Revista de Științe Politice. Revue des Sciences Politiques • No. 73 • 2022: 144 - 154

ORIGINAL PAPER

Elements of Comparative Law Concerning the Exercise of the Lien

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Abstract:
The Roman origin of the lien more precisely the Praetorian one, explains the fact that this atypical means of guarantee is found in most European legal systems and implicitly globally through the cultural and political influence exerted by the old continent on the whole world. It is interesting to observe which of the regulations is more effective and whether similarities can be found between the systems of continental law and those of jurisprudential one.

Keywords: *lien creditor; secured claim; connexity.*

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1. Introduction

The origin of the lien was identified in a praetorian creation, *exceptio doli,* which appeared to prevent unfair situations in which the debtor of an obligation was required to be executed without the other party executing in turn what it owed. The application of the exception of fraud in certain concrete situations identified by the praetor's edict, as a complement to civil law, justifies the lack of regulation of a general theory for this guarantee mechanism.

We can say that a framework regulation for the lien first appeared in German and Swiss law at the beginning of the twentieth century, while the French legislator managed to reach an express regulation of the forms of the right of retention only a century later.

The general application of the lien until the enactment of the new Romanian civil code, implemented by Law 71/2011, was based on the interpretation by analogy of the texts that confer such a right to certain categories of creditors. The old model of regulation was the result of the major influence that French law has on our law. Thanks to the obvious similarities between the two legal systems, our previous research has focused on French doctrine and jurisprudence.

However, we believe that the provisions of German and Swiss law concerning the lien must be taken into account, as they have a different view of this juridical institution than the French one.

On the other hand, the English legal system, which puts jurisprudence at the forefront, giving legal value to the judicial precedent to the detriment of the written law, has created a legal institution similar to the right lien, but of a heterogeneous nature.

This article aims to carry out a study on the situations that give rise to a lien and especially on its effects in the comparative law.

2. Framework regulation of the lien in the German legal system

Among the continental legal systems, in which the source of law is the law, an express regulation of the lien as an independent legal institution was first found in the Civil Code and the Commercial Code of the German state, which entered into force on January firth, 1900.

We will first consider the provisions in civil matters and then those applicable to traders, as the legal regime of retention differs depending on the nature of the legal relationship between the parties.

The lien is defined in Article 273 of the German Civil Code, according to which there are two cases in which the creditor may invoke such a right.

The first case concerns the situation in which the debtor may, in the absence of a contrary stipulation, refuse to execute his own performance resulting from the same legal relationship as the benefit due to him, but in turn remained unexecuted by the other party.

The terms used in the legal provision can be interpreted in the sense that the right of retention based on art. 273alin. (1) may be invoked regardless of the object and nature of the performance whose performance is refused (Elekes, 1929: 154). It follows from nowhere that the object of the obligation relates to the return or restitution of property, as is the case of French-inspired regulations (Art. 2286 pt. 2 French Civil Code), Which could be interpreted as meaning that the lien based on a juridical connection is completely assimilated to the exception of non-performance of

the contract, an idea supported by a well-known French author (Mazeaud, Mazeaud and Chabas, 1999: 205)

The lien also exists in favor of the person who incurred conservation expenses in connection with the property in his detention or has suffered damage caused by that property, which he will be able to retain until the moment of his compensation.

Therefore, the legal provision relied on enshrines the two types of connection which justify the creation of a lien. *Debitum cum re iunctum* can take the form of an intellectual liaison, namely the common juridical source of the two equally certain and due obligations or of a material bond with the good determined by its conservation, the improvements made or the damage suffered in relation to the good. Consequently, the hypotheses in which German law authorizes the exercise of a right of lien are the same as those highlighted in the French literature, confirming the imperative of its general application and the common origin of the two legal systems found in Roman law.

The same text of the law also provides a limit for the legitimate exercise of the lien, in the sense that, like the Romanian regulations, the refusal to handover cannot operate when the property came into the possession of the creditor by an illicit act committed intentionally. As long as the recognition of the right of lien is intended to put the creditor in a fair position vis-à-vis the claimant, a general regulation of this juridical institution should contain a provision eliminating any possibility for the creditor to change a conduct deliberately illicit in a prerogative that would guarantee the realization of his claim.

