

Some considerations on effects of unworthiness to inherit

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"Civil Code, as well as any other normative act, in order to be useful and valuable for the company it governs, from the perspective of legal reports, must "go along" with the times with which it is contemporary." [1].

The new regulation of the Civil Code brings text amendments or even new approaches on the successional unworthiness or on the unworthiness to inherit.

Mainly the office of the material is in Book IV "On Inheritance and liberality", Title I - Provisions relating to inheritance, in general, Chapter II - General Conditions of the right to inherit. Specifically, art. 958 Civil Code [2] deals with the legal unworthiness, art. 959 [3] Civil Code approaches the judicial unworthiness, art. 960 Civil Code [4] regulates the effects of unworthiness and art. 961 Civil Code [5] clears the aspects regarding the removal of effects of unworthiness.

In this paper we want to present some of the aspects of the effects of unworthiness as they were regulated in the Civil Code in force, highlighting the difference of approach of the legislator to the former Civil Code.

First we must say that the civil rule in force establishes two categories of unworthiness: legal unworthiness and judicial unworthiness.

Regarding the effects of unworthiness we can appreciate a new introduced provision by art. 960 Civil Code which states that:

- the unworthiness is removed from the legal and testamentary inheritance [6]
- The possession exercised by the unworthy on property of the inheritance is considered of bad faith.
- The preservation and administration documents concluded between unworthy and third parties, are available to the extent that are useful to the heirs. Also, are maintained onerous acts concluded between unworthy and bona fide third party purchasers, being applicable the rules of the land register matter.

Given that, practically, the unworthiness has the legal nature of a penalty as a result of an abusive and incorrect of the potential successor to de cuius, we can appreciate that in case of judicial unworthiness we are in the situation of a civil penalty residing from a judicial decision, while in case of legal unworthiness we consider that we are in the situation of a civil sanction.

If we want to analyze the effect of unworthiness to inherit, it will be useful that in our analysis to approach separately the effects of unworthiness compared to the one declared unworthy to inherit, the effects of unworthiness to the third parties (in relation with the potential successor and with de cuius) and the effects of unworthiness to the descendants of the one declared unworthy.

If in the first situation, namely in the case of the analysis of the effects of unworthiness against the unworthy, the occurrence of the unworthy succession does not create problems in situation in which the potential successor declared unworthy didn't enter in the possession of any property from his estate, we still need to mention that if the (unworthy) own the total or a part of the properties that constitute the estate, on the date on which he was declared unworthy and the obligation to return all these properties together with the natural fruits, industrial or civil perceived from these fruits, being considered a possessor of bad faith will be obliged to pay them.

Regarding the consequences of the effects of unworthiness to third parties (successors in questions) we consider that "the obligation of returning may rest not only with the unworthy, but with his successors in question that have contracted with a non domino and must bear the consequences of the principle *nemo plus iuris ad alium transfere potest quam ipse habet*" [7]. In the same time from the text of art. 960, para.(3) Civil Code we notice that unlike the old civil regulation, the preservation documents, and the administration documents, to the extent that are useful to the heirs, concluded between unworthy and third parties, are available.

In the same paragraph, it is expressly mentioned that are maintained onerous acts concluded between unworthy and bona fide third party purchasers, but it is stated that all the rules of the land register matter remain binding and enforceable.

Staying in the legislator's logic who drafted this text, we can appreciate that per a

contrario all documents of provision concluded in bad faith with the third parties and the documents free of charge will always be abolished.

If the legal act is maintained, the refund will not be satisfied in nature but will be achieved through equivalent by the unworthy, in compliance with the rules of possession in bad faith [8]. Unworthiness as shown above, does not produce effects only to the unworthy or third parties respectively successors in question of the unworthy. The unworthiness in a new approach of the legislator causes effects for the descendants of the unworthy, meaning that unlike the old regulation, the current Civil Code starting from the strictly personal nature of a sanction states that " the unworthiness has the character of the strictly sanction of the heir for his acts of unworthiness and, therefore, in principle, should not cause effects in the person of descendants, regardless of their degree" [9].

In conclusion, we will remember some aspects of removing the effects of unworthiness. Art. 961 Civil Code basically introduce a new regulation which unlike the old text (which established that forgiveness of the unworthiness does not remove the effects of unworthiness) regulates that "the effects of legal or judicial unworthiness can be removed by will or by an authentic notarial document by the one that leaves the legacy ".

We emphasize that forgiveness of the unworthiness must be made expressly, after the time of producing the fact which led to the declaration of the potential successor as unworthy and to describe enlightening both the author and the act of unworthiness. The forgiveness of the unworthiness is not deducted nor assumed. Just to reinforce the obligation of fulfillment the background conditions, the legislator provided an obligation on the fulfillment of formal conditions. In this context we recall that civil rule in force require as condition *ad validitatem* that the externalization of forgiveness is made in solemn form by authentic will or by authentic notarial document. In both situations these are registered 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 ".

We consider that the debates on the amendments of legal rules in respect of civil matter should continue, because they "provoke the practitioners for a correct, uniform and non-discriminatory interpretation in each EU Member State" [10]

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[2] 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.

[3] 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.

[4] Art. 960

Effects of unworthiness

(1) The unworthy person is debarred both from legal and from testamentary succession.

(2) Possession exercised by the unworthy on property of the inheritance is considered of bad faith.

(3) The preservation and administration documents concluded between unworthy and third parties, are available to the extent that are useful to the heirs. Also, are maintained onerous acts concluded between unworthy and bona fide third party purchasers, being applicable the rules of the land register matter.

[5] Art. 961

Removing unworthy effects

(1) The effects of the legal or judicial indignity can be specifically eliminated by will or by an authentic notarial deed made by the person who leaves the inheritance Without an express declaration, it does not constitute the removal of effects of unworthiness the legacy left to the unworthy after committing the offense which attracts the unworthiness.

(2) The effects of unworthiness cannot be removed through rehabilitation of the unworthy, amnesty occurred after sentencing, pardon or prescription of criminal punishment.

[6] Since the current Civil Code enshrines mixed inheritance, ie coexistence with the testamentary inheritance, we can appreciate as a consequence that the unworthy is removed in the case of mixed inheritance

[7] Baias F.-A., Chelaru E., Constantinovici R., Macovei I., „Noul Cod Civil”. Comentariu pe articole. Ediția 1. Revizuit”, C.H. Beck Publishing House, București. 2012, pag. 1008

[8] Baias F.-A., Chelaru E., Constantinovici R., Macovei I., op. cit., pag. 1009

[9] Idem

[10] 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.