Revocation of the Donation in the Legislation of the Republic of Moldova and the Russian Federation

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Abstract: The article brings new information from the field of the irrevocability of the donation as regulated in the Republic of Moldova and the Russian Federation. The conditions under which the donation can be revoked, as they are regulated in the Moldovan legislation, will be analyzed, being similar, even identical to the causes of revocation provided by the Romanian legislator, i.e. those concerning ingratitude and the failure to perform the task. Issues such as: entitled persons to request the revocation of the donation contract, the consequences that occur after the donation has been revoked, what happens to the donation after the application of this sanction, and the obligation of the parties, will also be highlighted.

Keywords: donation; revocation; Republic of Moldova; Russian Federation

1. Introduction

The Moldovan rule offers the legal possibility of unilateral termination of the free contract, in our case the donation, from the donor, after the donation has been executed if he is no longer able to provide proper maintenance and fulfill his legal obligations of maintenance to third parties.

In addition to ingratitude, the Russian Federation also provides for other situations when the donation can be revoked, such as: submitting the donated asset by the donor to the risk of mistreatment provided that the given asset represents a significant non-material value to the donor; here it would refer to collections of certain things or even to a good passed from generation to generation; if the donation was terminated by a licensed legal or natural person using funds directly related to its activity within half a year prior to the initiation of insolvency proceedings.

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The donation contract is governed by Civil Code, Book III Title III on the *categories of obligations*, Chapter III - *About donation*. As mentioned, the donation contract is irrevocable. Once concluded, it can only be dissolved by mutual consent of the parties, the irrevocability of the donation is intended, on the one hand, to draw the donor's attention to the importance of the act by which he voluntarily decreases his patrimony free of charge and, on the other hand, to ensure adequate protection for the right of the donor, which cannot be permanently threatened by the possibility of the revocation by the donor. In addition, the principle of irrevocability of the donation is also a guarantee for third parties who contract with the donor regarding the donated asset. (Chibac, Băieşu, Rotari, & Efrim, 2005, p. 89)

2. Revocation of Donation for Ingratitude

The Law of the Republic of Moldova provides that the revocation of the donation may be performed as a civil sanction, in case of ingratitude and non-execution.

By virtue of its character of liberality made with the intention of gratification, the donation contract generates a legal duty of the grateful donor. By enhancing the donor's heritage free of charge, the donor is entitled to await the donor, if not a gratitude, then at least loyalty, manifested by abstaining from committing inappropriate deeds. (Braghinchi & Vitreanschi, 2000, p. 373) According to art. 835 Civil Code, *the donation may be revoked if the donor has assaulted the life of the donor or a close relative of the donor, if he is guilty of another unlawful act committed to the donor or a close relative of the donor, situations that indicate serious ingratitude, or refuses without due cause to give the donor the indebt maintenance*.

The revocation of the donation for assault on the life of the donor or his close relatives may occur when there has been an attempt by the donor to physically suppress the donor or some of his close relatives. Close relatives of the donor are considered members of his or her family, as well as relatives up to the fourth degree inclusive. The fact that the donor committed an assault on the lives of the nominees is a serious deviation from his duty of readiness and it is natural for the donor to be endowed with the right to revoke the donation in this case. By attempting the life, the willingness of the donor to kill the donor or some of his close relatives is understood. For this reason, it is indifferent whether there was only an attempted murder or the deed was consumed, and no criminal conviction of

the donor for the deed is required. It is sufficient for the court to determine the intention of the donor to kill. In situations where the assault on life has been committed imprudently or irresponsibly, we believe that the donor will not be able to demand the revocation of the donation.

