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DONATION OF PROPERTY VERSUS ANNUITY – ANALYSIS OF VALIDITY OF APPLYING A SPECIFIC KIND OF CONTRACT IN FAMILY RELATIONS

Summary
The paper presents a comparative study of donation contract and annuity contract and their legal effects. Main emphasis is put on the time when a property owner takes a decision about entering into one form of legal construction or the other. The author of the paper discusses cases in which the donor's expectations may, in the end, fail to overlap with the legal state defined by a given form of contract, which is often confirmed by life practice. The paper includes specific references to the position of the donor, annuitant and their contractors. The paper calls for a wider access to legal advice and relevant information for property owners who consider making a donation.

Key words: *annuity, donation, ownership of property, family relations, aim of the contract*

In the course of my legal career[1] I often encounter situations when clients present me a contract of donation (gift) for review and explain the circumstances in which it was drawn up and the reasons behind their decisions. In many such cases it turns out that clients disposed of their most valuable assets – as most of the contracts concern donations in form of real estate- in a way which may bring about serious consequences for donors and their families. It becomes clear that they wrongly understood or were not aware of the results the contract of donation of property really has on their own legal position and legal position of the donee. It refers to the effects that can already be felt by the donor or effects that may occur in the future for example during the property partition proceedings or settlements of legitime after the death of the donor. The lack of knowledge about the consequences of a donation contract is very often manifested in the following assumptions of donors:

- donation contracts can be easily cancelled;

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- the donor retains the right to decide about the donated property;
- there is a special bond between the donor and the donee who is in a way "indebted" to the donor and this "debt" has a complex structure.[2]

The above mentioned assumptions do not find reflection in reality especially when we think about family relations (as obviously a considerable number of donations is made within close family ties). Moreover, the donors often have exaggerated expectations with respect to their donees. The analysis of the motives often expressed by donors proves that a more effective legal form would be the annuity contract not donation. To justify this statement I will now analyze relevant regulations and prove that in cases of intended act of donation it is worth considering yet another option of a named contract.

The contract of donation is regulated by articles 888 – 902 of civil code[3]. Under the donation contract the donor is obliged to provide gratuitous benefit from his or her property for the donee. Thus, donation is a manifestation of the donor's generosity for which he/she does not expect nor is entitled to equivalent. The motifs behind this act are not relevant[4], the only thing that matters is the shift in ownership right of the property from the donor to the donee, the gratuity, however, must be

[2]The paper discusses such cases in which donors are not aware of the full impact of the donation agreement or do not have its full picture – but not in the sense of lack of intent to proceed with the donation or in a mistake regarding the content of act of law.

[3]Information on the notion of donation and characteristic features of donation contract see: S. Grzybowski, [in:] *System prawa prywatnego*, vol.III, part.2, par.23 ; J. Ciszewski, *Kodeks cywilny. Komentarz*, 2nd edition, LexisNexis 2014; L. Stecki, *Darowizna*, Toruń 1998; and also: decision of the Supreme Court 6 September 2013, V CSK 417/12 Lex no 1402680, decision of the Supreme Court 20 October 2006, IV CSK 172/06, Lex no 564478, resolution of the Supreme Court 19 December 1986, III CZP 92/86, OSNC 1988/1/9, decision of the Supreme Court 21 May 1979, I CR 98/79, Lex no 8184, resolution of the Supreme Court 30 April 1977, III CZP 73/76, OSNC 1978/2/19.

[4]Such motivation may be a subject for evaluation and may be relevant in cases provided for in Article 901 of civil code
(Act of 23 April 1964, civil code, consolidated text Journal of Laws 2014, item 121, as amended) – with respect to permissible admissibility of termination of donation contract for the sake of motives on the donor's part. Motivation may be important in evaluation of situations affected by Article 902 of civil code which stipulates that donation may not be revoked when the donation satisfies an obligation resulting from principles of social coexistence (see: decision of Supreme Administrative Court of 17 May 2006, II FSK 716/05, LEX no 282605).

intentional. The gratuity means that the donee is not obliged to reciprocate with any kind of provision for the donor.[5] The donation contract is binding and unilateral.

