

The Impact of a Spouse's Gross Ingratitude on the Admissibility or Inadmissibility of Revocation of a Donation Made to Joint Marital Property, in the Views of Doctrine and the Case Law

There are many arguments in doctrine and case-law concerning the issue of the admissibility of a revocation of a donation made to the joint marital property if only one of them shows gross ingratitude towards the donor. Many of the opinions discussed in the article go beyond the topic of the admissibility of the revocation of a donation in favour of the return of an object after the revocation of the donation. The admissibility of the revocation of the donation should be considered regardless of the problem of returning the item, which occurs only after the effective revocation of the donation. The issue of the admissibility or inadmissibility of a revocation of a donation cannot be determined by the existence of potential obstacles in the future return of the object after the revocation of the donation. The position allowing for partial revocation of a donation should be supported, as the arguments in favour of this view take into account the principles of social coexistence and appear to be the most equitable solution from the point of view of the interests of both the donor and the beneficiaries. If one of the spouses shows grossly reprehensible behaviour, the donor should retain its right to revoke the donation in any case, as this right results from the provisions of the Civil Code. However, it is essential that the possibility to revoke a donation should apply only to the person who has presented gross ingratitude, in the absence of a legal basis for extending liability to the other spouse. Consequently, the stance on the partial admissibility of revocation of a donation should be regarded as the most appropriate.

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The article aims to present two existing positions in doctrine in regards to the problem of revocation of a donation where it was made to the joint marital property while only one of the spouses has become ungrateful to the donor. By the provisions of the Polish Civil Code, gross ingratitude of the donor is a premise for the revocation of the donation which has been already made. When a donation is made directly to joint marital property, the problem arises as to the admissibility of its revocation if only one of the spouses presented grossly ungrateful behaviour. With

regard to this problem, both doctrine and the case law developed two stances. The first is in favour of the total inadmissibility of a revocation of a donation where only one of the spouses has shown gross ingratitude towards the donor, while the second is in favour of allowing a partial revocation of the donation. Each of these stances presents various arguments which will be presented in this article.

The view of total inadmissibility of the revocation a donation made to the joint marital property due to the gross ingratitude of only one of the spouses, arose as part of the criticism¹ of the Supreme Court's sentence, when the possibility of revoking the donation was allowed in the discussed circumstances, by accepting the thesis that at the moment of making the declaration of intent to revoke the donation, ownership of the object from joint ownership without shares automatically changes into joint ownership in equal parts².

The first argument raised by advocates of this approach states that the good of the family may be endangered by the revocation of a donation which has been made to the joint marital property. It is essential due to the fact that the protection of the family has been raised to the rank of a constitutional principle in Polish law³. The rationale behind the existence of a joint marital property institution is the well-being of the family⁴, the realisation of equal rights of spouses in the economic functioning of the family⁵, financial stability⁶, closer union of spouses⁷. The importance of the institution was

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- 1 A. Szpunar, *Glosa do uchwały Sądu Najwyższego z dnia 18.2.1969 r., III CZP 133/68, OSNCP 1969, nr 11, poz. 193*, „Nowe Prawo” No. 7-8, 1970, p. 1180; art. 35 Family and Guardianship Code: „During the duration of the statutory joint marital ownership, no spouse may request the division of joint property. Nor may he dispose of or undertake to dispose of the share which, in the event of cessation of the co-ownership, will accrue to him in the joint property or in individual objects belonging to such property”.
 - 2 Supreme Court Resolution of 18.2.1969 r., III CZP 133/68, OSNCP 1969, No. 11, item 193.
 - 3 Art. 18 Constitution of the Republic of Poland of 2 April 1997 (Dz. U. z 1997 r., Nr 78, poz. 483): „Marriage as a union of a man and a woman, a family, maternity and parenthood are under the protection and care of the Republic of Poland”.
 - 4 Supreme Court sentence of 4.11.2004, V CK 215/04, Legalis,
 - 5 Supreme Court sentence 31.1.2003, IV CKN 1710/00, Legalis.
 - 6 Supreme Court Resolution of 9.6.1976 r., III CZP 46/75, OSNCP 1976, No. 9, item 184.
 - 7 J. Słyk, [in:] *Kodeks Rodzinny i Opiekuńczy. Komentarz, art. 31*, ed. K. Osajda, Warszawa 2018, nb. 14.

particularly evident in ineffective attempts to replace it with a construction of property separation with equalisation of assets and achievements⁸.

