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CANCEL A COMPLETED GIFT CONTRACT

Abstract: In this article has been analyzed concept of “cancellation of the gift” in terms of the gift agreement and process the givers right to terminate the contract in the event of certain circumstances specified in the law by the scientific literatures and media as well.

Key words: Jurisprudence, cancel, concept, Civil Code, gift contract, giver, property right, law.

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Introduction

In our jurisprudence there is the concept of “cancellation of the gift” in terms of the gift agreement. According to him, the donor has the right to terminate the contract in the event of certain circumstances specified in the law. In this case, the recipient shall forfeit the thing presented to him, and the property right to the thing shall be returned to the donor or his heirs. These grounds are set out in Article 507, Paragraphs 6 and 7 of Article 511 of the Civil Code of the Republic of Uzbekistan (hereinafter - the Civil Code).

As we analyze these items, the question arises unwittingly: Is this list exhausted or can there be any other reason for the cancellation of the gift? The legal literature on this issue generally has the same opinion, given the exceptional nature of the institution. For example, Vitryansky considers these grounds as a “closed list” [1, p.373], while V.V.Vryansky asserts that “they are fully specified” [2, p.133].

Anortoev commenting on Article 507 of the Civil Code, he states: “Cancellation of a gift is allowed in exceptional cases provided by the commentary article, or in accordance with the provisions of the Civil Code regarding the invalidity of the transaction” [3, p.236]. It follows that I. Anortoev argues that the agreement is invalid on general grounds, that if the provisions of the agreement are invalid (Articles 113-128 of the

Criminal Code of the Republic of Uzbekistan), the basis for the cancellation of the gift may be.

METHODS

We know that invalidation of the agreement means unlawful actions carried out in the form of a transaction and do not have legal consequences (Article 114 of the Civil Code). However, this does not mean that an agreement that has been invalidated will have no legal effect at all. The agreement shall be considered void from the moment of its finding, and not from the moment when the court finds or acknowledges its validity.

Therefore, the legal consequences of such a transaction are considered to be relevant to actions taken by its participants from the moment of the transaction until the court’s decision, even if one of the parties to the agreement has not yet committed (Article 114 of the Civil Code).

Another reason for the cancellation of the gift agreement by referring to the nullity of the transactions is that the circle of persons entitled to the gift is limited by Article 507 of the Civil Code of the Republic of Uzbekistan to be examined by the court at the request of the person. These persons are the interested relatives of the giver who lost this right after entering into such contract.

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RESULTS AND DISCUSSIONS

It is also noteworthy that according to Article 150 of the CC of the Republic of Uzbekistan, the total period for filing a claim is 3 years, and the period for filing a claim for invalid transactions is set as a special lawsuit. Based on the foregoing, the exceptions to the cancellation of the gift may include, in general, the transactions deemed invalid. However, it is also important to remember that the gift is null and void only by the donor, and it is the duty of the court to recognize the transaction (as any other agreement) is null and void.

The recognition of a gift agreement (as a result of deception, threats, misstatement, etc.) may also be considered to be, to some extent, an indirect manifestation of the cancellation of the gift, as in both cases the gift agreement is terminated, that is, the contract itself. It seems to have been canceled. However, at the same time, when the gift agreement is terminated, the rights and obligations are terminated until the future, and when the contract is found invalid, it is considered from the moment of its conclusion as it does not create the rights and obligations of the parties.

According to Article 507 of the CC of the RU, the gift can be canceled in the following cases:

First, the donor has the right to cancel the gift in the event of a deliberate crime against the life or health of the donor, his family or close relatives. It is clear from the contents of Part 1 of Article 507 of the Civil Code that the law does not require any prior recognition by the court that the actions of the donor are illegal or dangerous to the public. However, this is contrary to the presumption of innocence, because according to the presumption of innocence enshrined in the Constitution of the Republic of Uzbekistan, any person charged with a crime shall not be held guilty until he or she is found legally in court).

