Some Assessments of the Maintenance Contract Free of Charge

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Abstract

Traditionally, the free maintenance contact is qualified as a donation, the solution being based mainly on the similarities between it and the life annuity contract. That solution, formulated before the entry into force of the current Civil Code, when the maintenance contract did not enjoy its own rules, remained optimal after 2011, even though, at present, in addition to the fact that there are special rules applicable to it, no essential elements such as legal differences between the services arising from the life annuity contract and those having their source in the maintenance one, but also those resulting from the conclusion of a donation. In addition, since its nature as an act with the title free of charge is unequivocal, it is also necessary to clarify its belonging to the subcategory of liberalities or disinterested acts. This is because, under the law of other States, the maintenance contract is configured as one for consideration, and for the situations in which the conventional maintenance claim is free of charge, the opinions are much more diversified. Analyzing these aspects and identifying sufficient arguments, we support the sui generis character of the maintenance contract free of charge, an act that is on the border between liberalities and disinterested contracts.

Keywords: *contract, maintenance, liberality, disinterested contract, sui generis contract*.

JEL Classification*:* K12

1. Introduction

The maintenance contract, regulated by art. 2254-2263 of the Civil Code, is, according to the legal definition, the one by which "one party undertakes to perform for the benefit of the other party or of a certain third party the services necessary for the maintenance and care for a certain period" or "for the entire life of the maintenance creditor", when the duration of maintenance has not been stipulated or it has been provided only that it has a life-saving character. Thus, the legal definition refers to the "contract in its free version"[2].

From the economy of the norms of the Civil Code dedicated to this contract and those to which it is referred, from the matter of life annuities [art. 2243 – 2247, art. 2249, art. 2251 para. (1) and art. 2252 of the Civil Code, "which shall apply accordingly"], it follows that it may be concluded, as a rule, for consideration and, by way of exception, free of charge.

Starting from the legal definitions of the contract free of charge [art. 1172 para. (2) Civil Code] and liberalities [art. 984 para. (1) Civil Code], we consider it questionable to classify the maintenance contract free of charge as a liberality.

2. The maintenance contract for free of charge is a liberality, a disinterested act or a contract *sui generis*?

In the specialized literature[3], prior to the entry into force of the current Civil Code, it has been shown that the right to maintenance can be established even free of charge, by donation or by will, for these situations being applied the substantive and formal rules specific to liberalities, or by the mechanism of stipulation for another, in which case it is a «indirect "donation"».

Under the current regulation, it is argued that the free title of the conventional constitution of the right to maintenance implies that the maintenance contract in question is a liberality[4]. [5]

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[2] Liviu Stănciulescu, *Dreptul contractelor civile. Doctrină și jurisprudență*, Bucharest: Hamangiu, 2017, p. 519.

[3] Francisc Deak, *Tratat de drept civil. Contracte speciale*, Bucharest: Universul Juridic, 2001, p. 532.

[4] Grigore-Valentin Beleniuc, *Contractul de întreținere*, Bucharest: Universul Juridic, 2019, p. 48, 182; Mirela Costache, "Few Considerations on the Maintenance Obligation in the Romanian Civil Law", *Acta Universitatis Danubius. Juridica* 13, no. 2 (2017): p. 142; Victor Marcusohn, *Drept civil. Contracte speciale*, Bucharest*:* Universul Juridic, 2018, p. 371; Florin Moțiu, *Contracte speciale*, Bucharest: Universul Juridic, 2017, p. 350, note 3.

[5] With the clarification that the stipulation for another is not a liberality as one would be understood from a formulation (Marcusohn, *op. cit.*, *Drept civil. Contracte speciale*, 317), it can be both onerous and free of charge, even if, in all cases, the third beneficiary

But there is a fundamental difference between the two statements. Indeed, the maintenance obligation may arise by the will of individuals, in addition to the application of the mandatory rules relating to the statutory maintenance obligation, a will materialised in the conclusion of unilateral (related to the task) or bilateral legal acts (mainly, by a maintenance contract, a sale in which, in addition to the payment of the price, the buyer is also obliged to maintain the seller, a donation with a burden or, why not, by any "compatible" contract, even unnamed). But advocating the liberal nature of the maintenance contract free of charge raises some questions regarding the interpretation and application of some legal norms.

According to art.984 Civil Code, liberalities can be made by donation or legacy, being legal acts by which the disposer transmits, in whole or in part, goods belonging to him, to another person, the transfer being made free of charge.

