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**ABSTRACT OF THE DOCTORAL DISSERTATION
“REVOCATION OF THE EXECUTED DONATION”**

The institution of revocation of executed donation was a subject of research presented in this dissertation. The practical application of this institution still rises significant doubts, despite the fact that provisions governing it remain unchanged over time. These doubts are visible both in the rich, casuistic case law as well as in the varying in their breadth and depth views of academics and commentators. Nevertheless, there is still no monographic study that would comprehensively and systematically present the extensive and heterogeneous research material, and that would draw general, universal conclusions from it. This dissertation aims to fill this gap, placing significant emphasis on solving practical problems in the application of the institution named in the title.

The conducted research indicated that a source of numerous doubts in the application of the commented institution is connected with its peculiar, dual nature, which also proves to be particularly fascinating from a scientific point of view. On one hand, this institution shows a high degree of flexibility and subjectivity connected with elements of moral and ethical nature, especially in the context of prerequisites of its application (such as gross ingratitude, forgiveness with sufficient understanding, fulfillment of the obligation resulting from the principles of community life). On the other hand, the institution in question constitutes a significant breach of the constitutional *pacta sunt servanda* principle, creating a potential threat to the certainty of legal transactions, which means that its application cannot be entirely arbitrary. This phenomenon, manifested throughout the entire dissertation, is included in the main thesis, according to which:

Institution of revocation of executed donation is characterized by a high degree of flexibility and subjectiveness, connected with elements of moral and ethical nature, but framed in a relatively rigid framework, which does not allow an absolute

discretion in its application and limits the aspect of the uncertainty of law that is inherently connected to the institution.

Taking into account the general and theoretical nature of the foregoing thesis, I formulate three additional specific theses, more practical and narrower in scope, which increase the readability of the analyses by grouping together the theses with an even greater level of specificity, according to which:

- 1) Relying solely on a literal interpretation of the provisions governing revocation of an executed donation is ineffective.**
- 2) The most accurate method to describe the concept of "gross ingratitude" is by identifying and describing the criteria affecting the evaluation of the donee's behavior.**
- 3) The time limit to revoke the executed donation is final, however, the severity of this regulation is reduced by the method of determining the commencement of its course.**

The assessment of the validity of the aforementioned theses involved detailed analysis of all the provisions regulating the institution of revocation of an executed donation. The extensiveness of the research material in this area shaped the structure of the dissertation, which, in addition to the introduction and conclusion, consists of the following nine chapters.

Chapter I addresses the basic aspects of the nature, content, subject matter, and parties to the donation contract itself, which indirectly determine the most general scope of application of the institution of revocation of an executed donation.

Chapter II of the dissertation describes the conclusion of a legally valid donation contract. This chapter also covers the execution of a donation, which is a direct condition for the application of the title legal institution, which proves to be particularly problematic in respect to things of individual identity.

The discussion of Chapters I and II of the thesis allows for moving on to a direct analysis of the institution of revocation of an executed donation in Chapter III. Research in this field begins with general characteristics, including questions regarding its substance, scope, objectives, character in comparison with other civil law institutions, the type of norms governing it and the prerequisites for its application.

Chapter IV is devoted to the fundamental and the sole positive prerequisite for the revocation of an executed donation, namely the display of gross ingratitude of the donee

towards the donor. The technical legal classification of the concept of "gross ingratitude", the manner in which it is reflected in the external world and, above all, the analysis of its content, all called for consideration in this regard. In the last mentioned area, I find the methodology of identifying and describing the objective and subjective criteria which affect the assessment of the donee's behavior to be the most accurate. Particular attention is directed to the meaning of the functor "gross", which leads to a number of in-depth questions, especially in relation to the guilt and intentionality of the donee's behavior, as well as the intensity of the evil caused, including repetition, continuity, and the unlawfulness and lawfulness of the evaluated actions. From the subjective point of view, it was important to determine which subjects could show gross ingratitude towards the donor and which subjects could be affected by this ingratitude. It needs to be taken into account whether the behaviour of third parties might be attributed to the donee and whether the behaviour towards the property should be regarded as equivalent to behaviour towards the donor. At the end of the Chapter, on the basis of the synthesized analysis, I propose a general model for establishing the premise of gross ingratitude of the donee towards the donor.

Chapter V of the dissertation contains an analysis of those premises that may prevent the exercise of the right to revoke an executed donation. Those prerequisites are granting forgiveness, expiring the time-limit, and determining that the donation fulfills an obligation arising from rules of social coexistence. Apart from the above, there are other exclusions that do not directly result from the wording of the provisions governing the institution contained in the title, such as waiver of the right, death of the donee or death of the donor. The analysis of each of the above premises raises further concerns and research questions, which are covered in that Chapter.

Chapter VI is dedicated to the examination of subjects entitled to revoke an executed donation. The provisions in this scope expressly refer to the donor, but they also raise questions about the possible actionability of a statutory representative, attorney or public prosecutor. In addition, within the limited scope specified in Article 899 of the Civil Code, the heirs of the donor may also be entitled to this right. However, numerous doubts surround the manner in which they may acquire these rights and what is the precise scope of the premises for their revocation of the donation. Particularly the time limit proves to be very problematic, as well as situation of multitude of heirs.

Posing questions about the form, content and recipient of the declaration revoking donation in Chapter VII constitutes a natural continuation of the analysis made in Chapters IV-VI. It is particularly questionable whether a donation may be revoked in a testament, in a court

claim form or by another procedural act. This also raises the question of whether the donor's declaration must specify the reasons for revocation. The provisions also do not clearly define the possibility of making a declaration of revocation of a donation against a person who does not have full legal capacity.

Chapter VIII describes the consequences of revoking an executed donation. Article 898 § 2 of the Civil Code refers in this regard mainly to the application of the provisions on unjust enrichment. This leads to a number of research questions, starting with the basic issues of specifying the obligatory or *in rem* nature of the effects as well as its retroactive (*ex tunc*) or "future" (*ex nunc*) consequences. The scope of application of particular provisions of unjust enrichment and their meaning in terms of the revocation of an executed donation also raises doubts.

The final, ninth Chapter of the dissertation is devoted to those cases where spouses are parties to the donation contract. These cases lead to specific issues regarding the manner and consequences of revoking an executed donation, both because of the multitude of subjects, but also because of the need to take into account the regime of matrimonial joint property and the issue of spousal representation. Due to that, the considerations in this area have been separated and presented as the last thematic chapter of the thesis.

The dissertation is concluded with a summary, in which, in addition to the verification of the presented theses, I collect the postulates *de lege ferenda*, propose a summary of the new provisions regulating the institution of revocation of an executed donation, as well as present a model of determining the premise of gross ingratitude of the donee towards the donor. The foregoing elements, along with the conducted detailed analysis, fill the gap existing in the doctrine and case law concerning the institution of revocation of an executed donation.

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