

SOME CONTENTIOUS ISSUES IN THE ANNULMENT OF THE LIFETIME MAINTENANCE AGREEMENT – THROUGH SELECTED CASE LAW EXAMPLES¹

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Abstract

In civil law, there is probably no contract that gives rise to more disputes in judicial practice than the lifetime maintenance agreement. Even more than seven decades after its regulation, the lifetime maintenance agreement continues to provoke numerous controversies and remains an inexhaustible source of interest for both legal scholars and legal practitioners. The grounds for the annulment of the lifetime maintenance agreement are numerous. The Law on Obligations of the Republic of Serbia regulates the grounds for annulment that apply to all contracts, while the Serbian Succession Act regulates specific grounds for the annulment of the lifetime maintenance agreement. Litigation concerning the annulment of this contract is frequent, and case law is rich with positions adopted by courts in various cases. In this paper, the authors will review certain specific cases from judicial practice and critically analyze the judgments rendered.

Keywords: *Lifetime Maintenance Agreement, Annulment of Contract, Case Law, Succession Act, Law on Obligations.*

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1. Introduction

The lifetime maintenance agreement is one of the most complex contracts in civil law, and virtually every aspect of it may become contentious. The primary purpose of this agreement is to provide maintenance, care, and assistance, most commonly to elderly, infirm, and ill persons. The interest of the maintenance provider, on the other hand, lies in obtaining, in return for the maintenance rendered, the pecuniary benefit stipulated by the agreement, most frequently a certain immovable property.

Although useful and socially justified, the conclusion of this agreement is often accompanied by various forms of abuse, given that it may be used to circumvent statutory restrictions on the disposition of property and, in particular, to defeat the interests of the compulsory heirs of the maintenance recipient. It may therefore be said that few contracts give rise to as many court proceedings as the lifetime maintenance agreement, where parties seek either its termination or its annulment on one of the numerous grounds prescribed by law.

The grounds rendering this contract invalid are numerous and diverse. Since the lifetime maintenance agreement is regulated in Serbian law by the Inheritance Act of the Republic of Serbia (Official Gazette of the Republic of Serbia, 46/1995, 101/2003, 6/2015), that Act provides for three specific grounds of invalidity: defects in form; the absence of consent by the guardianship authority where the maintenance provider is a person engaged in caring for the maintenance recipient; and situations in which, due to the illness or advanced age of the maintenance recipient, the agreement involved no uncertainty whatsoever for the maintenance provider. The Law on Obligations of the Republic of Serbia (Official Gazette of the SFRY, 29/75, 39/85, 45/89, 57/89; Official Gazette of the FR Y, 31/93; Official Gazette of Serbia and Montenegro, 1/2003; Official Gazette of the Republic of Serbia, 18/2020), as the principal statute governing contractual relations, prescribes the general grounds for nullity applicable to all contracts, on account of which a lifetime maintenance agreement may likewise be invalid.²

This paper analyses the relevant theoretical positions, while particular emphasis is placed on judicial practice concerning actions for the annulment of lifetime maintenance agreements on the grounds of the incapacity of either the maintenance recipient or the maintenance provider, cases involving a so-called

² The Law on Obligations uses the term *invalid contracts* to designate contracts lacking one of the requirements for validity and classifies them into null and void and voidable contracts, depending on the reason rendering them legally ineffective. The basis of this distinction lies in the fact that null and void contracts predominantly infringe public interests, whereas voidable contracts primarily affect private interests (Ковачевић Куштримовић, Лазич, 2008, 267). The concept of invalidity presupposes that the defect existed from the very moment of the contract's conclusion, that is, that the contract suffered from an "inherent defect" (Радишић, 2004, 170).

simulated lifetime maintenance agreement, as well as cases in which the agreement was concluded for impermissible motives.

2. Contractual Capacity of the Parties to a Lifetime Maintenance Agreement

2.1. General Remarks on Capacity to Contract under Serbian Law

The Law on Obligations provides that, for the conclusion of a valid contract, a contracting party must possess the legal capacity required for the conclusion of that particular contract.³ It is presumed that every adult person possesses contractual capacity, is capable of rational judgment, understands the consequences of decisions made, and is able to protect his or her rights and interests.⁴ If, at the moment of concluding a contract, one of the parties lacks the capacity for reasoning and judgment, the contract will not be valid.

