

THEORETICAL AND PRACTICAL ASPECTS OF REGULATING DONATION CONTRACTS: LITHUANIAN EXPERIENCE

DALIA, PERKUMIENĖ¹,
INESA, BAGUŽIENĖ²

Abstract

The relevance of the topic is also influenced by the aspects of establishing the principle of gratuitousness of a donation contract, since according to this principle, a contract can be recognized as a donation contract only if the contract is gratuitous, i.e. the donor does not have any counter-obligations to the donor. In the case where the parties agree on the payment of remuneration for the donation, this is considered a fictitious agreement. On the other hand, when assessing the circumstances, whether there was an intention to provide property or property rights gratuitously, it is important to establish the motives for the donation, since a donation, like any other legal act, must be motivated, and the circumstances revealing the motives for making a gift can be considered as evidentiary facts to confirm the true will of the party who concluded the donation contract. In the case where the motives for concluding the donation contract are not established, reasonable doubts arise regarding the true will of the donor (Civil Division of the Supreme Court of the Republic of Lithuania..., 2010). Problem statement. A donation contract is one of the types of civil law contracts characterized by the gratuitousness and voluntariness of the donor's will (Perkumiene et al., 2021). However, in practice, the application of this institution raises a number of legal issues. Although the law clearly defines the essence of a donation contract, doubts arise as to the compliance of some of its forms, especially contracts with conditions, with this concept. Such contracts often contain elements of mutual obligations, therefore they cannot always be classified as true donation contracts. Problematic situations also arise when assessing the grounds for declaring a donation contract invalid (Babic, 2024). When resolving disputes regarding actions that contradict good moral norms, courts rely on different criteria, but their application in practice is not entirely uniform. Similar uncertainties arise in legal relations regarding support and charity. Since the obligation to provide support is not mandatory, disputes often arise regarding the use of provided or illegally received support and the return of unused funds. Thus, the main problem considered in this study is that the legal regulation of gift contracts in Lithuania is not sufficiently clear and consistent, and the contradictions that arise in its practical application raise doubts about the certainty and legal certainty of legal relations. Research objectives. To analyze aspects of the legal regulation of the gift contract, identifying the main problems of legal regulation and application. Methodology. The following scientific research methods were applied: system analysis, document analysis, comparative, logical-analytical method and generalization methods.

Key words: gift contract, gift contract, Civil Code of Lithuania, donor, donee.

Introduction. Relevance of the topic. "A gift is a transaction, the essence of which is that the owner of the property voluntarily, selflessly, gratuitously transfers his property or provides another property benefit provided for by law to another person, and the latter person consciously (voluntarily) accepts this property benefit." (Civil Cases Division of the Supreme Court of the Republic of Lithuania..., 2009) The gift agreement is widespread in our everyday life. The main purpose of the gift agreement is to express his will to give or gratuitously improve the property situation of another person (Perkumiene et al., 2021). By means of a gift agreement, the donor transfers property or a property right

to the awarded gratuitously by right of ownership or releases the awarded from a property obligation to the donor or a third party (Civil Code of the Republic of Lithuania, 2000).

It should be noted that Article 6.476 of the Civil Code of the Republic of Lithuania (hereinafter referred to as the CC) regulates a separate group of contractual relationships of donation – a donation (support or charity) contract, which is distinguished from other donation contracts by the special purpose of the contract, since under this contract, property or property rights are donated for a certain beneficial purpose (Jurkevičius et al., 2015), i.e. to satisfy selfless and socially valuable needs (Civil Cases Division of the Supreme Court of the Republic of Lithuania..., 2009).

The relevance of the topic is also influenced by the aspects of establishing the principle of gratuitousness of a donation contract, since according

¹ SMK College of Applied Sciences (Klaipėda, Lithuania)
E-mail: perkum@gmail.lt

ORCID ID: <https://orcid.org/0000-0003-4072-3898>

² SMK College of Applied Sciences (Klaipėda, Lithuania)
E-mail: inesabaguziene@gmail.com
ORCID ID: <https://orcid.org/0009-0003-8029-292X>

to this principle, a contract can be recognized as a donation contract only if the contract is gratuitous, i.e. the donee does not have any counter-obligations towards the donor (Perkumiene et al., 2021). In the case when the parties agree that compensation will be paid for the gift, it is considered a sham transaction. On the other hand, when assessing the circumstances, whether the intention was to provide property or property rights gratuitously, it is important to establish the motives for the donation (Perkumiene et al., 2021), since the donation, like any other legal act, must be motivated, and the circumstances that reveal the motives for granting the gift may be considered as evidentiary facts to confirm the true will of the party who concluded the donation contract. In the case when no motives for concluding the donation contract are established, reasonable doubts arise regarding the true will of the donor (Civil Cases Division of the Supreme Court of the Republic of Lithuania..., 2010).