Another reason for revoking the donation for ingratitude is the donor's committing other illicit deeds to the donor or his close relatives, which attest to grave ingratitude. This includes any unlawful act, manifested in the form of aggressions that harm bodily health or integrity, injuries, insults, offenses committed against the donor or his relatives, and which shows serious ingratitude. Because the law does not exhaustively mention illicit acts that denote serious ingratitude, their appreciation will be made by the court.[1]

The ultimate ground for revoking the donation for ingratitude provided by law is the donor's unjustified refusal to provide the donor with the due maintenance. It is considered to be the obligation of the donor to give the donor maintenance (food, clothes, etc.) within the value of the donated goods when the donor is deprived of the means for his / her own maintenance. The refusal to provide maintenance will be considered as ingratitude when the donor needed maintenance and asked for it from the donor, but he, although he had the opportunity, refused to offer it without a sound justification. If the donor has relatives or other persons required to maintain it on a legal or contractual basis, he will not be able to claim the revocation of the donation for non-maintenance from the donor. In this case, he may request the rescission of the contract under the conditions of art. 836 of Civil Code.

[1] On March 25, 2011 N.U. filed a lawsuit against L.U. regarding the revocation of the donation contract. In the grounds of the action, the applicant indicated that, based on the judgment of the Râşcani District Court, Chisinau, on 30 September 2010, he was ordered to be evacuated from the apartment where he resided with the defendant and donated him the share of the said apartment. The applicant considers that by evacuation at the request of L.U. of the donor in the apartment that was the subject of the donation, the defendant committed a deed which shows a serious ingratitude to the donor. It is not apparent from the donation contract that the donation was conditional on the fulfillment of certain obligations. Moreover, it does not follow from the content of the contract that N.U. is to live in the disputed apartment after his donation. So the well-founded courts have concluded that the appellant did not prove that the donation was conditional and the intimate committed a serious ingratitude to N.U. The appellant's argument that he is of advanced age and has no other place of living, by accepting the donation of the share of the apartment, he took the risk of the consequences. Thus, for the reasons given and having regard to the fact that the courts have examined the matter in all respects, the Court examined and assessed the evidence adduced, to which it had been given a fair assessment, the Civil, Commercial and Administrative Board of the Court Supreme Court comes to the conclusion of considering the NU's appeal as inadmissible. (file No. 2ra-2501/12 the full complement of the Civil, Commercial and Administrative Courts of the Supreme Court of Justice). www.csj.md.

In relations between the parties to the donation contract, revocation for ingratitude produces a retroactive effect. The donation is considered to have not existed and for this reason the donor is obliged to return the donated asset. Since the revocation of the donation for ingratitude is a personal sanction against the donor, this (revocation) will not affect the rights of third parties. If the asset does not exist in nature or has been alienated, the donor may be required to pay the value in accordance with the rules governing unjust enrichment (Article 1389-1397 of the Civil Code).

The term for the revocation of the donation on grounds of ingratitude is one year after the donor has learned of the commission of the illicit deed which is the subject of the revocation. Leaking the term deprives the donor or other person entitled to request the revocation of the donation. If, within the one-year term, the revocation of the donation for ingratitude has not been requested, it is presumed that the donor has been forgiven. In cases where the donor has committed successively several illicit acts for which the donation may be revoked, the term will be calculated from the moment the donor learned of the last of the illicit acts.

The revocation action is a purely personal action, only the donor is entitled to appreciate the ingratitude of the donor and to forgive him for the committed act. Starting from this, only the donor has the right to request the revocation of the donation for ingratitude. The heirs of the donor become the holders of the right to revocation action only when the donor has died without the action until the expiration of the term of one of the auctions at the time of the illicit act committed by the donor or when the action was brought by the donor, he died before the end of the trial.

For the same reasons, the action of revoking the donation cannot be infringed on the heirs of the donor. Since the revocation of the donation for ingratitude is a civil sanction, it can be applied only to the person guilty of committing it, and to the heirs it cannot be imputed the grantee's fault.

