Some aspects imposed by the changing of civil rule regarding inheritance

Alexandra CRIŞAN
Notary trainee, Galati
oanagrama@yahoo.com

One of the most complex and perennial legal institutions, the inheritance, has raised and will permanently cause approaches, interpretations, procedural application extremely interesting and charged by emotional factors.

"The institution of inheritance, is an important component in the process of economic development and strengthening family relationships, of society as a whole. Starting with the habit, passing over the rules stage and early and empirical rules, continuing with a system developed and refined by European or national laws and regulations, the "inheritance" or "succession" suffered various approaches both in terminology and in deeper plan of legal philosophy, elements determined by economic, legislative or policy development of that company." [1].

Adding up in its construction both elements regarding ownership and family relationships, an analysis of the concept of "inheritance" reporting that a company in a particular historical moment given to this institution, faithfully reveals the role and place of family and ownership in the philosophy and culture of that company.

As recalled by Nicolae Iliescu: "In terms of law, as in art, literature, religion, every age, every nation has its character. Law varies by time and places, being the product of variable needs by time and places " [2]. Paraphrasing below the opinion on "ownership" of the author mentioned above, thus applying this view to the right to inheritance we can say that the right to inheritance "has also changed over the centuries when the needs and conceptions of the human spirit by changing had drawn the transformation of the "right to inheritance" [3].

Being a concept so strongly linked to fundamental rights such as the ownership and family, the legislative changes imposed especially by legal philosophy in communist period, failed to affect very consistently the civil rule in general, but particularly the provision regarding the inheritance.

“The inheritance in general, and the successional procedure, in particular, have always represented and will continue to represent, both for legal practitioners and for theorists, a challenge generated by the complexity of the raised issues. " [4].

Current Civil Code, amends a civil rule which actually managed to cross a long time, miraculously surviving to several attempts to amend. Amendments required by the law of the New Civil Code (Law no. 287/2009) [5].

These amendments include both conceptual and terminological amendments, and procedural solutions that are required by the reality of the moment and by the European legislation.

We recall in this context, as example, the preference of the legislator for the term inheritance in the disadvantage of the term succession, amendments on succession unworthiness, of the term of successional option and changes in the provisions of the will.

"Etymologically analyzed, the word "succession" has its origins in the Latin succesio-succesionis, which means "replacement" and also "continuance" or "succession of things."

The experts in law, based on the fact that the concepts of succession and inheritance are synonymous from legally point of view, they gave a special meaning to the concept of inheritance, this designating the transmission of inheritance of a deceased natural person to one or more persons in being (physical persons, legal persons or state) " [6]

Returning to the current Civil Code this governs the matters of inheritance in Book IV of - "On inheritance and liberality" starting with Title I - "Provisions relating to inheritance in general", continuing with Title II - "Legal Inheritance", then with Title III - "Liberality" and closing the book IV with the Title IV - "Transmission and inheritance partition." Clearly the Civil Code hosts several articles with respect to inheritance, rights and successional procedure, references that completes the constitutional provisions in matter and that completes the legal provisions from subsequent legislation.

“"Consecrated at the constitutional level by Art. 146 "The right of inheritance is guaranteed" and the Civil Code, Book IV, "On inheritance and liberality “, the inheritance

is an objective necessity linked directly and deeply influenced by the socio-political and economic context of the moment" [7].

Starting right with art. 953 Civil Code [8] it proposes a new definition of inheritance to the one consecrated by the former regulation, where, succession (inheritance) was described only as a way of acquiring the property.

Regarding art. 954 Civil Code [9] we mention that para. 2 of the article, removing the criterion imposed by Law no. 36/1995, respectively "the most important assets as value" [10].

As a result of European concerns and regulations in matters of inheritances with foreign elements, in the same article imposing a system and a unitary practice generated by the inheritance applicable law.

Art. 955 Civil Code clarifies another theme on kinds of inheritance as requiring the mixt inheritance, expressly stating the possibility of coexistence of legal inheritance with testamentary inheritance.

The current regulation, maintaining the interdiction of pacts on unopened inheritances (Art.956 Civil Code) [11] in art. 1.160-1.162 allows some exceptions to this rule if the ascendant partition and the ability to stipulate in the company contract the agreement of associates within the company, that where one of the partners dies, his heirs may take his place in company whose activity continues.

It should be noted that "documents authenticated by notary, to the above category (see explanation above), draw absolute nullity and comes under art.1.258 New Civil Code on notary public liability. Are premises and are not penalized with void the aforementioned (see text above), respectively the corporate terms in civil companies or by persons and ascending division (art.1.161 New Civil Code) " [12].

Regarding unworthiness to inherit, so in case of legal unworthiness and judicial unworthiness we meet new texts introduced or amended. Thus, it is established in art. 958-959 Civil Code [13] two categories of unworthiness: legal unworthiness art. 958 Civil Code and judicial unworthiness art. 959 Civil Code regarding the notary procedure we only specify that the legal unworthiness may be found under the final judicial decision [14]. It is also interesting the specification of para. 2 [15] of the same article which sets that the unworthiness is valid and applies even if the person in matter could

not be convicted because of the death of the author or in case has intervened the prescription or the application of a decree or a law of amnesty.