Problem Statement. A donation contract is one of the types of civil law contracts, characterized by gratuitousness and the voluntariness of the donor's will (Perkumiene et al., 2021). However, in practice, the application of this institution raises a number of legal issues. Although the law clearly defines the essence of a donation contract, doubts arise regarding the compliance of some of its forms, especially contracts with conditions, with this concept. Such contracts often contain elements of mutual obligations, therefore they cannot always be classified as true donation contracts.

Problematic situations also arise when assessing the grounds for annulment of a gift contract (Babic, 2024). When resolving disputes regarding actions contrary to good morals, courts rely on various criteria, but their application in practice is not entirely uniform. Similar uncertainties arise in legal relations of support and charity. Since the obligation to provide support is not mandatory, disputes often arise regarding the use of provided or illegally received support and the return of unused funds. Therefore, the main problem examined in this study is that the legal regulation of gift contracts (Perkumiene et al., 2021) in Lithuania is not sufficiently clear and consistent, and the contradictions encountered in its practical application raise doubts about the definiteness and legal certainty of legal relations.

The purpose of the article. To investigate how donation contracts are legally regulated and to outline the main problems that emerge in their practical use.

Research objectives. The first objective is to clarify the concept and legal nature of a donation contract.

The second is to analyze the essential aspects of its legal regulation, and the third is to identify the main challenges related to its practical implementation.

Methodology of investigation. The following scientific research methods were applied: systematic analysis, document analysis, comparative, logical-analytical method, and generalization methods.

The concept and meaning of a gift agreement.

Gifts play an important role in our lives, performing a social function and at the same time existing as a system of certain rules (Kavoliūnaitė-Ragauskienė, 2019). Anthropologists interpret gifts as processes of informal exchange (Perkumiene et al., 2021). The practice of giving gifts helps to strengthen connections among different social groups within society. It also reflects a form of reciprocity, where individuals interact with one another by assuming specific roles, and their actions are linked through a mutual process of exchange. Giving and receiving gifts are considered social behavior of individuals (Givi et al., 2023).

In general terms, a gift refers to any exchange of property or transfer of ownership from one person to another where the sender willingly transfers his property to the recipient without any consideration, i.e. without considering any monetary value. A gift is often referred to as a form of consideration. The sender can present it to the recipient during any events such as a wedding ceremony, birthday party, etc (Baranauskas et al., 2008). A gift can be in the form of movable or immovable property. When the sender intends to present any gift to the recipient of that gift and when the recipient accepts the gift without any consideration from the sender as per law, that gift should be recognized as a legal gift as per law. A gift can become revoked and void as per law if the essential elements of a gift are not properly implemented (Tong et al., 2024). The term "Gift" is considered as a transfer of property in terms of law. Without a proper process of giving and taking between the donor and the donee, the legal aspects of the gift will fail (Butsan, 2020).

A gift agreement is one of the oldest and most important positive contracts because a person (donor) transfers a gift to another party – the donee (donee) (Perkumiene et al., 2021). A gift may involve the act of transferring ownership of a particular asset or another type of property entitlement. This agreement originated in Roman law, where legal rules related to the concept of a gift agreement, the entities that concluded the agreement – the donor and the recipient of the gift (Perkumiene et al., 2021). A gift agreement refers to the unconditional and permanent trans-

fer of ownership or rights made freely by one person to another. When concluding this agreement, the aim is for one party to the agreement to receive material (property) benefits at the expense of the other party to the agreement without compensation (Dauti, 2019).

Giving enables the giver to give a gift, which in turn opens up new possibilities for the giver, as it develops his virtues and introduces him to the logic of surplus (Perkumiene et al., 2021). Assuming that "man was created for giving," the act of giving represents not simply a burden or a cost, but an opportunity for moral and personal development. From the recipient's point of view, a gift respects his dignity: through solidarity it can unify those who were unequal and make equal those who were different in dignity and fundamental rights (Bruers, 2024). It therefore does not establish any relationship of subordination, nor does it imply the superiority of one person over another.

