

Old Fashion Warranty in Sale Contracts: Eviction and Defects in Romanian Regulations of the Early XIXTh Century and Their Influence on Modern Civil Codes

Lecturer **Sorin-Alexandru VERNEA**¹

Abstract

Over time, the stability of the legal framework has favored the development of production and trade in conditions of predictability and safety. The experiences of the past can be capitalized in the present by adapting old rules to new legal situations, without altering the essence of legal concepts. Identifying the essential, constant elements is the real challenge for preserving the authenticity of legal institutions. To this end the present article analyzes the warranty against eviction and defects in the Romanian legislation of the early XIXth century, respectively the Caragea Law and the Calimach Code. The paper is structured in two parts, the first being intended to identify the specific elements of the warranty mechanism for eviction and defects in the two previously mentioned regulations by using the concepts developed in Roman law, and the second part analyzes the extent to which the particularities of this mechanism were taken over in modern Romanian Civil Codes, of 1864 and 2009. The conclusion of the paper aims to identify the common essential and defining elements for the warranty against eviction and defects in the Romanian legislation of the last two centuries.

Keywords: eviction, defects, guarantee, Roman law, comparative law, history of law, *actio redhibitoria*, *actio aestimatoria*.

JEL Classification: K12, K15

DOI: 10.62768/PLPA/2025/14/1/10

Please cite this article as: Vernea, Sorin-Alexandru, „Old Fashion Warranty in Sale Contracts: Eviction and Defects in Romanian Regulations of the Early XIX Th Century and Their Influence on Modern Civil Codes”, <i>Perspectives of Law and Public Administration</i> 14, no. 1 (March 2025): 164-174.	Article History Received: 2 November 2024 Revised: 7 January 2025 Accepted: 8 March 2025
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1. Introduction

Civil law literature from the early XXth century², defined eviction as "the total or partial loss of the object sold, through the effect of a court decision, which recognizes in favor of a third party, the existence of a real right over the object, by virtue of a cause prior to the sale". The definition captures the main elements of eviction as a concept, however, we appreciate that it can be reduced to an essential form: "Eviction is the

¹ Sorin-Alexandru Vernea - Faculty of Law, University of Bucharest, Romania, vernea.sorin-alexandru@drept.unibuc.ro.

² Dimitrie Alexandrescu, *Explicațiunea teoretică și practică a Dreptului civil român*, volume VIII, part 2, (Universul Juridic Publishing House, 2018), p. 272.

dispossession, by legal means, through process, of an object"³. The latter form covers the specifics of the eviction, and in most cases, it was determined by the acquisition of the asset from a non-owner seller⁴.

As for defects, we note that they have the nature of material flaws that determine the unfitness of the object for use according to the purpose for which it was purchased, or flaws that considerably reduce its value.

In our view, both warranties arise from the seller's obligation to provide the buyer with "*quiet and useful possession of the object*"⁵.

The two guarantees were essential for ensuring the security of civil and commercial legal relations, given that they appeared in a period marked by high legal formalism, in classical Roman law, and were preserved, with minor modifications, until the Roman Empire fell, being later taken over in Byzantine law. All this period overlaps with the continuous removal of the excessive formalities of Roman law and the interpretation of legal acts in a manner useful for the dynamics of commercial relations of the time. We cannot omit the fact that, originally, the general form by which the contracts were concluded required an interpretation of strict law⁶, but later, the *ex fide bona* interpretation was generalized.

For the analysis that is the subject of this paper, we have chosen the Calimach Code and the Caragea Legislation as representative regulations for Romanian law from the 19th century, from two perspectives: firstly, because they were the main civil legislations adopted both in Moldova and in Muntenia in the first half of the 19th century, and secondly, because they preceded the 1864 Civil Code, the first modern civil code of the Romanian people.