All donation contracts referred to in the paper are related to real estate and are contracted in the form of notarial deeds[6]. However, donations may take a form of various provisions such as: release from an obligation, transfer of rights, monetary payments, granting some rights in favour of the donee, expectative to acquire some rights in the future[7].

The annuity contract, regulated by articles 908 - 916[8] of civil code, is binding, paid and mutual. Additionally, it is also an aleatory contract because the length of the contact is determined by the length of the annuitant's life, and this cannot be predetermined. Under annuity contract the donee in return for transfer of ownership of property is obliged to provide the donor with lifetime maintenance and subsistence[9]. Unless otherwise provided for in the contract, the lifetime maintenance embraces provision of the following: housing, food, clothes, electricity and heating fuel as well as necessary care and medical assistance in donor's sickness and covering the costs of funeral according to donor's local burial traditions. Thus, in the version assumed by the legislator, annuity contract obliges the donee to provide the donor with lifelong maintenance and subsistence[10]. Often annuity contracts additionally guarantee donors the right of usufruct of part of the property, the right of habitation or other easement or recurring payments made by the donee in cash or in things

[5]Gratuity of donation has also other consequences, for example the donor is treated more leniently with respect to regulations of the civil code for liability for failure to perform or improper performance of obligation (art. 891 paragraph 1 c.c.), and in case of delays in performing monetary obligation does not pay interest on late payments after due date (in accordance with Article 891 paragraph 2 c.c.).

[6]Otherwise the contract is invalid in compliance to Art. 890 par.2 c.c. with respect to Art. 158 c.c. Conclusion of donation contract as a rule requires a notarial deed otherwise it is null and void with respect to the donor's statement. However, a donation contract concluded without the notarial deed is valid when the promised provision was delivered (Art. 890 paragraph 1 c.c.).

[7]See: decision of the Supreme Court 26 June2001, I CA 1/01, OSNC 2002/2/26.

[8]Information on the notion and characteristics of annuity see: J.Gudowski (ed.), *Kodeks cywilny, Komentarz*. Book III. *Liabilities*, LexisNexis 2013; J.Panowicz-Lipska, *System Prawa Prywatnego*, Vol. 8. *Prawo zobowiazań* – detailed part, C.H.Beck 2011.

[9]See: decision of the Supreme Court 15 October 2014, V CSK 653/13, Lex 1514819.

[10]For scope of this obligation see: judgement of the Supreme Court 9 May 2008, III Csk 359/07, Lex 453125.

specified as to their kind. In such a case the above mentioned elements constitute the essence of the annuity right instead.[11]

Both donation and annuity contracts share the same effect – the right of property is transferred to another person[12], but regulations of these contracts foresee considerable different positions of the donee and donor. It must be stressed here, that donation contracts often include additional provisions under which the grantee is obliged to grant the donor the right of habitation or the right of usufruct of part of the property – however such provisions are ultimately dependent on the will of the donee. The donor may also write down in the donation contract an order[13] requesting from the donee to provide him/her with care and medical assistance in sickness and in old age but the impact of such an order is much weaker than the benefits coming from the position of annuitant[14].

Different positions of donor and donee in the donation and annuity contracts result from elementary differences in the discussed contracts[15]. The donor, according to the assumptions of the legislator, should not

[11]For description of annuity agreement see: Z.Radwański, [in:] *System Prawa Prywatnego*, Vol..III, part 2, par. 135-136; J.Ciszewski (ed.), *Kodeks cywilny. Komentarz*. Wyd. II, LexisNexis 2014.

[12]Also shares in the joint ownership of the property, see: decision of the Supreme Court 30 March1998, III CKN 219/98, Lex no 56814.

[13]Regulated by provisions of articles 983 - 895 of civil code.