The German legislation was a source of inspiration for the Romanian legislator not only regarding the exclusion of the possibility of exercising a lien on the premise of committing an illegal act, but also regarding the possibility of the debtor to offer another guarantee in exchange for relieving the retained property. However, the provisions of the Romanian Civil Code within art. 2499 par. (1) show a much more permissive approach than those of art. 273 para. (3) BGB, which requires that the new collateral offered to the creditor be real, expressly providing that a personal guarantee cannot be received to prevent the holding of the property.

We consider that the possibility granted to the debtor to constitute a new guarantee is a natural solution for finding a balance between the interest of the lienor to benefit from a guarantee for the indirect execution of his claim and the debtor's right to exercise the prerogative of use over the good. Once the debtor can provide another guarantee for the benefit of the lienor, the refusal to surrender is unfair and without legal basis.

In addition to Paragraph 273 of the BGB, entitled “The Lien”, which refers to both forms of *debitum cum re iunctum,* we note that the German legislator generally regulated the exception of non-enforcement in Article 320. This legal provision allows the creditor to suspend the execution of his own obligation emerged of the same bilateral contract as the claim he invokes. If the provisions of the framework definition refer to obligations arising from a legal fact, we believe *lato sensu so* to include contracts, Article 320 refers to mutual contracts. therefore bilateral. This way of regulation supports the idea that in the German legal system there is a dualistic conception on the lien (Popesco, 1930: 95).

Although currently the doctrine related to the legal systems of French inspiration has drawn a fine line for the delimitation of the lien from the exception of non-execution, we note that the text of art. 320 para.1 leads to the idea that the refusal to perform may take the form of a right of retention, in which case the debtor will not be

able to resort to the provision of another guarantee in order to oblige his counterparty to execute the performance to which he was obliged. We consider that such a clarification has the role of highlighting the main distinction between the two grounds for the refusal to handover whit comminatory purpose. If in the first case the retention arising from the juridical connection is a means of guarantee which can be replaced by any other right of the same kind, in the case of non-performance the aim is to restore a contractual balance and the only way to achieve the purpose of the contract is the simultaneous performance of reciprocal and interdependent obligations.

The Romanian doctrine interprets the option of the German legislator in the sense that the provisions of art. 273 BGB concern the proper right of retention, including the hypothesis of imperfectly bilateral contracts, and those of art. 320 refer to the exception of non-execution of the contract. (Voicu: 2001, 47)

The legal effects of the lien are those set out in Paragraph 274 of the BGB, from the interpretation of which we conclude that it confers on the creditor the right to obtain capitalization by foreclosure and to extinguish his claim from the price obtained, but not before court proceedings. Based on the lien, it is possible to obtain the debtor's sentencing for the execution of his own duty in exchange for the execution of the one to which the lienor is bound. Following the ruling of such a decision, the holder of the lien may proceed with the pursuit of the property without performing his own obligation, if his opponent has been delayed. Thus, the settlement of the claim by the forced sale of the seized property is possible only after a court decision and after the refusal of the adverse party to receive payment from the lienor, voluntarily performing his obligation.

We appreciate that despite the fact that the legislator allows the lienor to capitalize on the property in order to satisfy his right to claim, in civil matters the manner of exercising the withholding is not specific to real rights and cannot be considered a means of private justice. In fact, the lienor may obtain, as a first step, an obligation on the debtor in court to perform his obligation in kind in exchange for the remittance of the property. As in French-inspired legal systems, the exercise of the lien has a comminatory effect on the debtor, turning it into a guarantee, but in addition to the option of awaiting voluntary enforcement, the lienor can go to court.

The guarantee function the right of retention as regulated in Article 273 of the BGB is resulting therefore in a passive attitude that is allowed creditor with suspension of their own obligations, but also because the debtor may oppose the refusal of performance by providing a collateral to bear on another good.

Therefore, although it certainly becomes a means of obtaining enforcement of the invoked claim the lien works as an exception opposed to the other side of the legal relationship.

Compared to third parties, the effects of the lien are quite limited, as in most cases the lienor cannot oppose the request to hand over the property, coming from the latter. For example, the sub-acquirer of the property encumbered by a lien will not be able to take possession of the property before reimbursing the necessary and useful expenses made by the previous owner or the situation of the buyer of a movable property to which the lienor may refuse the property its debtor (Popesco.1930: 130). Regarding the other creditors, by reference to the provisions of the Code of Civil Procedure, in the case of forced pursuit of movable property, the lienor may refuse to handover the asset, invoking his right (Popesco, 1930: 131).

