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## **Specific Properties of the Agreement for Lifetime Support in the Legal System of the Republic of Macedonia**

Risto Ilioski<sup>a\*</sup>, Marija Ampovska<sup>b</sup>

<sup>a</sup>University "St. Kliment Ohridski" - Bitola, Faculty of Law - Kichevo, Rudnichka b.b., 6250, Kichevo, Republic of Macedonia

<sup>b</sup>University "Goce Delcev" - Stip, Faculty of Law, Krste Misirkov b.b., 2000, Stip, Republic of Macedonia

<sup>a</sup>Email: [ristoi@yahoo.com](mailto:ristoi@yahoo.com)

<sup>b</sup>Email: [marija.radevska@ugd.edu.mk](mailto:marija.radevska@ugd.edu.mk)

### **Abstract**

The agreement for lifetime support is a specific agreement in the legal system of the Republic of Macedonia. With this agreement, in the Macedonian applicable law, we have the commitment of the support provider for a lifelong support of the support recipient or a third person, while the recipient of the support leaves all of his property or a part of his property in compensation, whose handover of the covered property is postponed until his death. In this paper we perform an analysis and study of the agreement for lifetime support in the positive law applied in the Republic of Macedonia, and we will perceive that this agreement is a matter of interest of the obligation law and inheritance law. It is an agreement with obligation - legal and inheritance - legal elements. Namely, the purpose of this paper is to perform a scientific analysis of this agreement pursuant to the Macedonian legislation, and thus to perceive the double meaning that this agreement has, or inheritance - legal and obligation - legal meaning.

**Keywords:** agreement; handover; lifetime support; law; provider; property; recipient; subject; witnesses.

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\* Corresponding author.

E-mail address: [ristoi@yahoo.com](mailto:ristoi@yahoo.com).

## **1. Introduction**

Based on the agreement for lifetime support, the recipient of the support disposes of his property. So with this agreement, the provider of the support gives a lifelong support to the recipient of the support or a third person, while the other side - the recipient of the support as compensation leaves their property, without having to leave his entire property in compensation, and the handover is postponed until his death. In this context the essential elements of this agreement are also perceived and such are: providing the support and leaving the entire property or a certain part of the property to the provider, with a delay until the death of the recipient of the support. Hence, the mixed character of this agreement.

Further on, we see the agreement for lifetime support in details, studying the legal definition of this agreement and its features. Furthermore, we will focus on those between who this agreement can be made, the subject of the lifetime support agreement, but also for the inheritance - legal action that this agreement causes in the law of the Republic of Macedonia, and in the end before we state the concluding observations, we will analyze the ways allowed for termination of this agreement under the applicable law of the Republic of Macedonia.

Namely, the scientific study of the agreement for lifetime support in the Macedonian law, and thus the perception of the inheritance - legal and the obligation - legal significance of this agreement, which actually represents the intention, or purpose of this paper.

## **2. Definition and features of the agreement for lifetime support**

The agreement for lifetime support in the Republic of Macedonia, is regulated by the Law on Obligations of 2001 [1] (hereinafter referred to as: LO) and with the Articles from 1029 to 1035. The legal definition of the agreement for lifetime support is positioned at the very beginning, in the Article 1029 of the said law, which regulates that: "With the agreement for lifetime support, the support provider is obliged to lifelong support of the recipient of the support or a third person and recipient of the support in compensation leaves to him entire his property or a certain part of the property, whose handover is postponed until his death." Thus, the support provider realizes the support even during life or *inter vivos*, while the exercising of the rights or their transfer from one party to another, occurs *mortis causa*.

This agreement by its features appears as: a consensual agreement, strictly formal contract, duplex binding contract, freighting contract, aleatoric agreement and mixed agreement [2]. First we immediately have to emphasize that it is a deal where, instead of the actual handing over of property, or the goods, for the occurrence of this agreement an agreed statement of will of the elements of the agreement is needed. Hence the feature consensus of this agreement occurs. However, given the fact that it is an agreement where a person lifelong supports another person, he may in the course of the life of the person receiving support, the support provider to manage the property, but with that not to acquire ownership rights. In this respect, Prof. Trpenovska - Spirović, writes: "It does not involve handover of ownership to the provider of the support, but only the right of management and economic use of the property, which usually occurs because of the age and disability of the recipient of the support, itself to carry out these run "[3]. Furthermore for the agreement of lifetime support in