[14]An order is a request to undertake or discontinue any action when the profits may be reserved for the benefit of the donor, a third party or even the donee. The order may refer to payments of monetary benefits, custody, initiating treatment etc. The order however, does not constitute the source of credibility that the order must be performed. Moreover, pursuant to article 894 paragraph 1 of civil code, the donor may demand performance of the order if he/she fulfilled the obligation under the donation contract – then it was stipulated that the donor may submit a separate declaration of will to the donee in this respect. The nature of impact of the order is a subject matter for a dispute in the doctrine. For sure, however, imposing an obligation to pay a benefit cannot deprive the donation of its gratuitous character and cannot ruin the essence of the donation. See: decision of the Court of Appeal in Katowice 13 February 1995, I ACa 656/94, LexisNexis no 320535. Similarly in cases of using elements of donation in payment agreements (see: decision of the Supreme Court 12 October 2001 V CKN 631/00, OSN 2002, No 7-8, item 91).

[15]A reference to diametrical differences in the contracts of donation and annuity is to be found in the grounds to the judgement in the Court of Appeal in Białystok dated 6 March 2015, I ACa 858/14, Lex no 1661139.

have prior expectations from the donee with respect to the gift[16]. Under annuity contract the donor has a perfect right and a guarantee to make demands[17], which puts the donor in a much more comfortable position because he/she did not dispose of his property gratuitously[18]. Of course it does not mean that the worth of the benefit due for the donor shall be equal to the worth of property under the contract. As a rule, in general calculation, the value of the annuitant's rights is lower than the value of the property although normally under mutual contract the provisions must be equal[19]. No equivalence of provisions in the annuity contract is, however, permissible in response to randomness of such a contract – upon signing the contract the parties usually may not be able to determine the length of their contractual relationship. Although there may be cases in which the annuitant will not suffer any detriment so as to the contract being mutual, for example when he/she is granted the right of usufruct which will provide him/her with substantial profit.

The positions of donor and donee are entirely different and it is difficult to put them together. However, if it is the donor's hidden motivation to obtain certain "tokens of gratitude" from the donee, it is definitely more profitable for him/her (the donor) to enter into annuity contract. This hidden motivation of which the donor not always is fully aware, is often manifested in the belief and conviction that after the transfer of rights to the property to the donee, it becomes the grantee's duty and obligation to provide for the donor's needs should he/she fall into scarcity. It must be emphasized however, that the notion of scarcity

[16]On executory consideration see: Ł.Węgrzynowski, *Ekwiwalentność świadczeń w umowie wzajemnej*, Lex 2014 and decision of the Supreme Administrative Court in Warsaw 3 December 2014, II FSK 2194/12, Lex nr 1519725.

[17]He/she may, for example, bring legal action to receive payment, protection of ownership, protection of easement.

[18]On payments resulting from annuity contract and how to establish the annuitant's revenue see: the decision of the Supreme Court of Appeal in Warsaw dated 3 December 2014, II FSK 2194/12 Lex no 1591725.

[19]No equivalence of benefits in annuity contract may constitute grounds for attempts to cancel such agreement in legal proceedings (for example by reference to a defect in the declaration of will in the form of an error). In such a case also the regulation of exploitation may apply (article 388 of civil code) however, the complexity of issues in evaluation of the situation has been proved in the sentence issued by the Court of Appeal in Warsaw dated 17 September 2014, VI ACa 1851/13, Lex no 1544990.

on the grounds of jurisdiction and doctrine is clearly defined[20] thus, not every shortage in life necessities shall be legally seen as a sign of scarcity. On the contrary, only the most basic needs of the donor can be treated as a legitimate claim. These needs only include elementary costs of upkeep (or upbringing) so expecting full provision and maintenance at the donee's expense, seems to be ultimately ungrounded. Moreover, the donor's maintenance costs which the donee will potentially be obliged to cover will be calculated within the boundaries of still existing enrichment[21] but if the act of donation took place many years before, there may be no grounds for awarding a benefit (in some cases the donee for example sold the property and spent all the money; in other cases the money obtained from the sale of the property was used as an investment in another property). Regulation of article 897 of civil code is therefore legitimate *in fine* as it stipulates that the donee may be released from the obligation to provide for the donor proportionally to his/her justified necessities or from performing statutory maintenance obligation by returning the equivalent of enrichment to the donor. The value of the enrichment is understood as the value existing at the moment when the donor filed the claim. In this situation it is frequently easier for the donee to offer the donor a given sum of money than permanently provide for him/her in the years to come. It all depends on calculating the value of enrichment and contrasting it with the estimated costs of the donor's maintenance during hypothetically assumed period of time.