2. Revocation of the Donation for Failure to Perform the Task

In accordance with art. 834, par. 3 Civil Code, if the grantee fails to fulfill the task, which was expressly stipulated in the contract[1], the donor has the right to revoke

[1] B.V. filed a lawsuit against G.S. on October 16, 2009 regarding the revocation of the donation contract. In the grounds of the action, the applicant stated that on 21 August 2008 he had entered into a donation agreement with the defendant, under which he gave the "donor" the ½ ideal share of the

the donation. The revocation of the donation on this legal basis is possible under the same conditions and produces the same legal effects as the resolution of synallagmatic contract. The revocation of the donation for failure to perform the task does not operate by law, but by a written statement to the grantee. In case of litigation, the revocation of the donation will be decided by the competent court.

The right to request the revocation of the donation belongs only to the donor and his creditors through oblique action (article 599 of the Criminal Code) and to his / her legal successors who benefit from the effects of the revocation. If the task was instituted in favor of a third party, it cannot demand the revocation of the donation, but only the accomplishment of the task, in accordance with the provisions of paragraph 2, art. 834 Civil Code.

The revocation of the donation for the realization of the task produces the effects stipulated in art. 738 Civil Code. As an exception to the principle of irrevocability, the legislator however provides for cases where the donor may request the rescission or nullity of the donation contract.

flat's dwelling. Subsequently, it was to be subject to cadastral registration, but this was not done because previous drafting of the B.V. and G.S. have verbally agreed that the defendant assumes the material assistance obligations expressed in the proper maintenance of the family and the common son G, but despite this, the defendant has failed to fulfill his obligations. Thus, he asked the court to revoke the donation contract. The reasoning of the appeal states that the findings of the court of appeal set out in the decision are inconsistent with the circumstances of the case and the substantive rules of law have been misinterpreted. Examining the grounds of appeal in relation to civil matters, the Supreme Court of Cassation and Civil Service Tribunal's panel considers that the appeal is inadmissible for the following reasons. The assertion of B.V. that the contract was concluded on condition that the husband to provide him with material assistance and maintenance to her and to her child was not proven to be admissible and pertinent evidence, all the more so since she is working in Italy with the child and does not need the help of the respondent. It is clear from the text of the contract that the parties did not condition the contract by which the dwelling was transferred free of charge to G.S.'s property with some bonds that he had to make in favor of B.V.
These factual and legal circumstances of the dispute have been correctly evaluated and appreciated by the court of appeal, which grounded the judgment of the first instance and dismissed the action. In that context, the appellant's arguments that the findings of the appeal court set out in the decision are inconsistent with the circumstances of the case; that the substantive rules of law have been misinterpreted and that the file is declarative and lacking probative evidence. For the reasons given, and having regard to the fact that the appeal court has examined the matter in all its aspects, correctly verified and assessed the evidence presented, the Civil and Administrative Complaints Board completes the conclusion of the appeal lodged by B.V. as inadmissible. (file No. 2ra-1417/10 the Civil, Commercial and Administrative Court of the Supreme Court of Justice) www.csj.md.

3. The Resolution of the Contract in Case of Need

Art. 836 Civil Code provides for the possibility of a unilateral resolution of the donation agreement if, after the donation has been executed, he is no longer able to provide proper maintenance and to meet its legal obligations of maintenance to third parties.

Due to the fact that the resolution in case of a state of need is required after the donation contract has been executed and the grantee has become the holder of the right received, by way of derogation from the provisions of art. 738 Civil Code, the law limits the effects of the resolution only to the return of the donated assets that the donor still possesses. If the assets no longer exist in nature or have been alienated, the rescission of the donation agreement is inadmissible, the donor being denied the right to claim damages. The resolution for the foreseen grounds does not affect the rights of third parties regarding the donated asset, regardless of whether the right has been passed to third parties free of charge or for consideration. In cases where the asset is in the possession of the grantee, but is enforced by third party rights, the donor will accept the restitution of the property, without being able to claim damages.

