



## Execution of Obligations Arising from the Donation Contract

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**Abstract:** *The donation knows several varieties and types of it that find their applicability in the usual practice. An increased interest is applied to the donation received as result of an obligation, being the variety of the donation contract with a synallagmatic character. Burdening the donation with a task requires the donee to accept the task for which he is bound once the liberality is accepted. The donor can be protected in case of non-fulfillment of the task imposed on the donee by two measures regulated by the Civil Code, namely the execution of the task or the revocation of the donation. It is necessary to specify that following the application of art. 1028 C. Civ. "The donee is required to perform the task only within the value of the donated property, updated on the date on which the task was to be performed." The present research aims to treat from the point of view of regulation and jurisprudence the issue of the right to sue for the execution of the task by the donee.*

**Keywords:** *donation; non-execution of the task; right to sue; forced execution*

The donation contract can be one with an obligation, this being a complex legal act that contains exactly the desire of the parties. In order to be able to respect the wishes of the parties, the legislator does not limit the content of the obligation that may be imposed. By concluding the contract, obligations are created only in the task of one of the parties, of the donor, without these obligations to find a correlation in the duties of the donee, if the donation is not affected by the task. Moreover, the donation with obligations is, within the limits of that obligation, a synallagmatic and onerous contract<sup>3</sup>.

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<sup>3</sup> G. C. Frentiu, *Comments on the Civil Code - Liberalities. The will. Succession Reserve*, Bucharest: Hamangiu, 2013, p. 3.

The obligation must not be impossible, unlawful or immoral under common law. This can be provided either in favor of the donor or in favor of a third party (stipulation for another) or in favor of the donee for himself.

It should be noted that following the application of the provisions of art. 1028 C. Civ. "*The donee is required to perform the task only within the value of the donated property, updated on the date on which the task was to be performed.*" From this it can be deduced that the imposed obligation must have a pecuniary value. However, the possibility of being able to impose a task that will not diminish the gratuitousness gained is not prevented.

The fact that the donee is required to perform the task only within the value of the donated property means that the donee may invoke the exception of non-performance if the task becomes more onerous than the benefit resulting from the contract<sup>1</sup>.

In the case of the resolutive condition, even if it is optional from the donee, no obligation is created for him, being free to act as he wishes, because that task is only a way that, in case of realization, abolishes the right over which he subsisted. But, in case of non-execution of the task that obliges the donee, the creditor may resort to the action in execution.

Donation with obligation generally excludes the element of randomness, in the sense that the obligations of the parties cannot create for them the chance of a gain or the risk of a loss, the rigor of concluding the contract and its effects being incompatible with the scope of chance. From the moment of concluding the contract, the obligations incumbent on the donor and the donee are legally determined, given the named character of the contract, obligations that the donor can aggravate and multiply validly (for example, the eviction guarantee).

The donation does not create for the donor a "risk of loss", but even a concrete, assumed patrimonial diminution, which will benefit the donee, because this means liberal intention.

If the task consists in paying a life annuity during the life of the donor or in providing maintenance in his favor or in a third party, elements of randomness intervene, in the sense that the extent of the donor's obligations will depend on the life of the beneficiary and, in case of life annuity, the concrete variability of its needs<sup>2</sup>.

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<sup>1</sup> G. Boroi, I. Nicolae, in G. Boroi, M. M. Pivniceru, C. A. Angheliescu, B. Nazat, I. Nicolae, T. V. Rădulescu, *Civil law files, ed. 2nd, revised and added*, Hamangiu Publishing House, Bucharest, 2017, p. 612

<sup>2</sup> Art. 1173 Civil Code, *The commutative contract and the random contract*. (1) The contract is commutative in which, at the moment of its conclusion, the existence of the rights and

Of course, the donation (and the one with the obligation) is compatible with the establishment of suspensive or random or mixed resolutive conditions, sometimes even implicit, but they only affect the effectiveness or abolition of the obligations validly assumed, and not of the formation of the agreement of will were certain.

The revocation of the donation for non-execution of the task does not operate by law, but must be requested in court. From the provisions of art. 1021 C.Civ<sup>1</sup>, it appears that the revocation for non-execution of the tasks is judicial, but it is not imperative<sup>2</sup>.

Jurisprudential practice reveals that most contracts have as their initial will the desire to conclude a contract by which they are rewarded in exchange for the provision of life support. These contracts most often end up on the judges' table because they are required to be revoked due to non-execution the life annuity. As it has been pointed out in the legal literature, the donation with tasks is, in the limit of the task, a synallagmatic contract, and in case of non-execution the specific effects of the synallagmatic contracts intervene. In other words, the revocation of the donation for non-execution without justification of the tasks has at its origin the synallagmatic character and at the same time the interdependence of the obligations of the parties, but in this case within the limit of the task imposed on the donee<sup>3,4</sup>.