Deterioration of relationship between the parties under the two kinds of discussed contracts provokes situations which can be legally resolved in different ways. Because the annuity contract is mutually binding, the legislator stipulated a certain "equivalent model" defined in article 913 paragraph 1 of civil code[22], which allows either party to file a petition to

[20]On the notion of scarcity see: A. Partyk, *Pojęcie „niedostatku" jako podstawy obowiązku alimentacyjnego*, Lex 2014 and S. Babiarz, *Spadek i darowizna w prawie cywilnym i podatkowym*, rozdz.11, LexisNexis 2008.

[21]In accordance to the wording of Art. 897 c.c.: 'If after the act of donation the donor falls into scarcity, the donee is obliged, within still existing enrichment, to provide the donor with resources which, according to the donor, he/she lacks to maintain his/her justified needs or to fulfill the statutory maintenance obligation. (...)".

[22]See: decision of Court of Appeal in Białystok dated 20 February 2014, I ACa 758/13, Lex 1437906, decision of Court of Appeal in Lublin dated 28 November 2013, I ACa 542/13, Lex 1416183, decision of the Supreme Court dated 15 July 2010, IV CSK 32/10, Lex nr 885022, decision of the Supreme Court 10 September 2009, V CSK

the court requesting a judgement to change a part or all rights under annuity agreement and replace the rights with life allowance (annuity)[23] whose value must correspond to the value of rights under the agreement[24]. The premise for such a request are conditions in which it is impossible for the parties under the contract to remain in direct contact (and being in direct contact is a constitutive feature of annuity as the annuitant is, as a rule, accepted into the donee's home). What's important, the regulation mentions just any reason which prevents the parties from remaining in direct contact, thus culpable reasons, situations caused by a given action or omission as well as circumstances beyond their control are included as valid. This offers a wide scope of circumstances in which the postulated change of annuitant's rights into allowance (annuity) may be considered by court; consequently, both parties are guaranteed certain freedom and flexibility with the contract being still in force.

A donation contract does not offer such solutions. Deterioration of relations between parties under the contract, in principle, does not have any impact on durability and execution of the contract, unless the condition under article 898 paragraph 1 of civil code is fulfilled. This condition is called *glaring ingratitude* committed by the donee[25] in which case the donor may cancel the donation[26] even if the act of donation has already taken place.[27] This situation brings about different legal effects. The moment the donor files a written statement to the donee in which the gift is cancelled, a claim arises on the part of the donor against the donee to return the gift of property[28]. However, not every wrongful behavior of

58/09, Lex 564860, resolution of the Supreme Court 30 May 1980, III CZP 27/80, OSNC 1980/12/230.

[23]Annuity in meaning of article 903 of civil code, see: decision of the Court of Appeal in Warsaw dated 20 December 2013, VI Aca 740/13, Lex no 1430894.

[24]See: A. Sylwestrzak, *Zamiana uprawnień dożywotnika na rentę*; GSP 2010/2/207-220.

[25]It is also possible to consider the effects of the grantee's failure to fulfill the order (see Article 895 of civil code).

[26]See: A. Sylwestrzak, *Odwołanie darowizny wskutek rażącej niewdzięczności obdarowanego*, „Gdańskie Studia Prawnicze", 2003, No 10.

[27]We should remember, however, about an exceptional provision of article 902 of civil code, which stipulates that the regulation on cancellation of donation does not apply if the donation does justice to the obligation resulting from the rules of social co-existence.