By a donation contract, the donor transfers property or a property right to the donee gratuitously, upon the latter's expression of his will to accept the gift (Raghbir et al., 2024). A donation contract is unilateral, gratuitous, and at the same time real, since it is considered concluded upon the transfer of the donated item (Perkumiene et al., 2021). We do not consider a person's obligation to donate property or a property right in the future to be a donation contract (Civil Code of the Republic of Lithuania, 2000).

Kesting et al. (2021) define the gift perspective as an economic term and argue that it is constructed by exchange, the axioms of self-interest, instrumental rationality, and utility maximization—concepts that are prevalent in conventional forms of economic analysis, recognizing the gift as an example of a social practice supported by social institutions, within the perspective of social and institutional economics.

To summarize, the principal aim of a donation contract is to manifest the donor's intention to bestow a benefit or enhance another's financial standing free of charge (Perkumiene et al., 2021). Under this agreement, the donor may transfer property or property rights to the donee or discharge the donee from a monetary obligation owed to the donor or a third person (Grigol Robakidze University, 2025). The contract is unilateral and gratuitous, acquiring legal effect only once the gift has been delivered.

A conditional gift agreement and its essence. A conditional gift is a gift with a condition (Grigol Robakidze University, 2025). A condition precedent is a condition that must occur before any gift can be

given. The condition is subsequent: Gifts that are given without conditions are subject to a subsequent condition (Antonova et al., 2018). A conditional gift is a gift that is given to someone without any consideration but with a condition. A conditional gift is always subject to a condition that exists with the gift. A conditional gift is one that is subject to a condition. A conditional gift can be revoked if the recipient fails to fulfill the conditions attached to the gift. A gift is a conditional gift and is not final until some future event occurs (Maresca-Kramer, n. d.). A conditional gift is one that is based on some future event or act. If the event does not occur, the donor has the right to reclaim the gift (Perkumiene et al., 2021). For example, most courts classify engagement rings as a conditional gift and award the engagement ring to the donor in broken engagement cases (Kok et al., 2024).

Under Scots law, both the promise and the gift itself may be conditional. However, such a condition means that the gift will be made after the condition has been fulfilled by the future donee. For example, a reward for finding a lost item (Pollock et al., 2024). In other cases, the gift was conditional on the donee taking care of the donee until his death and burying him. The essential factor in a conditional gift is that the donee must fulfill the specified conditional obligations voluntarily, without compensation (Pollock et al., 2024). U.S. civil law permits the donor to include particular conditions or continuing obligations in the donation contract. For example, formal, written agreements are required regarding restrictions on the gift, allowing the donor to control the future use of the gift (Perkumiene et al., 2021), the money to be invested or paid out under certain agreed conditions, which will result in the property or project being named in the donor's name. In such and similar circumstances, the donor and the donee are more interested in having the terms of the gift clearly proven to avoid misunderstandings in the future (WeConservePA, 2023). A gift agreement is not discretionary, therefore the arguments for and against presented below are not relevant (ConservationTools.org, n.d.). The donee may be offended by a request to conclude a gift agreement with a condition, as if formalizing a promise of the parties, believing that such a request raises doubts about his reliability or financial capabilities (ConservationTools.org, n.d.). In W. Kaltenbrunner's (2025) opinion, a gift is like a firework, i.e. to the "shock feeling of a gift", when the giver, for example, giving a sweater, chooses his color, brand and can enjoy seeing the donee wearing it. The giver of the gift can also indicate its use,

i.e. a certain condition and at the same time maintain a certain control over the donated item, i.e. as if part of the ownership (Kaltenbrunner, 2025).

A conditional gift is also provided for in German law and if the condition is not implemented and fulfilled, the donor has the right to demand the return of the gift (German Civil Code, 1900). Typically, such a condition defines the purpose for which the donated asset should be applied. The issue emerges when the condition serves the donor's interests, raising doubts about how to separate an acceptable conditional gift from a bilateral service agreement, which, under German law, is incompatible with the gratuitous character of a gift. German courts hold that if the condition of the gift provides a benefit to the donor, in this case it is possible to deduct that benefit from the value of the gift. In such a case, such as a conditional gift in which the donor donates land and indicates that he will live on that land until his death, the court would reduce the value of the gift, but the gift contract itself would not turn into a mutual service contract (Henke, 2024). It is clear that such a distinction is difficult to apply in practice.