The fact that the two legislations studied were not included in contemporary positive law should not lead to a low interest in their approach, given that they are part of the national history, correspond to the social realities of the last decades of the Turkish-Phanariot regime and constitute an important landmark for the establishment of Romanian law legal peculiarities from that time.

The Calimach Code was adopted in Moldova by order of Sovereign Scarlat Calimach and was enforced from October 1, 1817 to December 1, 1865, when it was repealed by the Civil Code 1864. All references made in this work to the Calimach Code refer to the critical edition published in 1958 under the coordination of academician Andrei Rădulescu⁷.

The Caragea legislation was adopted in Muntenia by order of Sovereign Ioan Caragea and was enforced between September 1, 1818 and December 1, 1865, when it was repealed, like the equivalent legislation in Moldova, by the Civil Code 1864. All references made in this work at Legiuirea Caragea are related to the edition made by

³ Emil Molcuț, *Drept privat roman*, (Universul Juridic Publishing House, 2011), p. 296.

⁴ Alina Axente, *Drept privat roman*, (Hamangiu Publishing House, 2024), p. 415.

⁵ Liviu Stănciulescu, *Curs de drept civil. Contracte*, (Hamangiu Publishing House, 2014), p. 168.

⁶ Aurel Jean Andrei, *Particularitățile sistemului juridic roman*, (Universul Juridic Publishing House, 2015), p. 87.

⁷ Andrei Rădulescu (coord.), *Codul Calimach, ediție critică*, (Academy of the Romanian People's Republic, 1958).

Demetru Stoenescu⁸.

2. Warranty against eviction and defects in the Callimach Code and the Caragea Legislation

Since the two legislations had similar regulations, being created for the same people, in the same timeframe, we believe that the analysis of legal institutions cannot be carried out separately, but by bringing together the regulations, alongside revealing any differences.

Thus, we note with priority that none of the laws define the warranty for eviction or defects, however, they contain rules regarding the latter's legal mechanism.

As a peculiarity distinct from Roman law, we note that both warranties are subjected to a common regime, having as remedies either *actio redhibitoria* or, in certain situations, *actio aestimatoria*.

Regarding total eviction, we note that the relevant provisions of the Caragea Legislation are in part III, chapter 2, paragraph 32, which stipulate: "When the seller trades an immovable foreign object, and, by judicial manner, it will be demanded, and will be taken by its owner, then the seller must return to the buyer the price and the interest of the money, and the buyer must give the owner the fruits of the object. If the buyer improves the object for which it was evicted with plantings, then the owner of the object must pay him the cost of the improvement. If the buyer builds something on that object, and that building brings profit, the owner will buy it, and if it doesn't, the buyer will detach it".

As a preliminary, we note that the eviction is conditioned by the existence of a court decision by which the buyer is deprived of his right over the property. In such a case, the only legal remedy consists in the *actio redhibitoria*, by which the sale is cancelled, and the seller will return the price received and the interest related to it, for the period between the day of payment and the day of return.

Analyzing the previously reproduced text, we note that the legislation applicable in Muntenia obliges the buyer to return to the owner in whose favor the eviction was carried out and the "fruits of the object", i.e. the natural, civil or industrial fruits produced by the property, as long as it was in the possession of the buyer. Although this obligation is placed, in the topography of the text, after the seller's obligation to return the price received and the related interest, we consider that the respective obligations are independent, and the non-execution of one cannot influence the execution conditions of the other.

Equally, we note that the legislator recognized a right of the buyer who invested in the purchased asset and was later evicted, to have the expenses useful to the owner redeemed, or to have the investments that are not useful for the owner removed.

The Caragea legislation also contains a series of special provisions, regarding the effects of the guarantee for eviction in paragraphs 34, 35 and 36 of chapter 2 of part

⁸ Dem D. Stoenescu, *Legiuirea Caragea*, after the edition of 1818, annotated with the jurisprudence of the Court of Cassation from 1879 to 1900, (Fane Constantinescu Publisher, 1905)

III⁹.