It should be added that the presumption of innocence may be rejected, but it requires sufficient evidence that is clearly established, relevant to the case, and which is permissible in law, and that the burden of proof lies with the inquiry agencies [4, p. 37]. It is one of the most important democratic features of criminal proceedings, it ensures the protection of human rights and prevents arbitrary accusations and debates.

Paragraph 1 of Article 507 of the Civil Code states that the cancellation of the donation agreement in the event of a deliberate crime against the life or health of the donor or his family or close relatives is allowed in a judicial proceeding.

Indeed, as long as the donor is not protected by the court, it may occur that the donor can, at any time, accuse the recipient of any wrong, unjustified basis, and revoke the gift and return the item. This cannot be tolerated.

Therefore, we consider it necessary to state Part 1 of Article 507 of the Criminal Code of the Republic

of Uzbekistan in the following wording: or if the person commits a criminal act in respect of his property, and if he or she admits to it or is proved by a court, the donor has the right to cancel the gift in a judicial proceeding.

The legislation of the Republic of Uzbekistan does not say how long the donor may be able to claim from the donor. It follows that this right belongs to us for the period of total annulment, which begins on the day when the donor or beneficiary is aware of or should be aware of the unlawful actions of the donor. However, as the defendant's guilt can only be determined by the court and decided upon after the verdict has come into force, we believe that this period will begin at that point.

Second, if the recipient's treatment of the gift, which is of great value to the donor, threatens to destroy it completely, the donor has the right to sue the donor for cancellation (Section 3, Art. 507 of the Civil Code). It is clear from the contents of this article that the law does not focus on the value of the gift, and the subject of the gift must be of immaterial (moral, aesthetic) value to the donor.

In this connection, Masevich points out: "The cancellation of the gift on the grounds specified in the second order implies that the recipient knows how much the value of the gift is known to the gift and obliges the recipient to retain it" [5, p. 155]. M. Baratov, I. Anortoev, A.L. Makovsky, V.V. Vitryansky [6, p.79].

As long as this is what motivates the recipient to secure the gift, does the recipient have the right to dispose of the item after it has been transferred into his possession? No, he does not. In this case, the contents of the triune property will be violated, meaning the donor will not be able to use the gift as he wishes.

In our view, if the condition is the recipient's attitude towards the donated item, then the only thing that the beneficiary needs to do is to save and use the gift. For this reason, it is necessary to speak about contractual agreements (Part 2 of Article 104 of the Civil Code).

As with other agreements, a donation agreement may be concluded on terms that do not result in the recipient's obligations to the donor (the contract is unilateral). In case of annulment, the rights and obligations of the parties under the executed agreement shall cease if the circumstances specified in the agreement arise. However, the rights and obligations of the parties before the cancellation of such agreement must be protected and fulfilled even after its occurrence.

That is, if the recipient's treatment of the item presents a risk of his or her death, for example, negligence, abuse, or intentional damage to the item may result in the loss of the usefulness of the gift in a judicial proceeding. . It also means that the main purpose of such a contract is not to make a gift but to

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hand it over to the trustee for safekeeping, that is the specific condition of the gift.

Such items must be of great value to the donor [7, p.237]. Failure to comply with these second terms of the contract also gives the donor the right to cancel the gift. However, any gift agreement may be enclosed under this condition as a “family memory”. Therefore, attention should be paid to the economic side of the contract. In other words, it is not about low value items, but rather about things that have enough property value.

This assumption is based on the content of Article 508 of the Criminal Code of the Republic of Uzbekistan, which stipulates that Articles 506 and 507 of the Republic of Uzbekistan do not apply to small value gifts. Therefore, giving gifts even if they are of great value to the donor, cannot be undone.

Thirdly, at the request of an interested person, the court may, in violation of the bankruptcy legislation, cancel the donation made at the expense of funds associated with entrepreneurial activity within one year prior to the declaration of bankruptcy (insolvency). However, the Bankruptcy Law of the Republic of Uzbekistan [8] addresses this issue differently.

