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AGREEMENTS ON ASSIGNMENT AND DISTRIBUTION OF PROPERTY DURING LIFETIME

Summary: *The authors analyse the positive law solutions of the domestic legislator dedicated to the contract for the assignment and distribution of assets for life, explaining the essential elements of the contract and how they have been applied. The authors focus on the importance and mode of regulation that this contract has in the law of succession, while pointing out its significance in the subject matter of the law on obligations. By comparing the provisions of the legislature in the Republic of Serbia governing this legal work, the authors point to more rational solutions envisaged in the Republic of Srpska, but also criticize the inadequate use of terminology that needs to be corrected in the future. According to the authors, the assignment and distribution are unfairly neglected in relation to the lifetime maintenance contract, which is the most widespread inheritance agreement of this kind. The aim of the paper is to point out the broad possibilities of contracts for the assignment and distribution of assets for life and to show that this contract represents a more favourable solution than a life support contract which can often be misused.*

Key words: *legal nature, subjects, subject matter, relationship*

JEL classification: *K12*

INTRODUCTION

The notion of inheritance includes the division and distribution of property, but also the economic, social, intellectual, and biological connections between people (Weigel 2008, 280). Accordingly, the authors will explain the meaning and role of these terms in relation to assignment and distribution. In this paper, our attention is limited to the laws governing the transfer of property from one generation to another, or to other persons who in the modern legal sense belong to the legal heirs (Hiers 1993, 130).

According to Article 128 of the Law on Inheritance of the Republic of Srpska, the legal work inter vivos whereby an ancestor can assign and distribute his property to children and other descendants is called a contract for the assignment and distribution of property for life (Law on Inheritance of the Republic of Srpska - ZON "Official Gazette of the Republic of Srpska", No. 1/2009, 55/2009 - correction and 91/2016). The above wording indicates that a valid contract for the assignment and distribution of property cannot be concluded by persons outside this circle of relatives who are not authorized to inherit it after the death of the assignor (Subotic-Konstatinovic 1978, 584).

In view of the legally binding consequences it produces, it is normatively regulated by the Law on Inheritance of the Republic of Srpska, although it has the characteristics of a contract of obligation which are reflected in the transfer of property from the assignor to the contractors.

However, this contract is not an inheritance contract in the true sense of the word, as it is not eligible to be the basis for invoking the inheritance of either the contractor or third parties.
The specific legislative technique that has been present in our region for years, as well as the fact that this legal work can only be concluded by blood relatives in a straight line, who could be mutually inherited by the rules of regular legal inheritance, justify the inclusion of this contract in the hereditary matter (Stojanović 2008, 26). The legal order of inheritance shows the degree of development of democratic rights, i.e. whether descendants are treated differently because of their gender or order of birth (Brophy 2010, 475). In the assignment and distribution, the sex of the descendants is not relevant, but the descendants born earlier, i.e. the testator's children, have a privileged position in relation to the grandchildren of the assignor.
The contract for the assignment and distribution of assets for life constitutes a kind of prior inheritance, but also a waiver of the contractor from the placing of hereditary claims regarding the property covered by this contract after the death of the assignor (Huseinspahić and Kurbegović-Huseinspahić 2017, 218). By law, things and rights from an ancestor's legacy are inherited only after his death (Rollison 1935, 24), and assignment and distribution allow certain goods to be passed on to his children and other descendants during the ancestor's lifetime.
The purpose of the contract is to reach an agreement on the distribution of all or part of the property of the assignor during his or her lifetime, thus achieving the dual legal and political goals. It is possible for the offspring to acquire, during the assignor's life, material possessions that facilitate or enable him to establish his own household and avoid possible disputes between the assignor's children over the division of his legacy (Djurdjevic 2015, 244).
Art. 129 of the ZON specifies the conditions for validity and provides that the assignment and distribution of property will only have full legal effect if all the children and other descendants of the assignor who are legally called to inherit his legacy have agreed to it. If a descendant has not given his or her consent, he or she may give it later. The cancellation of the effect of the offspring's disagreement is possible if the offspring who did not give his consent dies before the testator and does not leave offspring behind, that is, if he renounces the inheritance or is unworthy. In the event that a descendant who would be legally called to inherit does not give his or her consent, either at the conclusion of the contract or subsequently, the contract for the assignment and distribution of property will not be valid, but due to legal conversion, parts of the property transferred to other heirs will be considered as gifts and will be treated as gifts made to heirs after the death of the ancestor. (Antic 2009, 340).

