title of credit initially considered by the parties, which would have included an unconditional, autonomous and abstract obligation to pay a certain amount of money, obtains the value of a title (written under private signature) attesting a claim. simple, non-autonomous and causal.

From the point of view of the delimitation of related institutions, the conversion differs from confirmation by the fact that in case of confirmation, in principle, the sanction of nullity can be completely annulled, the null or voidable legal act can produce its effects exactly as desired. the party or wanted the parties, without being in the presence of two legal acts. While in the conversion situation we attest the incidence of two distinct civil legal acts, the subsequent act being valid, and the initial act - struck by nullity.

The conversion will not be confused with the restoration, even if both, as well as the confirmation, are ways of correcting the causes of nullity of the civil legal act. With the restoration of the original act struck by nullity by taking into account and compliance with all legal requirements regarding the conditions of validity of the legal act, the new act - the subsequent act will have its effects unhindered, depriving the need and . Conversely, if the conversion will be applied with priority, then there is no room for recovery.

Conversion is easily distinguished from partial nullity, when some of the effects of a legal act are maintained by law, and here the fragments of effects which are not contrary to the law are considered.

We will not consider the application of the conversion when only in appearance the legal act denotes an invalidity, on the grounds that it was incorrectly qualified by the parties, incorporating it into a legal nature by virtue of which the conditions of validity were not met.

We will not have a conversion even in the case of the incidence of the legal institution of the novation. Novation involves the transformation of one mandatory legal relationship into another, and the conversion involves the replacement of an initial civil legal act with another, on the grounds that the former has been infested with a cause of invalidity.

Likewise, conversion is to be different from simulation. In the case of simulation, both acts are intended to produce the effects at the same time: the secret act - between the parties and the public act - between the parties and third parties, while in the circumstance of the conversion only the subsequent act will take effect.

At the same time, it will be taken into account that the conversion will direct a cause of nullity of the civil legal act, while the effectiveness will attribute efficiency and efficiency to an inefficient legal act from one of the causes of ineffectiveness elucidated by the Civil Code of the Republic of Moldova consider the acceptance *stricto sensu* of inefficiency.

The investigation of the conversion as a way of correcting the causes of nullity of the civil legal act would be incomplete if its functions were left out of the analysis. However, the functions can explain the reason for this legal operation and how it works in the service of general and particular interests. The functions of conversion are those directions (guidelines) of the action of the legal mechanism for converting a null and void civil legal act (initial legal act) into another

valid legal act (subsequent legal act). Based on the legal nature of the conversion, its mode of operation and its effects, we consider that such guidelines are threefold, namely 1) mitigating the impact of nullity on the original civil legal act, 2) stimulating the party or parts of the original legal act to capitalize the liabilities of production on the basis of the manifestation of will incorporated in it, 3) ensuring the continuity of the civil circuit regarding the goods and values that are the object of the convertible legal acts.

The function of mitigating the impact of the nullity of the civil legal act derives from the legal nature of the conversion as a way of removing the causes of nullity of the legal act. The conversion somewhat corrects the cause or reason for nullity that infests the civil legal act and allows the capitalization of the legal act struck by nullity in a valid manner. Consequently, the conversion reduces the impact of the nullity on the legal act subject to a cause of absolute or relative nullity and creates premises for the production of certain legal effects compatible with the manifestation of the will or parts of the invalid act.

The stimulus function is related to the way the conversion operates and represents a logical continuation of the function of mitigating the impact of the nullity of the civil legal act, and its essence consists in stimulating the capitalization of the will incorporated in the initial legal act abolished. , arising from the intention pursued by the party or parties to the original legal act.

The third function of the conversion is to facilitate the continuity of the civil circuit of goods, or, as the purpose of expressing the will to operate the conversion, stimulated by the very mechanism of this legal operation, facilitates the continuity of the civil circuit of goods. This function is performed through conversion effects.

