



Parental Benefits and Resolatory Conditions

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The notion of “parental benefit” under Greek law.

Under Greek law, a parental benefit is a contract whereby a parent transfers a property asset to their child without consideration, in order to help improve the child's family, financial or professional status. Such a transfer of property includes, for example, the transfer of ownership of movable or real estate properties, the establishment of a trust, the forgiveness of a debt to the child, etc. The above-mentioned financial provisions on the part of parents to their children are executed willingly by the parents and therefore constitute gratuitous transactions (gifts “inter vivos”). These gratuitous transactions are treated favorably under Greek law, as they are considered to be in fact the fulfilment of a moral or physical obligation from the parents to their child(ren). Parental benefits are provided for in article 1509(a) of the Greek Civil Code, which reads as follows: *“the provision of property to a child by either of the parents, either for the purpose of establishing or maintaining economic or family independence or for the establishment or continuation of a profession, constitutes a donation only to the extent that it exceeds the appropriate measure under the circumstances”*.

As a rule, the purpose of a parental gift is the immediate delivery of property. Due to its favorable treatment under Greek (especially tax) law, parental benefits are often used as a means of distribution of the parental estate inter vivos.

Revocation of a parental benefit

A parental benefit may be revoked only to the extent that it consists a donation, namely only to the extent that it exceeds the reasonable measure under the circumstances of each case.

Regarding the determination of such “reasonable measure”, Greek law does not specify the circumstances under which a parental benefit may be considered as a donation. In interpreting the law, Greek Courts have ruled that “the appropriate measure under the circumstances” is determined on a case per case basis, according to the parent’s financial situation and social position at the time of establishment of the benefit, as well as the particularities of each case, i.e. the number of children, their age, the existence of equal/similar provisions made towards each of the children etc. Only if a parental benefit is found to exceed the reasonable measure and only for the excess amount, is it possible for a revocation to take place in accordance with the legal provisions regulating donations and, more specifically, article 505 of the Greek Civil Code, which provides that *“a donor is entitled to revoke a donation, if the beneficiary has shown himself to be ungrateful towards the donor, his spouse or a close relative through serious misconduct and especially if the beneficiary has breached their obligation to support the donor”*. Therefore, the donor is entitled to revoke the donation only if the beneficiary, through their severe misconduct, appears to be ungrateful towards the donor or their spouse or their close relatives and

especially if they breached their obligation to support the donor. The matter of whether or not the beneficiary's ingratitude behavior or misconduct constitutes a serious offense is examined and decided by the Court which, in formulating its judgment, assesses this behavior based on objective criteria, taking into account the degree of fault of the beneficiary as well as any concurrent fault of the donor or his spouse or close relative.

As to the method of revocation, article 509 of the Greek Civil Code stipulates the means with which a donation may be revoked: "*The revocation of a donation may be made by means of a declaration to the recipient. After the revocation is made, the provision obligation of the donor is cancelled and the fulfilled provision is sought back, in accordance with the provisions on unjust enrichment*". The revocation of a donation may thus take place through an informal unilateral declaration by the donor to the beneficiary. Such declaration develops its legal effects from the moment it is received by the beneficiary, provided of course that the reason of revocation is true and valid. Following the abovementioned revocation declaration, the donor has to file a lawsuit against the beneficiary, requesting the Court to acknowledge the validity of the revocation and the donor's right to recover and take possession of the object of the donation as of the date of receipt of the declaration by the beneficiary.

Resolutive Conditions

On the other hand, a parental benefit may include a resolutive condition, the fulfillment of which reverses the legal effects of the benefit. Resolutive conditions are provided for in article 202 of Greek Civil Code: "*If a contract provides that the reversal of its results depends on a future and uncertain event (resolutive condition), as soon as this event occurs, the effect of the contract ceases and the former situation is ipso jure restored*". With regard to the formalities that must be met in order for a resolutive condition to be validly agreed upon and produce its legal effects, the form of such condition must meet the formalities required for the main contract to which it refers. When it comes to rights upon real estate properties, article 369 of the Greek Civil Code provides that "*contracts having as an object the establishment, transfer, alteration or abolishment of rights in rem on real estate, must be concluded before a notary public*". Therefore, for contracts related to real estate properties, which have to be concluded in writing before a notary public, the resolutive condition must also meet the same formal requirements, namely it must also be concluded in writing, through a notarial deed. The purpose of the provision of said art. 369 is mainly the safety of the transactions related to real estate properties. Noncompliance with the provision of art. 369 entails, as legal consequence, the invalidity/nullity of the contract, according to art. 159 of the Greek Civil Code ("*contracts for which the form required by law has not been followed are null, unless otherwise provided for in the law*") and the lack of the required form cannot be cured by any other means of evidence.

The effects of the contract containing a validly established resolutive condition are produced immediately at the time of the conclusion of the contract, but the fulfillment of the condition reverses such – already produced – effects and the former situation is restored ipso jure, namely without the need of any other action on behalf of the parties. In cases where the resolutive condition is provided in a contract for the transfer of ownership of a real estate property to someone else (e.g. buyer), the fulfillment of the condition results to the automatic return of the property to the ownership of the seller who, under Greek law, shall not be considered as a 'successor' of the buyer but, to the contrary, continues directly the former legal situation (following a 'break' for as long as the resolutive condition was still pending); this

is why the ownership of the property comes back to the seller/transferor without any other formalities, namely without the need for the conclusion of a new notarial deed (‘in rem result of the fulfillment of the resolutive condition).

As stated above, under Greek law parental benefits are a tax efficient method for distributing assets to future heirs while the parents are still alive.

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