The state of need that the donor has reached after the donation contract must not be conditioned by his guilty behavior. If the donor intentionally or gravely caused the state of need, the rescission of the donation contract is inadmissible art. 836 Civil Code, par. (2).

The legislator provided this possibility for cases where the donor is no longer able to provide adequate maintenance because of the fact that the relatives or other persons required to maintain on the basis of a legal basis cannot demand the revocation of the donation or the fulfillment of their obligation.

4. Nullity of the Contract in the Case of Illnesses Presumed to be Fatal

According to art. 833 of Civil Code, the donation contract was concluded during a disease presumed to be lethal to the donor, followed by its recovery, may be declared null, at the donor's request. In this case, the legislator fixes the presumption that the conclusion of the contract is dictated by the donor's awareness of the inevitability of his death. (Chibac, Băieşu, Rotari, & Efrim, 2005, p. 92)

It is presumed to be fatal those pathological processes (illness), regardless of their nature, which affect the human body and inevitably lead to the death of the sick

person. The presumption of lethality of the illness must be medical and not merely suspected by the grantee or other persons.

In order to be able to request the nullity of the donation contract concluded during a fatal presumed illness, the donor's recovery must be such as to eliminate the threat of death that is imminent. Partial recovery, which only removes the occurrence of death over a short period of time, it does not give the grantee the right to request the nullity of the contract.

The grantee will be able to request the nullity of the donation contract during the general prescription terms. The nullity implies a civil legal act concluded with the non-compliance with the validity conditions. The diseases presumed to be lethal to the grantee, we suppose, is not a case that would invalidate a civil legal act, unless this disease had an effect on capacity. This could have been included by the legislator in the legal causes of the revocation of the donation.

5. The Revocation of the Donation in the Russian legislation

The donation contract being used many times to transmit a property right, does not give in to other types of widespread civil contracts. In connection with this, the Russian legislation dedicates the donation a whole chapter in the civil code, including 10 articles (from 572 to 582) which regulate this type of legal acts.

In one of these articles, 578, questions are also considered regarding the revocation of the donation, which is essentially a single law phenomenon in Russian civil law.

From the legal point of view, the revocation of the donation presupposes the procedure in which the donated asset returns to the grantee's patrimony, in the cases stipulated by the law in art. 578 Civil Code:

1. If, following the conclusion of the donation agreement, the grantee has committed illicit acts in relation to the donor, namely: intentionally committing bodily injury, disrespecting the life of the donor or his / her family members and close relatives. If the donor has died as a result of the assassination, the heirs have the right to revoke the donation;

2. If the grantee submits the donated asset, as a result of his actions, to the risk of peril. Provided that the given asset represents for the donor an important non-material value;

3 If the donation contract has been concluded by a legal person or an authorized natural person using funds directly related to its activity during the half year before the initiation of insolvency proceedings;

4. If the donation agreement provides for the condition that the donated property will return to the donor's patrimony if the grantee dies before the donor.

A serious reason for revoking the unilateral donation, on the donor's will, is the grantee is committing an assault on the life of the donor or his relatives. According to art. 30, 105, 111, 112, 115, 116 of the Criminal Code of the Russian Federation of 13.06.1996 such offenses are considered criminal offenses.

A person's assault on an individual's life is an unrealized crime (which has not been carried through). According to art. 30 of the Criminal Code the assault on life is considered an offense that can be accomplished by both action and inaction, in our case committed by the grantee.

The attempt to someone's life can also be accomplished through psychic action on a person. This may be intentional committing a psychological trauma to a person suffering from chronic heart disease, being the purpose of suppressing his life.

The reasons why the donor has decided to commit the crime can be varied, but for revoking the donation they are irrelevant.

According to art. 578, the civilian donor has the right to demand the revocation of the donation not only if the person who has been grappled has assaulted his life, but also to the life of his family members and other close relatives. If the grantee has achieved his purpose by killing the donor, the right to demand the revocation of the donation lies with his heirs.

