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Lifelong Maintenance Contract as One of the Types of Transfer of Property, its Legal Nature and Collateral Risks

Less than two decades have passed since the enactment of the Civil Code of Georgia. However, citizens are still merely informed with regard to the legal nature of the contracts transferring property ownership. Hence, instead of lifelong maintenance contract, they often are using deed of gift or sales and purchase agreements. The latter does not provide achievement of the set purpose by participants of the contractual relationship and creates less guarantees of legal protection for grantor or seller.

In the current article the freedom of contract is discussed as an important achievement of private law relations, compliance of principles of freedom of contract with principles of the European Law of Obligations, aleatory nature of the contract, its particular legal nature, legal characteristics of the contract, for of the contract, fiduciary and long term obligatory character of the contract, etc.

Key words: *Contract, lifelong maintenance, dependent, bread-winner, property, risk.*

1. Introduction

The fact that every human strives for ensuring stability and economic condition of his/her future life, is one of the initial statements of the hypothesis of lifecycle¹ of Franco Modigliani,² laureate of the noble prize. The modern interpretation of the lifecycle hypothesis was presented by Franco Modigliani in 1985 during the lecture held at the ceremony of assignation of the noble prize “Lifecycle, savings of citizens and wealth of the nation.” The strive towards retaining of economic stability of future life was never a strange thing for human society in any societal-economic formation. Such mechanism is the lifelong annuity. More precisely, according to words of famous French lawyer Alain Bénabent, the lifelong annuity – this is a tool, to leave your heritage to yourself for old age – “*La rente viagere est, dit-on, le moyen, d’ heriter de soi-meme.*”³

In the modern world civil law there are contracts, which are aimed at risk,⁴ also contracts already including risk, as aleatory⁵ or euphemistic (embellished), as loyal contracts bringing welfare.⁶

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¹ Franco Modigliani received noble prize in 1985 for this study.

² American Economist of the Italian origin (1918-2003), <<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=14&t=142896>> [25.09.2020].

³ *Bénabent A.*, Droit civil, Les contrats spéciaux civils et commerciaux, 8. Auflage, Paris, 2008, 643.

⁴ *Henssler M.*, Risiko als Vertragsgegenstand, Tübingen, 1994, 366, 733.

⁵ Aleator – gambler; aleatory, occasional, depending on probability and risk (for instance regarding contracts; aleatory agreement – risky agreement, depending on casualty, bet, etc.).

<<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=48&t=1481>> [25.09.2020]. (in Georgian)

⁶ Contracts bringing welfare / loyal contracts: ABGB (Zweiter Teil, Zweite Abteilung, Neunundzwanzigstes Hauptstück: “Von den Glücksverträgen“, §§ 1267-1292) im dritten Teil.

Henssler describes this risk as more illegal, as far as other element of the risk, which is in relation with the risk of the event, is also related to the length of contract, etc.⁷

2. Freedom of Contract as an Important Achievement of Private Law Relations

2.1. Role of Market Economy and its Importance in the Freedom of Contract

Concluding contract is the expression of free will. Free conclusion of a contract entails the fact that nobody is obliged to enter into agreement.⁸ Conclusion of a contract is based on the will of parties to enter into particular legal relationship, which is ground for contract law that is formed on principle of freedom of parties' relation and freedom of contract.⁹ It is a precondition for development of legal nature, economic life and private initiative.¹⁰ The will to conduct legal relations must be agreed between parties.¹¹ A contract is a result of agreement of desires expressed by parties, i.e. expression of will – offer, which is addressed towards conclusion of contract, must be accepted by the addressee.¹²

Within the framework of the agreement the party obtains possibility to exercise civil rights.¹³ In general, conclusion of the agreement is based on the need of parties to conduct such legal relation, which in future will facilitate raise of conscious demand in response to necessary condition, demand in the psychological science for performing activity on particular thing or action, indication to provoking desire for action, which forces human to perform some kind of action.¹⁴ The important principle which is a basis for the Law of Obligations is the principle of freedom of contract.^{15,16} The freedom of contract took form which is called free implementation of action in contractual relations, within the legal framework and regulation of which on normative level is one of the fundamental legal preconditions for economic development of the country.¹⁷ There is an opinion that the birth of the principle of freedom of contract was facilitated by the market economy.¹⁸ As a result of developing principle of the freedom of contract, participants of the civil relations, in accordance to their own will, are entitled to conclude contracts acceptable for them, the content of which does not infringe rights of

⁷ Henssler M., Risiko als Vertragsgegenstand, Tübingen, 1994, 395.

⁸ Zoidze B., Reception of the European Private Law in Georgia, Tbilisi, 2005, 270 (in Georgian).

⁹ Ordinance of the Civil Law Chamber of the Supreme Court of Georgia from 22 March 2011 №as-1359-1197-2010. Descriptive part – Decision of the Appellate Court of Georgia from 27 April 2009 (in Georgian).

¹⁰ Chanturia L., General Part of the Civil Law, Tbilisi, 2011, 31 (in Georgian).

¹¹ Ibid. 317.

¹² Baghishvili E., Evocation of the will (offer) in the unified private law, Georgian Law Review, Special Edition, 2007, 76 (in Georgian).

¹³ Kobakhidze A., General Part of the Civil Law, Tbilisi, 2001, 325 (in Georgian).

¹⁴ Kakabadze V., Psychology of necessity, Tbilisi, 1988, 21 (in Georgian).

¹⁵ Decision of the Civil Law Chamber of the Supreme Court of Georgia from 8 November 2011 №as-839-890-2011 (in Georgian).

¹⁶ Decision of the Civil Law Chamber of the Supreme Court of Georgia from 27 March 2012 №as-1300-1320-2011 (in Georgian).

¹⁷ Commentaries to the Civil Code of Georgia, Vol. 3, General part of the Law of Obligations, Tbilisi, 2001, 60-61, Article 319 (in Georgian).

¹⁸ Bernitz U., Market as a Legal Discipline, Scandinavian Studies in Law, Vol. 23, 1979, 58.

third persons.¹⁹ As wide the framework of the contract formation will be, the more possibilities will exist for market economy participants to freely conclude contracts.²⁰ Contractual lawfulness is the limitation of contractual liberty from one perspective and entails equivalence of implementation, however we shall not consider this as identity of values of implementation.²¹ Existence of equal rights indicated to contractual lawfulness (formal, non-factual equality is implied).²²

2.2. Harmonization of the Principle of Freedom of Contract with the Principle of the European Law of Obligations

Freedom is the right to do what is permitted under the law.²³ A person may perform any action not forbidden by the law and he/she is responsible for that action personally.²⁴ Therefore, freedom of content of the contract represents possibility of its parties to choose personally, in accordance to their own will, prescribe any lawful term permitted under the law in the contract.²⁵ Exercise of freedom is important in private, as well as in public-law relations. For achieving freedom, it is necessary for person to share the law and preconditions of its application.²⁶ In both cases, the interests of those people, who participate in the respective legal relations, must be necessarily protected, as far as otherwise it is impossible to implement freedom by the person.²⁷ Freedom of contract cannot exist if the people holding this right are not capable to implement their right.²⁸

The serious achievement of the Georgian Law Reform is the freedom of contract. The notion of the contractual freedom defined by the Civil Code of Georgia corresponds to the process of unification-harmonization of the European Law of Obligations.²⁹ According to the principle of freedom of contract, parties have right to conclude or not to conclude contract, within the framework of the law unlimitedly define its form, content and legal outcomes.³⁰ The freedom of contract, first of all, must be understood as the right, as the determination of the right represents a title attaining to and depending on the area of person's freedom.³¹ As far as the authenticity of a contract depends on whether the second party has understood correctly the thing which the person expressing the will

¹⁹ *Shengelia I.*, Contractual liberty as the principle, essence and significance of the Civil Law, Justice and Law, 2009, №4 (23), 45 (in Georgian).