In addition to the provisions of the Civil Code, the German legislature has chosen to regulate separately the lien applicable to commercial legal relationships. Specificity of trade relations led to the establishment of a completely different juridical regime. for the lien retention recognized in favor of traders. First, under Paragraph 369 of the HGB, traders are recognized a lien independently of any connection between the claim invoked and the asset in the creditor's possession.

The exercise of the right of lien presupposes in this case that the invoked right of claim has its basis in a commercial transaction, in which both contracting parties are traders, as well as the possession of the good. The guarantee covers all movable property and securities entered into the possession of the creditor with the consent of the obliged, following the deployment of commercial relations. Thus, as long as the two parties are traders, the creditor may retain any property of the debtor which he has at his disposal for the satisfaction of all claims against the same debtor. We can say that as long as the consent of the debtor is required for the possession of the good by the creditor, the ground of the obligations of the two parties can only be a contractual one.

According to the legal provision, the creditor can dispose of goods through bills of lading, depository receipts and warrant, these being representative titles of the goods. The lien subsists even if the assets and values belonging to the debtor have been transferred by him or on his behalf to other creditors as soon as that they return to his patrimony. The opposability of the commercial lien to third parties depends on the ability of the lienor to oppose them the same exceptions as his debtor, which means that they cannot be completely foreign to the legal relationship between the retainer and the latter.

The way in which the lien is exercised presupposes that the lienor has a direct and immediate power over the goods held for collateral purposes so that his conduct can become abusive at any time. In order to prevent abuse of rights in this matter, the law provides that the lien ceases when it is incompatible with the instructions for using of the property received from the debtor before or at the time of handing over the property or with the mandate assumed by the creditor in this regard.

Similar to the solution identified in civil matters, the lien of traders cannot be invoked as long as the debtor constitutes another real security. All the more so in commercial matters a personal guarantee, such as a surety, would not suffice.

The effects of commercial lien are established by art. 371 HGB, and the main advantage is that the lienor may this time capitalize the seized property in order to satisfy his claim in accordance with the applicable rules on pledge. In fact, the deadline for the formal notice will be one week, much shorter than the one-month period of the pledge incident.

The lienor investiture with the prerogative to put the property up for sale shows the importance of the lien in commercial matters for the ease with which it allows the creditor to realize his claim, which derives from the fact that it is a statutory guarantee. It is also important that if there are several creditors entitled to pursue the asset, the retainer will be satisfied with priority. In view of these aspects, we can say that the lien granted to traders under German law can be considered a real right, which allows the capitalization of the good and gives the creditor preference over other pursuers of the object of his guarantee. The sale may be realized by the lienor outside a foreclosure procedure, but only after obtaining an enforceable title in contradiction with the debtor or the owner of the property (see: art. 371 para. (2), 372 HGB). About invoking this

guarantee in the insolvency procedure, the beneficiary of a lien of a commercial nature is treated as pledgee and thanks so doing can enjoy the extinguishment of the debt by capitalizing the asset encumbered in a separate way by the administrator named once the procedure is opened. (See Article 50 and 51 of the Insolvency Code).

The exercise of the lien in commercial matters is so important that it enjoys special regulation when legal relationships specific to maritime law are in question. Thus, Book V of the HGB, which deals with maritime trade, refers to secured claims, the object and effects of lien in that branch of law.

From the above it is undoubted that the prerogatives of pursuit and preference granted to the lienor are intrinsic to his right and do not result from the association with a cause of preference, as in the case of the framework regulation adopted by the new Romanian Civil Code.

3. The Lien in the Swiss Civil Code

The framework regulation of the lien in the Swiss legislation is found in the provisions of art. 895-898 of the Civil Code, while applications of this form of guarantee are expressly mentioned in the Code of Obligations.

The definition of the right of lien starts from the consented material possession exercised by the creditor over some goods belonging to the debtor. The specificity of the Swiss legislation is that there is an express provision that only movable property and securities may be affected by a lien Based on this right of security, the creditor may retain the property until the payment of a due claim which is in a natural connection with the latter. We consider that the notion of natural connexity is rather thought of as a material connection, but the common origin of the obligations of the parties can be considered as a close liaison between the possession of the property and the claim invoked by the creditor. If in civil matters a connection in the traditional sense of the term is required, in trade relations it is replaced by the requirement that both the possession of the goods and the claim be the result of trade relations between the parties, as in the case of German law.