Although the previously cited texts do not contain provisions regarding the warranty mechanism, they expressly establish, in three different scenarios, that the seller owes "what is due" to the evinced buyer, i.e. a compensation equal to the sale price along with interest, as I stated previously, as well as an amount between a tenth and a third of the price, which will be handed over by the seller "to the alms box". The latter phrase designates the charitable activities within the Orthodox Church, an institution of particular importance in the functioning of the Romanian Countries during the second phase of the Turkish-Phanariot regime.

According to our assessment, the respective amount constitutes a civil fine, because it doesn't have a reparative role, to compensate the injured person, but a preventive role, to avoid a similar behavior of the seller in the future.

Another important particularity exists in paragraph 33, chapter 2, part III of the Caragea Legislation, which establishes the seller's obligation to compensate the evinced buyer, including the expenses of the process by which he was evinced: "If the seller will sell a judicially disputed object and due to that a trial of the buyer will occur, then the seller pays all the expense of the trial".

The Callimach Code regulates the obligation to compensate for eviction in section 1246, which states: "The vendor of the object is obliged to compensate for the debts and shortcomings, which are related to the object, if they did not follow a specific arrangement for these in another section". We note that the legal text is structured in an atypical manner, without presenting the warranty mechanism. The provision must be interpreted in conjunction with section 1239, according to which: "If someone leaves something to another under the title of assignment, the duty is to make sure that the object will have the properties specifically promised, or according to custom, and that it will be useful and efficient, as required by the nature of the object or the bargain". In such a situation, the legislation applicable in Moldova regulates the warranty obligation for the seller, even using a term specific to the personal warranty¹⁰. Although the text refers to the "specific properties promised", we appreciate that they include not only the physical features of the good but also the features of the title held by the seller. We base this conclusion on the fact that no other separate regulation of warranty for eviction exists in the Callimach Code, and section 1247 removed the obligation of warranty for eviction, on the assumption that the buyer knew he acquired a foreign object, that is,

⁹ Paragraphs 34, 35 and 36 of chapter 2 of part III of the Caragea Legislation stipulate: "34. When a vendor sells the same movable thing to two buyers without a written contract, he will give it to one of them, then the buyer who receives it will be the owner, and the other will demand from the seller what is due to him, and the seller should lose the third part of the price of the object that shall go to the alms box. 35. When the vendor will sell a movable thing to two buyers by written contract, then whichever of the buyers will see from the contract of the buyer that he bought it first, shall take it. And the other should demand from the seller what is due to him and the seller should lose like a third part of the price of the thing that shall go to the alms box. 36. When the vendor sells the same immovable thing to two buyers, let which of the buyers will see from the record of the purchase that he bought it first, and the other to demand from the seller what is due to him; and the seller will lose the tenth part of the price that shall go to the alms box".

¹⁰ The Romanian term used is "chizăsluire" which comes from "chezaş", a term used to designate, in Romanian, the personal guarantor in the regulations of the 17th-19th centuries.

that he bought the property from a *non-dominus*¹¹.

We note that the warranty mechanism is unique both for defects and for eviction, a fact resulting from section 1240, which provides: "Therefore the one who will say, as if a thing has qualities that are missing and for which the other party specifically bargained, or were understood according to the nature of the matter; that which the (un)usual vices or enslavements of the object have hidden, those who alienates as a rightful thing objects that he does not own anymore, or he never owned; he who lies, saying that the thing is suitable for a specific use or that it is free from the usual duties and responsibilities, remains responsible for this, if the truth will later emerge". In what concerns total eviction, we hold that the *actio redhibitoria*, as a remedy, results from an *a fortiori* interpretation of section 1250, incident to partial eviction and defects.

As a particular situation, specific to the Callimach Code, we note that section 1249 regulates the possibility of the buyer in good faith, sued by the owner of the property sold, to request the introduction of the seller in the already started process so that the latter will defend him¹². A similar provision does not exist in the Caragea Legislation.