Macedonian law a strict form is provided, hence this agreement is a strictly formal legal act. Namely, this agreement is required to be filed in writing, and also it needs to be certified by the court or by a notary, so that the judge or notary during the verification in the presence of the contractors and two witnesses who know them will read aloud the contract and will warn the contractors of the consequences that the contract causes (Article 1030, paragraph 1 and paragraph 2 of LO). Regarding the witnesses there is a limitation, so that as witnesses can appear only persons who can occur in the role of a witnesses in the preparation of court testament (Article 1030, paragraph 3 of LO). Also an opportunity is provided, the provider of the support to be represented by an authorized person, at the conclusion of the agreement for lifetime support. Namely, at the conclusion of the contract, the provider of the support may be represented by an authorized person, with the authorization valid for three months from the date of issuance, it must be issued in the form of a public document, and in that letter of attorney to be appointed the person with whom the provider of support will sign a contract, and the content of the agreement (Article 1030, paragraph 4 of LO). So, a strict formality of this agreement is a condition for the validity of the same.

The contract for lifetime support also is double-sided - binding because, both the recipient and the provider of the support have rights and responsibilities, which given the fact that the provider of the support lifelong supports the recipient of the support or the third party, and the recipient of the support for it in compensation leaves property covered by this agreement, with a handover postponed until his death, this agreement represents a freighting legal act. Equivalence due to the nature of the agreement is not always present. Namely, the value of the property covered by the contract and the value of the support are not always equivalent. This agreement is also aleatoric, because at the conclusion of the contract, it is only known what the provider of the support would receive, but it is not known until when i.e. how long, the provider should give support. Hence the uncertainty, about how much time the support should be given, or when death of the person who appears as the recipient of support would set in. In view of this the risk of the provider of the support is specific. This agreement given the action that it causes, appears as a mixed agreement as well, whose impact is inherently inter vivos and mortis causa, so that with this contract may be entitled to ownership of the property covered by this agreement, and based on this contract to perform work for the person receiving support.

Having seen this agreement for its features, the question arises which subjects are allowed to enter into contract for lifetime support? Let us respond immediately that when it comes to the agreement for lifetime support, with statutory provisions it is not explicitly provided between which persons can this agreement be concluded or which persons may occur in the role of parties to the contract of lifetime support. Namely, such an agreement, according to the positive law applied in the Republic of Macedonia, may be concluded between spouses too. So in the role of a provider of support can also be a spouse of the recipient of the support. In the role of the provider of the support may occur to be any of the children of the recipient or any third party. From hence are perceived the broad possibilities of this agreement. Still, because the subjects of the contract are not expressly provided, that is strictly defined by statutory provisions, in theory and the judicial practice dilemmas arise regarding the persons between who the conclusion of this agreement is possible [4]. In the role of a recipient and provider of support can occur any natural person with a legal capacity. As for the possibility of a minor to appear as party to the agreement it is said in the legal theory that, "in the judicial practice, however, an opinion has appeared according to which a juvenile may also appear as a party to the agreement for lifetime support" [5].

Furthermore, regarding the question whether a juridical person can appear as a provider of support, in theory it is stated that, "any juridical person may appear as a provider of lifetime support, while with the statute of that person it does not have to be stated that the support of natural persons is an activity which, among other things, the juridical person can do" [6]. In addition to this work, our attention will be focused to the content and subject of the agreement of the lifetime support.

### **3. Subject of the agreement for lifetime support**

In the agreement for life support, the following elements are important: providing the support and leaving the property or part of the property with a suspended transfer until the death of the recipient of the support. Thus, with this contract for the provider and the recipient of the support arise rights and obligations, with which the content is perceived and the subject of the agreement is realized.

The recipient of the support has a right as specified in the contract for lifetime support, to get a lifetime support. For example, about the nutrition, the care for personal and residential hygiene, medical treatments etc. While the recipient of the support is required, in terms of leaving the entire property or a part of it, in compensation, to the provider of the support, but with a delayed transfer until the death of the recipient of the support. In this context, the recipient of the support may leave in compensation, with this agreement, only property he had at the time of the signing the contract. Also in the agreement for lifetime support it must be accurately and clearly defined or determined the property that is left in compensation to the support provider, with a postponed handover until the death of the recipient of the support.