It should be noted that in the event of non-execution of the task, an action may be brought in court having as object the execution of the task, this being left to the discretion of the holder of the action. Thus, according to art. 1027 para. (1) of the Civil Code<sup>5</sup>, if the donee does not fulfill the task to which he

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obligations of the parties is certain, and their extent is determined or determinable. (2) The contract is random which, by its nature or by the will of the parties, offers to at least one of the parties the chance of a gain and exposes it at the same time to the risk of a loss, which depends on a future and uncertain event.

<sup>1</sup> Art. 1021. *Mode of operation*. Revocation for ingratitude and failure to perform duties does not operate by law.

<sup>2</sup> Fr. Deak, L. Mihai, R. Popescu, Civil Law Treaty, *Special Contracts*, vol. III, ed. V, updated and completed by R. Popescu, Universul Juridic Publishing House, Bucharest, 2018 pp. 237 - 238;

<sup>3</sup> Fr. Deak, *Civil Law Treaty. Special contracts*, Actami Publishing House, Bucharest, 1996, p. 128;

<sup>4</sup> I. Nicolae, *Short considerations on the legal causes of revocation of donations*, Revista Universul Juridic, <http://revista.universuljuridic.ro/scurte-consideratii-pe-marginea-cauzelor-legale-de-revocare-donatiilor/>;

<sup>5</sup> Art. 1027. *Actions in case of non-execution of the task*. (1) If the donee does not fulfill the task to which he has undertaken, the donor or his successors in rights may request either the execution of the task or the revocation of the donation.

(2) If the task has been stipulated in favor of a third party, he may request only the execution of the task.

(3) The right to the action by which the execution of the task is requested or the revocation of the donation shall be prescribed within 3 years from the date on which the task was to be executed.

undertook, the donor or his successors in rights may request either the execution of the task or the revocation of the donation. These legal actions are subject to the extinctive prescription. According to art. 1027 para. (3) of the Civil Code, the right to the action requesting the execution of the task or the revocation of the donation shall expire within 3 years from the date on which the task was to be performed.

It was stated, in the opinion of one author that if one of the parties proves by any means of proof that, although the legal act concluded between the parties is a life annuity contract, the parties actually wished to conclude a life annuity contract, this being their real will, the legal act concluded between the parties (donation) is struck by absolute nullity for obstacle error (*error in negotium*), the parties having a false representation of reality. Such confusion is all the more possible if the parties lack legal training and their expression is not clear enough to express their true intention. The current Civil Code provides for the possibility of cancellation of a contract by a contracting party if it was in a material error at the time of its conclusion.

If, in the case of the donor and his successors in law, the legislator provided the right to choose between the forced execution of the task and the action aimed at revoking the donation for non-execution of the task, on the other hand, if the task was stipulated in favor of a third party. requires only the execution of the task, according to art. 1027 para. (2) Civil Code. In other words, the right of option between the two alternatives does not belong to the third party in whose favor the task was stipulated<sup>1</sup>. It should not be lost sight of the fact that the donor's creditors may bring the action, if the legal requirements are met<sup>2</sup>.

The right to the action requesting the execution of the task or the revocation of the donation for non-execution of the task without justification shall expire within 3 years from the date on which the task was to be performed.

As a result of the above, we can conclude that, if the donee does not perform the task to which he undertook, within 3 years from the time when the task

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<sup>1</sup> I. Nicolae, *op. cit.*.

<sup>2</sup> Art. 1560 C. Civ.. *Notion* (1) The creditor whose claim is certain and due may exercise the rights and actions of the debtor when he, to the detriment of the creditor, refuses or neglects to exercise them. (2) The creditor will not be able to exercise the rights and actions that are closely related to the person of the debtor. (3) The person against whom the oblique action is exercised may oppose to the creditor all the means of defense that he could have opposed to the debtor.

Art. 1561 of the Civil Code. *The effects of admitting the oblique action*. The court decision for admitting the oblique action benefits all creditors, without any preference in favor of the creditor who exercised the action.

was to be performed, the donor may request the execution of the task itself which was ordered in favor of the donor, the donee or a third party.

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- \*\*\* Law no. 287/2009, regarding the Civil Code, published in the Official Gazette no. 511 of July 24, 2009