²⁰ *Dzlierishvili Z., Tsertsvadze G., Robakidze I., Svanadze G., Tsertsvadze L., Janashia L.*, The Contract Law, Tbilisi, 2014, 107 (in Georgian).

²¹ *Zoidze B.*, Reception of the Private Law in Georgia, Tbilisi, 2005, 295 (in Georgian).

²² *Khubua G.*, Theory of Law, Tbilisi, 2004, 76 (in Georgian).

²³ *Montesquieu S.L.*, The Spirit of Laws, translation of D. *Labuchidze-Khoperia, Natadze N., Jioevi O. (ed.)*, The Caucasus Institute for Peace, Democracy and Development, Tbilisi, 1994, 180 (in Georgian).

²⁴ *Chanturia L.*, General part of the Civil Law, Tbilisi, 2011, 92 (in Georgian).

²⁵ *Chechelashvili Z.*, Contract Law, second edition, Tbilisi, 2010, 61 (in Georgian).

²⁶ *Zoidze B.*, Attempt to understand practical existence of the law, primarily in the context of human rights, Essays, Tbilisi, 2013, 58 (in Georgian).

²⁷ *David R.*, Major legal systems in the World today, *Ninidze T., Sumbatashvili E. (trans.), Ninidze T. (ed.)*, Tbilisi, 2010, 80 (in Georgian).

²⁸ *Jorbenadze S.*, Limits of the freedom of contract in the Civil Law, Dissertation, 2016, 46 (in Georgian).

²⁹ *Zoidze B.*, Reception of the European Private Law in Georgia, Tbilisi, 2005, 268 (in Georgian).

³⁰ Decision of the Civil Law Chamber of the Supreme Court of Georgia from 9 November 2005 №as-382-691-05 (in Georgian).

³¹ *Chachava S.*, Competition of needs and grounds of needs, Tbilisi, 2011, 3 (in Georgian).

wanted to say, it becomes clear what is the importance of understanding the will of second party properly.³² The freedom to conclude contract and respectively determine its content mainly aims at protecting interests of subjects of the legal relation. This gives possibility to every person, by means regulated by the law and by using own material possibilities, to receive all those services from other person, which are not possible for him/her arbitrarily. Therefore, in this regard the best tool is the lifelong maintenance contract.

3. Aleatory Nature of the Lifelong Maintenance Contract

3.1. Impact of the Term of a Contract on the Scale of Obligations and Unknown Time of its Exhaustion

The principle of freedom of the contract for lifelong maintenance consists of two parts: on the one hand it entails freedom to conclude contract, and on the other hand – possibility to freely determine the content of a contract.³³ However, it should be taken into account that “contractual freedom is possible in the framework of contractual order and if it drops out from the order, it will cause anarchy and arbitrariness in the business.”³⁴

The important legal particularity of the lifelong maintenance contract is the fact that it is equipped with aleatory characteristics. The word “aleatory” derives from French, “alea” means throwing dice.³⁵ In the lifelong maintenance contract the unknown fact is the expiry of term, termination of performing obligation by one party. Therefore, “the term impacts the volume of obligation, but never destroys it entirely; This is the condition of byer in return to lifelong maintenance, who pays more or less expensive for the item, depending on the length of the life of seller, whether he/she lives longer or passes out surprisingly. Moreover, the buyer knows that he/she cannot receive the property free of charge.”³⁶

In the doctrinal sentences, according to which for both parties of contract the reciprocal implementation and economic results depend on unknown event, Bénabent has suggested the following formulation: the contract is aleatory according to which remuneration (reciprocal implementation) for everyone or for one party is related to unknown event.³⁷ To say in other words, aleatory contract may bring benefit or loss to any party, which depends on the unknown event that is related to performing at least one service.³⁸

³² *Sukhitashvili T.*, Interpreting contract in the modern Georgian Civil Law, Journal “Justice”, 2007, №3, 126 (in Georgian).

³³ *Dzlierishvili Z.*, Legal Nature of Contract on Transfer of Property under Ownership, Tbilisi, 2010, 426 (in Georgian).

³⁴ *Zoidze B.*, Reception of the European Civil Law in Georgia, Tbilisi, 2005, 273 (in Georgian).

³⁵ *Garner B. A. (ed.)*, Black’s Law Dictionary, Eight Edition, Thomson West, 2004, 342.

³⁶ *Planiol M.*, The Course on the Civil Law, part 1, theory of obligations. Petrokov: editing house of S. Panski, 1911, 345 (in Russian).

³⁷ *Ferid M., Sonnenberger H. J.*, Das Französische Zivilrecht, Heidelberg, II, Rn. 2 M 101, 1994, 387.

³⁸ Aleatory contract necessarily gives chance for getting benefit and lost as well for each party; however, it depends on causality, unknown event, related to service provision from both sides, or on contract from only one side, Savaux, Defrénois 2007, Art. 38697, №76, 1737 (1739).

The French Civil Code is silent with regard to the lifelong maintenance contract, however in practice it is used and described by French law-scientists. M. Planioli wrote: “Instead of selling property, in return to the lifelong maintenance some people preferred to enter into legal obligatory relations for their own benefit. Future counteragents agreed that one side would transfer flat or table to other signatory, in a word, would transfer maintenance prepared in all ways for lifelong period. Such promise determines obligation to do something and such agreement is called lifelong maintenance contract.”³⁹

Conclusion of the lifelong maintenance contract may be caused by several circumstances, mostly it is concluded in cases when the dependent is disable to work, or suffers from material hardship and requires care. He/she concludes contract with bread-winner, who gets property (immovable property or movable things in the ownership of the dependent) prescribed under the contract in return to this care and assistance.⁴⁰

Hence, the lifelong maintenance contract carries aleatory character, as its result becomes clear only after the termination of contract, after which it may appear that the contract was beneficial for one party and causing damage for other one. The fact whether a contract is risky or not is determined deriving from the purpose of the contract, i.e. parties consciously and intentionally make a risk, the economic outcome of which depends on undefined event.

3.2. Legal Nature of the Lifelong Maintenance Contract

For showing legal nature of any contract the juridical qualification is important. How can we legally classify the contract of lifelong maintenance? Is it legally independent contract or mixed contract? The mixed contract represents combination of various types of contract regulated under the law, that must be subject to respective regime, if it does not give incorrect impression on its characteristic.⁴¹ However, this definition supposes that the lifelong maintenance relationship has legal independence.⁴²

With regard to the lifelong maintenance contract legal classification represents particular difficulty. The aleatory contract is a mutual, reciprocal contract the equivalent of which lies within possibility of each party to get benefit or damage in case of unknown event.⁴³ The adequacy of received and given is the best fact in the legal relationship, however, there is a risk of the opposite as well, which must not exceed the legal basis. The risk of inadequacy is more in case of lifelong maintenance contract. It shall not exceed the limits of contract terms by its results. The benefit

³⁹ *Planiol M.*, Course of French Language, Vol. 2, contracts. *Petrokov*: editing house of *S. Panskii*, 1911, 818 (in Russian).