The problem of the economic burden of returning the revoked donation arises in the event of revocation of a donation made to the joint marital property. If the donation is revoked in a whole or in relation to only one spouse, the obligation to return the whole object, half of its shares or the respective monetary value, in the legal sense would be incurred only by the ungrateful spouse, but in the factual sense by both spouses and the whole family in consequence. This problem is particularly evident when the object of the donation is a real estate. Partial revocation of the donation could create an unexpected obligation to return the respective monetary value equals to half of the property, which could significantly exceed financial capabilities of the family⁹. Thus, according to this standpoint, the good of the family is safeguarded by the existence of the statutory joint marital ownership which constitutes an obstacle to the effective revocation of the whole donation, in the event of the gross ingratitude of one of the spouses.

The second argument in favour of the inadmissibility of the revocation of the donation in discussed circumstances, resulting from the provisions of Articles 35 and 42 of The Family and Guardianship Code. These provisions prohibit any of the spouses from demanding the division of the marital property when the statutory joint marital ownership was still in force, and from administering or promising to administer of the share which would accrue to the spouse after the division of that property¹⁰. Also, these provisions prohibit a creditor from demanding to satisfy his interest by individual assets belonging to the joint marital property but also by a share of the joint marital property, when the statutory joint marital ownership was still in force¹¹.

Thus, if the statutory joint marital ownership is not divisible into shares by its nature, there is no physical possibility to determine the elements of the joint marital property which the spouses could administer or promise to administer. From the perspective of the creditor, the meaning of the provisions can be expressed by the statement that the creditor cannot have more

8 T. Smoczyński, *Reforma małżeńskiego prawa majątkowego*, „Monitor Prawniczy” No. 18, 2004, p. 827-828; J. Słyk, [in:] *Kodeks Rodzinny...*, op. cit., art. 31, nb. 15.

9 L. Stecki, *Glosa do uchwały SN z 18 lutego 1969 r., III CZP 133/68*, „Nowe Prawo” No. 9, 1970, p. 1353-1357.

10 Art. 35 Family and Guardianship Code.

11 Art. 42 Family and Guardianship Code: „The spouse’s creditor may not, during the term of the joint action, demand satisfaction from the share which, if the joint action is terminated, will accrue to that spouse in the joint property or in individual property belonging to that property”.

rights to the object than its owner¹². The creditor has no right to direct the enforcement to the spouse's share in the joint marital property. This entitlement is acquired after the dissolution of the joint marital property and division of assets¹³.

According to the doctrine, there is no need to divide the joint marital property into the parts during the time when the statutory joint marital ownership is still in force if due to the dissolution of the joint marital property there are some shares which can be modified (reduced or increased for each spouse), pursuant to Article 43 § 2 of The Family and Guardianship Code, and that is a justification of existence of prohibitions mentioned above¹⁴.

The return of the object of the donation should be interpreted as a dispositive legal act within the scope of the discussed provisions (administration of shares in joint marital property) due to the Supreme Court's case-law, the revocation of the donation takes on the effect under the law of obligations, therefore, the ungrateful beneficiary is obliged to transfer the ownership, not possession of given property back to the donor¹⁵.

The third argument in favour of the inadmissibility of the revocation of the donation in discussed circumstances, resulting from the fact that the donor voluntarily excludes the principle specified in Article 33 point 2 of The Family and Guardianship Code, according to which if the beneficiary is a person remaining in statutory joint marital ownership, the object originating from the donation is nevertheless transferred to his/her separate individual property¹⁶. If therefore, the donor stipulates in the donation agreement

12 S. Breyer, S. Gross, [in:] *Komentarz do Kodeksu Rodzinnego i Opiekuńczego*, ed. B. Dobrzański, J. Ignatowicz, Warszawa 1975, p. 217; K. Pietrzykowski, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz*, ed. K. Pietrzykowski, art. 42, nb. 2, Warszawa 2018.

13 Supreme Court Resolution of 17.4.2015 r., III CZP 9/15, OSNC 2016, No. 4, item 41.

14 K. Pietrzykowski, [in:] *Kodeks rodzinny i opiekuńczy Komentarz*, ed. K. Pietrzykowski, art. 42, nb. 2-4, Warszawa 2018.

15 Resolution (7) Supreme Court of 7.1.1967, III CZP 32/66, OSN 1968 No. 12, item 199; Resolution (7) Supreme Court of 30.11.1994 r., III CZP 130/94, OSP 1995 z. 7, item 159; A. Szpunar, *Kilka uwag o odwołaniu darowizny*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” No. 3, 1986, p. 9.