1. THE LEGAL NATURE OF THE CONTRACT

The contract for the assignment and distribution of assets for life is a formal, named, bilateral, as a rule unilaterally binding, causal and beneficent legal transaction.
It belongs to strictly formal legal affairs and in our legislation requires the form of a notarized document. By its legal effect, the form of this contract is ad solemnitatem and is a condition for validity. The procedure of notarial processing of documents enables the reading of the true will of the parties and prevents provisions that are contrary to the law or cannot be implemented in the content of the legal transaction. As this contract primarily transfers property rights, it is necessary that the provisions be formulated clearly and in a non-contradictory manner by persons capable and authorized to conclude such legal transactions, so that the rights and obligations of the parties are balanced and clearly defined, in order to avoid legal disputes during their realization or to enable them to be entered in the appropriate public registers without difficulty (Povlakić 2012, 253).
At the same time, it is necessary that there is free will when concluding the contract, more precisely that defects of will are not present, in accordance with the basic principles of contractual relations (Šolaja and Raković 2019, 267).
This contract is a named contract because it is specifically regulated by law, its name is determined and its essential content is prescribed, and the absence of essential elements in this

type of contract implies its nullity (Barley 2018, 13). That is, if a contract is regulated by law as a separate named contract, then the parties cannot regulate their contractual relationship in detail, and it is therefore sufficient to agree on the essential elements, so that the relevant law provisions of the dispositive character are applied to their legal relations. The law prescribes the essential elements of a contract for the assignment and distribution of assets for life that are a condition for validity, and it is up to the parties to reach an agreement on the property to be covered by this legal business, possible obligations on the offspring side and the like.

The welfare of society takes precedence over the wishes of the individual, only when the social interest is at stake or when it is of primary importance (Hirsch 2004, 1034). In the case of a contract of assignment and distribution, the law prescribes conditions that the assignor cannot voluntarily change, because it is in the interest of the society that all descendants to be invited to inherit should agree; for otherwise the assignor's descendant who is not covered by the contract could be unfairly left out and damaged.

The contract is a bilateral legal transaction, since it arises on the basis of at least two consonant statements of wills in which one statement of will creates an offer and the other accepts the offer (Ignjatović and Šutova 2013, 189). Therefore, the assignor offers his property with or without compensation, and his descendants and eventually the spouse must agree to it; otherwise the legal consequences of this contract will not occur.

As a rule, a contract for the assignment and distribution of assets for life is unilaterally binding because it creates obligations only on the page of the assignor, that is, he or she must assign some or all of the property to the descendant co-contractors. This also results in the basis of the assignment and distribution agreement, which consists in the free increase of the property of the offspring (animus donandi), which makes this contract a causal contract (Đurđević 2015 244). Thus, the assignor is aware that he is not obliged to cede to the contractors the real estate or some other property that is the subject of the contract, but he does so with the intention of donating (Perkušić and Ivančić 2005, 939). On the other hand, this contract can also be bilaterally binding if the obligations are agreed on the side of the offspring in the form of providing life support, payment of debts and other burdens ordered by the assignor.

As already mentioned, the contract on assignment and distribution of assets for life can assign assets without compensation and obligations on the side of descendants, and in this case, it is a charitable legal business, the main characteristic of which is the absence of compensation for the charity done. However, the law allows the offspring to provide for appropriate obligations for the benefit of the assignor, his spouse or a third party. At the conclusion of the contract, the assignor may for himself, his spouse or other person retain the right of fruitful enjoyment of all the assignments or of some of them, or arrange a life annuity in kind or money, or a lifetime allowance or any other compensation (Art. 133 ZON). This legal wording makes one think that this is an encumbered legal transaction because the offspring for the benefit they receive must provide adequate compensation. In theory, the question arises whether the contract of assignment and distribution of life still falls within the legal regime of charitable legal affairs if certain obligations are agreed on the side of descendants, which is a characteristic of encumbered legal transactions.

Some authors think that this contract will retain the quality of charitable legal work when the duty is foreseen on the side of the descendants to give the annuity or life support to the assignor (Đurđević 2015, 244). The authors of the opposite view believe that a contract for the assignment and distribution of property for a life that is “burdened” with life support or annuity is always an encumbered legal job, since due to its aleatory nature, the intention of generosity could not be formed with the assignor (Stojanović 2008, 32). There is also a group of authors who argue that in this case it is a mixed, i.e. remunerable legal work (Kreč and Pavić 1964, 332), while on the other hand, some authors state that the contracts for the assignment and distribution of property during life, which obligate the offspring to another form of remuneration, may be partly paid and partly free legal work (Svorcan 2004, 410).

Taking into account the authors' considerations, we believe that the contract for the assignment and distribution of assets for life is a legal benefit and that obligations such as a life annuity or lifetime maintenance have the legal nature of a warrant rather than an imposition (Đurđević, 2015, 244), which is also underpinned by the legal formulation of Art. 135 of the ZON, according to which the assignor's trustees can refute the assignment and distribution under the conditions provided for rebuttal of the disposition without compensation.