Under Serbian law, full legal capacity is acquired upon reaching the age of majority, that is, upon attaining eighteen years of age.⁵ Full legal capacity may also be acquired earlier through emancipation in two situations: where a minor enters into marriage after obtaining court approval (statutory emancipation), and where a minor who has reached the age of sixteen, has become a parent, and has attained sufficient physical and mental maturity, acquires full legal capacity by a court decision (judicial emancipation).⁶

Persons under the age of fourteen⁷ and persons who have been fully deprived of legal capacity by a court decision due to their inability to reason and make judgments do not possess legally relevant will, and contracts concluded independently by such persons are null and void. In legal doctrine, there is a view that the declaration of will of such persons does not constitute a legally relevant fact; consequently, where such declarations coincide, no contract comes into existence because capacity appears as a condition for the formation of the contract rather than merely a condition for its validity (Перовић, 1981, 246).

Persons to whom the law grants limited contractual capacity include minors over the age of fourteen (older minors) and adults whose legal capacity has been

³ See Article 56(1) of the Law on Obligations.

⁴ See Judgment of the Supreme Court of Cassation of the Republic of Serbia, Rev. No. 1105/2016, 14 December 2017 (source: Paragraf Lex).

⁵ See Article 11(1) of the Family Act of the Republic of Serbia (Official Gazette of the Republic of Serbia, 18/2005, 72/2011, 6/2015).

⁶ See Article 11(2) and (3) of the Family Act.

⁷ This does not mean that younger minors are entirely excluded from legal transactions. The legislator recognizes their right to undertake legal transactions through which they acquire rights only, transactions that create neither rights nor obligations, and transactions of minor significance (Article 64(1) of the Family Act).

partially restricted in non-contentious court proceedings. A court decision on partial deprivation of legal capacity specifies the contracts that such a person may and may not undertake independently.⁸

The legislator provides that, in addition to the contracts that may be undertaken by younger minors, an older minor may enter into all other legal transactions subject to the prior or subsequent consent of a parent or guardian.⁹ The sanction prescribed for concluding a contract without the consent of the legal representative is voidability of the contract,¹⁰ although the contract may subsequently be validated through ratification.¹¹

2.2. Incapacity of the Maintenance Recipient

Since lifetime maintenance agreements are most frequently concluded by elderly and ill persons in the capacity of maintenance recipients, their statutory heirs often express doubts as to whether the recipients possessed the capacity for reasoning and judgment at the time of concluding the agreement. Consequently, heirs frequently initiate court proceedings alleging the absence of such capacity on the part of the maintenance recipient, with the aim of challenging the contractual disposition.

In every individual case where doubt exists regarding the recipient's capacity for reasoning and judgment, the court must determine whether the maintenance recipient was capable of making reasoned decisions at the time the agreement was concluded, taking into account all relevant circumstances and the nature of any illness from which the person suffered. According to a position adopted by the Supreme Court of Serbia, the maintenance recipient must be capable of "reasonable judgment," since only then can he or she express legally relevant will. During the proceedings in that case, it was established that the maintenance recipient, at the time he concluded the disputed agreement with his spouse, was "burdened by his advanced age and numerous serious illnesses, which caused pronounced concern for his own health and fear of death, resulting in feelings of helplessness and dependence upon the care provided by his wife. Consequently, although he was not mentally disturbed and had not been deprived of legal capacity, at the time of concluding the lifetime maintenance agreement he was not capable of understanding the significance of the legal act he was undertaking".¹² The court declared the agreement null and void, relying on Article 56 of the Law on Obligations.

⁸ See Article 147(3) of the Family Act.

⁹ See Article 64(2) of the Family Act.

¹⁰ See Article 111 of the Law on Obligations.

¹¹ See Article 56(3) of the Law on Obligations.

¹² Supreme Court of Serbia, Rev. No. 371/2006, 24 May 2006 (Retrieved from: <https://www.vk.sud.rs/sr/%D1%80%D0%B5%D0%B2-37106>. Retrieved: 12 May 2026).

In another case, the Supreme Court of Cassation of Serbia held that the maintenance recipient lacked legal capacity at the moment of concluding the agreement because he suffered from malignant diseases affecting internal organs and the brain.¹³ The court found that the progression of the disease was such that he lacked the capacity for rational judgment at the relevant time. In this case, however, the court characterized the agreement as voidable and annulled it pursuant to Article 111 of the Law on Obligations, which provides for voidability where one contracting party possesses limited legal capacity.

