

NOTIONS REGARDING THE LIFE ANNUITY CONTRACT

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Abstract: *The life annuity contract is the bilateral legal act by which a party, called the debtor is obliged to perform recurring acts to the benefit of the other party or a third party called a creditor, performances which consist of payment of a certain amount of money for the rest of the creditor's life. The current paper discusses aspects regarding the life annuity contract in regard to its validity conditions and formal conditions. As it is a contract widely used in practice, the thorough analysis of its validity conditions is extremely important in order to avoid potential litigation arising from its vices.*

Key words: *annuity, formal and procedural conditions*

1. Notion and legal characteristics

Based on the provisions of article 1169 of the Civil Code, the parties are free to conclude any contracts. The right to enter into contract is a natural right, one which the citizens enjoy based on their quality of member of the society [West, R., 2014, p. 893-912], as is internationally regulated. Based on the principle of contractual freedom, the parties are free to conclude life annuity contracts.

The life annuity contract is the bilateral legal act by which a party, called a debtor of annuity is obliged to perform, in the benefit of the other party or a third party, the creditor of annuity, recurring performances which are in fact represented by an amount of money or other fungible goods for the rest of the creditor's life, as expressly regulated in articles 2242-2253.

Annuity can be paid to the benefit of the creditor or a third party provided that this certain person is determined at the time the contract is concluded, as in this case we are in the presence of indirect donation made by stipulation for another person.

In case the debtor of the obligation is a person married under the regime of legal community, he can't enter the contract on his own, as he must conclude it along with his spouse, thus both spouses will be the debtors of the annuity obligation.

The parties of the life annuity contract are the creditor, the beneficiary of annuity and the debtor, the person who is obliged to perform recurring performances.

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In regard to its legal characteristics[Moţiu, F., 2017, p. 346] the life annuity contract is characterized by the following:

- it is a bilateral legal act, the result of an agreement of wills, even if it can provide obligations just for one of the parties;

- it is a named act, as it is expressly regulated in the Civil Code. Furthermore, it represents common law in the matter of the upkeep contract, thus the provisions of article 2256 of the Civil Code, those of article 2243-2247, 2249, 2251 first alignment and article 2252 are also applied to the upkeep contract;

- it is an onerous contract as in exchange for the annuity, the creditor transfers his property right or another real right. If by exception, the contract is concluded for free, it represents a liberality which is subject to the formal and procedural conditions stated for its validity;

- it is a random contract in its essence, any contrary provision causing the absolute annulment of the contract. The random character results from the fact that it is concluded for the duration of the creditor's life, a duration which is not known at the time the contract is concluded. As it is a random contract, it provides chances of win or lose for both parties, as the *alea* element is of the essence of the contract. The random character is confirmed by the provisions of article 2246 and 2247 of the Civil Code, provisions which will be analysed in the following lines;

- it is a bilateral contract; by exception, it can be of unilateral character when it is concluded for free and with no tasks, as, within the limits of a certain value, donation is a bilateral contract;

- it is a consensual contract, concluded by the simple manifestation of will of the parties or, by exception, in a solemn form, when in exchange for annuity, the creditor transfers a property right or another real right over an immobile good to the debtor or when it is concluded for free;

- it is a contract of successive execution, as the instalments of annuity will be successively and periodically paid throughout the life of the creditor, according to the parties' agreement;

- it is a contract which transfers property when, in exchange for annuity, the creditor transfers the property right over one of his goods. The transfer of the property right operates in accordance with the principle of reciprocity at the time the agreement of will is achieved, except for the case in which the material object of the contract is an immobile good, in which case the cadastral register provisions will apply, as well as in the case the parties have postponed the transfer of the property right by a certain term of by suspensive condition, when the object is not determined or when the creditor is not the owner of the good;

- it is an irrevocable legal act, according to the provisions of article 2252 of the Civil Code, as the debtor can't be freed from the payment of annuity, restitution of capital and paid instalments. The debtor is held to pay the annuity until the death of the person in favour of whom the annuity was concluded, no matter how onerous the payment might become. In case the debtor dies before the creditor, his obligation is transferred indivisibly to his own heirs.