2. ENTITIES THAT CAN CONTRACT THIS AGREEMENT

The basic rule of inheritance prescribes that bloodline is a critical determinant, and that without proper proximity of blood relationship, inheritance is not possible (Rhodes 2008, 434).
As already mentioned, the contract of assignment and distribution of life will be valid and produce full legal effect only if it is agreed upon by all the children and other descendants of the assignor who will be ex-lege invited to inherit his legacy, hence three groups of descendants should be distinguished in this connection. The most prominent logic that connects such determination of the conditions of previous inheritance and equality refers to the adequate distribution of ancestral wealth (Hager and Hilbig 2019, 760). Also, modern legislation emphasizes the importance of formal adoption, so that adopted children also have the right to conclude this contract (Wright 2015, 73).
The first group should include descendants who are the legal heirs of the assignor and who retain this property until the assignor's death, regardless of whether they gave their consent at the time of conclusion or subsequently. The second group consists of the descendants of the decedent who subsequently acquired the hereditary characteristics. This situation arises in the case of the occurrence of the assignor's offspring, who was declared deceased at the time of the conclusion of the contract, the subsequent birth of the assignore's child, or the appearance of a descendant using the right of representation. The third group consists of the descendants of the assignor who were heirs at the time of the conclusion of the contract, but lost this property due to death, unworthiness, renunciation or exclusion from inheritance (Miljković 2013). Given these facts, their consent is not required.
According to Art. 106 of the Law on Obligations of the Republic of Srpska, conversion constitutes the transformation of a null and void contract into a valid second contract, if the null contract fulfils the conditions for the validity of another contract (Law on Obligations - ZOO, Official Gazette of the SFRY, No.29 / 78, 39/85, 45/89 and 57/89 and Official Gazette of the Republic of Srpska, Nos. 17 / 93,3 / 96,37 / 01,39 / 03 and 74/04). The other contract will then apply to the contractor, if it is consistent with the purpose the contractors had in mind when they concluded the contract and if it can be taken that they would conclude the contract if they knew of the nullity of their contract. This implies the intention of the legislator to try to save the legal business if the parties did not know the preconditions for the validity of the concluded legal transaction (Udiković 2019, 158).
The legislator explicitly requires the consent of all descendants, given at the time of conclusion or subsequently; otherwise they will convert to a gift contract (Art. 132, para. 1 of the ZON).
Applicable inheritance regulations also state that a conversion will occur if the assignor's child is born after the conclusion of this contract, or an heir who has been declared deceased appears (Art. 132, para 2 of the ZON). Of course, these descendants can also give their subsequent consent, giving this contract full legal effect. Certain authors also believe that a descendant who was declared deceased and who appears after the death of the assignor, when the legacy proceeding has already been completed, may exercise his right in litigation (Kreč and Pavić 1964, 342).
The introduction of this provision has ensured protection of the rights of heirs who did not exist at the time of the conclusion of the contract, and therefore could not even be covered by being recognized as legally relevant contractors. This legal formulation has achieved legal certainty and prevented future disputes between the successors of the assignor known at the time of the

conclusion and those who arose subsequently. If they, or any other heir, does not agree to the distribution and assignment, the rights of the contractors who have consented to the assignment and distribution will not have the effect which they had in mind when concluding, because the assignment of the property will be considered as gifts made to the heirs, that is, the gift may be returned to the extent that the imperative right of the necessary heirs has been violated (Art. 39, Para. 4 of the ZON) (Djurdjic 2019, 291). That is, the heirs of the assignee inherit as if he had donated his property, and from the assigned and distributed property the necessary heirs could be settled. Pursuant to Art. 51, Paragraph 2 of the ZON, all those who have been damaged in respect of their right to the necessary part, may require that these gifts now be included in the hereditary part of each descendant who has received the benefit of the assignment and distribution agreement.

When comparing the decision of the legislator in the Republic of Srpska with the solution provided for in the Law on Inheritance of the Republic of Serbia, it is concluded that the provision on the rights of the subsequently born child of the assignor or appearance of an heir who was declared deceased is more adequate in the legislation of the Republic of Srpska (Law on Inheritance of the Republic Serbian Official Gazette of RS, No. 46/95, 101/2003 - decision of USRS and 6/2015).