In turn, art.1172 para. (2) Civil Code establishes that the contract by which one party procures a benefit from the other, without obtaining any advantage in return, is free of charge.

Thus, the liberalities, exhaustively listed by art. 984 para. (2) Civil Code – the donation and the legacy – are the legal acts by which a person disposes of all or part of his assets, in favor of another person, without seeking to obtain any advantage in return.

a. The link being a unilateral legal act, goes beyond our analysis. However, I consider that, since it is permissible to affect the legacy with a burden, the following clarifications are required in the event that the burden consists in the provision of maintenance:

– maintenance cannot be imposed on the legatee for the benefit of the disposer, the legacy of the maintenance claim taking effect and the enforcement being "due from the day of the opening of the inheritance" [Art.1062 of the Civil Code]. In the event that the burden consists in the support by the legatee of the funeral costs of the provider – a task considered to be in the interest of the disposer[6] – the claim is not a maintenance one[7];

– maintenance cannot be established for the benefit of the legatee, it being nonsense to oblige him to provide for himself what is necessary for his own livelihood;

– maintenance claim can only be established for the benefit of a third party, but the legacy remains a unilateral legal act, in the event of non-compliance the rules specific to it being applicable.

In conclusion, we are not in the situation of a maintenance contract to which the rules of another matter are 'duly' applicable, where the maintenance claim arises from a legacy, nor of the transformation of the legacy into a contract or vice versa.

b. The donation, a bilateral legal act, but a unilateral contract, may be affected by a burden that represents an obligation that has as an obligation to do what consists of the maintenance of the donor or of a third party[8]. Even if the donation may also be affected by a burden in favor of the donor[9], for this contract we also exclude, *de plano*, the possibility of constituting the maintenance claim for the benefit of the donor, for the above reasons. Moreover, the solution is the same regardless of the concrete source of the binding legal maintenance relationship.

But the donation is never the same as a maintenance contract, being unanimously admitted[10] that they differ fundamentally, even if there are elements of similarity[11], for reasons that we do not reiterate here. Moreover, it is nonsense to equate two special contracts, the only possible problem being that of the classification of the legal act by which the maintenance claim arose.

Going over the above and admitting that the legation and the donation are only examples[12] of

cannot, without exception, be held to a consideration born of the stipulation.

[6] Gabriel Boroi, Carla-Alexandra Anghelescu, *Fișe de drept civil*, Bucharest: Hamangiu, 2019, p. 103.

[7] Regardless of the legal or conventional source of maintenance, it consists in providing those "necessary for living (...)" (Art. 530 para. (1) C. civ.], respectively of the insurance, for the creditor, of "food, clothing, footwear, housekeeping and the use of a suitable dwelling", "the care and expenses necessary in the event of illness" and, under certain conditions, the support of the latter's funeral expenses [Art. 2257 para. (2) and (3) C. civ.].

[8] Beleniuc, *op. cit., Contractul de întreținere,* p. 89; Stănciulescu, *op. cit., Dreptul contractelor civile,* p. 521.

[9] Veronica Stoica, *Drept civil. Contracte speciale*, Bucharest: Universul Juridic, 2008, p. 143.

[10] Beleniuc, *Contractul de întreținere,* p. 89-91; Deak, *op. cit., Tratat de drept civil*, p. 538; Marcusohn, *Drept civil. Contracte speciale*, p. 373; Moțiu, *op. cit., Contracte special,* p. 353; Stănciulescu, *op. cit., Dreptul contractelor civile,* p. 521.

[11] Furthermore, the comparison falls within the scope of the entrusted donation and the maintenance contract for consideration.

[12] Boroi and Anghelescu, *op. cit., Fișe de drept civil*, p. 45.

liberalities [opinion that contradicts the imperative norm written in para. (2) of art. 984 of the Civil Code: "liberalities can be made only by donation or by legacy (...)"[13], we return to the notions of liberality and maintenance contract free of charge.

If in a situation a person (the donor) "disposes (...) a good sale" – right in rem or claim[14], in the other situation a person (the maintenance debtor) "undertakes to perform (...) the benefits necessary for the maintenance and care" of another person. Thus, the obligation assumed by the disposer is to *give*, while that of the maintenance debtor is *do*[15]. Moreover, the existence of the burden in the person of the beneficiary of the liberality mitigates the free nature of the donation contract, within the limit of the amount of that burden. As a result of the lack of consideration from the maintenance creditor, the analysis of the legal nature of the services is limited only to that of maintenance, which, I stress, again, does not fall into the category of *give*, but in that of those of *do*.