We should note that the reason for the revocation of the donation may only be the intentional killing of the donor, so causing the death due to negligence cannot attract the sanction of revocation. The donor may revoke the donation by law, unlike his heirs who can only revoke it by acting in court.

Also, the donor may cancel the donation if the donor has intentionally caused bodily injury under par. (1) art. 578 of the Civil Code. In this case, the nature and gravity of the injuries are of no importance. Here are considered bodily injury caused by strikes or any other acts of violence that cause physical injuries requiring or not medical care. It is important that they are committed intentionally.

As with donor killing, the donor's injury to the donor through negligence does not give the donor the opportunity to revoke the donation.

According to art. 577 of Civil Code if the donor committed an assassination on the life of the donor, one of the members of his / her family or close relatives, or intentionally caused bodily injuries, and until that time the donation of donated property has not taken place, the donor has the right to refuse to surrender.

The donor may also ask for the revocation and if the donor uses the donated good to put him in danger.

This reason may be the reason for the revocation of the donation if the object of this contract is a good material and not a property right.

The good in question must necessarily have a non-marital value for the donor, for example, it may be a collection that the donor has gathered for a long time, or a family relic, etc. In this case, the revocation is not lawful, but it is done by the court, because different opinions can arise over the value of these goods, which inevitably leads to contradictory opinions.

First, it is necessary to establish the non-property value of this asset. Secondly, it is necessary to prove that the donor knew what value the good has for the donor, which obliges him to behave thoughtfully towards that object and ensure its integrity. It is determined whether in reality the donor's behavior towards the donated good raises the risk of the donation. The donor has the obligation to prove the above.

Another ground for the revocation of the donation provided by par. 3, art. 578 Civil Code is the only case where the right to request the revocation of the donation can be returned to a third party interested in the contract. If the donation is made by an authorized natural person or a legal person in violation of the “bankruptcy” law, then the court may revoke the donation. It is assumed that persons interested in this case may be both the creditors of the natural or legal person (who have declared bankruptcy) and the state organs controlling the economic activity of the market. The legislator sought in this case to secure the interests of creditors by preventing bankrupt persons from concealing his fortune by concluding a donation contract in favor of third parties.

In this case, the contract may be revoked if the following cumulative conditions are met:

a) The donation contract was made in violation of bankruptcy law;

b) If the contract was concluded on the account of funds directly related to the activity of the authorized legal or natural person;

c) The donation contract is concluded within six months prior to the initiation of the insolvency procedure by the authorized person or legal entity.

The last case provided by art. 578 of Civil Code. For revoking the donation is not related to certain negative factors.

According to par. (4) of the same Article, the donor has the right to revoke the donation if the donor survives the donor. However, such a donor's right exists only if the parties have provided for such situations by including such a clause in the contract at the time of its conclusion. We must mention that revocation does not take place automatically, so it is not a revocation.

Every citizen can realize his / her right, which is why the grantee may request the revocation of the contract or may not use this right. In the latter case, the donated asset passes into the patrimony of the heirs of the donor.

The revocation of the donation is admitted exclusively only in the cases mentioned in art. 578 of the Civil Code. This sanction produces retroactive effects so that the parties are put in the situation prior to the conclusion of the donation contract. That is why in all cases of revocation the donor has the obligation to return in nature to the donor all the assets received if they were preserved and were in his patrimony until the moment of revocation. If the assets were alienated by the donor, the restitution in nature is no longer possible. If it is demonstrated that the donor has alienated or destroyed the asset with the intention of avoiding his restitution, the donor has the possibility to claim damages in court.

To the grantee there are not transmitted the fruits obtained by the donor, as they are considered by the legislator as being the property of the grantee.

According to art. 576 of the Civil Code it cannot demand the revocation of the donation for ordinary assets of low value. Ordinary assets are considered to be those whose cost does not exceed the value of five minimum wages.