Namely, the inheritance-legal regulations in the Republic of Serbia do not contain a provision regulating the status of these successors. Non-regulation of this important issue may lead to the interpretation that the contract for the assignment and distribution of assets for life produces an effect independent of these facts, which is nevertheless inconsistent with the provision that the condition for the validity of this contract is the consent of all descendants who would be called to inherit. The appearance of a legal loophole creates opportunities for different interpretations in case law, and it is necessary to introduce solutions that would include these entities in terms of validity requirements (Stojanović 2008, 28).

Also, with respect to heirs who have this capacity at the time of the conclusion of the contract, but lose it subsequently due to death, unworthiness, waiver or exclusion from inheritance, the solution envisaged in the legislation of the Republic of Srpska is a more adequate solution.

The Republic of Srpska explicitly states that no consent is necessary of heirs who die before the assignor, are unworthy or excluded from inheritance, while on the other hand, the legislator in the Republic of Serbia does not foresee exclusion from inheritance as a possible cause of annulment of the disagreement. This form of disinheriting heirs results in exclusion from the right to the necessary part if the assignor disposes of his inheritance by way of will (Stojanovic 2008, 28), and a descendant who, for justified reasons, is not entitled to the imperative hereditary part, should not be a contracting party when concluding the contract as is provided for in the Law on Inheritance of the Republic of Srpska. The law is stable, but never static, it adapts to the social reality (Hirsch 2010, 527), and for the reasons already mentioned, certain provisions should be included in the Law on Inheritance of the Republic of Serbia.

Succession represents the transfer of rights and obligations from the previous owner to his heirs. With the exception of equalizing the position of married and unmarried children, succession remains unchanged as a legal institute, just like other central institutes of civil law (Willenbacher 2003, 209), and it is necessary to address this issue in the analysis of assignment and distribution.

In legal theory, the question is whether the contract for the assignment and distribution of assets for life will be valid if it is not agreed upon by the descendants of the contracting parties who use the right of representation, or rather come to the place of their legal predecessor.

In one view, if the assignor had a descendant who died before the assignor and left behind descendants, the consent of the representative team would be necessary for the contract to be valid (Antic and Balinovac 1996, 482). If the representatives did not give their consent, the contract of assignment and distribution of assets for life would be converted into a gift contract. Since the law explicitly states that a contract for the assignment and distribution of assets for life will have full legal effect if a descendant who has not agreed to the distribution dies before

the testator and has left no descendants, is unworthy, excluded or renounced, by analogy we come to the conclusion that the assignment will be valid if the person coming to the place of his or her ancestor right renounces the inheritance, is excluded, is unworthy or incapable of inheritance.

According to another understanding, if a descendant who gave his or her consent dies before the testator and leaves his or her representatives coming in his / her place as legal heirs, the assignment and distribution agreement retains its hereditary effects also against these descendants (Kreč and Pavić 1964, 342). Therefore, the consent of the descendants is not necessary for the validity of the contract. They share the legal fate of their predecessor, regardless of whether they are in agreement with respect to assigned property.

We believe that the second opinion is justified, since the transferred property is part of the legacy of the assignor's descendant, which will be inherited by his representatives, arising from the fact that the assignment consists in the registration of rights in the relevant real estate registers or handing over when it comes to movable property for the life of the assignor. In addition, injury to assignor's will would be avoided, since by assignment and distribution, he determined the manner of property satisfaction of the representative who gave his consent, obviously satisfied with the outcome of this legal transaction. If the first understanding is applied, the non-consent of the representative would cause the assignment and distribution agreement to be converted into a gift contract, and the assignment of property could be returned to settle the necessary part, which was not the intention of the assignor.

2.1 Rights of the assignor's spouse

Marriage is a living union of a man and a woman in which relationships of a personal nature are realized, but also relationships with an important property aspect (Krešić 2010, 544). In modern law, when a man and a woman enter into marriage, their personalities form a single entity in terms of law (Khertarpal 1969, 39), so it is adequate that the contract of assignment and distribution produces legal consequences for the spouse of the assignor.

Art. 134 of the ZON regulates the rights of a spouse and stipulates that they may be covered by a contract for the assignment and distribution of property for life if they give their consent. The assignor's spouse may be a contracting party at the conclusion of the contract or may give their consent regarding the content of the contract. He may or may not have these characteristics, as this will not affect the validity of the contract. If the spouse agrees or is not a contracting party, the contract will remain valid, whereby it will be converted into a gift contract with respect to the spouse, therefore the contract on assignment and distribution of assets for life will remain in force as such, but will not have full legal effect. In this way, the spouse is allowed to keep her right to the necessary part intact, which is consistent with the understanding that the spouse cannot, by his own will, deprive the spouse of part of his property that belongs to her by law (Morton, 162), since she inherits the law equally in the first inheritance along with the descendants of the decedent. However, although the spouse of the assignor has the same hereditary position as the children and descendants in the inheritance of the legacy, he evidently has an inferior position with respect to the assignment and distribution of property for life in relation to the ex lege heirs of the assignor. Namely, the consent of the children and possibly other descendants who will be called upon to inherit his property at the moment of the death of the assignor is necessary for the validity of the contract and the non-consent of one of them causes this hereditary contract to be converted into a gift contract with respect to all parties, while the spouse's consent or participation in this legal business does not produce such legal effect. We believe that this difference stems from the intention of the legislator to provide primarily the descendants of the assignor and to prevent property conflicts between them after his death. The spouse shall in any case be secured, and even in the event of the assignor's distributing all of his or her property to their offspring, he or she has the imperative right on the necessary part. Therefore, there will be two calculated values of the legacy, one in relation to