⁴⁰ Ordinance of the Civil Law Chamber of the Supreme Court of Georgia from 17 October 2019 №as-1043-2019 (in Georgian).

⁴¹ BGH, NJW 2005, 2008 (2010).

⁴² On the other hand, Lafrentz considers that right to lifelong maintenance represents mixed contract, which does not have legal independence from lifelong maintenance, analogically, *Lafrentz K.*, *Die Leibrente: Inhalt und Rechtsfolgen*, Hamburg, Univ., Diss., 1994, 158.

⁴³ French Civil Code, *Pereterski I.S. (trans.) M.*, 1941, 408 (in Russian).

received in this manner is subject to return and relationship deriving from it is regulated with special norms of unjust enrichment, along with general norms.⁴⁴ The claim to receive benefit may be used in any case, which contradicts with the essence of such contracts (such as the lifelong maintenance contract and insurance), that requires indication of fixed, previously agreed implementation.⁴⁵

The volume of reciprocal satisfaction under the risky contract, which is assigned to one party for implementation, will be left unknown, until the time when the condition emerges which finally makes it clear. In the lifelong maintenance contract, the risky term is the fact of death of the dependent, but the time of the death as well. It is unclear when the death of the dependent takes place. Therefore, it is impossible to calculate the exact amount of lifelong maintenance to be received under the lifelong maintenance contract. Hence, the maintenance contract is related to the risk, as far as the volume of property may appear more or less with respect to the value of given property. First of all, the risk is taken by the dependent, as far as the income received from transfer of property is calculated within the long period of payment. Within this period, by virtue of various circumstances, for instance unsustainability of economy, political and social conditions, inflation, devaluation of currency, unexpected fluctuation of prices, the amount of property must change.⁴⁶ However, the bread-winner takes risk, as the total amount of money for maintenance may appear more than the property received for the maintenance. The risk is also expressed in the fact that each party may appear in the condition of early termination of the contract of lifelong maintenance by the requirement of the receiver of property.

Therefore, the risk is taken by each party to the contract. But, by concluding lifelong maintenance contract parties understand that circumstance and agree thereto. That is why it would have been controversial to insert in the essence of the contract itself that the total amount of property, which must be paid to dependent, is limited to the volume of the transferred property.

3.3. Legal Definition of Risky Contract and its Interpretation

The risky contract represents bilateral agreement, by virtue of which the benefit, as well as loss in the relationship depends on improper circumstances for everyone, one or several participants. "If the equivalent (which is given and received from each person) is laid down in relation to improper circumstances for each party in the chances of profit or losses."⁴⁷ This definition is very convincing, as far as the contract may be risky for one party, or for both of them.

The reason of unsatisfactory doctrine of risky contracts must be seen in fidelity towards traditional legal formulation, especially fidelity towards roman law, which is often noticed in case of concluding risky, gameplay and aleatory contracts. According to this formulation, it is an unequivocal fact that each legal agreement which is under risk finishes with the same result as gambling, with complaints, whimpering and unjustified win characteristic thereto.

⁴⁴ *Chitoshvili T.*, Disposing Property Free of Charge, as the Basis for Groundless Enrichment, Justice, №2, 2008, 92 (in Georgian).

⁴⁵ J.-Cl. Civil/ *Bénabent A., Rakotovahiny M.-A.*, Art. 1964, fasc. 10, Nr. 3, 4.

⁴⁶ Civil Law part 2: Law of obligations, *Zaleski V. V. (ed.)*, Moscow., 1998, 142 (in Russian).

⁴⁷ *Morandiere L. J.*, The Civil Law of France k.2. M, 1961, 330 (in Russian).

The characteristic of risky contract is determined for each contractual relationship based on its purpose and legal consequences are determined respectively, i.e. guarantee complains and protested based on mistakes is excepted with the ratio, that it is related to taking risk by yourself. Moreover, it is excepted as mean of legal protection because of reducing value in half.

Articles 4:103 and 4:109 of the principles of the European Contract Law, which indirectly are related to aleatory contract, and several normative acts were adopted as obtaining specific risk. The party has a right to challenge the contract because of the mistake in relation to the fact or law existing in the moment of conclusion of a contract, if: the mistake is caused by the information provided by the second party; or the second party knew or had to know about the mistake and did not notify about this the other party in contradiction with principles of good faith and fairness; or the second party made the same mistake and the other party knew or had to know, that in case of knowledge of the truth he/she would not conclude contract, with substantially different term. The part loses right to challenge, if deriving from the case circumstances: his/her mistake was unpardonable, or he/she took risk of mistake on himself/herself.⁴⁸ In any case, doubt about insufficiency cannot be approved by the norms of the European Contract Law, because there are circumstances, however is not directly related to aleatory or risky contracts, but makes assumption of respective legal results. Yves-Marie Laithier discusses the second hypothesis in more details, and as for the aleatory contract, it considers undefined in French Law, as far as there are reciprocal contracts, which may accidentally become aleatory⁴⁹ and aleatory contracts without risk.⁵⁰ It is motivated to protect more precisely the specificity of aleatory contracts, in order to maintain opinion related to their qualification.⁵¹ That is why there is a sense to think about essence of aleatory contract: the desirable disbalance from parties is justified in indexes, if every party has chance to receive benefit and takes risk of damage related to unidentified event taking place as a result of conclusion of a contract, the event which could not have been determined by both parties.

4. Legal Characteristics of Lifelong Maintenance Contract

4.1. Procuring Nature of the Contract of Lifelong Maintenance Contract

Parties to the lifelong maintenance relationship of procuring nature have realized the aleatory character of the contract, i.e. uncertainty of receiving benefit or suffering damage, which depends on the length of life of the dependent. According to article 941 of the Civil Code of Georgia, person who decides to pay lifelong maintenance (bread-winner) is obliged to pay it to receiver of property (dependent) during entire life, if the contract does not provide otherwise. Lifelong maintenance may

⁴⁸ Institute of Davit Batonishvili, Principles of European Contract Law, Tbilisi, 2014, <<http://www.library.court.ge/upload/PECL-Georgian%20Translation-PDIL.pdf>> [25.09.2020] (in Georgian).

⁴⁹ Vente à forfait: *Bénabent/Rakotovahiny*, J.-Cl. Civil, Art. 1964, fasc. 10, №7; 90- 124.

⁵⁰ As an example the lifelong maintenance contract without risk is named, which is addressed by the claim on terminating contract by the legal defense tool, that practically exists for the group – „contrats commutatifs“, Association Henri Capitant des Amis de la Culture Juridique Française, L'aléa, Paris 2011, 11.