OVERALL CONCLUSIONS AND RECOMMENDATIONS

As a result of the study, the synthesis of the material presented in this scientific paper, allows us to formulate the following **general conclusions**:

1) the concept of conversion has not been identified in Roman law which consistently promotes the principle *quod nullum est, nullum producit effectum*. However, the efforts of **German pandectists in the sec. the nineteenth century** determined the shaping of conversion based on isolated hypotheses of the so-called transformation of legal acts that can be found in classical Roman jurisprudence;

2) the first modern civil code that expressly enshrined the institution of conversion was the **German Civil Code of 1896**. Under Article 140, entitled 'Umdeutung' ('Reinterpretation'), it was inferred that when the legal act originally concluded was be kept as another legal act, if the conditions of validity of the latter, including the formal requirements, are met;

3) the conversion has evolved from a predominantly formal way of transforming a legal act of a certain legal nature, not necessarily struck by nullity, into a legal act of another legal nature, to **a mechanism of limiting the effects of the nullity of the legal act by maintaining force of the manifestation of will expressed on the occasion of concluding the legal act infested by a cause of nullity**, recognized as a way of correcting the causes of nullity of the civil legal act;

4) a doctrinal definition and, even more so, a legal one of **the modalities for correcting the causes of nullity of the civil legal act** is not formulated in any system of law, however, we can find that the doctrine, almost unanimously, reached the conclusion that the parties to a civil legal act contaminated by a cause of invalidity would be legally entitled to have the option of treating the legal act, trying to replace it with a valid one (restoring the legal operation) or to capitalize on the old one in a legal manner (confirmation of the legal act or its conversion);

5) the conversion, confirmation and restoration have **the legal nature** of ways of correcting the causes of nullity of the civil legal act, despite the multiple qualifications given by the doctrine;

6) the basis of the conversion lies in the dimension of the complex legal fact, the system of which consists of three elements: the nullity of the initial civil legal act; the valid expression of will expressed in the original legal act struck by nullity, still capable of producing certain legal effects; the express manifestation of the will to operate the conversion, manifestation that is carried out before the court, taking into account the judicial character of the conversion;

7) in the specialized literature of the Republic of Moldova there is no **proper notion dedicated to conversion**, however, in the Romanian doctrine a consensus is identified regarding the notion of conversion, understanding the legal operation which consists in considering a legal

act affected by nullity as another legal act, the conditions of validity, substance and form of which are fulfilled, the operation by which the manifestation of invalid will as a legal act is considered and produces effects as another legal act, whose own requirements of validity, substance and of form, are satisfied;

8) Given that the existing **classifications** in the doctrine regarding conversion (formal and substantial; legal and judicial) do not stand up to criticism, we are of the opinion that conversion is susceptible to classification in express or virtual, according to the criterion of legislative consecration;

9) the conversion cannot exist when a legal act is **partially invalidated** and in case the total nullity of the legal act has not been declared by **the competent court**;

10) the subsequent legal act results, derives from the initial legal act struck by nullity, which has a legal existence from a purely theoretical point of view. In other words, the subsequent legal act capitalizes on **the manifestation of the original will**, capable of producing valid legal effects in another legal act, which will give rise to, modify and extinguish rights and obligations other than those envisaged by the party or parties once with the conclusion of the initial legal act;

11) the legal fact of the conversion can operate both between **the same parts of the initial bilateral act**, struck by nullity, and in favor of only **a part** of the initial bilateral act, giving rise to a subsequent unilateral legal act. At the same time, conversion **other than the part or parts of the original legal act** may prevail;

12) the conversion will not be applied if the party or parties to the original act do not wish to do so, given the principle of relativity of the effects of the civil legal act. Therefore, **the will regarding the operation of the conversion must be expressly expressed**, in order to be opposable to third parties, but also to ensure the verification of the real will of the party or parties;

13) the will of a single party is sufficient for the conversion to take place, as long as it does not have to be invoked by the party responsible for the nullity of the original act;

14) a perfectly valid subsequent legal act must result from the express exercise of the expression of will regarding the operation of the conversion. And the subsequent valid act, in order to be an integral part of the conversion structure, will have to contain **an element of difference from the original act;**

15) the binding effect of the conversion is the rule from which there may be exceptions. For example, if a translational act of rights is struck by nullity, but in view of the components of the legal fact of the conversion it is possible for a subsequent equally translational act of rights to arise, then the conversion will have **real effect**;