Conversely, the same court found a lifetime maintenance agreement absolutely void under Article 103(1) of the Law on Obligations where the maintenance recipient had suffered for decades from an incurable chronic psychotic disorder. Although he remained capable of communicating with others, the available treatment could only improve communication with his surroundings and could not restore genuine capacity for rational judgment.¹⁴

In all cases where the maintenance recipient had not formally been deprived of legal capacity during his or her lifetime, but civil proceedings are subsequently initiated seeking a declaration of nullity on the grounds of incapacity, courts resort to expert examination of the recipient's capacity for reasoning and judgment.¹⁵ The task of the expert witness is to determine whether the maintenance recipient possessed such capacity at the precise moment the agreement was concluded.

In practice, and indeed in the majority of cases, forensic psychiatric examination is conducted posthumously. This considerably increases the possibility of an inaccurate assessment because the maintenance recipient can no longer be personally examined. Experts, expert commissions attached to clinical centres, or forensic psychiatric boards of medical faculties assess the recipient's capacity on the basis of medical records, court files, often unreliable witness testimony (generally from laypersons), and an evaluation of the motives underlying the conclusion of the contract.¹⁶

Where medical expert evidence establishes that the maintenance recipient lacked the capacity for reasoning and judgment at the time the lifetime maintenance agreement was executed, and the court accepts the expert findings and opinion, the agreement will be deemed null and void because one of the contracting parties was

¹³ Supreme Court of Cassation of the Republic of Serbia, Rev. No. 470/2010, 22 April 2010 (source: Paragraf Lex).

¹⁴ Supreme Court of Cassation of the Republic of Serbia, Rev. No. 1105/2016, 14 December 2017 (source: Paragraf Lex).

¹⁵ Supreme Court of Cassation of the Republic of Serbia, Rev. No. 273/2019, 18 June 2021 (source: Paragraf Lex).

¹⁶ For a detailed discussion of the psychiatric aspects of the annulment of lifetime maintenance agreements and the determination of the maintenance recipient's capacity for reasoning and judgment, see: (Ћирић, Стојановић, 2002, 614–618).

incapable of expressing legally relevant will for the conclusion of the contract, notwithstanding the fact that the person had not formally been deprived of legal capacity.¹⁷ Where two posthumous expert examinations produce contradictory findings and opinions, the court will accept the opinion of the expert or expert commission that it considers more convincing, while simultaneously evaluating all other circumstances of the particular case.¹⁸

In order to eliminate, or at least significantly reduce, the possibility of challenging the agreement on the grounds of incapacity, contracting parties often arrange for a neuropsychiatric examination of the maintenance recipient prior to the conclusion of the agreement, and the recipient's capacity is expressly recorded in the agreement itself.¹⁹ Since a lifetime maintenance agreement must be executed before a public notary, the notary is under a duty to determine the legal capacity of the contracting parties, and particularly that of the maintenance recipient. If, through direct personal observation, the notary becomes convinced that the recipient lacks the capacity for reasoning and judgment, he or she will refuse to solemnize the instrument.²⁰ Where the notary merely harbours doubts regarding the recipient's capacity, solemnization of the instrument will be made conditional upon a neuropsychiatric assessment of the recipient's legal capacity.²¹

A guardian is appointed by the guardianship authority for adults who have been deprived of legal capacity.²² The guardian independently performs all legal acts relating to the care of the protected person, represents the protected person, secures the means necessary for maintenance, and manages and disposes of the

¹⁷ Supreme Court of Cassation of the Republic of Serbia, Rev. No. 1105/2016, 14 December 2017 (source: Paragraf Lex).

¹⁸ The courts proceeded in this manner in a case where it was sought to establish that the agreement was null and void and without legal effect because the maintenance recipient, due to numerous illnesses, lacked the capacity for rational judgment. Faced with conflicting opinions issued by two expert commissions, the Higher Court in Belgrade, on the basis of a conscientious and careful assessment of all the evidence, dismissed the claim (Judgment P. No. 349/12, 22 January 2018). The judgment was subsequently upheld by the Court of Appeal in Belgrade (Gž. No. 8501/18, 31 October 2018), as well as by the Supreme Court of Cassation of the Republic of Serbia (Rev. No. 4180/2019, 12 December 2019. Retrieved from: <https://www.vk.sud.rs/sr-lat/rev-41802019-313131-ugovor-o-doživotnom-izdržavanju>. Retrieved: 14 May 2026).

¹⁹ Court of Appeal in Niš, Gž. No. 308/2021, 18 May 2021 (source: Court Archives).

²⁰ Article 93d(3) of the Notaries Public Act of the Republic of Serbia (Official Gazette of the Republic of Serbia, 31/2011, 85/2012, 19/2013, 55/2014, 93/2014, 121/2014, 6/2015, 106/2015, 94/2024).

