

The Supreme Court of Cassation recognizes life annuity contracts

Dimitrina Petrova, Kambourov & Partners Attorneys at Law

Contracts regarding assignment of property in exchange for allowance and care are widely distributed. Property rights are the most frequently assigned ones. It is possible, of course, for a restricted property right to be assigned or established. There is a substantial amount of case law on the matter. Aiming to provide the person whose rights are being assigned with better social and living conditions, these contracts are also characterized by the ethical connotation of the relations between the parties. Within the notarial act, usually the assignee's obligation is described as allowance and care. According to case law, allowance involves the entire amount of food supplies, overhead costs, clothes and others, depending on the needs of the assigners (regardless of their income and capabilities to provide for themselves), as well as healthcare, attention to the hygiene and to the household of the assigners according to the assigners' needs and their capabilities to manage on their own (for instance Decision № 214/02.05.2006, № 141/2005 г., II г.о. of the Supreme Court of Cassation). The principle consists in allowance and care being provided in kind. As an exception, a transformation of the allowance obligation into a financial one is allowed (for instance when the assigner refuses to accept the offered cares and allowance). Complete negation of any resemblance with the annuity contract has always been a starting point for past case law, with this type of contract being considered an illicit instrument for the realization of an unearned income.

Following the changes of 10.11.1989, the issue regarding contracts for the assignment of property in exchange for life annuity, gained topicality, though not being endowed with an explicit resolution. Withstanding arguments for shifting conditions and lack of specific legal regulation were the inertia of the long accumulated practice, the power of the statutory interpretation in Decision №96/1966 of the Supreme Court of Cassation, as well as the lack of a clear sign for change in law enforcement.

Bearing this in mind, it is comprehensible that notaries were reticent towards contracts for the assignment of properties in exchange for life annuity, within which the assignee assumes the obligation to regularly pay a definite amount of money, up until the decease of the assigner.

In 2007, inspired by contract propositions by Hildt company, provision of article 230a of the Insurance code was introduced, though it solely dealt with contracts, realized by occupation (i.e. when the acquisition of a property in the exchange for life annuity is covered by the usual commercial activity of the assignee). Therefore, this legal change was not sufficient enough to explicitly legitimize the factuality of these contracts, aside from the ones realized by occupation.

Although previously discussed in the court's decisions, it was not until 2011 that the issue of the validity of a contract for the assignment of property in exchange for life annuity received an explicit resolution. This was realized through an act by the Supreme Court of Cassation, obligatory for lower courts' practice. The case is as follows: a contract has been concluded, assigning a property in exchange for a determined monthly allowance that has to be paid by the assignee to the assigner until the assigner's decease (no cares are stipulated). Following the assigner's decease, the devisee demanded the contract to be nullified on the grounds of its contradiction with law and good morals, with argumentation being obtained throughout past case law that denies factuality to the annuity contract. The first two instances decided in favor of the contract's validity and disallowed the claim. A cassation appeal was admitted regarding the validity of a contract assigning possession over real estate in exchange for lifelong financial allowance. Through its decision (Decision № 200/20.04.2011 г. № 876/2010 г. of the Supreme Court of Cassation) the court agrees that within the effect of the

Constitution of 1991 and after the fall-off of the Civilian property act's restrictions, the deal for the assignment of a piece of real estate in exchange for a monthly allowance or annuity is not immoral. Such deal does not contradict with good morals and is in fact valid. Within the motives, another two occasions are also tackled: a) the contract is valid, even if the obligation of the assignee is strictly financial with no looking after the assigner being involved (i.e. taking care of him); b) it is of no significance whether the amount of the financial allowance covers the assigner's needs.

The adopted resolution explicitly arranges the validity of contracts for the assignment of property in exchange for life annuity, and implicitly the validity of contracts for the assignment of property in exchange for care and financial allowance at a fixed rate. These contracts provide for greater possibilities regarding the protection of the assigners. In case of failure to fulfill the contract assigning property in exchange for allowance and care, the possibilities facing the assigner are predominantly two: claiming transformation of the obligation from one by kind into a financial one or claiming dissolution of the contract through court. Carrying out this sort of actions is practically beyond the assigners' abilities (being mostly old and single individuals). Within contracts assigning property in exchange for life annuity (or care and financial allowance) the assigner has another possibility at his disposal – claiming adjudication of the regularly recurring due amount of money, which as a legal procedure is normally less complicated compared to proving the existence of a prerequisite for transformation or dissolution of the contract due to failure to fulfill.

The assignee is also faced with numerous privileges: the contract is retributive (i.e. the negatives of an endowment lack – mostly apprehension of its revocation, incl. due to impairment of a preserved share(накърняване за запазена част)), There is no need for immediately ensuring a substantial financial resource, so as to pay the price (which is a basic problem regarding simple sale activities). Also, there is no risk for the assigner (or his devisees) to argue in favor of a failure to fulfill due cares and allowance (a constant risk in the context of contracts assigning property in exchange for allowance and care). Within certain occasions, the contract for the devolution of a property in exchange for life annuity appears to be a much more appropriate instrument in order for relations to be settled, since it offers a reasonable balance between the interests of both parties.

With the contract for the assignment of a property in exchange for life annuity being of aleatory essence, financial allowance ought to be due for as long as the assigner is alive, and not until it reaches a certain amount or rate. Assigner's age is of no significance, but in case the assignee has been aware of a soon to come decease of the assigner, the contract therefore ought to be void.

Practice would be the one to prove whether the contract for the assignment of a property in exchange for life annuity would find broad application. What matters is that the Supreme Court of Cassation significantly expanded the range of relevant methods for the gainful assignment of a property.