[28]In contrast to donations such as chattels, in this case *ex lege* return of rights to the property to the donor does not apply. The return of donation in the form of property

the donee is treated as a glaring ingratitude, what *expressis verbis* results from the name of the circumstances. Donors are often unaware of this fact and they remain convinced that each conflict in the relationship between the donor and the donee will constitute grounds to cancel the donation contract.

There is rich case-law in this respect and it is very precise too[29]. To quote just a few samples of courts' decisions: "donation creates an ethical platform between the donor and the donee who is morally obliged to feel gratitude. Violation of this obligation through committing serious transgressions is a subject to legal sanctions provided for in article 898 paragraph 1 of civil code which stipulates the donor's right to cancel the donation. The sanction may be applied when the donee has committed an act of glaring ingratitude which is understood as behaviour which in the light of existing moral and legal rules classifies as ingratitude of qualified degree. (...)"[30]; "Glaring ingratitude in case of cancelling a donation must be proved by considerably ill will aimed at causing a harm to the donor or his/her property. Deliberate and malicious violation of rules resulting from personal relations (...)"[31]; "(...) This ingratitude may be confirmed only after obtaining full picture of circumstances referring both to the donee and the donor, all causes of the conflict between the two parties must also be determined. About existence or non-existence of grounds for cancelling a donation in each case decide specific circumstances considered against the usual social code of a particular community, the circumstances may not exceed the incidents of life conflicts. (...)"[32].

Glaring ingratitude is always evaluated against the overall view of circumstances in each individual case because there is no single model for this premise. What is important, the court must examine in such cases

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proceeds on legal path as an action aimed at forcing the grantee to submit a statement of will in which he/she declares to return the rights to the property back to the donor.

[29]See for example: decision of the Supreme Court 6 December 2012, IV CSK 172/12 Lex No 1284764, decision of the Supreme Court 17 November 2011, IV CSK 113/11, Lex No 1111009, decision of the Supreme Court 15 June 2010, II CSK 68/10, Lex No 852539, decision of the Supreme Court 19 March 2009, III CSK 307/08, Lex No 492154, decision of the Supreme Court 1 December 2004, III CK 63/04, Lex No 589985, decision of the Supreme Court 15 May 2002, II CKN 808/00, Lex No 1171683.

[30]Decision of the Supreme Court dated 9 October 2014, I CSK 556/13, Lex no1541042.

[31]Decision of the Court of Appeal in Lublin dated 25 March 2015, I ACa 836/14, Lex no 1668617.

[32]Decision of the Court of Appeal in Białystok dated 19 February 2015, I ACa 787/14, Lex no 16661132.

whether the conflict between the donor and the donee was not inspired or stirred up by the donor himself/herself because "(...) as the matter of fact the existence of the conflict between the parties of donation contract does not release the donee from the gratitude obligation. However, the conflict must not be ignored in evaluation of actions and omissions of the donee. We cannot expect that the donee shall make attempts to offer help to the donor in a situation when there is no chance of communication and agreement, and at the same time the donor takes actions directed against the donee. In this case, a part of the donee's actions may be assessed not as harmful for the donor but as conciliatory actions or actions taken in response to the harm caused by the donor (...)"[33].

Moreover, a donor who is considering to revoke the gift, must monitor formal requirements with respect to the mode of submission of declaration of the will to the donee and to the deadline for submission under article 899 paragraph 3 of civil code because the gift must not be revoked after a year from the day when the person entitled to appeal (donor, donor's inheritor) discovered the donee's ingratitude. As it was rightly indicated in the court's decision: "(...) The cancellation of donation must be justified by the causes of the cancellation i.e. description of donee's behaviour which can be classified as glaring ingratitude (article 898 § 1 civil code). The revoke is effective if it reaches the donee within specified period of time (article 61 civil code). Deadline for submission of declaration of cancellation is written down in article 899 § 3 of civil code. The deadline is calculated from the day when the donee's ingratitude was discovered.