Following the assertion of the assumptions which give rise to a lien, the provisions of the Swiss Civil Code refer to the goods which may be encumbered by such a right. First of all, it should be noted that they will be object to the lien, including the assets over which the debtor does not have a property right, as long as the lienor was in good faith at the time of acquiring material detention on them, but without affecting the previous rights of third parties.

Next, Article 896 provides for certain limitations on the exercise of the lien which relate either to the specific nature of the manner in which the claim is realized or to reasons which are intended to prevent an abuse of rights. Thus, a statutory guarantee that can lead to the realization of the claim according to the rules applicable to the pledge, it is understandable that the lien cannot encumber goods that by their nature are not realizable, in the sense that they are devoid of intrinsic value. We note here a wording similar to the one found in the provisions of art. 2496 of the Romanian Civil Code, according to which the lien cannot be exercised if the good is not susceptible to forced pursuit. However, we believe that the intention of the Romanian legislator was not to remove goods, such as documents, outside the application area of the lien.

The exercise of a lien is also excluded when it is incompatible with public order, the obligations assumed by the creditor or the instructions of the debtor, which demonstrates the proximity of the Swiss legal system to the German one despite the

French influences. We appreciate that by referring to public order, the legislator encompasses all aspects that may become illegal or immoral in relation to the object of the guarantee or the way in which it comes into the possession of the creditor.

Regarding the claim raised by the lienor, Swiss law expressly provides that the creditor must be the holder of a claim chargeable in order to exercise the right of guarantee. However, as an exception, the lien may also be exercised when the claim is affected by a suspensive term, if the debtor is insolvent. Moreover, where the state of insolvency occurs after the creditor has taken possession of the property or is not aware of the circumstances of the insolvency, the lien may be exercised without taking into account the agreement of the parties about the using of the property, either from the perspective of the instructions received from the debtor, or from the obligation assumed by the lienor in connection with the destination of the retained property. Precisely for preventing the risk of non-realization of the claim to which the lienor is submitted.

The most important legal provision of the general regime of the lien concerns its effects. Article 898 of the Swiss Civil Code provides that the lienor may pursue the property in accordance with the applicable rules on pledge, if the obligation has not been extinguished by payment and no other security has been provided for his benefit. Therefore, the pursuit and capitalization of the good occurs only when the guaranteed obligation is not voluntarily extinguished by the debtor. Precisely for this reason, before proceeding to the capitalization of the seized property, the legislative text requires the debtor to be summoned in connection about the initiation of the proceedings. At the same time, it must be pointed out that the lien ceases by establishing another guarantee that reconciles the interests of both parties, on the one hand the release of the detained property and on the other hand the guarantee of the claim. By examining the Swiss regulation of the lien, we can say that is has multiples similarities with the provisions of the German Commercial Code.

Comparing this general theory with the legal provisions contained in art. 2495-2499 of the Romanian Civil Code, we notice that there are some similarities, but the main difference is that in German-inspired regulations the lienor enjoys the same prerogatives as the pledge creditor even based on the right of lien

In addition to the framework regulation of the lien, the Swiss Civil Code contains provisions on the right to detain certain assets that have been detained by a third party without the consent of the owner, debtor of the secured claim. According to art. 700 of this normative act, the owner of a fund is allowed to exercise a lien on the movables that enters its therein through a fortuitous case, such as natural calamities. The object of this lien may be domestic or wild animals, fish and beehives, the guarantee being constituted by the legislator to ensure the realization of the claim on compensation for damages caused to the fund.

4. The Lien in the common law legal system

In the following we will refer to the particularities of the lien, as this juridical institution can be identified in English law, as it is much more homogeneous than the law of other states with the same type of judicial system. We consider that this approach is useful to observe the universality of the security mechanism described by the lien.

Limiting our considerations to the United Kingdom of Great Britain and Northern Ireland law is also justified by the fact that in the United States of America the term "lien" has a much broader meaning than that of English law, and it could refer to other securities.

The main difference between continental and English-inspired legal systems is related to the legal value it gives to the judicial precedent (Ungureanu and Munteanu, 2017: 23). It is natural that in a system of law in which previous jurisprudence and custom have the force of law, a juridical institution has emerged to respond to the idea of justice, such as the lien, to manifest itself in a manner similar to what we can deduce within the legislative regulations analyzed above.