16 Art. 33 p. 2 Family and Guardianship Code: „The personal property of each of the spouses includes: (...) property acquired by inheritance, bequest or donation, unless the testator or donor decides otherwise”; art. 197 Civil Code: „Co-owners shall be presumed to have equal shareholdings”.

that the object should be placed in the joint marital property, by doing so, he/she makes an exception to the principle expressed in the Code and the donor therefore voluntarily agrees to limit his/her rights. For this reason, revocation of the donation is not admissible¹⁷.

According to the doctrine, nothing precludes the donor of making a donation not to the joint marital property but their separate individual assets in the form of fractional co-ownership¹⁸.

Such a solution would allow the donor to revoke the donation if one of the spouses showed gross ingratitude to the donor. This view is reflected in the principle *volenti non fit iniuria* („to a willing person, injury is not done”) which states that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party in tort or delict¹⁹.

This principle is invoked to justify the total inadmissibility of the revocation of a donation²⁰ or the partial admissibility of the revocation only to one of the spouses²¹. However, it is stressed out, that in both situations mentioned above, there is lack of an effective way to revoke the donation and return the object to the donor in a whole, in consequence of the donor's waive from the Code rule described above²².

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- 17 Decision of the Supreme Court of 15.2.2012, I CSK 284/11, OSP 2013, No. 1, item 3; Sentence of the Court of Appeals in Katowice of 6.3.2013, I ACA 66/13, Legalis; A. Szpunar, *Kilka uwag...*, op. cit., p. 14.
- 18 S. Rejman, *Glosa do uchwały Sądu Najwyższego z dnia 18.2.1969 r., III CZP 133/68*, „Nowe Prawo” No. 6, 1971, p. 974-976.
- 19 J. Krzynówek, *Volenti non fit iniuria. Powstanie i historia reguły*, [in:] *Łacińskie paremie w kulturze prawnej i orzecznictwie sądów polskich*, ed. W. Wołodkiewicz, J. Krzynówek. Warszawa 2001. p. 267-287.
- 20 S. Rejman, *Glosa do uchwały...*, op. cit., p. 974-976.
- 21 M. Warciński, *Glosa do postanowienia Sądu Najwyższego z 15.2.2012 r., I CSK 284/11. Cywilne prawo – zobowiązania – odwołanie darowizny nieruchomości objętej majątkiem wspólnym z powodu rażącej niewdzięczności – roszczenie pieniężne z tytułu bezpodstawnego wzbogacenia w razie odwołania wobec jednego małżonka*, „Orzecznictwo Sądów Polskich” No. 1, 2013, p. 19.
- 22 K. Gromek, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz, art. 35*, ed. K. Gromek, Warszawa 2016, nb. 7 oraz [in:] *Kodeks rodzinny i opiekuńczy. Komentarz, art. 41*, ed. K. Gromek, Warszawa 2016, nb. 4; Decision of the Supreme Court of 15.2.2012, I CSK 284/11, OSP 2013, No. 1, item 3; Decision of the Supreme Court of 15.2.2012, I CSK 284/11, OSP 2013, No. 1, item 3.

The advocates of this viewpoint emphasising that the entry of the object and its remaining into the joint marital property until one of the spouses manifested gross ingratitude, is in itself an obstacle to both revocation of the donation but also to the return of the object to the donor. As a result, the donor's rights are limited to the possibility of claiming the respective consideration monetary value back from the ungrateful spouse only²³.

The fourth argument in favour of the inadmissibility of the revocation of the donation in discussed circumstances is to refer to the principle of equity, which prescribes an individual examination of the case. An unfair revocation of a donation to a spouse may be considered unfair if the spouse's conduct does not give rise to do so²⁴. Even if such inappropriate behaviour towards the donor happens, the consequences of the spouse's misconduct are not justified in the current legal status. Nor does it follow from the regulations governing the statutory joint marital ownership that it is possible to cancel a donation in relation to both spouses.

The fifth argument in favour of the inadmissibility of the revocation of the donation in discussed circumstances is the need to protect the interests of the spouse's creditors. If the revocation of a donation has an effect in property and results in a transfer of shares from joint marital property to separate individual property of spouses, this effect could constitute an instrument to circumvent the law²⁵.

A revocation of a donation made as an action of an ostensible nature would deprive the creditor of the possibility of enforcement of an object of which half of the shares, after revocation, would be owned, by virtue of law, to the separate property of the other spouse. In this case, such enforcement would have to be limited only to a share in the property belonging to the spouse who had entered into an obligation and only when the obligation was entered into in order to satisfy the needs of the family²⁶.