²¹ <https://www.pravniportal.com/%D1%98avni-beleznik-ceni-slobodno-sposobnost-stranke-za-rasudivanje-kao-relevantnu-cinjenicu-od-koje-zavisi-da-li-ce-joj-dozvolititi-da-samostalno-zakljuci-odredeni-ugovor/>. Retrieved: 14 May 2026.

²² Articles 124 and 125(1) of the Family Act.

protected person's property.²³ Transactions exceeding the scope of ordinary administration of the protected person's assets may be undertaken only with the prior consent of the guardianship authority.²⁴

Since the conclusion of a lifetime maintenance agreement produces significant effects not only in relation to the personality of the maintenance recipient but also with respect to his or her property, such an agreement undoubtedly falls within the category of extraordinary transactions requiring the prior approval of the Centre for Social Work as a condition of validity (Живојиновић, 1997, 51).²⁵

Cases involving the conclusion of a lifetime maintenance agreement through a guardian acting as the legal representative of a person lacking legal capacity are not uncommon in practice. It has been argued that the essence, significance, and protective function of this agreement are most clearly reflected precisely where the maintenance recipient is a person incapable of independently safeguarding his or her own rights (Станковић, 2010, 970).

When deciding whether to approve the conclusion of a lifetime maintenance agreement, the guardianship authority must give priority to the interests of the protected person as the maintenance recipient. Approval will be granted where, after considering all circumstances of the particular case—such as the reasons for deprivation of legal capacity, the value of the protected person's property, and the identity of the proposed maintenance provider—the authority concludes that the interests of the protected person will be best protected through the conclusion of a lifetime maintenance agreement (Живојиновић, 1997, 52). A lifetime maintenance agreement concluded by a maintenance recipient lacking legal capacity, without the knowledge and consent of his or her guardian and without the prior approval of the guardianship authority, is null and void.²⁶

2.3. Incapacity of the Maintenance Provider

For a contractual obligation to be validly assumed, legal capacity must also exist on the part of the maintenance provider. The role of maintenance provider may be performed by a natural person and, under certain conditions, by a legal entity.

The prevailing view in legal scholarship is that proper performance of the obligations assumed under a lifetime maintenance agreement cannot reasonably be expected from a minor or from a person deprived of legal capacity (Живојиновић, 1997, 53). Such a person is incapable of providing the maintenance recipient with everything necessary for his or her existence and of caring for the recipient's property and personal welfare (Почуча, 2011, 50). This is particularly so because

²³ Article 135(2) of the Family Act.

²⁴ Article 139(2) and (3) of the Family Act.

²⁵ Article 140(2) of the Family Act also expressly provides that a guardian may dispose of the protected person's property only with the consent of the guardianship authority.

²⁶ Court of Appeal in Niš, Gž. No. 4515/2017, 28 September 2017 (source: Paragraf Lex).

the maintenance obligation consists of diverse and long-term performances (Стојановић, 2022, 389) and requires continuous personal interaction between the maintenance provider and the maintenance recipient.

Judicial practice reveals divergent approaches where a minor appears in the role of maintenance provider. Indeed, even the Supreme Court has adopted different positions in almost identical factual circumstances. On several occasions, courts rejected claims seeking a declaration of nullity where lifetime maintenance agreements had been concluded in the name and on behalf of legally incapable persons by their legal representatives.²⁷ In these cases, even a two-year-old child appeared formally as the maintenance provider, while the child's parents, acting as legal representatives, assumed the contractual obligation to provide maintenance and to arrange the recipient's funeral after death. The courts held that such agreements were permissible under Article 72(1) of the Family Act, which provides that parents have the right and duty to represent their child in all legal matters, including those beyond the child's own legal capacity. Furthermore, the courts observed that the Inheritance Act does not expressly prohibit minors from assuming the role of maintenance provider.

A completely opposite position was adopted in several other cases, where courts granted claims seeking annulment of lifetime maintenance agreements due to the incapacity of the minor maintenance provider.²⁸ In those cases, the courts held that a lifetime maintenance agreement is not valid where a younger minor concludes it through a legal representative acting as maintenance provider. The courts relied on Article 56 of the Law on Obligations, which requires the legal capacity necessary for the conclusion of the specific contract in question, as well as Article 64 of the Family Act, which defines the legal acts that younger and older minors may undertake. The courts further emphasized that a lifetime maintenance agreement is a bilateral contract creating reciprocal obligations and that the maintenance provider must be a person capable, through his or her own declaration

²⁷ Supreme Court of Serbia, Rev. No. 2791/2005, 9 February 2006(source: Paragraf Lex).; Supreme Court of Cassation of the Republic of Serbia, Rev. No. 1663/2016, 24 March 2017 Retrieved from: <https://vk.sud.rs/sr-lat/rev-16632016-zakon-o-obligacionim-odnosima-%C4%8Dlan-111-ugovor-o-do%C5%BEivotnom-izdr%C5%BEavanju-poni%C5%A1taj-zakon-o>. Retrieved: 13 May 2026).