16) the conversion has **a judicial character**, and in order to operate, on the one hand, it is necessary to effectively and completely invalidate the original legal act in a procedural framework

opened by a nullity action, on the other hand, it is equally necessary to invoke conversion before the court;

17) the conversion may be carried out either **by way of exception**, the court finding the existence of the conversion and on this basis to reject the action brought against the party in favor of which the conversion is favorable, or **by way of a main claim**;

18) the conversion action is **a finding**, which can be promoted both in an already open procedural framework, **by way of a counterclaim**, and as **a main action in finding the existence or non-existence of a legal relationship** (subjective right);

19) the effect of the conversion, as well as that of nullity, occurs **retroactively (ex tunc)**, from the moment of the manifestation of will of the party or parties, incorporated in the initial act struck by nullity;

20) the cases of conversion that can be deduced from the economy of the norms of the Civil Code can be grouped in two categories: **cases of conversion in matters of succession and cases of conversion in matters of obligations**;

21) the conversion of the testamentary form will most often take place precisely in the sense of recognizing the validity of a holographic will if a will of a greater complexity (authentic or privileged) is struck by nullity for formal defects;

22) the conversion of the act of alienation of an asset from the estate, struck by nullity, into tacit acceptance of the inheritance can be imagined only in the legal context of the old wording of the Civil Code, which regulated the right of succession option in the form of acceptance or renunciation of inheritance. she. This is related to the fact that with the entry into force on March 1, 2019 of the new amendments to the Civil Code, in terms of succession option, the inheritance passes to the entitled heir subject to his right to renounce the inheritance, which means that the transmission of the inheritance occurs automatically when the inheritance is opened;

23) the alienation of the object of the bequest by the testator, even struck by nullity, could amount to tacit voluntary revocation of the bequest, although, in the light of the rules of the Civil Code, as a result of such an act of the testator occurs the expiration of the will. That position remains preferable as long as in this case there is a tacit voluntary revocation of the bequest, since the alienation of the object of the bequest is an intentional act of the testator which implicitly seeks the ineffectiveness of the testamentary disposition in question;

24) a sale-purchase canceled for the breach of the inalienability clause by the seller may be worth a pre-contract of sale-purchase, which may be enforced following the termination of the inalienability clause stipulated, either by the expiration of its term or by the authorization of the court or the waiver of the clause of the one who stipulated it. The conversion of a contract into a pre-contract may also occur **in the event of the nullity of the alienation of a common property**

in inheritance made by a spouse without the consent of the other spouse, and this pre-contract will result in the obligation of the alienator to obtain the consent of the other co-owner. Similar is the hypothesis **of the nullity of an act of alienation of the good in violation of the prohibition of disposition**, which can be converted into a pre-contract which will result in the obligation of the alienator to dispose of the good provided the ban is lifted;

25) we are in the presence of a case of conversion of the legal act **in the situation in which the act of constituting an autonomous personal guarantee, struck by absolute nullity, will be able to be valid act of constituting a guarantee.** The legal effect that the conversion will produce in such a case results from the fact that the trust itself produces legal effects distinct from those of an autonomous personal guarantee;

26) a conversion situation is **also in case of nullity of the bill of exchange, which can be valued in writing attesting a claim** (confirmation of debt), by virtue of the fact that the credit title initially considered by the parties, which would have included an unconditional obligation , autonomous and abstract to pay a certain amount of money, obtains the value of a title (written under private signature) attesting to a simple, non-autonomous and causal claim;

27) the conversion differs from **confirmation** by the fact that in the case of confirmation, in principle, the sanction of nullity can be annulled in its entirety, the null or void legal act being able to produce its effects exactly as the party wanted or wanted the parties, without being in the presence of two legal acts; and in the situation **of conversion** we attest the incidence of two distinct civil legal acts, the subsequent act being valid, and the initial act - struck by nullity;

28) the conversion, in addition to the fact that it has an alternative existence to **restoration**, is different from it because in the application of the restoration procedure the subsequent act is identical to the one initially subjected to **restoration**, while in a slight difference from the original act;