Regarding the support provider, it is necessary that he meets the commitments that he has taken with the contract for lifetime support concerning the lifelong support. Namely, the way in which the support will be given depends on the agreement itself. That which is agreed, it is necessary for the support provider to respect. So, the support provider can receive in their home the support recipient or a third party, or it can be a reverse case. It is a right of the support provider to get in ownership the property covered by the agreement, which is left in compensation by the recipient of the support, whose handover is postponed until the death of the recipient of the support. Here it has to be taken into notice as was already discussed, that the provider of the support may manage the property of the recipient of the support, covered by the contract, even during his life, but without gaining the right of ownership.

Also, in the Macedonian law it is allowed the support provider to be able to request a temporary registration in the public register, on its right of the contract for lifetime support (Article 1031 of LO). This is especially important so that there will be no abuse regarding the support recipient to dispose of the property that is covered by the agreement, which is a subject of the agreement. It is characteristic for the provider of the support that he is burdened by obligations arising in connection with the time of death of the recipient of the support, such as his funeral.

The question is whether the support provider is responsible for the debts of the recipient of the support after his death? In this context in the Republic of Macedonia, the provider of the support is not responsible, after the

death of the recipient of the support, for the debts of the recipient of the support, but there is a possibility of agreeing that the support provider will be responsible for the existing debts of the recipient of the support according to certain creditors (Article 1032 of LO). Thus, if new debts incurred after the conclusion of the agreement, in which case there is no possibility of the support provider to agree to account for these new debts with the recipient of the support.

There is a possibility that after the signing of the contract for lifetime support the circumstances that existed at the time of conclusion of the contract to have changed, so that the realization of the agreement would be significantly more difficult. Namely, if in case after the conclusion of the contract of lifetime support the circumstances have changed so that the fulfillment of the contract became significantly difficult, the court at a request of the parties taking into account all circumstances will settle their relations anew, with which the court can replace the right of the recipient of the support with a lifetime monetary support, if it is in accordance with the interests of the parties (Article 1034, paragraph 1 and paragraph 2 of LO). Thus, the court acts on the request of the parties. The court regulates the relations anew, taking into account all of the circumstances. Therefore, the recipient of the support may gain a right to a lifetime monetary support, if it suits the interests of the parties to the agreement, and not just to one side.

#### **4. Inheritance - legal action of the agreement for lifetime support**

For the contract for lifetime support it is specific that it has inheritance - legal action. Namely, the property that is the subject of this agreement shall not be a part of the estate. With the death of the recipient of the support, if his entire property is covered by this agreement, or if the recipient of the support had at his disposal all of his estate in the agreement for lifetime support, in which case there will be no legal process for legacy. Therefore, as legacy of the recipient of the support appears to be only the property that is not covered by the agreement and, the property that has been acquired additionally after the conclusion of the contract for lifetime support. In jurisprudence it is noted that, "a primary action of the agreement for lifetime support, even when the compensation is postponed until the death of the recipient of the support, is that the property that is subject to the agreement for lifetime support is not included in the estate of the deceased" [7]. In the Republic of Macedonia the Law on Succession in 1996 [8] in Article 33, paragraph 2 expressly provides that: "The estate does not include goods which the deceased had at his disposal for the agreement for lifetime support, and whose handover to the support provider is postponed until the death of the recipient of the support." Thus, the goods covered by the contract for lifetime support, with a postponed transfer until the death of the recipient of the support will not enter the estate. So in the field of compulsory inheritance, with the help of this agreement, disposing the property, a chance arises, compulsory heirs not to be able to exercise their right to compulsory share. Here it should be taken into consideration as we already explained that it is a double-sided – binding and freighting contract. Therefore, for example the parent can as recipient of the support make an agreement for lifetime support with his son, who appears in the role of the provider of support. So that the property in disposal of the recipient of the support in this agreement shall not enter into its estate, i.e. the estate of that parent. When it comes to the agreement for lifetime support, perhaps the most common motive for its conclusion is without a limitation disposing of the property in case of death. So, the agreement for lifetime support becomes, a rather effective for this. Still, so there is no doubt, in the Macedonian positive inheritance - legal legislation, the

agreement for lifelong support is not considered as the basis for claiming the heritage, and neither is the agreement for inheritance the basis for claiming the heritage.