As for the partial eviction, in the Caragea Legislation, the relevant provisions can be found in Part III, Chapter 2. Paragraph 43 provides: "The seller of immovable objects must also show how many enslavements an object has, and if he does not do that, then, the buyer is free to spoil his sale or to lower the price".

We note that we are in the presence of a special form of warranty for eviction, when the cause of the eviction consists of a servitude exercised over the object sold. Although the old Romanian terminology refers to "enslavement", we appreciate that its meaning should not be associated with any other concept apart from real or personal servitude. Thus, if the seller assumed an obligation that required the use of the sold good in any way, and before the object was traded, he did not fulfill his obligation, in our opinion, in the absence of a contrary agreement, the obligation will not be opposable to the buyer, therefore it is not susceptible to trigger the eviction guarantee mechanism.

In order to prevent the incidence of eviction, the buyer had the possibility of commencing a trial by *actio negatoria* or *prohibitoria* against the third party exercising a right of servitude over his property¹³.

Moreover, a possible de facto disturbance of the buyer cannot be circumscribed to the notion of "enslavement", as used by art. 43, from chapter 2, part III of the Caragea Legislation, since the buyer has the possibility to protect the possession of the asset, as a matter of fact, through specific actions provided by law.

¹¹ Section 1247 of the Callimach Code stipulates: "If someone, knowingly, has acquired an object from a non-owner, which later has been taken to court, he has no right to demand his compensation from the vendor of the object, giving him a complaint of debate, which cannot be started".

¹² According to section 1249 of the Callimach Code: "If the one who owns an object in good faith, will be sued by a third party, who puts forward, that he has rights over the object, he can, if he wishes, ask that the vendor of that object be called to court, and defend him according to the court order".

¹³ Vlad Victor Ochea, „Mijloace juridice de ocrotire a proprietății în dreptul roman”, *Scientific Journal of Law Students*, 2011, p. 7.

The Callimach Code, on the other hand, contains a slightly different mechanism, incident both in the case of partial eviction and in the case of latent defects that affect the use of the property sold. Thus, section 1250 stipulates: "If the defect or the lack of the object will be of such a nature that it will no longer be possible to cure or fulfill it, and thereby prevent the usual use of that object, then the injured party can request the complete annulment of the contract; and if the object lacks, as for example in measuring or counting, and that can be fulfilled by the seller, then, the buyer can only ask for this fulfillment. However, in these two cases, he can ask for the damage caused to him from the time of the bargain, if the other party will be used cunningly".

We note that the buyer obviously has the *actio redhibitoria* at his disposal, being able to request the cancellation of the contract, however, the *actio aestimatoria* implies a particularity, namely the price will not be reduced, but the deficiencies will be fulfilled by increasing the conduct provided by the seller. Thus, starting from the previously indicated text, we appreciate that the seller cannot be obliged to partially refund the price, but only to fulfill the deficiencies, a fact resulting from the imperative character of the regulation: "he can only ask for this fulfillment". Even under these conditions, if the deficiencies cannot be fulfilled, we appreciate that the sale could not be canceled as the only remedy, the buyer being entitled to opt for the maintenance of the contract and possible compensations based on the unlawful contractual conduct of the seller, namely, the fact that he did not deliver the object agreed, both qualitatively and quantitatively. This latter remedy involves an *exceptio non adimpleti contractus*, which has the effect of repairing the damage suffered by the buyer.

Under these conditions, we notice a subtle difference between the regulation of the Calimach Code and that of the Caragea Legislation, regarding the mechanism by which the warranty for partial eviction operates: in the legislation applicable in Moldova, the damage suffered by the buyer is covered, while in Muntenia, part of the price is returned, a value that is not always equivalent to the damage caused.