In addition, if we were to accept that the "property" available to the donor is a maintenance claim, it would mean accepting that this right is assignable, a fact expressly prohibited both by the rules on the maintenance contract (Art. 2258 of the Civil Code) and by those applicable to legal maintenance (Art. 514 of the Civil Code), regardless of whether this property is present or future. Moreover, irrespective of its nature as a present or future good, the donation presupposes that it is found, even for a fraction of a second, in the patrimony of the donor, who assumes the obligation to transfer interpatrimony of a right, from his own patrimony to the patrimony of the donor, or to establish any right by dismantling another existing right in his own patrimony.

It is true that art. 1098 of the Civil Code in the field of liberality reduction speaks about the "donation or legacy" that "has as object a usufruct, use or abitation or an annuity or life maintenance", which confirms the possibility that by donation to be transmitted a right dismembered from the property right existing in the donor's patrimony at the time of its conclusion. However, when the maintenance claim was constituted by an act free of charge, it will be a maintenance contract, not a "special liberality", being applicable to the provisions of art. 2261 para. (1) Civil Code (in the sense of continuing the provision by the heirs of the maintenance or transformation of this into annuity) and, in addition, if the disposer has not removed its application, the provisions of Art. 1098 of the Civil Code, which entitle the heirs of the maintenance debtor to request "reduction according to the common law". Moreover, since the maintenance constituted by the legacy is clearly a question of a burden imposed on the legatee for the benefit of a third party, by applying the principle of *ubi eadem est ratio, eadem solutio esse debet,* and for the donation contract the solution is the same.

In any event, I consider that even where the maintenance claim originated in another contract, it would not be possible to assign it because of the intuitous nature of the person, since it was constituted in favour of a particular person.

c. In conclusion, the maintenance contract is not a liberality. How free acts are subclassified into liberalities and disinterested acts[16], the question remains of the possibility of qualifying it as such a disinterested act.

d. In the absence of a legal definition, the disinterested contract was defined by doctrine[17] as the one through which "the disposer procures a benefit to someone without diminishing his

[13] Interesting is the situation of the patronage, regulated by Law no. 32/1994 of the sponsorship (published in the Official Gazette, Part I, no. 129 of 25 May 1994, with subsequent amendments and additions), this being, in my view, a variety of donations, in which the destination of the goods is determined by law, from this perspective being a condition act.

[14] Deak, *op. cit., Tratat de drept civil*, p. 118; Stănciulescu, *op. cit., Dreptul contractelor civile,* p. 222, 233.

[15] Deak, *op. cit., Tratat de drept civil*, p. 535, 538; Stănciulescu, *op. cit., Dreptul contractelor civile,* p. 520.

[16] Even if in the specialized literature [Alexandru-Paul Dimitriu, in *Noul Cod civil. Note. Corelații. Explicații*, edited by Ana-Gabriela Atanasiu et. al., Bucharest: C.H. Beck, 2011, p. 448] it was argued that, by art. 1173 of the Civil Code, the legislator understood not to condition the classification of commutative and random contracts on their onerous cart, we do not dwell on such an "eventual" distinct classification, because, even going over the "traditional" classifications [Constantin Stătescu and Corneliu Bîrsan, *Drept civil. Teoria generală a obligațiilor,* Bucharest: Hamangiu, 2008, p. 32-33], it is impossible to imagine the existence of a random free contract [Alin-Adrian Moise, in *Noul Cod civil. Comentariu pe articole. Art.1-2664*, edited by Flavius Baias, Eugen Chelaru, Rodica Constantinovici and Macovei, Ioan, Bucharest: C.H. Beck, 2012, p. 1227], the lack of consideration from the contracting partner being "incompatible" with the existence of the chance of winning and the risk of a loss.

[17] Gabriel Boroi and Carla-Alexandra Anghelescu, *Curs de drept civil. Partea generală*, Bucharest: Hamangiu, 2021, p. 129; Carmen Tamara Ungureanu and Ionuț-Alexandru Toader, *Drept civil. Partea generală. Persoanele*, Bucharest: Hamangiu, 2019, p. 173; Boroi and Anghelescu, op. cit., *Fișe de drept civil*, p. 45.

patrimony".