According to Paragraph 3 of Article 103, the agreement between the debtor and a certain creditor or another after the application for the declaration of the debtor’s bankruptcy, if this agreement results in the satisfaction of certain creditors’ claims against the debtor’s monetary obligations, or, at the request of a creditor, may be declared invalid by the Economic Court.

The content of this article indicates that the creditor cannot be a donor, as the transaction itself is intended to satisfy certain creditors’ claims more favorably than other creditors. This agreement is based on two main characters of the gift agreement - free of charge and does not intend to donate. However, a “other person” who is not a creditor’s lender may act as a donor.

Accordingly, the cancellation of the gift in accordance with Article 507 of the Criminal Code of the Republic of Uzbekistan shall be allowed only if the provisions of the Bankruptcy Law are violated. In this connection, the question arises as to when the provisions of the Act are considered to be violated over time. A gift can be considered as a breach of this law only if the donor has given it after the economic court has instituted a bankruptcy case [8].

This is understandable, as Article 64 of the Act states that the economic court will monitor the debtor’s bankruptcy from the moment it receives it and can now carry out the debtor’s transactions only with the consent of the interim manager.

In our view, the provisions of this Act may be violated even before filing a bankruptcy petition. For example, the debtor (the donor) may enter into an agreement with the “interested person”, which can be

subsequently invalidated by the Economic Court at the request of the external manager (if applied), if it is found to be detrimental to the creditors (Article 103 of the Act). Part 2) [9]. It is also important to note that before the application is submitted, the business of the debtor is in a difficult situation.

In this case, there is a doubt about the integrity of the transaction, as the debtor is unfaithful to its creditors and distributes the property of the firm to relatives and friends. For this reason, Article 507, Paragraph 4 and Article 103 of the Law of the Republic of Uzbekistan stipulate one purpose - to secure the creditors’ interest and not to allow the debtor (donor) to hide its property.

Fourth, in the case of the giver’s death before the donee, the donor’s right to cancel the gift may be conditioned upon (Don. 507, Part 5). This condition is voidable and the provisions of Article 104 of the Criminal Code of the Republic of Uzbekistan shall apply. This basis for the cancellation of the gift must be stated in the contract, which cannot be used in the case of the actual gift contract.

The essence of the rule is that if the contract provides for the cancellation of the gift, does the donor have the right to dispose of the gift? Before answering this question, we should note that the gift is not part of the donor’s legacy after the death of the recipient (the recipient already knows about it), and the giver may use it or waive it.

According to the condition, the donor does not intend to enlist the beneficiary, but the beneficiary, and therefore does not intend to increase the property of the beneficiary after his death. Therefore, if the donor dies before the donor, this condition loses its validity because it is the sole beneficiary’s rights and not the heirs.

When concluding a gift agreement, the property right to the subject of the gift passes. When the recipient receives this right, the gift is his property, and he has the right to use it at his own discretion. The buyer may sell the gift, turn it over to another person, or pledge it to a third person, knowing that the gift may be returned to the life-giver after his death, so that the gift may not be returned to the donor in accordance with Article 507 of the RF.

In this case, we think that an important sign of irrevocable gift is always crucial. This designation naturally follows from a strictly limited list of circumstances that are not specified in the determination of the donation agreement but allow it to be annulled (Article 507 of the Civil Code).

As for the donation agreement, there are some basic reasons to cancel a gift here as well. In accordance with Paragraphs 7 and 8 of Article 511 of the Criminal Code, these grounds include the use of the donated property for any purpose other than the beneficiary’s purpose, or for the beneficiary’s consent (or without the court’s decision).

