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REVOCATION OF DONATIONS

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ABSTRACT:

THE PRESENT WORK PRESENTS THE ASPECTS RELATED TO THE LEGAL REGIME OF THE REVOCATION OF DONATIONS. THE REVOCATION OF A DONATION IS REGULATED BY THE CIVIL CODE, IN ARTICLES 1020-1029. ALSO, ARTICLES 1020-1022 OF THE CIVIL CODE ARE DEDICATED TO THE COMMON PROVISIONS IN THE MATTER OF THE REVOCATION OF DONATIONS, AND LATER, THE REVOCATION OF THE DONATION FOR INGRATITUDE, AS WELL AS THE REVOCATION OF THE DONATION FOR NON-PERFORMANCE OF THE OBLIGATION, IN ARTICLES 1027-1029 OF THE CIVIL CODE. THROUGH THIS WORK, WE AIM TO ANALYZE THE ESSENTIAL ASPECTS IN THE MATTER OF THE REVOCATION OF A DONATION, WITH A FOCUS ON THE GENERAL AND SPECIAL EFFECTS IT ENTAILS.

KEY WORDS: REVOCATION OF DONATIONS, INGRATITUDE, IRREVOCABILITY OF DONATIONS.

INTRODUCTION

The Romanian Civil Code recognizes two forms of donations: donations and legacies included in the testament. According to Article 984 of the Civil Code, a gift is the act by which a person disposes of their goods, in whole or in part, in favor of another person, gratuitously.

The Civil Code mentions, in Article 986, that a legacy is the testamentary disposition by which the testator stipulates that, upon their death, one or more legatees will inherit their entire estate, a fraction of it, or certain specified assets.

Unlike a legacy, the Civil Code, in Article 958, mentions that a donation is a contract, which is made with the intention of gratifying one party, the donor, by irrevocably disposing of an asset in favor of the other party, the donee.

According to a mention in a decision of the Suceava Tribunal, "unlike bilateral contracts, where the cause of each of the parties' obligations consists of the performance of the promised performance by the other party, in contracts with a gratuitous title, the cause of the obligation of the person who disposes consists of the intention to increase the patrimony of the gratified person, without receiving a consideration in return [1]."

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SEAT OF THE SUBJECT

The donation contract is regulated in Chapter II, of Title III - Donations, in Book IV - On Inheritances and Donations. The donation, being a donation, has the effect of producing the impoverishment of the donor's patrimony. Nevertheless, unlike unjust enrichment, the cause of the contract is constituted by the *animus donandi*, that is the intention to gratify [2].

JURIDICAL CHARACTERISTICS OF THE GIFT AND PROMISE OF DONATION

The donation is delimited from other civil contracts by its legal characteristics. Thus, the donation is a unilateral contract, because only one of the parties has contractual obligations. However, there is an exception to the rule, where it is mentioned, in article 1028 of the Civil Code, that the donation can be bilateral, when it imposes a burden on the recipient.

The donation also has a gratuitous character, in the sense that the recipient is not, in principle, obliged to pay any equivalent. The absence of an authentic form of the donation contract will be punished with the absolute nullity of the contract. Exceptions to this provision are indirect donations, disguised donations, and manual donation.

The donation also has a solemn character, because it is subject to authentic form, and is a transfer of property, because it transfers ownership from the donor to the recipient. Being a solemn contract, "the transfer of ownership takes place at the time the agreement of will is embodied in the authentic form between the donor and the recipient, and in the absence of the parties, when the donor receives the acceptance of the recipient, both made in authentic form [3]."

The Civil Code provides for and regulates the possibility of entering into a promise in the matter of donation. The promise of donation was not regulated in the old Civil Code of 1864.

The promise of donation, in case of non-compliance, provides specific consequences in this regard. Also, according to Article 1014, paragraph 2 of the Civil Code, in case of non-execution by the promisor, the promise of donation only grants the promisee the right to claim damages equivalent to the expenses incurred and the advantages granted to third parties in consideration of the promise.

The promise of donation is also regulated by Article 1014 of the Civil Code. There are three types of aspects to be retained within the promise of donation:

- form of the promise,
- course of action in case of non-compliance with the promise and
- revocation of the promise.

The promise of donation, like the contract of donation, must be entered into in authentic form, under penalty of absolute nullity. Paragraph 2 of Article 1014 of the Civil Code states: "In case of non-execution by the promisor, the promise of donation only grants the promisee the right to claim damages equivalent to the expenses incurred and the advantages granted to third parties in consideration of the promise."

REASONS FOR REVOCATION OF DONATION

The rule in matters of donation is that it is irrevocable. However, the Romanian legislator provides a series of exceptions to this rule, thus regulating a series of legal causes

in which the revocation of the donation can occur. Before analyzing the cases of revocation of the donation, we will review those specific to the promise of donation.

Therefore, the promise of donation can be revoked under the conditions mentioned in article 1022 of the Civil Code, the promise of donation is revoked by law if, prior to its execution, one of the cases of revocation for ingratitude provided for in article 1023 arises. At article 2, it is mentioned that the promise of donation is revoked by law and when, prior to its execution, the material situation of the promisor has deteriorated to such an extent that the execution of the promise has become excessively onerous for it or the promisor has become insolvent.