⁵¹ Association Henri Capitant des Amis de la Culture Juridique Française, L'aléa, Paris 2011, 21.

be defined as monetary or in kind (flat, meals, care and other necessary help). The discussed contract, similarly to sale and purchase, exchange and gift agreements by its essence is a contract of transferring property, however, it differs from the named contracts by particularities characteristic only thereto. It is distinguished from sale-purchase agreement by the subjective content. If parties to the sale-purchase agreement – seller and buyer – may be physical persons, as well as legal persons separately, and also together, parties to the lifelong maintenance contract – bread-winner and dependent – entail only physical persons. According to article 477 I of the Civil Code of Georgia the seller is obliged to transfer to purchaser the ownership right of property, i.e. right to property on the purchased item derives immediately and purchaser may dispose it unlimitedly, which cannot be said with regard to lifelong maintenance contract. It is unequivocal fact that bread-winner obtains property right on the property transferred by the dependent, but this property right is somehow limited. According to article 945 of the Civil Code of Georgia, bread-winner has no right to alienate, to put under pledge or to restrict right to property in some other way without written consent of the dependent. It is inadmissible to pay debts of bread-winner from this property.

As it was mentioned above the lifelong maintenance contract, similar to the deed of gift, is a contract transferring property, which alike sale-purchase agreement differs from it by certain particularities. According to article 524 of the Civil Code of Georgia, the grantor gives property to the granted free of charge with his/her consent. Therefore, the latter contract is gratis, and the lifelong maintenance contract involves payment. As for the price of the contract, it is expressed in the maintenance paid to the dependent by the bread-winner, which is paid in return for the transferred property.

The Appellate Chamber of Tbilisi has mentioned in the ordinance on one of the disputable cases, that the main particularity of the lifelong maintenance contract is its procuring nature, as it entails transfer of the property of dependent to bread-winner in exchange to payment of counter compensation. In this regard the lifelong maintenance differs from the deed of gift.⁵²

In the relationship of counteragents in line with the existence of criteria of satisfying counter interests, the contract is divided into contracts involving payment and gratis contracts. The contract involving payment, by virtue of which one party receives reciprocal satisfaction (compensation) from other party for his/her performed action. The contract is gratis when one party does not receive reciprocal satisfaction (compensation) for his/her action.⁵³ Attaining the lifelong maintenance contract to contracts involving payment essentially was always and still remains as arguable issue. As it was noted by O.S. Ioffe “in the general legal description of the contract, which derives from the definition of this contract itself, does not cause any doubt regarding its procuring nature, as far as each party receives reciprocal fulfilment from another party: receiver in the form of house or its part, and the alienator – in the form of maintenance.”⁵⁴ In some countries the discussed contract may be involving

⁵² Decision of the Civil Law Chamber of the Supreme Court of Georgia from 17 October 2019 #as-1043-2019. Appealed ordinance – The ordinance of the Civil Law Chamber of the Tbilisi Appellate Court from 16 May 2019 (in Georgian).

⁵³ *Akhvlediani Z.*, Law of Obligations, Tbilisi, 1999, 29 (in Georgian).

⁵⁴ *Ioffe O. S.*, Law of Obligations, Moscow, 1975, 292 (in Russian).

payment, or being gratis, i.e. entailing or not entailing reciprocal fulfilment. By the contract determining free of charge maintenance, the dependent does not give anything to the bread-winner in return to the promised care. Therefore, dependent does not take any risk. The maintenance involving payment is determined by transfer of money, movable or immovable property.⁵⁵ Differentiation of contract in respect of whether it is involving payment or not, has no practical significance, especially for deciding the issue of material responsibility of a person. In some cases, the responsibility of person which does not take any material benefit by the contract, is less severe, comparing to the contract involving payment.⁵⁶

According to the Georgian legislation lifelong maintenance contract represents a contract involving payment, as far as in return to transfer of property into ownership the reciprocal fulfilment is required in the form of paying lifelong maintenance. Based on the definition of the subject of lifelong maintenance agreement made by the Supreme Court of Georgia, the particularity of the lifelong maintenance contract is that it involves payment and aims at transferring property of the dependent in the ownership of bread-winner by paying certain reciprocal compensation, which is not characterized as equivalent to the transferred property. The amount of maintenance which is received by the dependent from bread-winner based on lifelong maintenance contract, may represent only insignificant part of the value of property to be transferred to the bread-winner, and in some cases it may significantly exceed the value of the property (that is explained by the fact that maintenance is determined for the period of life, but parties may agree on a specific period).⁵⁷

The contract involves payment despite the fact whether the dependent received any other benefit except the maintenance in the limits of the transferred property. If the property is transferred in return to receive the maintenance (without paying the value of property), the lifelong maintenance contract still is considered as involving payment, as there is a reciprocal fulfilment in place in the form of paying lifelong maintenance, which may bear monetary or in kind character (fulfilment of work, providing service, housing, meals, clothes, care, or paying funeral expenses, etc.).⁵⁸

Counteragents participating in the legal relationship of lifelong maintenance realize that the party cannot receive benefit before the undefined event takes place – i.e. the death of dependent. Hence, parties enter into contractual relationship, where performance and reciprocal fulfilment would be disproportionate. The lifelong maintenance contract involves payment and transfer of property to bread-winner takes place for certain payment, however, it does not entirely imply such term as price and comparing to the sale-purchase agreement (Civil Code of Georgia 477 II), it does not differ by equivalence of opposing material benefit.

Payment for the fulfilment must be entailed in possibility for each party to obtain benefit or loss depending on undefined event. Legislation excludes authenticity of disproportionality between

⁵⁵ French Civil Code, *Pereterski I. S. (trans.)*, Moscow, 1941, 408 (in Russian).

⁵⁶ *Akhvlediani Z.*, Law of Obligations, Tbilisi, 1999, 29 (in Georgian).

⁵⁷ Interpretation of the Supreme Court of Georgia, the subject of interpretation: Article 941 of the Civil Code of Georgia, №as-1009-1268-04, 24.03.2005, *Nachkebia A.*, Interpretations of civil law norms in the practice of the Supreme Court (2000-2013), Tbilisi, 2014, 243 (in Georgian).

⁵⁸ Civil Law, part 2, Guidebook under common editing, *Kalpina M.*, 1998, 88 (in Russian).

performance and reciprocal fulfillment. Comparing performance and responding fulfillment may cause between the individual maintenance and payment for responding fulfillment the fact that the bread-winner will not be obliged to take typical risk by the contract, if the income appears to be higher than the promised lifelong maintenance, as he/she can provide maintenance from responding fulfillment.

Since the judicial practice discusses legal relationship of lifelong maintenance as reciprocal relationship, for which parties provide equivalent performance and responding fulfillment, it deliberates equivalence of the lifelong maintenance by indicating towards yet undefined total value, so that there was no further examination of dividing risk, which was taken into account by parties proposing the question whether parties have consciously agreed to the disbalance in response to exchanging equivalent service. Parties enter into contractual relations, which is directed towards preservation of objective disbalance, and exactly this conscious disproportion may be arguable issue in the court without additional justification. It must be taken into account that parties to the lifelong maintenance contract agree on the risk of benefit and loss in light of the life term of the person.