29) the partial nullity is when a part of the effects of a legal act are maintained by the law, and here the fragments of effects that are not contrary to the law are considered, while in the case of **conversion** the initial act does not produce any effect, in its entirety;

30) we do not consider **the conversion** to be a hypothesis when the legal act only appears to be invalid, on the ground that it was **incorrectly qualified** by the parties, incorporating it into a legal nature by virtue of which the conditions of validity were not met;

31) the novation envisages the transformation of one obligatory legal relationship into another, and **the conversion** involves the replacement of an initial civil legal act with another, on the grounds that the former has been infested with a cause of nullity;

32) in **the simulation** situation both acts are oriented to produce the effects at the same time: the secret act - between the parties and the public act - between the parties and third parties, while in the circumstance of **the conversion** effects will always produce only the subsequent act;

33) the conversion will direct a cause of nullity of the civil legal act, while **the effectiveness** will attribute efficiency and operation to an inefficient legal act from one of the causes of ineffectiveness elucidated by the Civil Code, if we consider the acceptance stricto sensu of inefficiency;

34) by virtue of **its mitigating function**, **the conversion** reduces the impact of nullity on the legal act subject to a cause of absolute or relative nullity and creates premises to produce certain legal effects compatible with the manifestation of will of the party or parts of the invalid act;

35) the essence **of the function of stimulating conversion** is to stimulate the capitalization of the will incorporated in the original legal act abolished in the part in which it is able to produce legal effects, arising from the intention pursued by the party or parties of the original legal act;

36) the function of conversion to facilitate the continuity of the civil circuit of goods is the purpose of expressing the will to operate the conversion, promoted by the very mechanism of this legal operation, materializing namely by ensuring the civil circuit of goods.

Given the above, we come up with the following **recommendations**:

1) to understand by **ways of correcting the causes of nullity of the civil legal act** those means or methods by which the parties of a civil legal act struck by a cause of nullity have the option to remedy the civil legal act, trying to replace it with a valid one (restoration of the legal operation) or to capitalize on the old one in a legal way (confirmation of the legal act or its conversion);

2) to consider by **restitution** the legal procedure by which the parties are free to conclude a new legal act, by which the valid will expressed in a null legal act to produce legal effects by another legal act, whose conditions of validity are fully respected;

3) to understand by **confirmation** the legal operation or the declaration by which a person, entitled to request the annulment of an act, recognizes it as valid;

4) to understand by **conversion** that way of correcting the causes of nullity of the civil legal act which consists in the capitalization in a transformed manner of the valid expression of will expressed in a civil legal act struck by nullity in a subsequent civil legal act, whose substantive and formal conditions are legally met and which produce legal effects different from those pursued by the conclusion of the original legal act;

5) to introduce in the Civil Code a new article, which will have the following content: *"Art. 3311 Conversion of the civil legal act*

(1) The conversion consists in the capitalization of the valid expression of will expressed in a civil legal act struck by total nullity in a subsequent civil legal act, whose substantive and formal conditions are legally met and which produces different legal effects from those pursued by the conclusion of the original legal act.

(2) The conversion shall take effect retroactively, from the time of the manifestation of the will of the party or parties in the original act struck down.

(3) The conversion is ascertained by the court, both by way of action and by way of exception, only at the request of the person in whose favor the conversion operates ";

6) to address **the elements of the conversion of the civil legal act** only in the context of the complex legal fact, resulting from the consideration of the nullity of the initial legal act (total and effective nullity), from the valid expression of will expressed in the initial legal act produces certain legal effects and from the express manifestation of the will to operate the conversion;

7) to consider as the main **cases of conversion in matters of succession** the conversion of the testamentary form, the tacit acceptance of the succession by an act of alienation of the succession property struck by nullity and the revocation of the legatee by an act of alienation of the object of the bequest struck by nullity;

8) to consider as the main **cases of conversion in terms of obligations** the conversion of the contract of alienation of a good into a pre-contract, the conversion of an autonomous personal guarantee into a surety and the conversion of a bill of exchange into a confirmation of the debt;