In delimiting the liberalities from the disinterested contracts, it has been shown that, in the case of the latter, no increase will occur in the beneficiary's estate, since there is no transfer of an asset of the provider for the benefit of the beneficiary, while the liberalities determine, in all cases, the impoverishment of the disposer, as a result of the transfer of a real right or the creation of an obligation to give for the benefit of the gratified, these "excluding obligations to do or a fact enforced, free services leaving intact the assets of the person providing them". In the event that a disinterested contract does not give rise to a mere obligation to do, involving also the transmission of values from the provider to the beneficiary, the impoverishment of the provider is not present, the deprivation of his goods being temporary time, unlike the liberalities, to which the transmission is definitive[18].

Can it be stated by way of axiom that the granting of conventional maintenance free of charge does not lead to any reduction in the assets of the maintenance debtor?

Certainly not, ensuring the maintenance of the creditor has the effect of reducing the debtor's assets, regardless of what maintenance actually consists of. Thus, the maintenance contract does not fit into the pattern of disinterested acts, because the purchase of food, clothing, shoes, housekeeping, medicines, involves expenses on the part of the debtor, so a patrimonial reduction. On the other hand, the preparation of food or the provision of medical care (except for the purchase of medicines and medical devices) can be classified as services that do not have such an effect. However, the provision of maintenance presupposes all these, due to its complex nature, and, as a consequence, attracts a patrimonial reduction for the debtor, but without changing the nature of the obligation from making it to one to give, the procurement of those necessary to ensure maintenance being absorbed in the service provided.

In conclusion, the free maintenance contract has particularities that place it at the interference of liberalities with disinterested acts, this being, in my opinion, a contract free of charge *sui generis*.

In these circumstances, the question arises what is meant by the proper application of the provisions of Art.2243 para. (1) Civil Code in the matter of life annuity, especially in the part concerning the "submission" of the maintenance contract free of charge to the own rules of the act of incorporation, subject to its own provisions.

As disinterested acts do not enjoy general regulation of their own, it remains to be seen whether the rules on capacity, form, revocation, reduction and relationship in the matter of liberalities are applicable to the maintenance contract free of charge.

In my view, having regard to the character of the *sui generis* of the maintenance contract free of charge, the lack of its own specific rules, the disinterested contracts and the fact that the maintenance obligation is one to do, unlike the obligation to pay the life annuity which is one to give (which allows the application of the rules in the field of liberalities and life annuity free of charge) we conclude that there can be no question of properly applying the norm written in para. (1) of Article 2243 of the Civil Code only as regards the possibility of his birth free of charge.

Consequently, we propose the amendment of art. 2254 para. (1) Civil Code in the sense of: "In the maintenance contract, a party undertakes to perform for the benefit of the other party or of a certain third party the services necessary for the maintenance and care for a certain duration, *in exchange for capital of any kind. By way of exception, the maintenance contract may be free of charge.*" We also propose to amend the reference norm in para. (1) of article 2256 of the Civil Code, in the sense of deletion from its content when referring to article 2243 of the Civil Code.

Such an interpretation does not change the rules regarding capacity or the solemn form of the maintenance contract.

I say this because, first of all, in my view, the maintenance contract must be concluded in all situations in authentic form. Thus, as regards the solemn form *ad validitatem*, it has been shown that this is justified by the need to warn the maintenance creditor[19], in particular. However, I consider that the establishment of that form is based on the need for protection of both parties, in the case of

[18] Octavian Căpățână, *Titlul gratuit în actele juridice*, Bucharest: Rosetti, 2003, p. 246, 282-283, 316.

[19] Dana Gârbovan, in *Noul Cod civil, vol. III, Art. 1650 – 2664, Contracte speciale. Privilegii și garanții. Prescripția extinctivă. Drept internațional privat*, edited by Mădălina Afrasinie *et al.*, Bucharest: Hamangiu, 2012, p. 642.

maintenance free of charge being the protection of the debtor, the creditor having the power whether or not to claim the enforcement of maintenance.

The same solution is supported by a part of the doctrine[20], with the express specification of the fact that, even in the case of maintenance constituted by the mechanism of the stipulation for another, the authentic form is one *ad validitatem*, art. 2255 of the Civil Code not making a distinction between the different ways of constitution, and the provisions of art. 2243 of the Civil Code, from the matter of annuity, being applicable only to the extent that "it does not contravene the special norms in the matter of the maintenance contract"[21].