Article 577 of the Civil Code gives the grantee the possibility to unilaterally refuse the delivery of the property even if the donation contract has been validly concluded. According to paragraph (1) of the same article, *the grantee has the right to refuse unilaterally the performance of the donation contract, which stipulates the promise of transmitting in the future to the grantee the property or the right provided for or its issuance of patrimonial obligations if after its conclusion the*

patrimonial or family situation, there have been changes in the health of the donor in such a way that the fulfillment of the contract under the new conditions will lead to a worsening of his / her living standards.

6. Conclusions

If we are to make a parallel between the norms that set the right to unilaterally refuse the donation between the grantee and the donor, we will find as a surprise that grantee has the right to refuse the donation without being relevant the causes that generate it. The situation is different if the donor does not want to hand over the asset. The law confers this right (to refuse the handing over of the asset) in the cases expressly provided by the law: changing the patrimonial situation, family or health situation in such a way that the fulfillment of the handing over obligation under the new conditions will lead to an essential decrease in the living standard of art. 577 Civil Code, par. (1).

The change in the patrimonial situation of the donor can be caused by a significant decrease in income, loss of salary, loss of part of his wealth due to natural disasters, etc. By modifying the family situation we understand divorce (which is followed by legal sharing), marriage, birth or adoption of a child. In terms of health, worsening may be invalidity, a heavy illness that requires long and expensive treatment, etc. However, none of the situations listed may be grounds for refusing to transfer the property if it does not meet the following conditions:

1) such a situation occurred after the conclusion of the donation contract. It must be unpredictable. Until the contract was concluded, none of the parties could have assumed the occurrence of these causes.

2) the donor's situation has changed in such a way that the performance of the contract will lead to a significant decrease in its standard of living.

3) there must be a causal relationship between the "significant loss of living standard" and the change in family or patrimonial status or the state of the donor's health.

Unless these requirements are met, the donor will have the right to refuse to grant the donation contract unilaterally. The refusal to make the donation contract must be in the same form as the donation itself.

Compared to the donor, who, if he does not want to receive the donated asset, has to repay the actual damages he has created, the donor's refusal does not attract such consequences. The person who is gratified by the donation is deprived of the right to claim damages under article 557 paragraph (3) of the Civil Code.

The unilateral refusal to grant donation by the donor may also take place in the cases provided for revocation in art. 578, par. (1). We have to make a difference between the unilateral refusal to fulfill the donation contract and the revocation of the donation regulated by art. 578 Civil Code as follows:

the unilateral refusal to execute the donation is possible only until the property is handed over, whereas the revocation rules apply to the already executed contract.

the refusal is only possible in the case of consensual contracts, while revocation is permitted for both the consensual and the real contracts.

the right of unilateral refusal belongs to both parties and the one to revoke the donation only belongs to the donor.

The case of the donation promise is regulated by art. 581 of the Civil Code, par. 1 establishes that the right of the donor who has promised to donate an asset is not passed on to his heirs (legal successors). This is explained by the fact that the donor's intention to donate in most cases is based on the relationships between the donor and the grantee. The donor intends to convey the asset not to anyone but to a designated person. That is why the general rule stipulates that in the case of the donor's death until the donation agreement is executed, the donor can no longer be bound. The promise is considered complete, the heirs of the donor do not have the right to ask for the promised asset. However, at the time the donation promise is concluded, the parties may stipulate that the right of the donor to whom the donation was promised is passed on to his / her heirs in case of death. When in the capacity of grantee there are legal persons, state or municipal education institutions, which have ceased to exist until the moment of the realization of the consensual donation contract, there are also applied the provisions of par. (1), art. 581 of the Civil Code. According to paragraph (2) art. 581 of the Civil Code the obligation of the donor, who promised the donation of the assets, is transmitted to its legal heirs. According to the civil legislation governing the inheritance, the inheritance mass includes not only the rights but also the obligations of the donor, one of which could be the execution of the donation contract.

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