The definition given to the lien by the literature is as follows: "Any charge of a payment of dept or duty upon either real or personal property" (Popesco, 1930: 19), while the jurisprudence considers lien as: "A right in one man to retain that which is in his possession belonging to another, till certain demands of him, the person in possession are satisfied." (Popesco, 1930: 19). Observing the two definitions, we find that the right of lien has a fairly wide application area in the sense that it allows guaranteeing the execution of any type of obligation, which leads to an assimilation to the non-performance of the contract exception, when the latter implies the refusal to handover an asset.

The specificity of this means of guarantee as outlined in English law derives precisely from the heterogeneous nature it has thanks to its various legal sources.

The most common form of lien is the one based on the Common Law, which by its characteristics most closely resembles the legal regime of this guarantee present in continental law. Known as possessory lien, it is obvious that the possession of another's property by the person claiming a debt is the main condition for the emergence of the retention, being equally necessary for this possession to be lawful (Popesco, 1930: 40). Also, in the older doctrine it was considered that mainly for the exercise of the lien the good must be the property of the debtor (Popesco, 1930: 42-44).

Depending on the goods on which the prerogative extends to refuse the handover of possessory lien can be particular or general, both types being able to arise not only from the common law, but also from the agreement of the parties. According to the literature, the starting point for the emergence of the common law was the recognition of certain customs by court decisions, which gained binding force even for third parties. (Iftimiei, 2020: 213)

Particular lien bears on the movable goods until the extinction of some obligations emerged in strict connection with them. The guarantee is exercised exclusively on a determined individual asset in order to create a comminatory effect on the debtor, likely to lead to the settlement of some receivables that are circumscribed mainly to the notion of material connection with the retained good. The claims that justify the invocation of a particular lien are the following: the claim of the one who has a legal obligation to provide certain services to the owner of a good, the claim of the one who incurs expenses to preserve the good or perform works on it, to the one who risks his life in a shipwreck (Popesco, 1930: 47-52).

Therefore, examining these hypotheses from the common law jurisprudence, it is easy to conclude that this form of lien encumbers individually determined goods which have a material liaison with the claim invoked by the creditor, his right being somewhat incorporated in the property he retains.

We also note that the seller of movable property has at hand a lien for the realization of his claim for the sale price. The importance of this application of retention has led to a detailed regulation at the level of written law, the Statute Law through the Sale of Goods Act, which gives the lienor at the same time the prerogative of selling the property (Section 41 - 48 SGA).

Instead, the general lien has as its object any property of the debtor that is in the hands of the lienor to guarantee all the claims that he invokes (Curti, 1928: 236). The juridical nature of this lien is considered to be that of a general movable privilege granted only to a limited category of creditors, in particular persons pursuing a professional activity as service providers, such as lawyers, carriers, factors (Le Gallou and Wesley, 2018: 570). Precisely because these creditors assume the risk of loss, they are entitled to retain all the debtor's assets at their disposal, regardless of the source or nature of the claim they invoke to increase the chances of the creditor's right being realized. Despite this, the doctrine states that the lienor does not have the right to capitalize the goods by sale in the absence of an express statutory stipulation or a judicial authorization (Le Gallou and Wesley, 2018: 570; Hall, 1917: 69). Such an example could be The Innkeepers Act granting the right to sale the debtor goods which the innkeeper holds.

We can therefore see that the effects of the common law lien are more like the right of retention present in the French-inspired systems, where this guarantee mechanism becomes effective in so far as it can compel the debtor to perform his obligation, is depending on the utility and intrinsic value of the affected goods.

Other similarity with written law systems, is that this right, which is closely related to possession, ceases by the voluntary dispossession of the creditor or by the establishment of another guarantee (Popesco, 1930: 140-143).

In addition to the lien which is justified in the detention exercised by the creditor, there are other categories identified as lien, but they have a very special applicability.

Equitable lien, is another form of lien entirely specific to English law. This is closely linked to the Praetorian roots of the lien due to the fact that it originates from equity, defined as a body of exceptionally applicable legal rules that control the gaps appeared in the Common Law system. Equity law is the creation of specialized courts, starting from the imperative of judging the case in accordance with the human conscience (Popesco, 1930: 30; Le Gallou and Wesley, 2018: 33).

The main difference between a right of retention arising on the basis of equity and that derived from the common law is an essential one, since the creditor can exercise the right of guarantee without the encumbered property being in his possession. For reasons of equity, possession of the property is no longer considered a prerequisite for sett of this guarantee mechanism, but its fundamentals in the idea of equity leads to a very narrow area of application, the most common cases being the real estate sale-purchase, contract both to guarantee the payment of the price and for refunding the deposit paid by the buyer (Le Gallou and Wesley, 2018: 571).