the offspring not included in the goods covered by this contract, and one for the spouse, which includes the goods covered by the contract for the assignment and distribution of assets for life, because only according to the spouse, these goods are deemed as a gift (Đurđević, 2015 247). The fact that other family members cannot be the subjects of this contract indicates the privileged status of the closest members, i.e. children, other descendants of the assignor and his spouse (Brassington 2019, 120). Also, some authors believe that inheritance is crucial for the development of social inequality (Boone, 2010, 98), but in the case of contracts for the transfer and distribution of property for life, unfair distribution is not possible, because the contract must be agreed by the closest persons to be invited to inheritance after the death of the assignor.

3. SUBJECT OF THE CONTRACT

The principal argument for inheritance, and therefore for assignment, is the preservation of capital (Tullock 1971, 465).

By assigning and distributing, the assignee undertakes to assign and distribute all or part of his property to his children and other descendants who inherit it ex lege. It is of utmost importance that the subject matter of the contract be determined or determinable, otherwise the contract will be void pursuant to Art. 47 ZOO. It follows that it is necessary for all the property subject to this contract to be described in detail and indicated. It is important for real estate to indicate the exact numbers of parcels and to describe the buildings because on the basis of the contract the rights are transferred by entry in the real estate cadastre (Miljković 2013). Precisely indicated and stated should also be movable things, because the legal formulation of "all movable things" would lead to indeterminacy or the impossibility to be determined, and consequently to nullity of the contract (Svorcan 2004, 399). Of course, the economic status of the assignor plays a significant role, as there is no doubt that his children will receive greater material benefits in this case (Bowles and Gintis 2002, 4).

It is not legally relevant whether all descendants will benefit from this legal work, only their consent is relevant. It is assumed that individuals, in this case the assignor, make their decisions on the basis of maximum utility (Stirzaker 1980, 574), and accordingly distribute their property to the descendants they believe will make the best use of the goods received by assignment and distribution. There is a possibility that the assignor's desire is to increase the assets of only certain descendants for free, while others will not be covered by the assignment and distribution. Here, we assume that the offspring who do not receive the benefit are materially satisfied through some other legal work of the assignor or otherwise. The question arises as to why the descendant who contributes the most to the common good of the assignor would not have the exclusive right to dispose of the items from the assignor's property (Jenkins 2008, 129), without the consent of others. The answer to this question should be sought in the importance of securing all the testator's descendants, in accordance with family solidarity, and the assignor may assign to the descendant most or all of the property, of course with the consent of the others.

Property means all things and rights which are the property of the assignor and which are inherently transferable. For example, they will not be able to cede the right of fruitful enjoyment or the right of residence because they belong to personal easements that are related to the personality of their title holder (Miljković 2013). Legal fruition can outlive its titular, which will be discussed later. The assignor may also transfer to the descendant all the rights he has in a dispute between him and another person over the property, provided, of course, that the dispute was pending at the time the contract was concluded (Svorcan 2004, 399).

It is necessary that the property covered by this legal transaction exists at the moment of the conclusion of the contract because the assignment and distribution clause found in the assignor's legacy will be null and void (Antic 2009, 342). In the event that such a clause is of extreme importance to the contract itself or was a condition, that is, a decisive impulse upon conclusion,

the entire contract will be void (Art. 105, para. 1 ZOO). Such an attitude of the legislator is understandable, since a contract that includes property acquired after the conclusion would be an inheritance contract that is forbidden in our law.

In the jurisprudence, cases of inclusion of these impermissible provisions have been more frequent, and in most cases the court declared them null and void, and for reasons of legal certainty, a provision was introduced to the law that forbids disposal of property that did not exist at the time the contract was concluded (Svorcan 2004, 399). In order to avoid the negative consequences reflected in the nullity of the provision or the entire contract, it is advisable to conclude an annex to the contract or a new contract for the assignment and distribution of assets for life.