The principle of gratuitousness of a donation contract. Non-remuneration, the nature of the donation contract, which determines many different rules. The donation contract is subject to the rules of the gratuitous contract, so that without consideration, the imbalance of the parties is created. On this occasion, the law must focus on the gratuitousness of the contract and the design of different rules, but the theory of dispute and empirical justice find ways to argue. Why did the dispute arise? The deep cause of the dispute was the inability to agree on a uniform knowledge of the principle of gratuitousness (Panitch et al., 2024). It is necessary to clarify the influence of gratuitousness on the rules of the donation contract in order to understand the nature and role of gratuitousness, and most importantly, to create justice and appropriate donation rules (Butsan, 2020). Considering the gratuitousness of the donation contract as the beginning of logic, its legitimacy reveals why people donate property to others and why the law must protect gratuitousness and donation. The nature of the remuneration can be understood in terms of the donor's financial contribution and the benefit received by the donor (Ananzeh, 2025). Its legitimacy arises from the following ways: (a) humanity. Man is a set of moral rules, which means that humanity would like to help its peers, with compassion, kindness and good social attitude; humanity usually associates itself with similar cir-

cumstances, such as a sense of trouble and waiting for help until it meets someone "stuck", therefore the will of giving, arising from sudden signs of compassion, care, love, (b) socialization (Dauti, 2019). Man is a socialized individual and inevitably has to help each other, active help means benefiting both, and others. The effective source of the gratuitousness of the contract is the independent will of the person. The will of both parties explains the legality of the gift contract and at the same time enables the contract no less than its legal consequences. Accordingly, the donor offers his property to others, the legality comes from independent will, which allows it to be protected by law. The existence of gratuitousness corresponds to the requirement of civil law, as well as personal needs. As for the form of the donation contract, the distinction between the formal and informal method is considered an understandable legal act, in the case of partial consideration and false donation, informal legal acts were relied on, since gratuitousness affects the lives of the parties. It is generally accepted that the entry into force of the donation contract has no bearing on the subjects and objects (Miruta, 2024). Due to the influence of gratuitousness on subjects and objects, there is a huge difference between a donation contract and a gratuitous contract. In the case of a contract, both parties must have all the opportunities to initiate civil acts. There are no restrictions on civil actions related to gratuitousness for a donation contract, since the fixed consequence is that the donor, having accepted the benefit, will never harm himself, others and society (Mauss, 2024). The objects of a donation contract can be different. Consequently, property according to the norms of law, no matter what tangible and virtual property, can be attributed to the objects of a donation contract. A donation contract usually does not contain invalid rules, as a result of which the contract would lose its validity even after its entry into force (Šeputaitė, 2024). However, it is appropriate to allow the gift contract to be annulled, even though the applicable condition has been satisfied, on the basis of non-remuneration.

Therefore, there are three special rules for the invalidity of a donation contract – the right of accidental revocation, legal revocation and contract defense, taking into account the imbalance of the donation contract. Accidental revocation would lead to conflicting rules between the donation and the civil rights themselves, without restrictions on accidental revocation. The donor cannot be allowed to break his promise to cancel the contract if only due

to the non-remuneration of the donation contract or the basic principles of civil law can be violated (Miruta, 2024). The non-remuneration of the donation contract affects not only the structure of rights and obligations, but also the legal obligations of both parties. The measures applied to the donation contract are to reduce the legal liability of the donor, to encourage people to contribute to others, to compensate the donor for material loss. Generally, donors are not liable for ordinary negligence, except for intent and gross negligence; and not to assume liability for indirect losses, to expect the calculation of direct liability (Saleh et al., 2024).

Analysis of the legal regulation of the donation contract. The content of the gift agreement clearly shows that this is not a unilateral transaction and in any circumstances the consent of the donee to accept the agreed gift is required. On the other hand, attempts to consider this institution are erroneous. A gift is considered a unilateral transaction, which is one of the ways of the emergence of property rights and at the same time does not create obligatory relations between the parties. However, at the same time, the contract is unilateral, since the donee has no obligations (the exception is such a variant as a gift). Thus, there is no such thing as a gift agreement with a lifetime maintenance (maintenance) in civil law. Such obligations are characteristic of one of the varieties of lease. Also, for example, a gift cannot be considered as a renunciation of an inheritance in favor of another person (Gîscă et al., 2024).