Another peculiarity is that equity lien will cease when other guarantees on the same good will be established in favor of the creditor, even if they are subsequently extinguished (Le Gallou and Wesley, 2018: 571). As long as Equity Law is meant to prevent iniquity that may arise in the context of legal relationships, when the lienor acquires another security, he can no longer benefit from this form of lien justified precisely by the need to and provide a way to ensure the fulfillment of the claim.

In Anglo-Saxon legal systems, written law is also a source of law, and the statutory lien is that security recognized under legal provisions (Popesco, 1930: 32), the term statute having the meaning of a normative act issued of Parliament (Popesco, 1930: 33) On this category of lien, the doctrine has ruled that each lien stipulated by law has its own legal regime, but the main prerogative given to the creditor is to refuse to

hand over the property, so it is a passive form of guarantee(Le Gallou and Wesley, 2018: 571).

In the United States, one of the most common forms of statutory lien is the right of lien recognized in favor of the state, to guarantee tax claims such as building tax and income tax or other taxes. As regards the object of a tax lien, it may extend to all movable and immovable property of the debtor.

In the field of maritime law, as in German law, there is a specific lien called maritime lien, which is exercised by the creditor over the ship or its cargo, without the need for them to actually be in the creditor's possession. This variety of the lien is used to guarantee claims arising from the payment of salaries to seafarers, the payment of expenses resulting from rescue operations or those relating to compensation for damage caused by the ship (Le Gallou and Wesley, 2018: 571).

In addition to these varieties of the lien the power of the autonomy of will principle determines the recognition of the possibility for this security to have a contractual source. Therefore, the consent of the parties may give rise to a right of lien in the English legal system, whether we are talking about a particular lien or a general lien (Popesco, 1930: 36-37). Recent doctrine states, however, that only tangible property can be the subject of such a contract, and intangible assets can be encumbered by a charge (Le Gallou and Wesley, 2018: 555).

5. Final considerations

Based on equity, it is understandable that the lien will find its correspondent in all legal systems, as it is fair for a creditor who that is holding the assets of the person from whom he pretends to receive a payment, to be able to retain them as security.

Through this article we aimed to create an overview of this juridical institution by analyzing its juridical regime in the legal systems not under French influence and to observe the possible similarities with the provisions of the new Romanian Civil Code contained in art. 2495-2499.

First of all, it must be said that the form of manifestation of the lien is that of a substantial exception, whereby the creditor refuses to perform his obligation, which is why the possession of the property is an insurmountable condition for the guarantee mechanism.

We later found that in legal systems in which the lien benefits of an express regulation, there are provisions that prevent the abusive exercise of the prerogative of the lienor, on the one hand, and block the emergence of the right of guarantee trough circumstances falling within the area of illicit acts, on the other

Going beyond these aspects, which were also found in the general theory of lien as created by the French authors, it must be pointed out that German law distinguishes between the exercise of the lien between traders and non-traders. In the civil legal relationships for the emergence of the lien it is necessary the presence of the connection between the claim and the retained good, and in the case of commercial relations the same right is recognized *ex dispari causa* on any goods in the possession of the creditor. Such a distinction is also made in English law, between particular lien and general lien.

The most important distinction between the two large families of continental law concerns the prerogative of the lienor to capitalize on the good in order to satisfy his claim from its price. Therefore, in German-inspired, as opposed to French, legislation, the lienor may, by virtue of his right of guarantee, sell the property in accordance with

the applicable pledge procedure either directly or in foreclosure. However, it should be noted that in cases where the lienor has the prerogative to sell the property, the object of this security is represented by the movables or securities.

For this reason, we consider that the choice of our legislator to associate a special movable privilege to the lien is a justified one, as it is under the influence of comparative law, where, as can be seen, the effectiveness of the latter on movable property is increased, thanks to the variety of transferring or constitutive contracts whose derivative object is movable property.

Acknowledgment:
"This work was supported by the grant POCU / 380/6/13/123990, co-financed by the European Social Fund within the Sectorial Operational Program Human Capital 2014 – 2020".

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Article Info

Received: March 23 2023
Accepted: March 30 2022

How to cite this article:
Bosneanu, I.A. (2022). Elements of Comparative Law Concerning the Exercise of the Lien. *Revista de Științe Politice. Revue des Sciences Politiques*, no. 73/ 2022), 144-154.