According to article 941 of the Civil Code of Georgia, the Appellate chamber shared the reasoning of the Civil Court, that the lifelong maintenance contract belongs to the category of relations where special importance is given to subjective attitude of parties towards obligations taken in the framework of contractual bond. In one case, this is the desire of dependent to dispose his/her property (in this case house) in a way that to provide possibility of respectful life for himself/herself; to be ensured with proper conditions of living, healthy and necessary products, medicaments needed for sustaining health condition, proper human care, etc. In a word, conclusion of the lifelong maintenance contract, mostly, are caused by expectation of dependent, that as a result of giving certain material advantage to bread-winner, he/she will be provided with respectful condition for living until the end of life. Practically, this aim causes the possibility of dependent to dispose the property in his/her life. On the one hand, such contractual bond for bread-winner incites positive legal outcome. In parallel with the obligations that are taken by him/her before the dependent by taking obligation to maintain, overall the bread-winner in the circumstances of normal relations, in compensation to the expenses or other human resources provided, after the death of the dependent receives full right, unlimited right to property of the dependent.⁵⁹

The lifelong maintenance contract involving payment in the context of legal relations does not represent a risk for one party, if he/she would have been confident from the beginning that he/she would receive something without providing any significant contribution from his/her side. In particular, the bread-winner does not take any risk, if payment of maintenance derives from the income of reciprocal fulfillment or by partial modelling of reciprocal agreement. Two particular cases – mistake in the calculation of lifelong maintenance and faulty accounting of responding fulfillment, could lead to disproportion.

⁵⁹ Ordinance of the Civil Law Chamber of the Supreme Court of Georgia from 24 November 2017 on the case №as-1205-1125-2017 (in Georgian).

The lifelong maintenance is oriented to prolong the life, i.e. the lifelong maintenance depends on the term of person's life.⁶⁰ The procuring nature of lifelong maintenance contract is express in payment, which is just similar to the interest in case of loan contract. In the named case the property transferred to bread-winner from the dependent is transformed into interest, the payment of which is done within the framework of contract during the entire life of the dependent. Moreover, it must be noted that maintenance, as such, disregarding how it is paid, in which form, must not be misunderstood and mistaken for an interest.⁶¹

4.2. Real-Consensual and Unilateral-Bilateral Contractual Construction of the Lifelong Maintenance Agreement

It is much more difficult to attribute the lifelong maintenance agreement to real or consensual, unilateral or bilateral agreements. Depending on from which moment the contract should be considered concluded, the contracts are divided into consensual and real contracts. A contract is consensual, when it is considered concluded from the moment of reaching an agreement in the prescribed form between the parties. A contract is real, when an agreement between the parties is not enough, but it is also necessary to transfer the subject of the contract from one party to the other.⁶² The division of contracts into real and consensual contracts and the difference caused by this, is based on the nature of the contract and the moment of their perfection. Accordingly, a contract is considered concluded if the parties reach a mutual agreement and impose certain obligations on each other and acquire certain rights of claim against each other.⁶³ This contractual consensus is reached by one party offering a contract to the other party and receiving agreement to the offer; In this case, in theory, the so-called Separation of offer and acceptance. In theory, in this case, it is advisable to single out the so-called offer and acceptance.⁶⁴

The model of consensual agreement is very typical for a civil law contract. This is explained by the fact that a contract is an agreement from which directly arise the rights and obligations constituting the content of the contract.

The Chamber of Civil Cases of the Supreme Court of Georgia, in its decision in one of the disputed cases, emphasized that the criterion for the actual and consensual division of contracts is the moment from which the contract is considered concluded. A lifelong maintenance contract is consensual because it is deemed to have been concluded after the parties have agreed on all its essential terms in the form provided for.⁶⁵

⁶⁰ *Welter R.*, *Wiederkehrende Leistungen im Zivilrecht und im Steuerrecht*, Frankfurt, Univ., Diss., Berlin 1984, 179; 185.

⁶¹ *Dernburg G.*, *Digests: Law of Obligations*, Moscow, 1900, 99 (in Russian).

⁶² *Akhvlediani Z.*, *Obligatory Law*, Tbilisi, 1999, 29 (in Georgian).

⁶³ *Kötz*, *Contract Law*, 2009, 17. *References: Dzierishvili Z., Tsertsvadze G., Robakidze I., Svanadze G., Tsertsvadze L., Janashia L.*, *Contract Law*, Tbilisi, 2014, 107 (in Georgian).

⁶⁴ *Chanturia L. (Ed.)*, *Commentary on the Civil Code of Georgia, Book III, General Part of Law of Obligations*, Tbilisi, 2001, 92 (in Georgian).

⁶⁵ Decision N178-167-2017 of 14 July 2017 of the Chamber of Civil Cases of the Supreme Court of Georgia (in Georgian).

According to the consensual model, the qualification of a particular contract is usually provided at the expense of reference to the obligations in its definition. In a consensual agreement, one party undertakes to perform the necessary actions in favor of the other party, which can be performed both by the fulfillment of the agreement itself and at a much later period.

O.S. Ioffe believed that consensual agreements provide the greatest legal protection. That is why its existence is paramount. Contrary to the nature of the consensual contract, the only dissenting opinion may be based not on the text of the law, but on the fact that in such a case after registration of the contract the acquirer would have the right to enforce it, including before the transfer by the alienator. However, it is unclear why the alienator should retain the ability to withdraw from the contract and rely only on the fact that the house has not yet been transferred to the acquirer after its registration? However, it is possible that after registration interest will be lost not for the alienator, but for the acquirer. Then, despite the uncompleted transfer, the right of enforcement may be exercised by the alienator himself. This means that, in accordance with the law, the consensual construction does not limit the interests of either party and, in the event of inaccuracies allowed by any other counterparty, ensures increased protection of the interests of the alienator.⁶⁶ O.S. Ioffe noted that the right of ownership of the home arises from the moment the contract is registered. Until the lifelong maintenance agreement is not expressed in the proper form, there would be no contract itself. If the registration was made but the house had not actually been transferred yet, the acquirer would already have become its owner, and therefore be liable to support the alienator. If the house was transferred but not registered, the contract would not have been concluded and no obligations related to it would have been imposed on the acquirer. All this gave O.S. Ioffe grounds to prove that the conclusion of the lifelong maintenance contract referred to the moment of its registration and not to the moment of the transfer of the house. Consequently, the contract is consensual.

M.I. Braginski believes that the need in the construction of a real contract arises when the legislator deems it necessary to protect the party who has to transfer an item to the other party. This is due to the fact that during a consensual contract, the party may force the contractor to fulfill the obligation imposed on him in kind (transfer of the item).⁶⁷

All of the above makes us doubt the correctness of some formulations of the concept of a real contract. According to one of them, a real contract is a contract according to which “rights and obligations arise only from the moment of transfer of items or for the origin of which, in addition to the agreement of the parties, the transfer of items is required.”⁶⁸

Using the conjunction “or” in this definition may lead to the erroneous conclusion that only one condition may be sufficient to conclude a contract – the transfer of property without reaching an agreement. Other inaccurate formulations are also found. E.g., E. A. Jargina notes that the division of

⁶⁶ Ioffe O. S., *Law of Obligations*, Moscow, 1975, 294 (in Russian).

⁶⁷ Braginsky M. I., *Vitryansky V.V.*, *Contract law, book -. Property transfer agreements*. Moscow., 2000, 632 (in Russian).

⁶⁸ *Civil law of Russia, textbook, part 1*, ed. Tsybulenko M., 1998, 363 (in Russian).

contracts into real and consensual contracts is based on influence of the actual transfer of property on the validity of the contract relating to it.⁶⁹

There is a confusion in the legislation of the distinction between legal categories, such as non-contract and invalidity of the contract. We cannot agree with the circumstance, that concluding consensual and real contract is linked to the moment when the contract enters into force.⁷⁰ A consensual agreement enters into force from the moment of its conclusion, however, by the agreement the contract may enter into force by a certain date or be related to other circumstances. The real contract in most cases also enters into force from the moment of its conclusion.