The form of a donation contract can be concluded with a conditional or suspended condition. In any case, this requires a written expression, as well as a clearly formulated intention of the person to donate something in the future. The contractual donation contract must indicate the specific donee and the exact object in the form of a right, any thing or exemption from an obligation. This type of donation contract is unilateral. It gives the donor the right to demand that the donor fulfill it, which in turn imposes on him the obligation to fulfill it in a timely manner. However, any rule always has exceptions (Didžiulis, 2019). Sometimes the donee still has certain obligations: a careful attitude to the presented thing that has great moral value for the donor (letters, manuscripts, diaries, etc.); the use of the property donated by the donor for the purpose specified by him. A donation contract, like the majority of other transactions, can be concluded with the application of the so-called suspended condition. For example, the content of a gift agreement for an apartment may

include a clause that the property is transferred only when the recipient achieves a socially beneficial result (marriage, graduation from an institute, school, adulthood, etc.). By agreement in the agreement, the person accepting the gift may refuse it at any time before its direct transfer, as he is not obliged to do so (Heist et al., 2025).

A donation agreement is a unilateral and gratuitous agreement. Unilateral, because the obligations of the conclusion arise only for one of the parties, but are gratuitous, because they do not involve the exchange of equivalent payments and are a support plan (Perkumiene et al., 2021). The form of the agreement depends on the subject. Like any agreement, a donation is a mutual transaction. For a contract to be a fact, it is the presence of the wills of two parties, the content of which corresponds and constitutes a consensus. The first of them should include a gratuitous transfer of property or other right, and the second – an agreement on the acquisition of this right (Miller, 2024).

Firstly, a donation agreement is always concluded by mutual consent and is formal when it comes to the transfer of ownership and property rights to real estate. This transfer is always made in the form of a notarial deed (Perkumiene et al., 2021), and the ownership rights are transferred by concluding a contract. The same applies to certain movable property for which a special form of transfer of ownership is required by law, for example, registered cars (written with signatures certified by a notary) (Marčiulaitytė, 2025). The second feature concerns the donation of securities. This should also be done properly in order for them to be transferred. The presented securities are transferred through the most common transfer of these bonds – with endorsement and title – by way of transfer. The main position to which all the above cases apply is that the donation is made in the form in which it is transferred in the relevant law (Ališauskaitė, 2024). The parties can choose the form of the donation agreement in all other assets themselves – either in writing with signatures certified by a notary, for example, the rights in this case pass to the donor's property from the conclusion of the contract, or simply by transferring the donated property, without requiring any form. The absence of a notary's signature chosen in writing means the invalidity of the agreement. When donating contractual claims, its specifics are also revealed. In principle, this is done by assignment. Like movable property, production can also be transferred. This can be done by a letter addressed by the donor to the debtor

and informing him that he has transferred his claim, and the debtor should consider that he no longer has any obligations – to the donor and the donor, or by notifying the Bank, to transfer part of his contribution to the deposit to a third person (Sianipar et al., 2024).

A great reason to have a gift agreement is that in the event of the donor's premature death, the donor may be unwilling or unable to fulfill his promise regarding a gift that is not properly documented to form a legally binding contract. This justification for the gift agreement requirement is very useful because it applies universally and without regard to the donor's reliability or creditworthiness (Jabara et al., 2024).

The donor's obligations as a liberality, donation, unlike sale, increase the donor's obligations less than the seller's, even if it is also generally a transfer of ownership. The donor's obligations are: the obligation to transfer the donated item; the obligation to provide the donated item; the warranty obligation for eviction; the warranty obligation against hidden defects. The obligation to provide the donated item is an obligation to do something. It has the meaning of the transfer of a material good and this could take place after the donation is made according to the terms of the contract. The obligation to provide performance and demand can be performed by both the donee and his heirs and creditors. The donated item must be provided in its entirety, in the condition it was in at the time of donation, when the gift was accepted, together with its fruits, accessories and everything necessary to use the item for its intended purpose. The donee cannot request that the donor provide another item instead of the donated one (Singh et al., 2024).

In summary, a donation is essentially a unilateral contract, therefore it creates obligations for only one contracting party, i.e. the donor.

Conclusion. The giver agrees to transfer some property or property right to the donee, who then indicates his desire to accept the present, in a gift agreement. This is a gratuitous transaction. Because it is regarded finalized when the donated object is transferred, this agreement is also actual.