The rule is that the assignor's contractors between whom the assignor has divided his property are not liable for his debts, except in two cases (Djurdjevic 2015, 248). When the subject of the contract is the transfer of the whole or part of that whole (craft shop, business premises, agricultural property with livestock, machinery), the person to whom such property is transferred shall be liable for debts relating to that whole or part thereof, in addition to the former holder and in solidarity with him, but only to the value of his assets (Art. 452 ZOO). A second case of liability for a debt is foreseen if so agreed at the conclusion of the contract or when it comes to property encumbered by a lien on a real estate mortgage. An agreement between a descendant who has taken over the debt and the assignor establishes a relationship in which the descendant commits himself to the ancestor to fulfil his obligation, and the creditor has no right to the descendant, and that contract is regulated by Art. 446 ZOO. The co-contractor who has assumed the obligation of fulfilment is solely responsible to the assignor if he fails to fulfil the contract. The mortgage accompanies the thing, and the offspring to whom the mortgaged property has been passed has to pay the assignor's debt, otherwise they will be deprived of property. It is necessary to make a written invitation to the creditor, and it will be considered that the mortgage creditor has tacitly agreed to the change of the debtor, unless they should refuse the invitation of the assignor within three months (Art. 447 of the ZOO).

If the contract is valid, the assets covered by it will not become part of the assignor's legacy, even the calculated value of the legacy, which shows that the necessary part cannot be settled by assigned and distributed property, as previously stated in the paper.

The obligation of the ancestor is the main act, but the legislator explicitly allows the obligations on the side of the offspring to be foreseen. These secondary acts are fulfilled by the offspring towards the assignor, the assignor's spouse, or some third party.

The legislator states that the contractual life annuity or the life-giving benefit in the event of the death of the assignor or his spouse belong in their entirety to the surviving spouse until their death, provided, of course, that these rights are agreed for both spouses together and unless otherwise agreed or arising from the circumstances of the case (Art. 133 ZON). It is interesting that the legislator binds all other rights that can be contracted to the assignor or his spouse to the titular person, while the right to a lifetime annuity or the right to enjoy life continues after their death. We believe this stems from the importance these rights have for the assignor or spouse, that is, the legislator wants the surviving spouse to be provided for the rest of his or her life. Spouses in marriage should be equal, respectful and supportive, so the spouse, by contracting the right on the side of his or her spouse, sought to materially secure him or her. Otherwise, the surviving spouse would probably be in a difficult financial position because he would not have the right to enjoy the property or receive the money he needed.

In practice, there are cases where a contract for the assignment and distribution of property for life is concluded as an unfair legal transaction, without additional burdens, but there are many more frequent cases where the right to live or enjoy the life of the ancestor is contracted (Stanojević 2008, 33). Other offspring commitments are not that common.

4. RELATIONSHIP BETWEEN THE AGREEMENT ON ASSIGNMENT AND DISTRIBUTION OF PROPERTY DURING LIFETIME WITH LIFE MAINTENANCE CONTRACT

A life support contract is also a contract of obligation that produces hereditary consequences and is a common contract of its kind, since it is concluded in practice on a massive and almost daily basis (Novakovic 2015, 142). It is defined as a contractual relationship in which "one contractor undertakes to support the life of another contractor or a third party, and in which the other contractor declares that he or she inherits all of his or her property or part thereof. It is a contract of alienation with compensation of part or whole of the property belonging to the recipient of maintenance at the time of the conclusion of the contract, whose yielding to the maintenance provider is postponed until the death of the maintenance recipient." (Art. 139, para. 1 ZON). This definition of contract in the Law on Inheritance of the Republic of Srpska is extremely impractical and has no scientific justification. The identical definition was contained in the Federal Law of 1955 and lost its significance when, due to the change of normative jurisdiction from the federal to the republic rank, republican laws on inheritance were passed (Antic 2009, 348). We think that amendments to the law should go in the direction of narrowing and simplifying this definition.

The life support contract is strictly formal, named, bilaterally binding, in respect of which everything that is said for the assignment and distribution contract applies. The contract is encumbered because it is about the alienation of property and rights by the recipient with compensation from the donor, that is, each contracting party owes a compensation for the benefit it receives under the contract (Novakovic 2015, 174).

It is encumbered and always bilaterally obligated legal business, unlike contracts for the assignment and distribution of assets for life because obligations are foreseen on both the recipient and the provider side. The assignment and distribution agreement may also have the characteristics of an encumbered legal transaction and contain obligations both on the part of the assignor and on the side of his descendants, but it still retains its lucrative character, as explained previously.