²⁸ See Judgment of the Court of Appeal in Kragujevac, Gž. No. II 402/2010, 5 February 2010 (source: *Збирка сентенци из грађанског права и грађанског процесног права* (Collection of Legal Principles in Civil Law and Civil Procedure), collective authorship, Book 1, pp. 125–126); Judgment of the Court of Appeal in Belgrade, Gž. No. 1687/2016, 8 June 2016 (source: Paragraf Lex); and Decision of the Supreme Court of Cassation of the Republic of Serbia, Rev. No. 167/2015, 12 February 2015, by which the Judgment of the Court of Appeal in Belgrade, Gž. No. 2281/13(1), 23 October 2013, was quashed, although that judgment had originally held such an agreement to be valid (Retrieved from: <https://www.vk.sud.rs/sr-lat/rev-1672015-nasledno-pravo-ugovor-o-doživotnom-izdržavanju>. Retrieved: 13 May 2026).

of will, of acquiring rights and assuming obligations—something minors are incapable of doing. Consequently, the very purpose of the agreement cannot be fulfilled. In addition, the courts considered that the formal requirements prescribed by Article 195 of the Inheritance Act had not been satisfied. The minors involved (in the cases designated Gž. No. 1687/2016 and Rev. No. 167/2015, children only two years of age) had not even been present during the confirmation of the agreement and therefore could not have been acquainted with its contents or warned of its legal consequences.

Such inconsistent case law does not contribute to legal certainty. Depending solely upon the view adopted by the adjudicating judges, one agreement may be considered valid despite a child appearing as maintenance provider through a parent acting in the child's name and for the child's benefit, whereas another agreement under virtually identical circumstances may be declared null and void. In our view, such judicial practice is unsustainable. Courts that considered these agreements legally valid evidently failed to appreciate the true nature of the lifetime maintenance agreement and the obligations it creates, which distinguish it significantly from other onerous contracts. This is *intuitu personae* agreement, requiring the maintenance provider personally and effectively to provide maintenance to the recipient rather than merely appearing in the contract as the provider while functioning in reality only as the acquirer of the transferred property.

An obvious question therefore arises: how can a minor who is incapable of supporting himself or herself be expected to provide maintenance to an elderly and/or ill person? The circumstances strongly suggest the existence of some form of abuse in the conclusion of the agreement. Otherwise, why would the agreement be concluded in favour of a child formally designated as the maintenance provider but in reality intended only as the recipient of the property?

The same objective could ordinarily be achieved through a gift. However, in that event the compulsory heirs of the maintenance recipient would be able to satisfy their compulsory share from the value of the gift. Even apart from these considerations, we are of the opinion that a lifetime maintenance agreement should in every case be declared null and void where a person lacking legal capacity appears as the maintenance provider.

3. Simulated Lifetime Maintenance Agreements

Simulated contracts are contracts to which contracting parties resort when they seek to create the impression that they have concluded one type of contract, while their true intention was to conclude an entirely different one. Thus, a simulated contract is a contract whose legal effects the parties do not actually intend; rather, it serves to conceal the contract that they genuinely wish to conclude (Ковачевић Куштримовић, Лазић, 2008, 278).

The intention of the contracting parties to conclude a contract must be genuine, free, and serious.²⁹ If the declared intention of the parties does not correspond to their actual intention, the declaration is simulated. In such a case, two contracts effectively exist. The first is the dissimulated contract, which the parties truly intended to conclude and whose legal effects they genuinely wished to produce. The second is the apparent, that is, simulated contract, which does not produce legal effects between the parties.