## **5. Termination of the agreement for lifetime support**

With the death of the recipient of the support, the agreement for lifetime support stops. The contract for lifetime support can under certain conditions be terminated and with the death of the provider of the support and, with a unilateral cancellation and, by agreement of the parties.

Regarding the provider of the support and the possibility of the agreement for a lifetime support to stop with his death, first there is a possibility of a transfer of the obligations of the contract which belong to the provider of the support. Namely, the obligations of the provider of the support, in case of his death, pass to the spouse and his descendants that are called to inheritance, provided that they agree upon it. (Article 1035, paragraph 1 of LO). Otherwise, in the absence of consent, if they do not agree to extend the contract, and they have no justified reason, the contract for the lifetime support shall be terminated and they have no right to claim compensation for the previously given support (Article 1035, paragraph 2 of LO). However there is a possibility for the spouse and the descendants not to be able to continue the contract. When there is a situation that the spouse and the descendants of the support provider are not able to take the contractual obligations, then for the previously given support, they have the right to claim compensation from the recipient of the support, and the court shall determine the compensation by a free evaluation taking into account the property circumstances of the recipient of the support and the property circumstances of the persons authorized to extend the agreement (Article 1035, paragraph 3 and paragraph 4 of LO). The court here will certainly among other things, pay attention to the length or duration of the support previously given.

The contract for a lifetime support as mentioned above may also be terminated by agreement of the contracting parties and by a unilateral cancellation. The contracting parties may cancel out the agreement by settlement after the beginning of its execution (Article 1033, paragraph 1 of LO). The agreement for lifetime support can under certain conditions be canceled at the request of any of the parties to the agreement. There is a possibility for the contractors, based on contract for lifetime support to live together. So when under contract the contractors live together, and their relationship becomes so deranged so that their joint life becomes unbearable, each side has the possibility to request cancellation of the contract by the court (Article 1033, paragraph 2 of LO). In the legal theory states that, "because the recipient of the support is generally old and single person which is not a rare case, especially in the country-side, the parties by a specific modality to agree a community life" [9]. Namely, in that case a possible reason for cancellation of the contract occurs to be the deranging of their relations with which their joint life has become unbearable. Furthermore, any party may seek cancellation of the contract, if the other side does a breach of conditions (Art. 1033, paragraph 3 of LO). Here inevitably the question is set for the damage caused by the cancellation of the contract for lifetime support. Thus, in the event of cancellation of the agreement for lifetime support, the party that is not responsible for the cancellation of the agreement for lifetime support, has the right to claim from the other party compensation for the damage they suffer (Article 1033, paragraph 4 of LO). Namely, for the right to claim compensation for the damage, it is necessary for the contracted party not to be responsible for the cancellation.

## 6. Conclusion and discussion

The agreement for lifetime support in the legal system of the Republic of Macedonia appears as an agreement in which the provider of the support is obliged to lifelong support the recipient of the support or a third person, and the recipient of the support in compensation leaves to him entire of his property or a certain part of the property, whose handover is postponed until his death. It is not expressly stated between which subjects this agreement for lifetime support can be concluded. A contract for lifetime support may as well conclude spouses, or as the provider of the support to occur a child of the recipient of the support, or any third person. This agreement is important for obligation law and inheritance law. The agreement for lifetime support is not basis for claiming heritage but has inheritance - legal action. The property that is the subject of the agreement does not enter within the estate. Regarding the compulsory inheritance, based on this agreement, with the disposition of the property, there is a possibility that the compulsory heirs are unable to exercise their right to compulsory share. In relation to the termination of the contract for lifetime support, it stops with the death of the recipient of the support, and under certain set conditions this agreement ceases and with death of the provider of the support, with agreement of the contracted parties and with a unilateral cancellation. In this paper we conducted a scientific processing of the agreement for lifetime support according to the Macedonian legislation, with which the double meaning of the agreement was as well perceived, or its inheritance – legal and contract - legal significance, which actually is the purpose of this paper. Therefore we believe that the purpose of this paper is accomplished.

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