The subject of the contract, which consists of the obligations of the grantor and the recipient of maintenance, must be possible, permissible, determined or determinable, otherwise the contract will not have legal effect (Antić 2009, 356). Also, the assets of the recipient of subsistence must exist at the moment of conclusion of the contract; it does not enter into the calculated value of the bequest and the necessary heirs cannot be settled from it. An identical solution regarding the specificity of the case, the existence of the property at the time of the conclusion of the contract and the inability to settle the necessary heirs is foreseen in the assignment and distribution.

Subjects to a life support contract can be both natural and legal persons, while the assignment and distribution are possible only between the ancestor, his spouse and descendants who invoke the inheritance after his death. An interesting situation is when a life support contract is entered into between persons who are legally required to support themselves. Namely, in practice, abuses that can occur due to the fact that the property covered by this contract does not belong to the legacy of the recipient of maintenance, and thus other heirs will be excluded from the inheritance (Gavrić 2014, 443). In the Draft Law on Inheritance of the Republic of Serbia there was a provision according to which "a life-long subsistence contract in which a person who is legally obliged to support a recipient is declared to be a survivor, unless others with a legal obligation to support have been heard before the conclusion of the contract" (Antic and Balinovac 1996, 507). Our opinion is on the side of the necessity of introducing this provision, as otherwise the abuses will continue and the courts will still have to assess the circumstances of each case and determine the existence of fraud, leading to overburdening and legal uncertainty. On the other hand, assignment and distribution encompass all successors of the

assignor and thus this contract is used as a mechanism for recognizing correct social norms that reflect justice as a basic virtue of society (Sloan 2019, 8).
For a life support contract, the life support provider acquires a civil law position that can be protected by entry in public registers, but in the event of a failure of the property due to force majeure or expropriation, the maintenance provider shall not be entitled to compensation due to the impossibility of applying the rules on real subrogation (Đurđević 2009, 204). On the other hand, by assignment and distribution, the property that is the subject of the contract is acquired by the descendants or spouse by entry in the real estate cadastre, that is, by the actual transfer by the assignor, as a rule immediately after the conclusion of the contract.
As already stated, assets covered by contracts for life support and assignment and distribution of assets for life cannot be used to settle the necessary heirs. Some authors believe that resistance to the establishment of a necessary part disturbs the balance of inheritance law and enables the emergence of social and ethical norms (Đurđević 2009, 204). On the other hand, there are opinions that the morality of inheritance distribution is viewed from the aspect of the giver of property (Halliday 2013, 619).
The great advantage of an assignment and distribution of property for life over a life-support contract is the absolute necessity for successors to give their consent for the contract to be valid, and in the event that they do not or are subsequently forced to repay what have received by assignment, their right to the necessary part remains intact.

5. TERMINATION OF THE CONTRACT

The extraordinary way of termination of the contract due to the circumstances that arose after its conclusion is termination of the contract (Arsić and Stanivuk 2019, 143).
When referring to termination of contracts for the assignment and distribution of assets for life, the legislator uses inadequate terminology because he uses the word revocation (Stojanovic 2008, 32). Namely, revocation is possible only with a unilateral declaration of will, which is certainly not the case here, and we believe that in the next amendments to the law this error should be corrected.
The legislator further states the possible reasons for the revocation, that is, termination by dividing them into two categories. The first category includes cases where the assignor has the right to demand that the contractor who has received the benefit of the contract return all that he has received through the assignment and distribution. The court is not empowered to assess the significance of the default on the assignor if the offspring has shown serious non-gratitude to him, failed to provide support to him or to any other person for whose benefit the contract was contracted, or failed to fulfil the agreed debts of the assignor (Art. 137 § 1 ZON). The second category includes other obligations imposed on the offspring whose main decision on the fate of the contract is made by the court. Namely, in the case of non-realization of other burdens, the court thoroughly assesses the importance of those burdens for the assignor and takes into account all the circumstances of the case, considers the reasons pro et contra, and only then decides whether to terminate the contract or only to enforce obligations (Art. 137, paragraph 2 ZON). Of course, it is possible to specify in the contract itself the ways and reasons for termination of the contract, in which case the court will appreciate what was agreed, regardless of the legal provisions. If there is a dispute over the reason for termination, the court decides on the lawsuit, but also the descendant has the right to appeal to the civil court by filing a lawsuit to establish the absence of reasons for termination of the contract (Antić and Balinovac 1996, 492). It is unclear why the legislator differently treats the non-realization of the burden with regards to the termination of the contract when each obligation can be of equal importance to the assignor (Stojanovic 2008, 32). Probably the intention was to protect the types of obligations that most often occur when concluding a contract, but such an attitude has no significant basis.