Parties resort to simulated contracts because, for some reason, they wish to conceal the existence of the desired dissimulated contract. In practice, the lifetime maintenance agreement is frequently concluded in order to circumvent statutory rules concerning compulsory shares, thereby preventing compulsory heirs from receiving any portion of the maintenance recipient's estate. In such cases, the agreement conceals the contract that the parties actually intended to conclude, most commonly a gift agreement (Шовић, 1999, 180). The reason for such conduct lies in the fact that compulsory heirs may satisfy their compulsory share from the value of gifts made by the deceased, whereas a lifetime maintenance agreement does not afford similar protection to compulsory heirs. By concluding such an agreement, the maintenance recipient may therefore achieve the objective of leaving nothing to his or her compulsory heirs. Moreover, this agreement is sometimes concluded as a simulated transaction simply in order to favour certain relatives over others.

Under Serbian law, a simulated contract is null and void, whereas the dissimulated contract will produce legal effects provided that the requirements for its validity are satisfied³⁰ and provided that the claimant seeking a declaration of nullity of the simulated contract has also raised such a claim in the proceedings (Крстић, 2014, 212). Accordingly, where a court determines that the true intention of the parties was not to establish a lifetime maintenance relationship but rather, most commonly, to make a gift, the court will recognize the legal effects of the gift agreement.³¹ In judicial practice, allegations of simulation are most frequently raised by the compulsory heirs of the maintenance recipient, since they have a direct interest in establishing that a gift, rather than a lifetime maintenance agreement, reflected the true intention of the contracting parties. If such intention is established, compulsory heirs may satisfy their compulsory share from the value of the gift.

The simplest situation arises where the defendant, acting as maintenance provider, admits that the agreement was not concluded for the purpose of maintenance but rather in order to transfer certain property to him or her.³² Thus, in one case, the maintenance provider acknowledged that his mother had told him that

²⁹ See Article 28 of the Law on Obligations.

³⁰ See Article 66(1) and (2) of the Law on Obligations.

³¹ Supreme Court of Serbia, Gzz. No. 59/84 (source: Почуча, 2011, 126).

³² Supreme Court of Serbia, Rev. No. 2230/98, 16 December 1998 (source: Антић, Ђурђевић, 2009, 284–285).

she wished to secure his financial future and that, when she was later admitted to hospital, she stated that the time had come to execute the agreement.

Where no such admission exists, proving simulation is considerably more difficult because it is often impossible to establish directly what the true intention of the parties was. Consequently, conclusions regarding simulation are usually drawn from indirect evidence and factual indications, such as proof that there was no genuine need for maintenance at the time the agreement was concluded or that the agreed maintenance obligations were never performed (Ђурђевић, 2015, 269). In one case, the court found that the parties had concealed a gift by means of a lifetime maintenance agreement because the maintenance recipient wished to adhere to traditional customs according to which male descendants enjoy priority in inheritance over female descendants. Accordingly, he transferred all of his property through the agreement to the only male heir in the family.³³

Simulation was likewise established in a case where the court concluded that the true intention of the parties had been to conclude a gift agreement rather than a lifetime maintenance agreement because neither a need for maintenance existed nor was any maintenance obligation ever performed.

The particular circumstances of that case were especially noteworthy. The maintenance recipient was the heir of the previous owner of an apartment. The former owner had intended the apartment to pass to a relative who had cared for her during her lifetime, but she died before she could transfer ownership to him. The heir subsequently concluded a lifetime maintenance agreement with that relative, pursuant to which he acquired ownership of the apartment. The purported maintenance provider neither provided maintenance to the recipient nor was any such maintenance requested. Consequently, the court concluded that the recipient's actual intention had been simply to transfer the apartment to the defendant as a gift. The fact that the recipient later changed her mind regarding the disposition of the apartment, allegedly due to unpaid utility bills, and sought annulment of the agreement did not alter the court's assessment. The court emphasized that what mattered was the actual intention existing at the moment the agreement was concluded, not subsequent changes of mind.³⁴

Judicial practice also contains cases in which courts rejected claims alleging simulation of a lifetime maintenance agreement where they found that maintenance obligations had in fact been performed continuously until the death of the

³³ Court of Appeal in Kragujevac, Gž. No. 2501/2012, 26 November 2012 (source: *Избор судске праксе* (Selection of Case Law), 9/2013, 51).

³⁴ Supreme Court of Cassation of the Republic of Serbia, Rev. No. 460/2019, 11 June 2020 (Retrieved from: <https://www.vk.sud.rs/sr/%D1%80%D0%B5%D0%B2-4602019-31242>. Retrieved: 19 May 2026).

maintenance recipient in accordance with the parties' intentions.³⁵ In such cases, proving simulation was particularly difficult, and courts generally attached decisive importance to the fact that the maintenance provider had duly performed the agreed obligations.