9) to include the provisions of art. 2381 Civil Code in par. (1) and to include a new paragraph in the cited article, as follows: *he intended to revoke the testamentary disposition.* " To expose art. 2388 lit. c) Civil Code in a new wording, as follows: *"the tested property did not belong to the testator";*

10) to understand by **the functions of conversion** those directions (guidelines) of the action of the legal mechanism of converting a civil legal act struck by nullity (initial legal act) into another valid legal act (subsequent legal act);

11) to consider as functions of conversion **the mitigation of the impact of nullity** on the original civil legal act, **the stimulation of part or parts of the original legal act** to capitalize on the effects of production based on the manifestation of will incorporated in it and **ensuring the continuity .**

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ADNOTARE

Mariana Șargarovschi, „Conversiunea – modalitate de îndreptare a cauzelor de nulitate ale actului juridic civil”, teză de doctor în drept, Chișinău, 2021

Structura tezei: introducere, patru capitole, concluzii generale și recomandări, bibliografie din 160 de titluri, 178 de pagini de text de bază. Rezultatele obținute sunt publicate în 19 lucrări științifice.

Cuvinte-cheie: conversiune, modalitate de îndreptare, nulitate, act juridic civil, manifestare de voință, fapt juridic complex, efecte reale, efecte obligaționale, caracter judiciar, succesiune, testament, legat, acceptare a moștenirii, contract, antecontract, fidejusiune, cambie, funcții.

Scopul lucrării: justificarea necesității reglementării conversiunii actului juridic civil ca modalitate de îndreptare a cauzelor de nulitate ale actului juridic, prin prisma utilității pe care această instituție juridică o poate prezenta pentru dinamizarea raporturilor juridice.

Obiectivele cercetării: cercetarea utilității conversiunii actului juridic civil ca modalitate de îndreptare a cauzelor de nulitate ale actului juridic; edificarea unei construcții teoretice care să reflecte cu exactitate esența fenomenului cercetat; soluționarea controverselor teoretice; elaborarea recomandărilor și a propunerilor de *lege ferenda*.

Noutatea și originalitatea științifică: este o cercetare fundamentală a conversiunii ca modalitate de îndreptare a cauzelor de nulitate ale actului juridic civil, care neutralizează cauza de nulitate ce infestează actul juridic și îi permite să își producă efectele juridice. În lucrare se formulează concluzii de ordin teoretic și practic și se înaintează propuneri de *lege ferenda*, pentru îmbogățirea doctrinei și a legislației în vigoare.

Rezultatul obținut constă în elaborarea unui cadru conceptual al conversiunii ca modalitate de îndreptare a cauzelor de nulitate ale actului juridic civil, ceea ce contribuie la justificarea acestei instituții juridice pentru circuitul civil al bunurilor și valorilor, în vederea implementării conversiunii în legislația Republicii Moldova.

Semnificația teoretică rezidă în cercetarea complexă a conversiunii actului juridic civil, fundamentarea ei teoretică, prin prisma conceptelor doctrinare autohtone și străine și a elementelor de drept comparat.

Valoarea aplicativă: identificarea condițiilor și ipotezelor de operare a conversiunii actului juridic civil, prin prisma sistemului Codului civil modernizat. Teza poate servi drept suport didactic pentru studenții, masteranzii și doctoranzii facultăților de drept.

Implementarea rezultatelor științifice: rezultatele cercetării pot fi utilizate pentru perfecționarea cadrului legislativ existent și a practicii judiciare în domeniul nulității actului juridic civil.

АННОТАЦИЯ

Мариана Шаргаровски, «Конверсия – средство исправления оснований недействительности сделки» диссертация на степень доктора права, Кишинэу, 2021

Структура диссертации: введение, четыре главы, выводы и рекомендации, библиография из 160 наименований, 178 страниц основного текста. Результаты исследования опубликованы в 19 научных работах.

Ключевые слова: конверсия, средство исправления, недействительность, сделка, волеизъявление, сложный юридический факт, вещные последствия, обязательственные последствия, судебный характер, наследование, завещание, завещательный отказ, принятие наследства, договор, предварительный договор, поручительство, вексель, функции.