Norms set up by the above mentioned regulations stipulate that the donor's right to revoke a donation due to donee's ingratitude may be executed only in a closed period of one year, after which the right expires. Such relatively short period of time to execute donor's right is justified by the need to eliminate uncertainty on the part of the donee. The time limits run from the date when the reason behind revoke of the donation was discovered i.e. from the day when the donor found out about the donee's ingratitude. It must be assumed that if the donor does not cancel the donation in the period of one year after the discovery of ingratitude, it means that the ingratitude was forgiven or the donor did

[33]Decision of the Court of Appeal in Warsaw dated 22 October 2014, VI ACa 262/14, Lex no 16240763.

not treat the grantee's behaviour as ingratuitous (...)"[34]. It should be emphasized that quite often donors fail to meet the one year deadline after discovery of ingratuitous behaviour (such behaviour may be manifested by a single action/omission for example brutal beating of the donor by the donee, it may also have repetitive character of long-term harassment also in the meaning of crime under article 207 of criminal code), because the donors are not aware of the content of article 899 paragraph 3 of civil code. Sometimes the donors demand return of their donation even though the act of forgiveness took place (if only in the form of gestures which were received as conciliatory by the donee or third parties)[35].

Also under annuity contract it is possible to dissolve it due to the notion of glaring ingratitude similarly as in case of a donation contract[36]. The court, however, uses this possibility only in exceptional cases on demand of the obliged party or the annuitant if he/she disposed of the property. These rare cases include: doing real harm to the annuitant, aggression and ill will. Within the regulation cited above under article 913 paragraph 2 of civil code there is also a number of judicial decisions which help to decide whether a given case can be treated as "exceptional".[37] Also here, however, the possibility to cancel the annuity agreement on the annuitant's request is ruled out if the bad relations between parties are, to a large extent, caused by the annuitant.[38]

Choosing the right kind of contract in family relations donation contract or annuity contract it is worth remembering about the content of article 1039 paragraph 2 of civil code. Pursuant to this article, when in case of statutory succession there is partition of estate between descendants or between descendants and the spouse, such successors are

[34]Decision of the Court of Appeal in Łodz dated 4 September 2014,l I ACa 1577/13, Lex no 1527063.

[35]Examples: donor hugging the grantee in public places, donor's words directed to third parties, donor's acceptance of invitation to the grantee's family occasion etc.

[36]In compliance with wording of Art. 913 Paragraph 2 c.c.: 'In exceptional cases the court, upon application of the obliged party or the annuitant, if the annuitant is the disposer of the property, may dissolve the annuity contract'. Leaving such possibility entirely in the hands of the court, proves that such a solution is of extraordinary nature.

[37]See for example: decision of the Court of Appeal in Białystok dated 18 March 2015, I ACa 907/14, Lex no 1665044; decision of the Court of Appeal in Białystok dated 18 March 2015, I Aca 903/14, Lex no1665024; decision of the Court of Appeal in Katowice dated 4 March 2015, I ACa 901/14, Lex no 1665781.

[38]Decision of the Court of Appeal in Gdańsk, I Aca 910/13, Lex no 1466771.

mutually obliged to include into their legacy donations obtained from the testator as well as any specific bequests. The inclusion obligation does not apply if from the testator's declaration or from the circumstances, it is clear that the donation or specific bequest were done with exemption from the inclusion obligation.

The analysis of the above mentioned regulation showed that, as a rule, in partition of the estate between particular statutory successors, the end result will be reduction in the inheritance by the value of the donation previously obtained from the donor/testator[39]. What's interesting, the testator may impose the obligation to include the donation in the inheritance also on the statutory successor who is not embraced by the circle defined in article 1039 paragraph 2 of civil code. Often, in such settlements done during estate partitions it turns out that the worth of the donation that must be included[40] in the inheritance exceeds the worth of the inheritance of a given successor (sometimes it exceeds the worth of the whole inheritance). In such a case the successor is not obliged to return the surplus and in the process of partition the donation and the successor will not be included (pursuant to article 1040 of civil code).