In terms of the effects of unworthiness, art. 960 Civil Code states that the indignity applies both to the legal inheritance and testamentary inheritance and consequently also mixed inheritance. The unworthiness, according to the new provisions is to return the fruits obtained from the date of opening the inheritance. Please note that according to the New Civil Code the forgiveness of the unworthy removes the effects of unworthy if the forgiveness is contained in an authentic document or in a will in which expressly this statement will be found. Procedural "both the authentic will and the notarial authentic document through which removes the effects of unworthiness, will be entered in the National Register of Authentic Wills, according to the provisions of Art. 95 of Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code ". [16]

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[2] Iliescu N., "Transformarea dreptului de proprietate", Publishing House of the Paper "Curierul Judiciar", Bucureşti, 1914, pag. 3.

[3] Idem.

[4] Ciucă L.-B., Some Considerations Regarding the Inheritance Succession Procedure With Extraneity Elements, published in the volume of the International Conference LUMEN "Trandisciplinarty and Communicative Action", 2014.

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[8] Art. 953 Notion The inheritance is the transmission of the heritage of a deceased natural person to one or more persons in being.

[9] Art. 954 Opening the inheritance

(1) "A person's inheritance opens at the time of his death.

(2) The inheritance opens at the last residence of the deceased. The proof of the last residence has to be made with the death certificate or, where appropriate, with the declaratory judgment of death remained final.

(3) If the last residence of the deceased is not known or is not in Romania, the inheritance opens in the place from the country located in the jurisdiction of the notary public seised first, if there is at least one immovable property of the person who leaves the inheritance. If in the estate there are no immovable properties, the place of opening the inheritance will be in the jurisdiction of the notary public seised first, if there are movable properties in its jurisdiction of the person who leaves the inheritance. If in the estate there are no properties on Romanian territory, the place of opening the inheritance will be in the jurisdiction of the notary public seised first.

(4) Provision of para. (3) shall apply accordingly when the first organ seised to conduct the inheritance proceedings is the Court.

[10] Please note that art. 68 para. 2 of Law no. 36/1995 was repealed by Law no. 71/2011.

[11] Art. 956

Legal documents on unopened inheritance

If the law does not specifies otherwise, are absolutely void all the legal documents having as object the eventual rights on an inheritance yet unopened, as well as documents according to which are to be accepted or waived any heritages before being open, or the acts which alienates or promise the alienation of rights it might acquire at the opening of the heritage.

[12] Rotaru D., Ciucă L.-B. – colectiv autori, "Codul civil al României : îndrumar notarial", Monitorul Oficial Publishing House, Bucureşti, 2011, pag. 326.

[13] Art. 958

The legal unworthiness

(1) It is unworthy to inherit:

a) person convicted criminally for committing an offense with the intent to kill the one who leaves the legacy.

b) a person convicted criminally for committing, before the opening of the inheritance,

an offense with the intent to kill another possible heir, if the inheritance were open at the time the offense would have removed or restricted the vocation to inherit the perpetrator.

(2) If the conviction for the facts referred to in para. (1) is prevented by the death of the perpetrator, by amnesty or prescription of the criminal liability, the unworthiness operates if those facts were established by a final civil judgment.

(3) The legal unworthiness can be established at any time, at the request of any interested person or ex officio by the court or by the notary public, based on the judgment from which it results unworthiness.

Art. 959

Judicial unworthiness

(1) It is unworthy to inherit:

(a) the convicted person for committing, deliberately, against the one who leaves a legacy, grave acts of physical or moral violence, or, where appropriate, the facts that had as result the victim's death.

b) a person who, in bad faith, concealed, altered, destroyed or falsified the will of the deceased.

c) a person who, by fraud or violence, prevented the person who left the legacy to prepare, amend or revoke the will.

(2) Under penalty of forfeiture, any potentially successor may request the court to declare the indignity within one year from the date of opening of inheritance. Introducing the action constitutes an act of tacit acceptance of inheritance by the potentially successor claimer.
(3) If the sentence for the facts provided in para. (1) Letter a) is pronounced after the date of opening the inheritance, the period of one year is calculated from the date of the final civil judgment.
(4) When the conviction for the facts mentioned in para. (1) a) is prevented by the death of the perpetrator, by amnesty or limitation for criminal liability, the legal unworthiness may be declared if those deeds were established by a final civil judgment. In this case, the period of one year begins to run from the occurrence of the cause of preventing the conviction, if this took place after the opening of the inheritance
(5) In cases provided in para. (1) letter b) and c) the period of one year begins to run since the successor knows the reason of unworthiness, if this date is subsequent to the opening of the inheritance.
(6) Village, town or, as appropriate, the municipality in whose jurisdiction the goods were on the date at the opening of the inheritance may bring the action provided in para. (2) where,
except there is no successor except he author of one of the acts referred to in para. (1). The provisions of para. (2)-(5) shall apply accordingly.
[14] Delivered by Criminal Court for one of the acts referred to in art. 958 of Civil Code
[15] Art. 958
The legal unworthiness
(2) If the conviction for the facts referred to in para. (1) is prevented by the death of the perpetrator, by amnesty or prescription of the criminal liability, the unworthiness
operates if those facts were established by a final civil judgment.
[16] Rotaru D., Ciucă L.-B. – colectiv autori, op.cit., pag. 332.