Цель диссертации: обоснование необходимости регулирования конверсии сделки как средства исправления оснований недействительности сделки, ввиду полезности, которую этот правовой институт может предоставить для динамизации правоотношений.

Задачи исследования: исследование полезности конверсии как средства исправления оснований недействительности сделки, построение теоретической конструкции, точно отражающей сущность исследуемого явления, разрешение теоретических разногласий, разработка рекомендаций и предложений по улучшению законодательства.

Научная новизна: это фундаментальное исследование конверсии как средства исправления оснований недействительности сделки, которое нейтрализует причину недействительности, присущую юридической сделке, и позволяет ей порождать правовые последствия. В работе сформулированы теоретические и практические выводы и сделаны предложения для обогащения доктрины и совершенствования законодательства.

Полученный результат: заключается в разработке концептуальной основы конверсии как способа исправления оснований недействительности сделки, что способствует обоснованию этого правового института для гражданского оборота товаров и ценностей, с целью внедрения конверсии в законодательство Республики Молдова.

Теоретическая значимость: состоит в комплексном исследовании конверсии юридической сделки, ее теоретическом обосновании, с точки зрения национальных и иностранных доктринальных элементов, и сравнительного правоведения.

Теоретическая ценность: выявление условий и гипотез применения конверсии юридической сделки, через призму системы модернизированного Гражданского кодекса. Диссертация может служить дидактическим материалом для юридических факультетов.

Внедрение научных результатов: результаты исследования могут быть использованы для совершенствования нормативной базы и судебной практики в области недействительности юридических сделок.

ANNOTATION

Mariana Șargarovschi, PhD thesis entitled „Conversion – way of correcting the causes of nullity of the civil legal act", Chișinău, 2021

Thesis structure: introduction, 4 chapters, conclusions and recommendations, bibliography of 160 titles, 178 pages of basic text. The results are published in 19 scientific works.

Keywords: conversion, way of correcting, nullity, civil legal act, expression of will, complex legal fact, real consequences, obligations consequences, judicial nature, inheritance, testament, acceptance of inheritance, contract, preliminary contract, surety, bill of exchange, functions.

The purpose of the thesis: justifying the need to regulate the conversion of the civil legal act as a way of correcting the causes of nullity of the legal act, in view of the usefulness that this legal institution can present for the dynamization of legal relations.

Research objectives: researching the usefulness of conversion of the civil legal act as a way to correct the causes of nullity of the civil legal act, building a theoretical construction that accurately reflects the essence of the researched phenomenon, resolving theoretical controversies, developing recommendations and proposals for improving the legislation.

Novelty and scientific originality: it is a fundamental research of conversion as a way of correcting the causes of nullity of the civil legal act, which neutralizes the cause of nullity that infests the legal act and allows it to produce its legal effects. The thesis formulates theoretical and practical conclusions and offers *lege ferenda* to enrich the doctrine and the current legislation.

The obtained result: consists in elaborating a conceptual framework of conversion as a way of correcting the causes of nullity of the civil legal act, which contributes to the justification of this legal institution for the civil circuit of goods and values, in order to implement the conversion in the legislation of the Republic of Moldova.

Theoretical significance: consists in a comprehensive study of conversion of the civil legal act, its theoretical foundation, in terms of domestic and foreign doctrinal concepts and elements of comparative law.

Application value: identification of the conditions and hypotheses for operating the conversion of the civil legal act, through the prism of the modernized Civil Code system. The thesis can serve as a teaching support for students, master students and doctoral students of law faculties.

Implementation of scientific results: the results of the research can be used to improve the existing legal framework and judicial practice in the field of nullity of the civil legal acts.

ȘARGAROVSCHI MARIANA

CONVERSION – WAY OF CORRECTING THE CAUSES OF NULLITY OF THE CIVIL LEGAL ACT

Specialization 553.01- Civil law

Summary of the doctoral thesis in law

Approved for printing: 13.05.2022 Paper size 60x84 1/16
Printing sheets.: 2,3 Edition 25 ex.

Publishing-Printing Center of the State University of Moldova
mun. Chisinau, str. Alexei Mateevici, 60, MD 2019