The sixth argument in favour of the inadmissibility of the revocation of the donation in discussed circumstances is the indivisible nature of the object. There is a view that, at the time when an object enters the joint marital

23 Sentence of the Court of Appeals in Białystok of 24.9.2015, I ACA 409/15, Legalis.

24 H. Ciepła, S. Brzeszczyńska, *Obrót nieruchomościami w praktyce notarialnej, sądowej, egzekucyjnej, podatkowej z wzorami umów*, Warszawa 2018, p. 746.

25 K. Mularski, [in:] *Komentarz do Kodeksu Cywilnego, art. 450-1088*, vol. II, ed. M. Gutowski, Warszawa 2016, p. 1298.

26 M. Warciński, *Glosa do postanowienia...*, op. cit., p. 18; art. 41 § 1 Family and Guardianship Code: „If the spouse has entered into a commitment with the permission of the other spouse, the creditor may also demand satisfaction from the joint property of the spouses”.

property, the object of a donation acquires the attribute of an indivisible²⁷. However, such a position is criticised in doctrine. In M. Warciński's opinion, it is not the type of property which includes the subject of the donation that determines the indivisibility of the object, but the fact of inability to satisfy the obligation without a material change in the object or its value²⁸. Also S. Dmowski expressed the view that the indivisible nature of an object in itself (e.g. a car), if it was given to several people, determines that it is impossible to revoke a donation in the situation of gross ingratitude of one of them²⁹, and in particular when a donation has been made to the joint marital property the revocation of the donation is totally inadmissible³⁰.

The seventh argument in favour of the inadmissibility of the revocation of the donation in discussed circumstances is to indicate the inconsistency of the consequences of the revocation of the donation in this case. The dual effect of the revocation of a donation means that an effective revocation of a donation at first results in a material effect (transfer of an object from joint marital property to separate individual property of spouses), and then in an obligation effect (obligation of the spouse to return the object of the donor)³¹. The view on the duality of the effects of revocation is criticised in terms of the admissibility of revocation, due to the need for uniform application of the law. This matter is still the subject of continuous discussion in the doctrine³². However, approach which presents the obligation effect of revocation of a donation is predominant. At this point, we have presented all the arguments raised by the advocates of the total inadmissibility of the revocation of the donation in the case of gross ingratitude of only one of the spouses.

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- 27 A. Szpunar, *Glosa do uchwały Sądu Najwyższego z dnia 18.2.1969 r., III CZP 133/68*, „Nowe Prawo” nr 7(8), 1970, p. 1180-1185; A. Szpunar, *Kilka uwag ...*, op. cit., p. 14.
- 28 M. Warciński, *Glosa do postanowienia...*, op. cit., p. 18.
- 29 S. Dmowski, [in:] *Komentarz do Kodeksu Cywilnego. Księga Trzecia. Zobowiązania*, vol. II, ed. G. Bieniek, Warszawa 2005, p. 740.
- 30 *Ibidem*, p. 741.
- 31 Supreme Court sentence of 26.11.1997, II CKN 458/97, OSNC 1998, No. 5, item 84.
- 32 Supports an obligation effect: uchwała SN z 7.1.1967 r., III CZP 32/66, OSNCP 1968, No. 12, item 199; M. Safjan, [in:] *Kodeks Cywilny. Komentarz*, art. 450-1088, vol. II, ed. K. Pietrzykowski, Warszawa 2015, s. 889; supports a material effect: S. Grzybowski, [in:] *System Prawa Cywilnego*, vol. III, *Prawo zobowiązań. Część szczegółowa*, ed. S. Grzybowski, Wrocław, 1976, p. 248; E. Drozd, *Przeniesienie własności nieruchomości*, Warszawa-Kraków 1974, p. 132; Supreme Court Resolution of 17.10.1963, III CO 51/63, OSNCPiUS 1964, No. 9, item 170.

Next, we will present the arguments of advocates of the view of partial admissibility of the revocation of the donation made to the joint marital property but only in relation to the spouse who showed gross ingratitude to the donor. According to this stance, partial revocation of the donation is permissible for several reasons.

The first argument is the fulfilment of the condition of gross ingratitude specified in Article 898 § 1 of the Civil Code by only one of the beneficiary spouses. Therefore, this condition is not met in its entirety. Since the other spouse's behaviour did not give a reason to revoke the donation in relation to himself, he or she cannot be held liable for the other spouse, nor can he lose the object of the donation, since the object is also his property³³.

Also, the doctrine indicates that there are no personal or objective restrictions in the Article 898 § 1 of the Civil Code, so that the revocation of the donation made to the joint marital property when only one of the spouses showed gross ingratitude to the donor, is permissible³⁴. The Supreme Court, in its resolution of 28 September 1979, also expressed the view that in the event of gross ingratitude of only one of the beneficiary spouses to the donor, the donation may be revoked in relation to him, but no to the other spouse, as there is no legal basis for doing so³⁵.