4. Impermissible Motives

A lifetime maintenance agreement is concluded for the very purpose inherent in its nature: the provision of maintenance, care, and assistance to the maintenance recipient. Consequently, the existence of a genuine need for maintenance on the part of the recipient, together with the actual performance of contractual obligations, is of particular importance when determining whether the agreement was intended to produce its legal effects or merely to achieve some other objective.³⁶

As an onerous contract, the motives that led the parties to conclude a lifetime maintenance agreement do not, as a rule, affect its validity. However, where an impermissible motive substantially influenced one party's decision to conclude the agreement, and that motive was known or ought to have been known to the other party, the agreement will not produce legal effects.³⁷ Most commonly, lifetime maintenance agreements are annulled in practice where the motive for their conclusion was not a genuine need for maintenance but rather an attempt to defeat the inheritance rights of the maintenance recipient's future heirs. At the same time, one judicial decision has taken the position that where the recipient's genuine need for maintenance constituted the decisive reason for concluding the agreement, the simultaneous existence of impermissible motives does not affect its validity.³⁸ The same view is found in Serbian legal scholarship: even where the maintenance recipient possessed impermissible motives, such motives should not affect the validity of the agreement if the decisive reason for entering into it was the acquisition of maintenance (Ћирић, Стојановић, 2002, 612).

Judicial practice also contains cases in which lifetime maintenance agreements have been annulled due to the existence of impermissible motives where the maintenance provider had no independent means of support whatsoever. Thus, in a judgment of the Court of Appeal in Kragujevac, it was established that the

³⁵ Supreme Court of Serbia, Rev. No. 3680/2003, 25 March 2004 (source: Вуковић, Станојчић, 2011, 19).

³⁶ Supreme Court of Cassation of the Republic of Serbia, Rev. No. 888/2020, 28 October 2020 (Retrieved from: <https://www.vk.sud.rs/sr-lat/rev-8882020-313131-ugovor-odo%C5%BEivotnom-izdr%C5%BEavanju-3124-neva%C5%BEnost-ugovora>. Retrieved: 19 May 2026).

³⁷ See Article 53(2) of the Law on Obligations.

³⁸ District Court in Valjevo, Gž. No. 591/2000, 2 June 2000 (Source: Андрејић, 2006, 9–10).

maintenance recipient (the father of the maintenance provider) was fully provided for both financially and in terms of housing and therefore had no need for either maintenance or care. The court found that the agreement had not been concluded for the purpose of securing maintenance but rather with the objective of defeating the inheritance rights of the claimants, who were the recipient's daughters from his first marriage. At the same time, the defendant, acting as maintenance provider, was himself a dependent person at the time the lifetime maintenance agreement was concluded and was in fact being maintained and educated by his father from the latter's own income.³⁹ Given that the agreement had been concluded for the impermissible purpose of frustrating the inheritance rights of the statutory and compulsory heirs, the court declared it null and void.

The nullity of a lifetime maintenance agreement on account of impermissible motives was likewise established in a case where parents concluded a lifetime maintenance agreement with one of their sons in order to deprive another son of his inheritance rights. Furthermore, the maintenance provider had spent most of his time in Germany and neither provided maintenance to his parents nor cared for them in any meaningful way.⁴⁰ In our opinion, the court correctly declared the agreement null and void in this case as well, acting within the limits of the claim asserted by the plaintiff.

By judgment Rev. No. 1351/2016, the Supreme Court of Cassation declared a lifetime maintenance agreement null and void due to the existence of both an unlawful basis (*causa*) and impermissible motives within the meaning of Articles 52 and 53 of the Law on Obligations. The maintenance recipient suffered from serious health problems and disposed of his entire property through a lifetime maintenance agreement in favour of his mother, not for the purpose of securing maintenance but rather in order to defeat the rights of his minor daughter as a compulsory heir. Taking into account the very short period between the diagnosis of the illness, the conclusion of the agreement, and the recipient's death (fourteen days), the courts concluded that death did not represent an uncertainty for the defendant. It was also established that immediately before being admitted to hospital, the maintenance recipient had stated that he wished to provide for the defendant because he did not know what would happen to him. In view of all these circumstances, the courts found that the lifetime maintenance agreement was a sham transaction concluded contrary to Article 13 of the Law on Obligations, that both its basis and motive were unlawful, and that it contained no elements of another contract that might have been

³⁹ Court of Appeal in Kragujevac, Gž. No. 1181/2011, 26 May 2011 (Retrieved from: <http://www.kg.ap.sud.rs/gz-1181.11-utvrdjivanje-ugovora-o-dozivotnom-izdravanju.html>. Retrieved: 19 May 2026).