On the other hand, a gift agreement with a condition makes people question its content. A more thorough examination of this CC norm uncovered justifiable deficiencies that preclude the classification of such an agreement as a gift, rendering it either illegal or void. A gift agreement with a condition should be viewed as a bilateral transaction wherein the donor, by their own volition, seeks to enhance the circumstances of the donee, while simultaneously imposing a specific condition. The donee is then required to either accept or decline the gift proposed by the donor, along with the associated obligations.

When the court is deciding whether to annul the donation contract, it will look at actions that are morally wrong. The court must consider all relevant factors, including the personal attributes of the parties involved in the donation contract, the nature of the gift, and other pertinent aspects that could influence the perspective of good morality and may be regarded as severely as an attempt on the life of the donor or their immediate relatives or intentional serious harm to them.

Donors have the legal right to withdraw their gifts, have their contracts canceled, or get their property back if donees don't follow the terms of their donations. A conditional clause does not prevent the contract from taking effect before the condition is met; rather, the donor may request termination if the condition remains unfulfilled. Such a clause may specify that the donated property is to be used for a designated purpose, provided that the rights and legitimate interests of others are not violated.

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ДАЛЯ, ПЕРКУМЕНЕ – дослідник, доктор наук,
Коледж прикладних наук SMK (Клайпеда, Литва)
E-mail: perkum@gmail.lt
ORCID ID: <https://orcid.org/0000-0003-4072-3898>

ІНЕСА, БАГУЖЕНЕ – дослідник Магістр права,
Коледж прикладних наук SMK, (Клайпеда, Литва)
E-mail: inesabaguziene@gmail.com
ORCID ID: <https://orcid.org/0009-0003-8029-292X>

ТЕОРЕТИЧНІ ТА ПРАКТИЧНІ АСПЕКТИ РЕГУЛЮВАННЯ ДОГОВОРІВ ПРО ПОЖЕРТВУВАННЯ: ДОСВІД ЛИТВИ

Анотація

Актуальність теми. На актуальність теми також впливають аспекти встановлення принципу безоплатності договору дарування, оскільки згідно з цим принципом договір може бути визнаний договором дарування лише за умови, що договір є безоплатним, тобто дарувальник не має юридичних зобов'язань перед дарувальником. У випадку, коли сторони домовляються про виплату винагороди за дарування, це вважається фіктивною угодою. З іншого боку, при оцінці обставин, чи було наміром надати майно чи майнові права безоплатно, важливо встановити мотиви дарування, оскільки дарування, як і будь-який інший правовий акт, має бути мотивованим, а обставини, що розкривають мотиви надання дарунку, можуть розглядатися як доказові факти для підтвердження справжньої волі сторони, яка уклала договір дарування. У випадку, коли мотиви укладення договору дарування не встановлені, виникають обґрунтовані сумніви щодо справжньої волі дарувальника (Відділ цивільних справ Верховного Суду Литовської Республіки..., 2010). **Постановка задачі.** Договір дарування – один із видів цивільно-правових договорів, що характеризується безоплатністю та добровільністю волевиявлення дарувальника (Perkumiene et al., 2021). Однак на практиці застосування цього інституту викликає низку правових питань. Хоча закон чітко визначає сутність договору дарування, виникають сумніви щодо відповідності деяких його форм, особливо договорів з умовами, цьому поняттю. Такі договори часто містять елементи взаємних зобов'язань, тому їх не завжди можна класифікувати як справжні договори дарування. Проблемні ситуації виникають і при оцінці підстав для визнання договору дарування недійсним (Babic, 2024). Вирішуючи спори щодо дій, що суперечать добрим моральним нормам, суди спираються на різні критерії, але їх застосування на практиці не є цілком однаковим. Подібні невизначеності виникають і у правовідносинах щодо підтримки та благодійності. Оскільки обов'язок надання підтримки не є обов'язковим, часто виникають спори щодо використання наданої або незаконно отриманої підтримки та повернення невикористаних коштів. Отже, основна проблема, що розглядається в цьому дослідженні, полягає в тому, що правове регулювання договорів дарування в Литві не є достатньо чітким та послідовним, а суперечності, що виникають у його практичному застосуванні, викликають сумніви щодо визначеності та правової визначеності правовідносин. **Задачі дослідження.** Проаналізувати аспекти правового регулювання договору дарування, визначивши основні проблеми правового регулювання та застосування. **Методологія.** Були застосовані такі методи наукового дослідження: системний аналіз, аналіз документів, порівняльний, логіко-аналітичний метод та методи узагальнення.

Ключові слова: договір дарування, договір дарування, цивільний кодекс Литви, дарувальник, обдарований.

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