However, it should be noted that the division of a contract into consensual and real contracts is a classification of contracts that does not have common characteristics. It does not cover all types of contracts, leaving out some parts of the contracts that do not belong to either the consensual or the actual contract. The legislator separates the contracts by consensual and real agreements that are subject to state registration and are considered concluded from that moment, unless something else is established by law. This rule, which reinforces a fundamentally different moment of contract perfection, is a sufficient basis to distinguish the third, special category of contract, which O.N. Sadykov calls formal contracts.⁷¹

Closely related to above classification is the division of contracts into unilateral and bilateral contracts. A unilateral agreement is one in which one of its parties acquires only a right, i.e. is only a creditor, the other party has only the duty, i.e. only a debtor. A bilateral agreement is one in which each party has both a right and an obligation, i.e. Each party is both a creditor and a debtor.⁷²

Such division of contracts takes place due to the nature of the distribution of rights and obligations between the parties to the contract. There was also no consensus among scholars on the issue of qualifying a lifelong maintenance contract on the given grounds. In their opinion, it is divided according to who holds which position on the issue of attribution of the lifelong maintenance agreement to the real or consensual agreement. A uniform solution to this issue is of paramount importance at both theoretical and practical levels, as it will automatically put an end to the debate over whether the treaty under consideration is unilateral or bilateral. A bilateral agreement, in turn, may be fully or imperfectly bilateral. A perfectly bilateral contract is always redemptive and synagmatic, as evidenced by the exchange of mutually beneficial performances (do ut des).⁷³

The Chamber of Cassation notes that contracts are classified unilaterally and bilaterally according to if the contractual obligations are imposed on both parties, or on only one of them. In the first case, there is a mutually binding contract, and in the second case, a unilaterally binding contract.

⁶⁹ *Yargina E.A.*, Rent agreement. Actual problems of civil law: Sat. articles *Vitryansky V.V. (ed.)*, Moscow, 2002 issue. 5, 216 (in Russian).

⁷⁰ Civil law of Russia, general part, *otv. Sadykov O. N. (ed.)*, Moscow, 2001, 727 (in Russian).

⁷¹ Commentary on the Civil Code of the Russian Federation, Part 1, Resp. ed. O. N. Sadykov, M., 1997, 703 (in Russian).

⁷² *Akhvlediani Z.*, Law of Obligations, Tbilisi, 1999, 28 (in Georgian).

⁷³ *Todua M., Willems H.*, Law of Obligations, Tbilisi, 2006, 106 (in Georgian).

A lifelong maintenance agreement is a syntagmatic or mutually binding agreement, because each party has both rights and obligations at the same time.⁷⁴

If we follow the real model of a lifelong maintenance agreement approved by the legislator, then the dependent can refuse the property transfer agreement after signing it and registering it in the public register. That would be tantamount to unconcluded contract. If the real estate is subject to a gratuitous transfer, then the interests of the breadwinner are not particularly affected, as he has not yet paid his own funds, but only calculated on the purchase of this property. And if the real estate was to be transferred for payment, then the right of the breadwinner may be violated, for in this case the breadwinner suffers a substantial loss which was spent on the purchase of the items as well as the unreceived income he would receive from the use of the items if those items were in his ownership. Is it necessary to further protect the rights of the dependent by violating the rights of the breadwinner? Such provisions of the property testify to the unrealistic nature of the lifelong maintenance contract, of which O.S. Ioffe wrote. His view of it was quoted by us in the text above. In addition, the perfection of the contract at the time of its registration in the public registry is more in line with the interests of the dependent, as the obligation of the breadwinner to assume a lifelong maintenance arises from the moment of registration of the contract. And, we inquired that the registration of the transfer of ownership of the property or the transfer of property always takes place after the registration of the contract.

5. Contract Form

According to Article 942 of the Criminal Code of Georgia, contract of lifelong maintenance must be formed in writing. In case of transferring a real estate, contract must be notarized. Lifelong maintenance contract is attributed to a number of formal binding agreements. If dependent transfers real estate to a breadwinner, in such case, lifelong maintenance contract must be concluded in writing and notarized.⁷⁵ The form binding obligation on real estate clearly demonstrates legislators' goal – to promote the stability of civil turnover by bringing real estate under a special legal regime.⁷⁶ According to Article 59 I of the Criminal Code of Georgia, a transaction concluded without observing the necessary form is void. Accordingly, the disputed transaction is void and does not produce the legal consequences provided by the transaction.⁷⁷ In case the invalidity is due to non-compliance with the contract form, there will be a need for mutual restitution, which means the breadwinner will have to return the transferred property and demand compensation on the basis of unfounded enrichment.⁷⁸

⁷⁴ Ordinance of the Chamber of Civil Cases of the Supreme Court of Georgia of March 10, 2011 in the case №AS-1120-1071-2010 (in Georgian).

⁷⁵ Ordinance of the Chamber of Civil Cases of the Supreme Court of Georgia №AS-185-178-2012 of June 19, 2012 (in Georgian).

⁷⁶ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia №AS-221-213-2012 of July 24, 2012 (in Georgian).

⁷⁷ Decision N2b / 2002-12 of the Chamber of Civil Cases of the Tbilisi Court of Appeal of September 11, 2012 (in Georgian).

⁷⁸ *Dzlierishvili Z.*, *The Legal Nature of Property Transfer Agreements*, Tbilisi, 2010, 437 (in Georgian).

The conclusion of an agreement in writing has the function of (1) warning, i.e. protection against hasty (reckless) expression of will; (2) the function of clarity and proof; (3) the function of identification and authenticity; (4) The function of providing information and consulting.⁷⁹ Obligation to provide information and consultation derives from Article 38 III of the Law of Georgia on Notaries – “The notary provides legal advice to persons and drafts documents at their request.” The obligation to consult in this case should be interpreted in such a way that the notary is obliged to read the contract to the parties (especially the inexperienced party) and explain their rights and obligations and indicate the legal consequences.⁸⁰ The form of notarization, which offers a high degree of legal protection to private law entities, still underscores the high degree of confidence of the parties to the transaction in this form of certification.⁸¹

The notary confirms the compliance of the transaction with the legislation by agreement of the parties and / or verifies the authenticity of the signature on the transaction. By the first paragraph of Article 13 of the “Instruction on the Rules of Execution of Notarial Acts” approved by the order of the Minister of Justice of Georgia, the notarial act is performed by a notary in the form of notarial confirmation or certification. The main function of notarization is to properly formulate the will of the parties and to prevent a transaction with a lack of will.⁸² The provision “Case provided by law” referred to in Article 69 V of the Criminal Code of Georgia can be found in relation to the lifelong maintenance contract, when the dependent transfers real estate to the breadwinner in exchange for the maintenance.⁸³

The transfer of ownership of real estate provided for in Article 942 of the Criminal Code of Georgia shall be carried out in conjunction with the rules provided for in Article 183 of the same Code, according to which, in order to purchase a real estate, it is necessary to have a notarized document and register the purchaser in the public registry. The public registry is one of the types of state register. The Public Registry is a combination of rights to immovable property, legal restrictions, tax liens / mortgages, movable property and intangible property, entrepreneurs and non-profit legal entities, and an address registry. The procedure for maintaining the public register shall be determined by the relevant legislative and sub-legislative normative acts.⁸⁴ The fact of registration in the public registry confirms the origin of the right to property and makes the authenticity of the right guaranteed

⁷⁹ Commentary on the Civil Code of Georgia, Book One, General Provisions of the Civil Code, 2017, 394 (in Georgian).