⁴⁰ Court of Appeal in Belgrade, Gž. No. 3377/2012, 16 July 2012 (source: *Paragraf Lex*).

concealed beneath it. Consequently, the agreement was declared null and void.⁴¹ It is evident that, in this case, the court identified several independent grounds for declaring the agreement invalid.

In another particularly complex case, the Supreme Court of Cassation established that the maintenance providers were younger minors whose parents had concluded the agreement on their behalf; that the agreement itself was a sham transaction; and that it had been concluded for impermissible motives. Accordingly, the Court quashed the decision of the appellate court affirming the first-instance judgment.⁴² It is striking that the lower courts had considered an agreement burdened with such serious defects to be valid. These defects were identified only by the highest judicial instance, which returned the case to the first-instance court for a retrial.

Conclusion

The lifetime maintenance agreement occupies a particularly important place in Serbian law because it simultaneously performs a social, family, and proprietary function. Through this agreement, elderly, infirm, and ill persons may secure maintenance, care, and assistance for the remainder of their lives, while the maintenance provider acquires the right to receive the agreed property benefit after the recipient's death. At the same time, precisely because of the significant proprietary consequences it produces, the lifetime maintenance agreement is frequently used as an instrument for achieving objectives other than those for which it was originally designed. This explains the exceptionally large number of judicial disputes concerning its validity and the numerous attempts by dissatisfied heirs to challenge such agreements after the death of the maintenance recipient.

The analysis of Serbian legislation, legal scholarship, and judicial practice demonstrates that questions concerning the legal capacity of the contracting parties, simulation of the agreement, and impermissible motives represent some of the most significant grounds on which the validity of a lifetime maintenance agreement may be challenged.

Particularly complex issues arise in cases involving the alleged incapacity of the maintenance recipient. Since such disputes are usually initiated only after the

⁴¹ Supreme Court of Cassation of the Republic of Serbia, Rev. No. 1351/2016, 17 November 2016 (Retrieved from: <https://www.vk.sud.rs/sr-lat/rev-13512016-ni%C5%A1tavnost-ugovora-o-do%C5%BEivotnom-izdr%C5%BEavanju>. Retrieved: 20 May 2026).

⁴² See Judgment of the Supreme Court of Cassation of the Republic of Serbia, Rev. No. 888/2020, 28 October 2020, by which the Judgment of the Court of Appeal in Niš, Gž. No. 335/2019, 19 September 2019, and the Judgment of the Higher Court in Niš, P. No. 90/2016, 18 October 2018, were quashed (Retrieved from: <https://www.vk.sud.rs/sr-lat/rev-8882020-313131-ugovor-o-do%C5%BEivotnom-izdr%C5%BEavanju-3124-neva%C5%BEnost-ugovora>. Retrieved: 20 May 2026).

recipient's death, courts frequently rely on posthumous psychiatric expert assessments, which inevitably carry a degree of uncertainty. For this reason, the role of public notaries in examining the recipient's legal capacity at the time of conclusion of the agreement is of considerable importance.

Judicial practice concerning the legal capacity of the maintenance provider is considerably less consistent. The existence of contradictory decisions regarding agreements concluded in favour of minors acting as maintenance providers creates legal uncertainty and undermines the predictability of judicial decision-making. In our view, the nature and purpose of the lifetime maintenance agreement require that the maintenance provider be a person capable of independently assuming and performing the contractual obligations arising from the agreement.

Simulation of a lifetime maintenance agreement most commonly occurs where the parties actually intend to conclude a gift agreement while seeking to avoid the legal consequences associated with gifts, particularly those relating to the protection of compulsory heirs. In such situations, courts must carefully examine the true intention of the parties and distinguish between the apparent and the genuinely intended transaction.

Likewise, although motives generally do not affect the validity of onerous contracts, the existence of impermissible motives may result in the nullity of a lifetime maintenance agreement where such motives decisively influenced the conclusion of the agreement and were known, or should have been known, to the other contracting party. Judicial practice demonstrates that attempts to defeat the inheritance rights of statutory and compulsory heirs constitute the most common impermissible motive encountered in this context.

The examined case law confirms that courts increasingly focus on the actual purpose of the agreement and the genuine intentions of the parties rather than solely on compliance with formal requirements. Such an approach contributes to the prevention of abuses and ensures that the lifetime maintenance agreement continues to serve the social function for which it was created, while simultaneously protecting both the interests of the contracting parties and the legitimate rights of heirs.

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