Regarding the warranty for defects, we note that in the Caragea Legislation there is a distinct regulation of the obligation of the seller who failed to show the buyer the "flaw of the object", that is, the defects of the object of the sale. Paragraph 39, sentence I, of chapter 2 of part III states: "If the seller does not show the flaws of the object he is selling and it will eventually be seen, the buyer is free not to take the object or to reduce the price". Although the legislator did not use a phrase that expressly designates the termination of the contract, it recognized the right of the buyer to refuse to take over the object, a fact that is equivalent, in the economy of the regulation, to the resolution of the contract, therefore, to the *actio redhibitoria*. To the extent that the defect of the good affects its qualities, but is not sufficient to determine the will of the buyer to terminate the contract, the latter has at his disposal an *actio aestimatoria*, through which he recovers part of the price. Under this aspect, the mechanism does not present an innovation, being based on the Roman heritage found in Romanian private law¹⁴.

¹⁴ For the analysis of the Roman system of warranty against defects, see Constantin Stoicescu – *Curs elementar de drept roman*, (Universul Juridic Publishing House, 2009), p. 275.

The second sentence of paragraph 39 of the same norm, establishes a significant nature of the defect in what concerns the use of the object. Thus, the text stipulates: "However, this should be done when the object, because of its flaws, cannot be used or can be used only with great effort, otherwise the seller will remain unperturbed". Therefore, the remedies related to the warranty for defects are effective only to the extent that the defect is of such gravity that the use the sold object will be impossible, or extremely difficult. The analysis of the serious nature of the defect compared to the usual way of using the object can only be done concretely, taking into account the particularities of each case. If, on the other hand, the defect does not meet this criterion of seriousness, the seller will not be obliged to provide any remedy.

We note, in accordance with paragraph 42 of the same norm, that the seller's liability for defects will exist only in the event that he was in bad faith, i.e. if he knew of the defect in the delivered object and did not communicate it to the buyer¹⁵. Moreover, the warranty for defects exists only in the hypothesis in which they are hidden, latent, not being possible for the buyer to observe them, in which context, it would have been appreciated that he bought at his own risk. In this sense, paragraph 41 provides: "any flaw that the buyer could see, know or suspect, cannot be basis for a trial". Equally, for apparent defects, the seller was exempted from the warranty obligation¹⁶.

The legislative solution is similar to the one in the Callimach Code, where, section 1245 provided: "If the flaws of an object are seen, then the liability for defects does not take place, except if a specific promise was made, that the object is free from all flaws and enslavements". We note, however, that in this hypothesis liability will be incurred also for apparent defects, as long as by convention, the seller has shown that the object is free from both defects and possible servitudes. The difference between the two regulations, under this aspect, appears to be minimal, and we cannot claim that the provision in the Callimach Code constitutes a genuine particularity of this legislation.

From a general perspective, we note that the Caragea Legislation contains the basic principles of liability for eviction and defects¹⁷, while the Callimach Code contains detailed rules, but with a lower degree of coherence.

3. Warranty against eviction and defects in the Romanian Civil Codes of 1864 and 2009

The warranty for eviction and defects can be found both in the 1864 Civil Code and in the 2009 Civil Code, in extremely similar forms, based in part on the institution

¹⁵ Paragraph 42, sentence I, chapter 2, part III of the Caragea Legislation provides: "When the seller knows the flaw of the object he is selling and keeps it quiet, and as a result damage will occur to the buyer, he is liable for the damage; and when he doesn't know it, he doesn't get into debt".

¹⁶ Paragraph 40, chapter 2, part III of the Caragea Legislation provides: "For the shown flaws (such as the broken eye of a horse and the like) the seller is not to blame, because the buyer cannot say he did not see them".

¹⁷ Aurel Jean Andrei, *Istoria statului și a dreptului românesc. De la Regimul fanariot la Unirea Principatelor Române*, (Universul Juridic Publishing House, 2023), p. 92.

of warranty in sales contracts from Roman law, as well as on new elements, specific to the social realities of the modern and contemporary era.