In view of the above, we reiterate that it is necessary to distinguish between the two statements, namely the maintenance contract free of charge is a liberality (donation or legacies) and maintenance can be constituted free of charge, in which case "we are in the presence of a unilateral contract (donation) or a unilateral (related) legal act", only the second being, in our view, correct. We make this clarification again, because in some situations we find both in the same analysis.

Starting from this recital, we consider that the authentic form for validity is required in all situations, without exception, its non-observance attracting the absolute nullity of the contract (art. 2555 of the Civil Code), the provisions of para. (2) of art.2243 of the Civil Code in the matter of annuity not being applicable, because, on the one hand, the maintenance contract free of charge, even if it was established by the mechanism of stipulation for another, does not constitute a liberality, because the promissor assumes an obligation to "do", not to "give", to transfer or constitute a real right or to transfer a right of claim for the benefit of the third party, the maintenance contract being the generator of receivable rights, which takes the form of benefits necessary for the maintenance and care of the maintenance creditor[22], and, on the other hand, the provisions enshrined in art. 2255 of the Civil Code constitute a special norm in relation to art. 2243 of the Civil Code.

Also, the maintenance debtor must have in all situations full capacity to exercise, this contract being an act of disposition that does not fall into the category of those allowed to the incapable, minors restricted capacity to exercise and those without capacity to exercise ("acts of small disposition, of a current nature and which are executed on the date of their conclusion" - art. 41 para. (3) and Article 43 para. (3) Civil Code]. Of course, the minor who has acquired the capacity to exercise in advance, under the conditions of Art. 40 of the Civil Code, or as a result of the conclusion of a marriage according to art. 39 of the Civil Code, will be able to assume, by contractual means, the status of debtor of a maintenance obligation.

In addition, pursuant to Article 12 para. (2) of the Civil Code nor the insolvent person (without distinction) may constitute a maintenance claim free of charge.

In all situations of non-compliance with the rules regarding the capacity of the maintenance debtor, the sanction is the relative nullity of the maintenance contract[23].

2.1. As regards other systems of continental law, the solutions are varied

Spain. Under Spanish law, the maintenance contract („*contrato de alimentos*") is an onerous one, the legal definition in Art. 1791 of the Spanish Civil Code[24] being in the sense that one of the parties undertakes to provide, to the other party, housing, maintenance and assistance of any kind, in exchange for the transfer of a capital consisting of any kind of goods or rights[25]. Based on this definition, Spanish doctrine and jurisprudence[26] states the character *onerous* as being by *Essence* this

[20] Gabriel Boroi, Ioana Nicolae, *Fișe de drept civil*, Bucharest: Hamangiu, 2019, p. 810; Stănciulescu, *op. cit., Dreptul contractelor civile*, p. 522.
[21] Boroi and Nicolae, op. cit., *Fișe de drept civil*, p. 810.
[22] Codrin Macovei and Mirela Carmen Dobrilă, in *Noul Cod civil. Comentariu pe articole. Art.1-2664*, edited by Flavius Baias, Eugen Chelaru, Rodica Constantinovici and Macovei, Ioan, Bucharest: C.H. Beck, 2012, p. 2201.
[23] Beleniuc, *op. cit., Contractul de întreținere,* p. 121-122.
[24] Art. 1791 Spanish Civil Code: "Por el contrato de alimentos una de las partes se obliga a proporcionar vivienda, manutención y asistencia de todo tipo a una persona durante su vida, a cambio de la transmisión de un capital en cualquier clase de bienes y derechos."
[25] Jose Maria Paz Rubio, in *Codigo civil. Comentarios y jurisprudencia*, edited by Modesto De Bustos Gómez–Rico *et al*., Madrid: Colex, 2004, p. 990.
[26] Cristina Berenguer Albaladejo, *El contrato de alimentos*, PhD thesis, University of Alicante, 2012, http://hdl.handle.net/10045/607

contract, which constitutes a guarantee for the contracting parties, the maintenance creditor is ensured that the services are performed in safe and dignified conditions, and the debtor being protected from the future claims of the creditor's heresies[27].

The Spanish doctrine states that, according to the principle of autonomy of will, maintenance can be constituted, by conventional means, also free of charge, but not in the form of a typical maintenance contract, the options being based on the thesis of a donation, of an atypical maintenance contract, in order to reach the conclusion of a "contractual liberality" but not of a donation in the strict sense[28].