Unlike the upkeep contract, life annuity is not an *intuituu personae* contract, as the creditor is free to sell his obligation at any time throughout his life.

2. The procedural conditions of the life annuity contract

Much like any legal act, for its valid conclusion, the life annuity contract must meet the validity conditions, as well as the formal and procedural conditions stated by law.

Thus, in regard to capacity, the life annuity contract is an act of disposition, thus the parties are required to have full exercise capacity, regardless of whether the annuity is free or of onerous character. Thus, in case it is of onerous character, it appears to be a sale, whereas if it was concluded for free, it represents a liberality; however, in all cases, exercise capacity is needed in order to conclude acts of disposition.

The parties' consent is subject to common law provisions, thus it must come from a person with judgment, it must be exteriorized, expressed with the intention of causing legal effects and it must not be affected by vices of consent. As it is a random contract, it must be mentioned that lesion as a judgment vice is not possible.

The object of the debtor's obligation is the recurring performance of the obligation to pay an amount of money or other fungible goods. In relation to the object of the contract, the debtor's obligation is indivisible when it is concluded for the benefit of several creditors, even if he received goods from both creditors in exchange for annuity. Judicial practice stated that, in such a case, the debtor is not obliged to perform two separate upkeeps – in correspondence with what he received from each of the creditors – as there is only one indivisible obligation [Cas., s. civ. propr. int., dec. no 1918/2005, in Law no 4/2006, p. 280].

Active indivisibility is a necessary one. Unlike the obligation of an upkeep contract, the debtor's obligation is not passively indivisible, which leads us to the conclusion that, in case the obligation belongs to several debtors, it is divided between them and the creditor can only make demands from each debtor within the limits of his obligation; similarly, the execution of the obligation to pay the annuity by any of the debtors, does not liberate the other debtors, except for the case when they are indivisibly obliged.

The reason for the divisibility of the debtor's obligation resides in the nature of the object of the performance, namely the payment of an amount of money or other fungible goods.

The object of the creditor's performance, when the contract is of onerous title is the transfer of the property right or another real right or debt.

This cause is subject to common law rules, namely that it must exist; it must be licit and moral. The immediate purpose in case of named contracts, as is the one analysed in this paper, is always licit and moral, thus we are about to analyse to what extent the mediate purpose is also licit and moral.

Along with the general validity conditions, the law states two special conditions, regulated in the content of article 2246-2247 of the Civil Code, which are, in fact, applications of the lack of cause, absolutely presumed by the lawmaker.

Thus, if in accordance with common law (article 1239 of the Civil Code) the existence of a valid cause is presumed until proven otherwise, in article 2246-2247 of the Civil Code, the lawmaker absolutely presumes the lack of cause.

In accordance with article 2246 of the Civil Code, the contract which states an obligation to upkeep a third party which was deceased at the time the contract was concluded, is annulled.

According to article 2247 of the Civil Code, the contract by which an onerous upkeep was concluded throughout the life of a person who, at the time the contract was concluded, suffered from an illness which caused the person's death within 30 days from when the contract was signed, does not cause any effect.

These provisions are inspired by article 1974-1975 of the French Civil Code [https://www.legifrance.gouv.fr/affichCode.do;jsessionid=09F5A524E8A3AE2C23F2A004CE3BA3F5.tplgfr31s_3?idSectionTA=LEGISCTA000006150325&cidTexte=LEGITEXT00006070721&dateTexte=20180510], according to which „*Tout contrat de rente viagère, créé sur la tête d'une personne qui était morte au jour du contrat, ne produit aucun effet. Il en est de même du contrat par lequel la rente a été créée sur la tête d'une personne atteinte de la maladie dont elle est décédée dans les vingt jours de la date du contrat.*”

Unlike common law, if in accordance with article 1238 of the Civil Code, the lack of cause is sanctioned by the relative annulment of contract, according to article 2246 of the Civil Code, in the case stated in the following article, the sanction stated by the lawmaker is the fact that the contract does not cause any effects.