With regard to eviction, the 1864 Civil Code provides in art. 1337: that "the seller is legally obliged, according to the nature of the sales contract, to compensate the buyer for the total or partial eviction of the object sold, or for the enslavements claimed regarding that object and which would not have been declared when the contract was made". The text protects the buyer from any form of eviction, i.e. total, partial or determined by the pre-existence of charges on the object sold. We observe, under this aspect, a similarity with the provisions of the Caragea Legislation, which provided protection including for the "enslavement" of the work, respectively for possible servitudes. Some scholars stated that there can be an eviction without it being consecrated by a court decision¹⁸, but this opinion is not generally accepted.

In the 2009 Civil Code, the seller's obligation is regulated in a simplistic but sufficient manner: "The seller is legally obliged to guarantee the buyer against eviction that would prevent totally or partially the undisturbed possession of the property sold", as provided by art. 1695, paragraph 1. In reality, although there is no reference to the forms of eviction, or to the typologies of legal disturbances, we appreciate that the text of the law is sufficient to include any cause of eviction, either total or partial, or any servitude related to the object.

Equally, similarly to the provisions of the two Phanariot legislations, we note that in the 1864 Civil Code no protection is granted to the buyer who knew the cause of the eviction, or who bought at his own risk, with the only particularity that a contractual clause according to which the seller is exonerated from liability, had to pre-exist, fact expressly stipulated by art. 1340.

As for the effects of eviction, we note that the regulation is similar to the provisions found in the Phanariot legislation of Muntenia. Thus, according to art. 1341 of the 1864 Civil Code, the buyer, if subjected to eviction, has the right to demand from the seller the restitution of the price, the fruits, if he owes them to be returned to the owner who evicted, the court fees opened by him against the seller and of the one opened by the owner against him and damages and the expenses of the contract of sale. These obligations have a counterpart in the Caragea Legislation, part III, chapter 2, paragraphs 32 and 33.

Although in the regulations analyzed in the first section there is a difference regarding the effects of partial eviction, namely the partial restitution of the price in the Caragea Legislation and the payment of compensation in the Calimach Code, we note that the Romanian modern legislators chose a new solution, making the distinction according to the evolution of the price between the moment of concluding the sale contract and the moment of eviction. Thus, according to art. 1348 of the 1864 Civil Code, in the event of the eviction of a part of the sold object, if the sale is not cancelled, the buyer has the right to demand the value, at the time of the eviction, of the part from which he was evicted, and not a proportional part from the price, regardless of whether

¹⁸ Francisc Deak, Lucian Mihai, Romeo Popescu, *Tratat de drept civil* (Universul Juridic Publishing House, 2006), p.104.

it is lower or higher than the price.

In the 2009 Civil Code, in case of partial eviction, the seller must return to the buyer a part of the price proportional to the value of the part from which he was evicted, to which interest damages are added, a fact stipulated by art.1703. This regulatory difference compared to the 1864 Civil Code should not be interpreted as a similarity with the provisions of the Caragea Legislation, in reality, the difference between value and price being susceptible to recovery under the title of interest damages.

In case of total eviction, the provisions of art. 1342 and 1344 of the 1864 Civil Code will apply, according to which if the object sold was of a lower value, the seller could not refuse to return the full price, and if the value of the thing was higher than the price paid, the seller was obliged to pay the buyer, in addition to the sale price, the increase in value until the date of eviction. The solution is also found in the 2009 Civil Code, in art.1701, in an almost identical form. In both situations, we believe that the termination of the contract constitutes the legal basis for the return to the previous situation¹⁹, in the present case, by refunding the price.

Regarding the warranty against defects, we observe that this is regulated by art. 1352 Civil Code 1864: "The seller is liable for the hidden defects of the object sold, if, because of them, the object is not suitable for use, according to its intended purpose, or its use is so diminished, that it may be supposed that the purchaser would not have bought it, or would not have given him what he gave, if he had known the vices". In such a situation, from the wording of the obligation, it follows that liability exists for hidden, important defects, the severity of which would affect the use of the sold object.