⁸⁰ Law of Georgia on Notaries, 04/12/2009, (in Georgian).
<<https://www.matsne.gov.ge/document/view/90928?publication=21>> [21.10.2020].

⁸¹ Chanturia L., Real Estate Property, Tbilisi, 2001, 195-197 (in Georgian).

⁸² Decision №AS-950-1256-07 of the Civil Chamber of the Supreme Court of Georgia of September 5, 2008 (in Georgian).

⁸³ Dzierishvili Z., The Legal Nature of the Property Transfer Agreement, Tbilisi, 2010, 435 (in Georgian).

⁸⁴ Law of Georgia on Public Registry, 19.12.2008, (in Georgian).
<<https://matsne.gov.ge/document/view/20560?publication=26>> [20.10.2020].

On Approval of the Instruction on Public Registry approved by the Order №4 of the Minister of Justice of Georgia, 15.01.2010, (in Georgian). <<https://matsne.gov.ge/ka/document/view/88882?publication=0>> [20.10.2020].

by the state through a public deed.⁸⁵ The agreement of the parties is not sufficient for the origin of the right subjugated by registration, but it is necessary that the fact of expression of the will of individuals be confirmed by a public act.⁸⁶ The fact of registration in the public register confirms not only the origin of the right to property, but also the transactions concluded on the item and intangible property come into force from the moment of registration of the rights defined by these transactions in the public registry. It can be said that the origin of the right and the entry into force of the transaction occur simultaneously with the completion of registration.

By notarizing the lifelong maintenance agreement by registering in the public registry, the state does not interfere in private legal relations in any way, but this fact of registration publicity records the full protection of the rights of the participants of legal relations. It can be said that by registering in the public register the state only brings order to private legal relations. The public registry, on the one hand, acts as a guarantor of civil turnover, and, on the other hand, it is in full consensus with the principle of trust and good faith established in civil turnover.⁸⁷

In one of the cases, the court clarified that the transfer of real estate under Article 942 of the Criminal Code should be interpreted as the transfer of ownership of a property right, which is subject to certain legal restrictions due to the peculiarities of the same contractual relationship, but for the rise of legal force of the transfer of this right, certain preconditions exist.⁸⁸ Article 183 of the Criminal Code of Georgia imperatively stipulates that a legal result, which is called the origin of the right to property, can be achieved only by the implementation of appropriate preconditions. The subject of the transaction is the transfer of ownership of the immovable property, while the motive of the transaction and the form of the obligation relationship have no essential significance.⁸⁹

Pursuant to Article 942 of the Criminal Code of Georgia, the Court of Cassation explained that the specificity of the lifelong maintenance agreement is reflected in the fact that the breadwinner becomes the owner of the property transferred to him by the dependent from the moment of the dependent's death or from the termination of the maintenance.⁹⁰

For the purpose of the present research, it is important to determine what the transfer of property means. In our view, the legal significance of the transfer of property depends on the nature of the contract under which the transfer takes place. If we are talking about a contract aimed at the transfer of ownership of property, then the transfer must also mean the transfer of right of ownership from one party to the other. However, the transfer time itself is determined in accordance with the law. This

⁸⁵ Commentary on the Civil Code of Georgia, Book Two, Commodity Law, 2018, 598 (in Georgian).

⁸⁶ *Chanturia L.*, Real Estate Property, Tbilisi, 2001, 171-179 (in Georgian).

⁸⁷ Decision №189-182-2013 of the Chamber of Civil Cases of the Supreme Court of Georgia of February 17, 2011 (in Georgian).

⁸⁸ Ordinance №as-185-178-2012 of the Chamber of Civil Cases of the Supreme Court of Georgia of June 19, 2012 (in Georgian).

⁸⁹ Decision №221-213-2012 of the Chamber of Civil Cases of the Supreme Court of Georgia of July 24, 2012 (in Georgian).

⁹⁰ Ordinance of the Chamber of Civil Cases of the Supreme Court of Georgia №as-185-178-2012 of June 19, 2012 (in Georgian).

time should be considered the moment of registration in case of transfer of ownership, when the law deems it necessary for the alienation of property and the actual transfer – in all other cases.

In the first case, the situation at the time of registration of the transfer of ownership is considered to be a legal transfer, even if the transfer of property has not actually taken place yet. Thus, by registering a lifelong maintenance contract in the public registry, the property transferred to the breadwinner is not already transferred with rights of ownership, however, the rights and obligations arising from the contract become both binding for the parties and acquire public nature for third parties. This is a guarantee of solid protection of their rights.

6. The Fiduciary Nature of the Lifelong Maintenance Agreement

With regard to the lifelong maintenance contract, it is undeniable that the contract under consideration is reciprocal, long-term and carries fiduciary character. Usually, the parties are constantly interacting with each other. By imposing duties on breadwinner like accommodation, food, clothing etc. The dependent usually knows the person well, trusts him/her, and has psychological connection with him/her. By forming the contract, the dependent hopes for help, care and material support from a particular person to whom he or she has certain sympathies. Therefore, replacing the breadwinner with another person may lead to absolute inadmissibility for the dependent. The law stipulates that alienation, mortgaging or otherwise encumbrance of property transferred to ensure a lifelong maintenance is allowed only with the prior consent of the dependent. This makes it possible to classify the lifelong maintenance as a contract of a fiduciary nature.

It is noteworthy that in addition to material well-being, a lifelong maintenance is also associated with human values between contractors such as trust, respect, a sense of gratitude, a desire for a relationship, kindness, and so on. The normal development of such a contractual relationship largely depends on the correct selection of the contractor's personality, the spiritual connection with him/her. Therefore, the risk that accompanies a lifelong maintenance relationship is manifested simultaneously in two aspects: improper or non-fulfillment of the obligation and human incompatibility.⁹¹

However, the fiduciary nature of the lifelong maintenance contract raises problems, which make it difficult to imagine the contract being a civil status, when it may rise to a conflict of a personal rather than a legal nature in the process of its performance. The case law of lifelong maintenance contract termination shows that the first reason for requesting termination of a contract is often not the breach of obligations by the payer, but rather conflicts and divisions in personal relationships.⁹²

7. The Long-Term Obligation Nature of the Lifelong Maintenance

According to Article 941 of the Criminal Code of Georgia, a lifelong maintenance contract is considered a long-term contract. Moreover, it may be the life longevity of the dependent. However,

⁹¹ Decision №2b / 6290-16 of the Chamber of Civil Cases of the Tbilisi Court of Appeal of July 11, 2017 (in Georgian).