The reason for which the lawmaker sanctioned with absolute annulment the life annuity contract which states an obligation to pay annuity to a party who was deceased at the time the contract was concluded pertains to the lack of the *alea* element, the lack of balance between the win and loss chances for both parties. The *alea* element pertains to the undetermined duration of performances and is a validity element in random [Chirică, D., 2010] contracts, as it entails its very essence.

This is why, if only one of the parties is exposed to the risk of loss and the other party is not, the contract is no longer random, but commutative.

Another opinion [Chirică D., 2005, p. 119-120] stated that absolute annulment is justified by the objective impossibility to execute the obligations, given the fact that the in person in favour of whom the annuity was created was dead at the time the contract was concluded.

As it is absolute annulment, it is subject to common law, namely it can be invoked by any interested party, at any time and it can't be covered by confirmation. We believe that not even the creditor's notary declaration regarding the fact that he doesn't suffer from any illness is not likely to remove the sanction if it is proven that, in reality, he suffered from an illness which caused his death within 30 days from the time the contract was concluded.

Thus, the debtor's good faith has no relevance in case of the consequences of the act affected by this cause of annulment. However, the analysis of the legal act from the perspective of the validity of its cause can't pertain exclusively to the time the act was

signed before the notary, as it also entails the examination of the circumstances in which the act was concluded, including the conduct of the contractors in the time interval during which the act was perfected [Civil decision no 735/R/1.10.2014 of Timisoara Appel Court, available at <https://idrept.ro/DocumentView.aspx?DocumentId=77999207>].

The 30 day term starts at the time the act is concluded, as the fact that annuity was paid long before the contract was concluded is of no relevance; in such a case, the court of law has no other choice than to acknowledge the absolute annulment of contracts.

In case the contract is concluded in authentic form and annuity is paid from before the time the act is authenticated, in order to fulfil the obligations of article 9 of Law no 36/1995, the public notary must inform the parties of these legal provisions, thus giving them the possibility to conclude an act which corresponds to their purpose.

In case the rent was paid in favour of several people and only one of them has died during the time regulated interval, then the contract is maintained given the active indivisibility and the existence of the *alea* element.

In regard to the sanction of depriving the contract of its effects as stated in article 2247 of the Civil Code, we notice that it is inspired from the French legal provisions, as Romanian law does not regulate such a cause of ineffectiveness of contracts.

3. The formal conditions of the life annuity contract

The life annuity contract is a judicial bilateral act, concluded between the debtor and the creditor, or a three way convention, in case annuity is regulated in favour of a third party, as the acquiring of the right by the third party is conditioned by his acceptance.

In regard to the form of the life annuity contract, as previously shown, it is a consensual contract.

The principle of mutuality, which governs the matter of legal acts, is a consequence of the principle of availability.

By exception, when, in exchange for annuity, the creditor transfers to the debtor the property right or another real right over a certain immobile good, as well as when annuity is concluded for free, the contract must be concluded in authentic form. In this case, fulfilling the formalities of immobile publicity is mandatory, as, in the concept of the Civil Code, real rights are acquired only by registration in the Cadastral Register. Solemnity is a means of protecting the consent of the person who is obliged, thus, determining him to reflect on the act and its legal consequences before expressing his will.

Not respecting the authentic form is sanctioned with absolute annulment, which is subject to common law, namely it can be invoked by anyone and can't be confirmed. The authentic form must not be confused with the solemn form, as the relation between the two is one from particular to general. In case the contract must be concluded in authentic form, the competence of authenticating the document belongs to any notary in Romania.

4. Conclusions

The conclusion of the life annuity contract entails the fulfilling of some special validity conditions, given its essentially random character.

The *alea* element is of the essence of the contract and its lack is sanctioned with absolute annulment. As it is frequently an onerous contract by which the creditor transfers a property right over an immobile good to the debtor, it is concluded in authentic form and the public notary is held to advise the parties as seriously as possible, by protecting their legitimate rights and interests, by emphasizing all aspects and avoiding the annulment cases expressly stated by law.

As it is a contract frequently used in practice, the thorough knowledge of the validity conditions of this contract is extremely important in order to avoid any litigation arising from its vices.

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