This regulation technique can also be found in the 2009 Civil Code, where, art.1707, paragraph 1 provides: "The seller guarantees the buyer against any hidden defects that make the sold good unsuitable for the use for which it is intended or that reduce its use or value to such an extent that, if he had known about them, the buyer would not have bought or would have given a lower price".

Similar to the provisions of the Phanariot legislations analyzed in the first part, we note that the seller will not be liable for apparent defects and about which the buyer was able to convince himself, a fact stipulated by art. 1353 of the Civil Code 1864, respectively by art. 1707, paragraph 4 from the 2009 Civil Code.

In addition to the regulations of the XIX-th century, the Civil Code 1864 stipulates that in case of warranty for defects, the buyer will have a choice between returning the object and receiving the price, or receiving a part of the price, to be determined by experts.

The 2009 Civil Code brings a series of changes to the effects of the warranty for defects, recognizing the possibility of their removal by the seller, at his expense, or the replacement of the sold object with an object of the same kind, but without defects, remedies that join the restitution of a part of the price and resolution of the sale, according to art.1710, par.1. Between these categories of remedies, the right of option belongs to the buyer, who, however, has the obligation to respect the criterion of

¹⁹ Vlad Victor Ochea, „Brief presentation of restitutio in integrum according to the Romanian Civil Code of 2009”, *CKS Journal* 2019, pp. 366-368, https://cks.univnt.ro/download/215_ebook_CKS_2019.pdf.

proportionality between the severity of the defect and the chosen remedy²⁰.

4. Conclusion

The comparative analysis of the regulations applied at different times in history on the same territory, reveals particularities sometimes unpredictable by contemporary standards, but real and of considerable importance in the past.

I have noticed, in the present approach, that the security of contractual relationships was a constant concern of the Romanian legislator, both towards the end of the Phanariot era and after the appearance of modern codes. In each period, the regulations sought to provide the necessary framework for the protection of private property, especially during the period of transition from Phanariot reigns to the national state, based on other institutional foundations and new forms of production.

In this context, I noted that the regulation of the warranty against eviction is carried out in a way specific to post-classical Roman law, with the full takeover of the remedy mechanism based on *actio redhibitoria* and *actio aestimatoria* or *quantum minoris*, a feature that can be observed both in the legislation of the 19th century and in the modern Codes.

Furthermore, we note that in the 1864 Civil Code, as an effect of adapting the solution found in the Calimach Code, in case of partial eviction, the seller owed the buyer compensation for the part of the object that was the subject of eviction, which was to be calculated according to specific rules, but, in the 2009 Civil Code, similarly to the solution in the Caragea Legislation, the seller was obliged to refund a proportional part of the price.

All these differences can be explained, on the one hand, by a different perspective of the legislators regarding the reparation of damages, in the course of over 200 years, and on the other hand, by a completion of the regulations specific to eviction with the possibility of claims compensation, under the conditions of common law, for *damnum emergens* and *lucrum cessans*, a fact that allowed a high degree of protection of the security of legal relations as well as of property as a fundamental right.

Beyond these elements of continuity, we noticed an aggravation of the seller's liability in the 2009 Civil Code, where he has additional remedies that aim to maintain the contract, such as the replacement or repair of the object, as well as restrictive terms for removing liability.

Under these conditions, we note that the warranty system for eviction and for defects is a constant element in the essential version, existing in Romanian legislation for more than 200 years, being, in reality, an old-fashioned means for protecting the buyer, however, just as important in the present as well as for the future, through its efficiency.

²⁰ Flavius-Antoniou Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei, *Codul civil, comentariu pe articole* (C.H. Beck Publishing House, 2021), p. 2061.

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