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This right to terminate a donation also applies not only to the beneficiary but also to his heirs or successors. It is necessary to prove that the donated property was not used for the intended purpose and that the recipient was guilty. For this purpose it is necessary to hold trial. The contents of the clause "Request for cancellation of donation" indirectly indicate that it is settled in a judicial proceeding in Art. In this regard, in our opinion, it is preferable to submit Article 511 of the CC of the Russian Federation in the following wording: "The beneficiary may use the donated property in violation of the intended purpose of the beneficiary or change that purpose in violation of the provisions of paragraph six of this article gives his heirs or other successor the right to demand the cancellation of the donation in a judicial proceeding.

Consequently, in the event of the cancellation of the gift, in the event of the cancellation of the gift in accordance with Part 6 of Article 507 of the RU, the recipient must return the donated item, if the gift was kept in its original condition. That is, when this legal fact arises, the donor will be deprived of the thing transferred to him, and the property right of the donor shall be restored to the donor. In fact, once acquired property rights must not be returned unless the law specifically provides. In this case, the law instructs the recipient to return the donated property to the donor. However, in part 6 of Article 507 of the Law of the Republic of Uzbekistan, the recipient covers only the cases in which the gift was kept in its original form, but does not state that the item was transferred to third parties, damaged or destroyed (such as long-term damage).

In our legislation this is not regulated. Different opinions have been expressed in the legal literature. For example, M.G.Masevich comments: "The result of cancellation of the gift is the return of the gift to the donor. If the item has been preserved until the end of the gift, it is possible. Otherwise, the donor has the right to demand the return of the value of the thing in monetary terms, except when it is not possible for the donor to satisfy the donor's claim. [10, p.172]. Clearly, the author advocates alternative solutions only if the donor is to blame. M. Baratov also supports this view: "If the donor proves that the donor has transferred the donation to third parties, he has the right to file a claim against the beneficiary" [11, p.80].

Makovsky distinguishes admissible consequences of the cancellation depending on the circumstances applicable to them, according to which, if the item was not in the hands of the recipient at the time of cancellation, the gift would be allowed to claim its value. He further states: "As to the cancellation of the gift by the negligence of the

recipient, it may also be necessary to claim the gift in its original form (if it has not been preserved, or not at all)" [12. p.310].

In our view, the consequence of the cancellation is that it is therefore necessary to differentiate according to the circumstances underlying the granting, since the donor cancels the sole purpose of the donation, not the monetary value of the gift or any other similar thing looking to get her back. In this regard, it is possible to disagree with the most correct and reliable opinion of A.L.Makovsky.

In the event of cancellation of the gift, the donor must return the item given to him, if stored. But what happens to his income? Do you want to get it back as well? M. Baratov points out that the recipient's income from the property remains in his possession [13, p.80]. But how long? When the donor presents the cancellation request or when the gift is canceled?

Article 92 of the Criminal Code of the Republic of Uzbekistan decides on who is responsible for the yield, revenue, products and income received from the use of the donated item, but does not specify how long this will continue. It should be noted, however, that the giver remains the owner of the thing (or property right) from the time the donor makes the claim for cancellation until the return of the gift.

During this time, however, the beneficiary's right to the gift remains questionable, and it remains unclear who owns the rights to the proceeds of the donated property. On this issue, M.N. Maleina believes it would be fair to establish in law that the income from the donation should also be refunded from the time the donor makes a request for cancellation [14, p. 129].

CONCLUSION

We came to this conclusion, considering the foreign legal acts and judicial practice, where the gift was often found invalid on the general grounds of the transactions. We should agree with M.N. Maleina that such a right arises in the case of the donor, when the recipient's guilty actions are commenced, or when the donor dies.

If the item needs maintenance, the recipient has the right to demand compensation for the costs associated with the time spent (maintenance, repair, etc.). Therefore, we believe that the rights of the parties to the income from the property (or property right) must be clearly stated in the law. In this regard, it is advisable to state Part 6 of Article 507 of the Criminal Code of the Republic of Uzbekistan in the following manner: He should also reimburse the income received from this property.

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