The second argument is to recognise the priority of the Article 898 § 1 of the Civil Code on the revocation of a donation over the provisions of the Article 43 § 2 of The Family and Guardianship Code on statutory joint marital ownership³⁶. According to this view, the fact that the spouses remain in statutory joint marital ownership cannot affect the donor's rights to revoke the donation. Since this right is an integral part of the donation institution, The Supreme Court supported this stance in its resolution³⁷.

According to the doctrine, in the event of a conflict between the regulations concerning a donation and the regulations governing the statutory joint marital ownership, the legislator gives priority to the content of the donor's declaration of will³⁸, as evidenced by the provisions of Article 33(2) of The Family and Guardianship Code allowing the donor to make a donation directly to the joint marital property, and this effect arises even if only one of

33 K. Gromek, [in:] *Kodeks rodzinny i opiekuńczy. Komentarz*, ed. K. Gromek, art. 42, nb. 5, Warszawa 2016.

34 M. Warciński, *Glosa do postanowienia...*, op. cit., p. 17.

35 Supreme Court Resolution of 28.9.1979, III CZP 15/79, LEX 2435.

36 M. Safjan, [in:] *Kodeks Cywilny. Komentarz, art. 450-1088...*, op. cit., p. 692.

37 Supreme Court Resolution of 28.9.1979 r., III CZP 15/79, LEX 2435.

38 M. Safjan, [in:] *Kodeks Cywilny. Komentarz, art. 450-1088...*, op. cit., p. 561.

the spouses was a party to the donation agreement³⁹. According to the doctrine, the preservation of the donor's right to revoke a donation is an example of how the law is applied following the principles of social coexistence⁴⁰.

It would be highly unjust to withdraw the right to revoke a donation from a person who treats a donor unfairly and reprehensibly only because he or she is in statutory joint marital ownership. Advocates of this viewpoint emphasize the need for the donor to retain even a partial right to revoke the donation. This view is supported by the resolution of the Supreme Court of 28 September 1979, which allows the revocation of a donation only in respect of a spouse who has shown gross ingratitude to the donor, even if the object was transferred to the joint marital property⁴¹.

On the other hand, Polish law prohibits making use of one's right, which would be contrary to the principles of social coexistence⁴². In the discussed circumstances, it would mean demanding the return of the object from a spouse who has not shown gross ingratitude towards the donor. Also, Z. Policzekiewicz supports the stance of the admissibility of the revocation of the donation only in relation to an ungrateful spouse, even if the object of the donation was transferred to their joint marital property, as the total revocation of the donation, in the author's opinion, would be grossly unfair⁴³.

The third argument in favour of the partial admissibility of the revocation of the donation in discussed circumstances is in favour of this position is that the ingratitude of one spouse and the ingratitude of both spouses should not be treated in the same way, since the other spouse could have acted in favour of the donor, for example in his defence⁴⁴.

The fourth argument in favour of the partial admissibility of the revocation of the donation in discussed circumstances is the cancellation of the original provisions of the donation agreement as a result of its revocation. At the moment of revocation of the donation, the act of will is cancelled not

39 L. Stecki, *Umowa darowizny*, Warszawa-Poznań 1974, p. 75.

40 M. Warciński, *Glosa do postanowienia...*, op. cit., p. 17.

41 Supreme Court Resolution of 18.9.1979, III CZP 15/79, Lex Polonica No. 301359, OSNCP 1980, No. 4, item 63.

42 Art. 5 sentence 1 of Civil Code: „It is not allowed to make a use of one's right that is contrary to the socio-economic purpose of that right or to the principles of social coexistence”.

43 Z. Policzekiewicz, *Glosa do uchwały Sądu Najwyższego z dnia 15.1.1992 r., III CZP 142/91*, „Orzecznictwo Sądów Polskich” nr 3(54), 1993, teza 2.

44 M. Warciński, *Glosa do postanowienia...*, op. cit., p. 17.

only concerning the donation of the object but also to its entry into the joint marital property⁴⁵.

The consequence of the revocation of a donation is that, in relation to the spouse, who was not grossly ingratitudinous, the legal basis which is the donor's declaration of intent is not legally effective for both – the reason she or he receives an object but also for the entry of that object into the joint property. On the other hand, there is no legal basis for claiming that the object of the revoked donation must leave the property of a spouse who was not grossly ingratitudinous so that a partial revocation of the donation should be considered as the best solution in the situation of gross ingratitude of only one of the spouses.

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45 Supreme Court Resolution of 28.9.1979, III CZP 15/79, LEX 2435.

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