The severing of the legal relationship between the whistle-blower and the co-contractors due to the gross non-gratitude expressed provides possibilities for different interpretations, since it is a legal standard. The expressed non-gratitude must be qualified as gross and not ordinary, and this is to be decided by the court in each particular case. However, due to case law, certain cases are already included in this reason for termination of charitable legal work. The assignor will have the right to demand repayment of everything that the offspring received in the name of assignment and distribution if the offspring commits a serious crime toward the assignor, whether done intentionally or by negligence, with the exception that a negligent relationship must be established in the existence of negligence (Miljković 2013). There are also cases where the offspring intentionally causes the assignor great property damage, physically abusing him, abusively treating him, threatening the assignor to be evicted from the house and the like (Đurđević 2015, 249). The cases of gross negligence represent a great thanklessness of the offspring to the assignor who has ceded and divided the property to them, and it is quite understandable that these situations lead to the termination of the contract, since the infringement of the assignor's rights is evident here.

When life support is contracted for the benefit of the assignor, his spouse, or a third party, the contract for the assignment and distribution of property has all the characteristics of a life support contract (Miljković 2013). If they are jointly contracted for the assignor and his spouse, after the death of one of them, they are transferred as a whole to the surviving spouse, and the legal provision for termination for failure to fulfil gives the right to termination only. Such a legal formulation opens possibilities for problems in practice (Svorcan 2004, 412). Since such a contract has all the features of a lifetime maintenance contract, it can be terminated only under the rules governing termination of the lifetime maintenance contract, i.e. termination can be requested because of default, influence of changed circumstances, unbearable life together or death of the maintenance provider whose obligation has not been assumed by his spouse or a descendant called for inheritance (Art. 142 ZON).

If the recipient of the property does not comply with the contractual obligation consisting in the payment of the assignor's debts, the conditions for termination of the contract will be considered fulfilled because that obligation was of extreme importance for the ancestor, which stems from the fact that it was contracted at the conclusion of the contract. It is also intensified by the fact that the offspring agreed to the obligation and knew it.

Prior to termination of the contract itself, the court should leave an adequate deadline for fulfilling the contractual obligation, regardless of the type of obligation involved, and to allow termination only after the expiry of this period, if the recipient has not fulfilled his obligation (Svorcan 2004, 415).

The legislator states that a descendant who had to return to the assignor all that he received in the name of assignment and distribution would be entitled to the necessary part, unless he was unworthy, renounced or excluded from the inheritance, and portions of the property transferred would be considered as a gift (Art. 138 ZON). The ambiguous wording of the provision raises the question of whether the assignment and distribution agreement is still valid, and if it is converted into a gift contract only to the descendant who returned the property or if the entire contract is converted to a gift contract. We believe that the first situation is fairer, since the principle of *favor contractus* is applied in domestic legislation, according to which the legislator seeks to keep the contract in force whenever possible (Arsić and Stanivuk 2019, 143), and other offspring and spouse should not suffer too great a consequence of doing something else. Also, if the position we represent is correct, the offspring should be barred from claiming the transferred property in the hereditary part, since the ancestor the desire not to account for the hereditary part by the very conclusion of the contract of assignment and distribution of property for life with other descendants and spouse, and by termination of the contractual relationship with the descendant (Stanojević 2008, 35).

CONCLUSION

The contract for the assignment and distribution of assets for life constitutes an extremely important contract in the matter of hereditary law, although it is not represented in practice to the extent that the contract for life support is. Its importance is reflected in the regulation of property relations between the ancestor and his legal heirs and the prevention of conflict in the succession debate. The paper presents irregularities that should be corrected in the legislation of the Republic of Serbia on the model of the domestic legislator, but also the need to remove the wrong terminology that is represented in the provision regarding termination of the contract. Transfer and distribution are intended to provide for the offspring during the assignor's life so that they can start their own household and be more financially independent. This contract is mostly unilaterally binding because it is intended to increase the offspring's assets free of charge. Also, the paper presents extensive options for contracting obligations on the side of descendants, when the contract receives the characteristics of an encumbered legal transaction and allows the assignor to receive appropriate compensation for the assigned property. There is a need for the legislator to clarify the distinction between unfulfilled burdens that entail termination of the contract and those of others, since any obligation may be equally significant to the assignor, as otherwise he would not even contract.

If life support is contracted, this contract assumes all the features of the life support contract, even terminating accordingly. The great advantage of the assignment and distribution is that it must be agreed upon by the descendants who will be called to the inheritance after the assignor's death and who have the imperative right to the necessary part. Since the property covered by this contract does not enter into the calculated value of the legacy, the consent of the necessary heirs fulfils the purpose of the assignment, since the rights of the descendants and spouse are protected. The authors believe that this contract should be more represented in practice, so that imperative heirs are not mistreated.

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