The knowledge about this regulation being in effect may become useful for somebody who has to take decision about a donation. If the testator did not intend to reduce the grantee's legacy after his/her death, but he/she did not undertake necessary steps (most importantly exemption of the donation written down in the donation agreement[41]), the legacy situation of the grantee in majority of cases, will result from provisions of article 1039 of civil code.

The donation will also have a future impact on the calculation of legitime of which the donors rarely are aware[42]. The essence of legitime is that usually a statutory fraction of the decedent's gross estate is passed as joint property to the decedent's spouse, parents and descendents pursuant to article 991 paragraph 1 of civil code. In accordance with content of article 993 of civil code, in calculation of legitime the donation

[39]See: L. Kaltenbek-Skarbek, *Prawo spadkowe*, Oficyna 2011.

[40]The scope of donations which are subject to inclusion is wide and controversial. See: decision of the Supreme Court 23 November 2012, I CSK 217/12, Lex no1284691, decision of the Supreme Court 9 December 2010, III CSK 39/10, Lex 738107.

[41]In compliance with wording of Art. l039 paragraph 1 c.c. in fine.

[42]See: decision of the Court of Appeal in Warsaw 11 March 2014, VI Aca 1513/13, Lex no 1454667, decision of the Court of Appeal in Łodz 18 July 2013, I ACa 244/13, Lex 1353761, decision of the Supreme Court 4 July 2012, I Csk 599/11, Lex No 1218157, decision of the Supreme Court 30 October 2003, IV CK 158/02, Lex no 105679.

made by the decedent must be included (excluding donations specified in article 994 of civil code) 994 k.c.)[43]. The value of the donation is established in accordance with prices on the day the legitime is calculated (it is usually done as a part of legal proceedings with respect to payment of legitime), and according to the condition of the donated property on the day of the donation. If the descendent who has a right to legitime obtained a donation from the decedent, it will be calculated into the due inheritance. Additionally, if the person entitled to legitime is a more distant descendent of the decedent, then the donation obtained by his/her ascendant (ancestor) will also be included into his/her legitime.

The settlement of donation connected with the legitime that takes place after the donor's death, may also affect persons not entitled for legitime and not being inheritors. Donation for such donee done less than ten years before the estate was opened, will be calculated into the inheritance. The person entitled to a legitime, who cannot receive it from the decedent nor a person with statutory bequest, may demand legitime from the person who obtained a donation, when the donation is included in the inheritance, a sum of money which is needed to complete the legitime (liability of the grantee is limited only to the existing enrichment). The regulations quoted above may become significant in taking the right decision by a potential donor.

The comparison of effects of donation and annuity contracts mentioned above and relations which are created as the result, show a real necessity to introduce better legal communication for those who want to dispose of their property – especially for the benefit of a close relative. Relevant information should be made available at the notary public offices or through legal counseling sought before taking the final decision. Easy access to this kind of information would eliminate frequent cases of disillusion and disappointment.

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DAROWIZNA NIERUCHOMOŚCI A DOŻYWOCIE – ANALIZA ZASADNOŚCI ZASTOSOWANIA KONKRETNEJ UMOWY W STOSUNKACH RODZINNYCH

Streszczenie
Artykuł koncentruje się na zagadnieniu porównania skutków umowy darowizny oraz umowy dożywocia - w kontekście momentu podejmowania przez właściciela nieruchomości decyzji o wykorzystaniu konkretnej konstrukcji prawnej. Autorka zwraca uwagę na momenty, w których oczekiwania dysponenta majątkiem mogą finalnie rozminąć się ze stanem prawnym ugruntowanym na niwie danego kontraktu, co potwierdza niejednokrotnie praktyka życiowa. W artykule znajdują się konkretne odniesienia do pozycji darczyńcy, dożywotnika oraz ich kontrahentów. Artykuł zwraca uwagę na potrzebę zagwarantowania właścicielom nieruchomości dostępności stosownych porad prawnych.

Słowa kluczowe*: dożywocie, darowizna, własność nieruchomości, stosunki rodzinne, cel umowy*