As for the donation, as it appears in article 1021 of the Civil Code, it is revoked if the reason is represented by ingratitude or non-execution without justification of the burden. The old Civil Code of 1864 regulated at article 829 and the revocation of the donation for the occurrence of a child, an aspect that is no longer provided for in the current Civil Code. It is of interest to mention that revocation for ingratitude and for non-compliance with the obligations does not operate by law.

Regarding the revocation of the donation for ingratitude, the Civil Code mentions in Article 1023 three limiting cases:

- a) if the donee attempted the life of the donor, of a close person to him or, knowing that others intend to attack, did not inform him;
- b) if the donee is guilty of criminal acts, cruelty or serious insults to the donor;
- c) if the donee unjustifiably refuses to provide for the needs of the donor in the value of the current asset.

The Hunedoara Court decided that simple disputes between the parties or the circumstance that the donee threatened the donor's husband does not lead to the revocation of the donation.

The Suceava Court stipulated that "the revocation of the donation for ingratitude can only be admitted against those among the donees who have been guilty of ingratitude, the donation remaining valid towards the other donees [4]".

The right of tenancy by which revocation is requested, according to Article 1024 (1) of the Civil Code, is prescribed within a year from the day the donor knew that the donee committed the act of ingratitude. Revocation for ingratitude being a civil punishment, it is to be noted that the action for revocation therefore has a personal character, and can be brought by the donor.

In addition to revocation for ingratitude, the donation can also be revoked in the case of non-performance. Although the donation is a gift, the donor may stipulate certain obligations to the donee, certain burdens in the contract.

Article 1027 of the Civil Code mentions that if the donee does not fulfill the obligation to which he or she has committed, the donor or their successors in rights may either enforce the burden or revoke the donation. The Braşov Tribunal has stated in one of its decisions that "if the father donates to his son a building with the reservation of the right of usufruct over that building and with the obligation of maintenance, he does not have the right to subsequently evict the donee, on the grounds that the act of donation did not give him the right to use the building, if the content of the act shows that the parties intended to cohabit, with a view to the obligation of maintenance."

The right of action for enforcement of the burden or revocation of the donation is prescribed within 3 years from the date the burden should have been performed. As Professor Dumitru Florescu notes, the action for revocation of the donation for non-performance of obligations no longer has a personal character like the action for revocation for ingratitude,

and can be promoted by the donor, their mandatary, their successors, or even the donor's creditors through an oblique action [5].

EFFECTS OF REVOCATION OF THE DONATION

The Civil Code mentions two types of effects caused by the revocation of a donation: general effects and special effects. In the case of revocation for ingratitude, if the return of the donated property is not possible, the recipient will be obliged to pay its value, calculated at the date of resolution of the case, according to Article 1025 of the Civil Code. Furthermore, the fruits must be returned starting from the date of the request for revocation of the donation.

Regarding the special effects of revocation, they are provided for in Article 1026 of the Civil Code: revocation for ingratitude has no effect on the real rights over the donated property acquired by third parties in good faith, nor on the guarantees established in their favor. In the case of properties subject to publicity formalities, the right of the third party must have been registered prior to the registration of the revocation request in the relevant public registers. According to Article 1029 of the Civil Code, when the donation is revoked for non-compliance with obligations, the property reverts to the donor's estate, free of any rights established in the meantime, subject to the provisions of Article 1648.

INABILITY TO RECEIVE DONATIONS

Although one may think that anyone can make a donation, in reality, the legislator has put certain exceptions, as seen in article 990 of the Civil Code:

1. Doctors, pharmacists and other people assimilated to these categories;
2. Priests or other persons providing religious assistance to the disposer.

In the first case, the reason for prohibiting the donation is based on the protection of the disposer due to their vulnerable state. "This incapacity is based on an absolute presumption of capture and suggestion, and counter evidence is not admitted to prove that the disposer's will was freely expressed [6]."

From this rule, we find certain exceptions, which we observe in article 990 paragraph 2:

- a) Donations made to the spouse, direct relatives or privileged collateral relatives;
- b) Donations made to other relatives up to the fourth degree inclusive, if at the time of the donation, the disposer has neither a spouse nor direct or privileged collateral relatives.

Regarding the category of priests and other persons assimilated to them, the reason is the same as in the case of donations made to doctors, pharmacists and other people assimilated to these categories, with certain exceptions. Therefore, by exception, donations made to the spouse, direct relatives or privileged collateral relatives are not annulable, nor are donations made to other relatives up to the fourth degree inclusive, if at the time of the donation, the disposer has neither a spouse nor direct or privileged collateral relatives, as mentioned in the Civil Code.

CONCLUSIONS

The donation contract represents one of the most well-known types of transfer property contracts. The institution of donation has existed since the Roman period - through the Publicia Law and the Cincia Law, over time it has taken on different conditions, and today it has become the most complex form of expression. Although this can be disposed of by most people, in the relationship between medical personnel and in the relationship with religious personnel, these are prohibited, with small exceptions provided by law. We consider

that the effects of a donation contract can bring significant benefits for both the donor and the recipient, if both parties act in good faith and execute the contract in accordance with legal provisions.

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