⁹² *Pakhomov A.*, Purchase and sale with the condition of lifelong maintenance, Law, Moscow, 1998, No. 7, 120 (in Russian).

due to the disposition of the norm, an agreement may be reached at another time by agreement of the parties. Therefore, the substantive content of the contract is formed not by the price determined by the transfer of property, but by the rights and obligations arising from the transfer of property. The latter also contributes to other features of this agreement, such as, for example, the issue of settling the relationship between the parties in the event of a change in circumstances. According to Article 949 I of the Criminal Code of Georgia, both the breadwinner and the dependent can withdraw from the lifelong maintenance contract if the relationship between the parties has become unbearable as a result of breach of contractual obligations, or other substantial reasons make it extremely difficult or impossible to extend it. The existence of such circumstances, naturally, cannot be used to terminate the purchase agreement. A lifelong maintenance contract is a long-term contract because it not only retains its validity until the death of the dependent, but also requires the payer to perform his or her duties systematically. Even in the modern period, many authors point out that the lifelong maintenance contract is a continuing contract. As noted by M.I. Braginski, the duration of a lifelong maintenance contract is reflected in the fact that the property will be transferred at the present time and its equivalent value will be paid in the future, namely in dependents lifetime.⁹³ A liability relationship is a long-term legal relationship that constantly generates new obligations in terms of its performance and protection over a long period of time.⁹⁴ A lifelong maintenance contract is a term, but the term is not determined by a calendar date, but by the life expectancy of the dependent.

However, the contract may provide for other things, i.e. the breadwinner and the dependent may agree on a specific time period during which the breadwinner undertakes to pay the dependent.⁹⁵ The absence of a long-term liability is based mainly on the fact that the dependent has already fulfilled its obligation – e.g., has transferred ownership of its property. The payment of the lifelong maintenance allowance should be distinguished according to the fulfillment of the targeted obligation. Within the proceedings of the insolvency case, the status of insolvency of the breadwinner is not used in the long-term exchange contracts.

The German Imperial Court first described a long-term obligation in its judgment of 26 April 1933.⁹⁶ It naturally already had its dogmatic idea of a lifelong maintenance. To the extent that several theories of long-term liability were developed to justify the purpose of terminating a causal contract concluded for an indefinite period without legal regulation, its unilateral early termination could not be considered as independent.

If the dependent has already received full repayment before the opening of insolvency proceedings, then his claim for lifelong maintenance is substantiated and depends only on the subsequent passage of time. In the context of long-term commitment relationships, despite the capitalization of the lifelong maintenance, the problems are typical: the following imbalance between

⁹³ *Braginsky M. I., Vitryansky V.V., Contract law, book -. Property transfer agreements, Moscow, 2000, 632 (in Russian).*

⁹⁴ *Canaris, C. -W., Law of Obligations Reform 2002, Munich, 2002, 187.*

⁹⁵ Decision of the Chamber of Civil Cases of the Supreme Court of Georgia, October 17, 2019, №AS-1043-2019 (in Georgian).

⁹⁶ *Oetker H., The Permanent Obligation and its Termination, Tübingen, 1994, 53.*

performance and reciprocal performance, much later performance, and the question of whether termination is possible or according to which rules we should apply for termination.

Otto von Gierke, in his article “Long-Term Obligations-Legal Agreements” published in 1914, compares liability relationships in which the obligation is concentrated at a certain point in time, to a long-term obligation in which the obligation lasts for a certain period of time (so called long term liability) and are constantly fulfilled during its existence. Thus, the basis of long-term commitment is the “constant of efficiency” (Constanta).⁹⁷ Gierke's commitment to long-term service is based on the dogmatic notion that the requirement to fulfill a long-term obligation as a whole is a single right from which independent but timely written requirements can arise.⁹⁸

However, Gierke also agrees that the notion of duration is relative,⁹⁹ the differentiation between time periods in terms of performance and reciprocal performance is important in assigning the importance of a legal relationship to a long-term obligation. Gierke's view of the lifelong maintenance contract as a long-term contract is based on the fact that it established the basic right as a single claim, which focuses at long-term response performance in the form of periodically recurring separate services.¹⁰⁰ The promise of payment for lifelong maintenance on the basis of the right to a single claim throughout a person's life forms a term debt relationship from which separate claims arise and its validity does not expire after their fulfillment.¹⁰¹

8. Conclusion

A lifelong maintenance contract is an aleatory and bilaterally syntagmatic contract, which manifests itself in the ability of each party to make a corresponding profit or loss in case of an unknown event. However, it should be noted that this profit or loss can be suffered by either party to the contract. The extent of the satisfaction provided for in the contract remains unknown until the death of the dependent. Therefore, when concluding a contract, it is impossible to calculate the exact amount of future payment in advance. The contract is aleatory to the extent that the payment always turns out to be more or less relative to the value of the property transferred. Therefore, the risk element in the contract is well understood by each party. Nevertheless, in the end, if the contract is inevitably beneficial to one party and unprofitable to the other, it will only be known as contract expires.

A lifelong maintenance contract falls into the category of a long-term commitment relationship. It maintains power not only until the moment of death of the dependent, but also focuses on the systematic fulfillment of its obligations by the breadwinner. Important is the fact that in addition to material well-being, the contract under consideration is also linked to human values. Therefore, such an obligation-legal relationship depends on the correct selection of the contractor, i.e. the risk is not only improper or non-fulfillment of the obligation, but also human incompatibility.

⁹⁷ *Gierke O. von*, Permanent Obligations, *JherJb* 64 [1914], 355 (359).

⁹⁸ *Ibid.*, 355 (360; 366; 374-377).

⁹⁹ *Ibid.*, 355 (393).

¹⁰⁰ *Ibid.* 355 (402).

¹⁰¹ *Gierke O. von*, German Private Law, Volume 3: Law of Obligations, Munich, Leipzig, 1917, 302.

The procuring feature of a lifelong maintenance contract leaves no doubt as each counterparty receives a satisfaction from the other, the breadwinner – the housing or part thereof, and the dependent – a lifelong maintenance allowance. The procuring of the contract is not characterized by the equivalence of the property to be transferred. It can sometimes be a small part of the transferred property, and sometimes – significantly exceed the value of the transferred property. Payment of maintenance is focused on the life expectancy of the dependent.

The issue of attribution of a lifelong maintenance contract to consensual contracts and its separation from real contracts is conditioned by the nature of concluding the contract and the moment of perfection. The contract is considered concluded after the parties agree on all its essential terms in the form provided for. A lifelong maintenance agreement is one of a number of formal binding agreements. In case of transfer of real estate by the dependent to the breadwinner, it is obligatory to put it in writing and notarize it. The transfer of real estate must be carried out in conjunction with the rules provided for in Article 183 of the Criminal Code. The latter makes the registration of the acquirer in the public registry a necessary condition. The fact of registration confirms the origin of the right to the given property and makes the authenticity of this right guaranteed. It is true that by registering a lifelong maintenance agreement in the public registry, the breadwinner, like the parties to a purchase, exchange or gift agreement, does not become the owner of the transferred real estate instantly, but the rights and obligations arising from the contract are binding on the contractors and at the same time are public to third parties. All this guarantees the irreversible protection of the rights of the breadwinner and the dependent.

Based on the generalization of notarial and court practice, the parties to the contract and notaries should be recommended to include a clause on the indexation of the amount of the fee in the text of the contract; on the possibility or impossibility of periodically paying cash payments or payment in kind; on the need for the prior consent of the dependent on the alienation, pledge and otherwise encumbrance of the property by the maintenance payer; on acquisition of a lien by the dependent on the said property; also on the inadmissibility of reducing the value of the mentioned property.

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