Italy. Under Italian law, maintenance of another („*vitalizio alimentare*", „*contratto di mantenimento*", „*vitalizio assistenziale*"), may have as a contractual basis an annuity "improper"[29]. Art. 1872 of the Italian Civil Code establishes that the life annuity may be constituted for consideration by the disposal of an asset, movable or immovable, or by transferring a capital, or free of charge, either by donation or by will, situations in which the rules corresponding to them will apply, as the case may be.[30] Thus, according to the majority opinion[31], the contract by which a maintenance claim arises free of charge is a donation, but part of the doctrine states that the existence of *animus donandi* is insufficient in the absence of a diminution of the disposer's patrimony, the contract not being a typical donation but an atypical free contract[32].

France. Under French law, the maintenance contract („*bail a nourriture*") is still an unnamed one. Doctrine[33] defines it as that contract by which "a person undertakes to provide for the vital needs (food, maintenance, housing and health) of another person", in exchange for the incorporation of an asset.

The case-law also defines that contract in its onerous form, stating that it "is characterised by the obligation assumed by the purchaser to provide the author of the entry with maintenance, in particular food and the preparation of food"[34].

Even if the opinions expressed over time have not been unitary, at this time, the onerous character is regarded by the majority of doctrine and jurisprudence as being of the essence of this contract, the assumption free of charge of the maintenance obligation not constituting the effect of a maintenance contract, but of a donation[35], noting that, in almost all of them, the opinions expressed are on the delimitation of the maintenance contract which implies consideration from the maintenance creditor from the maintenance donation.

3. Conclusions

In the light of the considerations of national law, but also of the legislation of other States, in

28, p. 257-259; Cristina Berenguer Albaladejo, *El contrato de alimentos*, Madrid: Dykinson, 2014, p. 266-267; Juan Carlos Martinez Ortega, *El contrato de alimentos: formularios y recompilation de jurisprundecia*, Madrid: Dykinson, 2007, p. 19, 21; Luis Felipe Ragel Sanchez, "El contrato de alimentos", *Revista Galega de administration publica* 38, no. 4, September-December 2004: p. 102; Spanish Supreme Court, administrative section, decision no. 1484/2020, https://vlex.es/vid/852172680; Spanish Supreme Court, civil section, decision no. 617/2017, https://vlex.es/vid/698602613.

[27] Alicia Calaza Lopez, "Elementos distintivos del contrato de alimentos: el peculiar alea y su acusado carácter intuitu personae", *Revista de Derecho UNED*, no. 19 (2016): p. 262-265, 277.

[28] Berenguer Albaladejo, *op. cit., El contrato de alimentos*, 2012, p. 259; Berenguer Albaladejo, *op. cit., El contrato de alimentos*, 2014, p. 267.

[29] Federico Saverio Mattucci, "*I vitalizi impropri"*, PhD thesis, University of Parma, 2016, https://www.repository.unipr.it/bitstream/1889/3063/1/I%20VITALIZI%20IMPROPRI.pdf.

[30] Art. 1872 Italian Civil Code: "La rendita vitalizia puo' essere costituita a titolo oneroso, mediante alienazione di un bene mobile o immobile o mediante cessione di capitale. La rendita vitalizia puo' essere costituita anche per donazione o per testamento, e in questo caso si osservano le norme stabilit dalla legge per tali atti."

[31] Paolo Cendon, *I nuovi contratti nella prassi civile e commerciale. Vol.3. Persone e famiglia. Tome II*, Torino: UTET, 2004, p. 914; Mattucci, *op. cit.,* "*I vitalizi impropri"*, p. 6.

[32] Berenguer Albaladejo, *op. cit., El contrato de alimentos*, 2014, p. 121.

[33] Philippe Malaurie, Laurent Aynes and Pierre-Yves Gautier, *Droit des contrats speciaux*, Paris: LGDJ, 2020, p. 625; Alain Benabent, *Droit des contrats speciaux civils et commerciaux*, Paris: LGDJ, 2021, p. 661.

[34] French Court of Cassation, civil chamber 1, decision of 20 February 2008, no. 06-19.997, https://www.legifrance.gouv.fr/juri/id/JURITEXT000018166476.

[35] Baudy-Lacantinerie Wahl, 1907, p. 169 *apud* Berenguer Albaladejo, *op. cit., El contrato de alimentos*, 2014, p. 51.

my opinion, the maintenance contract for free of charge has characteristics which place it at the boundary between liberalities and disinterested acts, its qualification being, in my view, that of a contract *sui generis*, to which the specific rules apply, and, depending on the concrete situation, sometimes in addition to those in the field of liberalities.

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