ACCEPTANCE OF THE INHERITANCE IN THE NEW CIVIL CODE REGULATION

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Abstract
The new regulation in civil matter, represented by Law no. 287/2009 regarding the Civil Code, whose date to entry in force has not been established yet, reconfigures quasi-totally the acceptance inheritance institution. In this paper we will analyze the acceptance of the inheritance issue under all its aspects, as a valence of the successional option right, in the light of the new Civil Code dispositions. We will thus be able to reveal the novelties brought by the new regulation and to appreciate its progressive nature. In the acceptance of the inheritance matter, the new Civil Code innovates, mainly as regards its forms (in the new Civil Code the acceptance under benefit of inventory is no more regulated), the effects of the acceptance (the heirs are responsible for the debts and for the delivers of the inheritance only with the assets from the successional patrimony) and the procedure that has to be performed in the case of inventory preparation and taking special measures for preserving the successional assets. We hope that through our approach, we enrol in the overall effort to make known and understood the disposition of the new Civil Code, until its entry in force.

Keywords*: express acceptance, tacit acceptance, forced acceptance, statement of unacceptance, presumption of waiver.*

1. Introduction

Our paper aims to analyze the problem of the inheritance acceptance, one of the valences of the successional option right, under all its aspects in the light of the new Civil Code.

Law no. 287/2009 regarding the Civil Code, published in the Official Gazette no. 511 from 24th of July 2009, but whose date of entry in force has not been established yet, provides to the acceptance of the inheritance a new configuration, reason for which we appreciate that the analysis of this institution of the successional right presents a particular up-to-date and utility. We also believe that making known and explaining the dispositions of the new Civil Code incidents in the acceptance of the inheritance matter, we bring our contribution to increase the justice quality, once this governmental decree comes into force.

Along with those who administer justice, are also interested in knowing the dispositions of the new Civil Code in inheritance acceptance matter equally the justice partners, law theorists, public notaries, civil servants with responsibilities in this area, Law and Public Administration specialization students. The legislator himself, always concerned with improving his legislative work, is interested by the *de lege ferenda* proposals formulated by the legal doctrine.

In the present paper we will analyze the problem of the inheritance acceptance under the following aspect: notion and legal regulation, ways (voluntary acceptance – express and tacit and forced acceptance), effects (general and special), inventory preparation and taking special measures to conserve the successional assets.

There have been written several studies, in the volumes of some conferences about the novelty elements brought by the new Civil Code, concerning the right to inherit in general since the date of the publishing of the law no. 287/2009 (2009, at the end of July). The inheritance acceptance

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problem in the regulation of the new Civil Code has been approached, as far as we know, only in volume "Noul Cod civil. Comentarii", in the study "Continuitate şi discontinuitate în reglementarea opțiunii succesorale[1]", where the author realises a brief analysis of the legal institution, subjected to our analysis.

In respect with this study we analyze the acceptance of the inheritance in the light of the new Civil Code, in a didactically and complete manner.

Under these circumstances, we consider that the subject we have proposed is up-to-date, and our scientific approach is useful.

2. Content

2.1. The notion and the legal regulation of the acceptance of the inheritance

The acceptance of the inheritance is the act or the unilateral legal fact through which *erede*[2] definitely strengthens his heir quality of the deceased[3].

The new Civil Code mainly dedicates to the acceptance of the inheritance articles 1106-1119. Unlike the Civil Code in force, the new Civil Code does not regulate two forms of the inheritance acceptance, but, abandoning the distinction between the pure and simple acceptance and the acceptance under inventory benefit, it regulates only the inheritance acceptance.

2.2. The acceptance types

As a consequence of the inheritance acceptance, legal heirs and legatees general or with general title are responsible for the debts and tasks of the inheritance only with the assets from the successional patrimony, proportionally with each person's quote [article 1114 paragraph (2) N.C.C.], (meaning *intra vires hereditatis*). By accepting the inheritance, *erede* appropriates the quality of heir, strengthening the transmission of the inheritance fully achieved at the date of the death [article 1114 paragraph (1) N.C.C.].

Any *erede* can choose regarding the inheritance, in the acceptance sense, new Civil Code regulating, in the article 1106, the freedom principle of the inheritance acceptance. As a consequence, "Nobody is forced to accept an inheritance that is rightfully his".

Although the new Civil Code, in the article 1108, that bears the name "The acceptance types", states about the express acceptance and about the tacit acceptance, we consider that, in the light of this governmental decree we have to distinguish between the voluntary acceptance and the forced acceptance (new Civil Code regulates the latter one in the article 1119). In turn, the voluntary acceptance may be express tacit, too[4].

As a consequence, the inheritance acceptance may be: voluntary and forced.

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[1] Bogdan Pătraşcu, "Continuitate şi discontinuitate în reglementarea opțiunii succesorale" in *Noul Cod civil. Comentarii,* coordinator Marilena Uliescu (Bucharest: Universul Juridic Publishing House, 2010), 246-72.

[2] The latin term "*erede*" has been used for the Romanian term "succesibil" (from the French "succecible") due to the lack of the English term that denominates a person who receives or is expected to succeed or is in line to receive a heritage due to a hereditary rank.

[3] Francisc Deak, *Tratat de drept succesoral,* Second edition, updated and completed (Bucharest: Universul Juridic Publishing House, 2002), 411; Dan Chirică, *Drept civil. Succesiuni* (Bucharest: Lumina Lex Publishing House, 1996), 218; Alexandru Bacaci and Gheorghe Comăniță, *Drept civil. Succesiunile* (Bucharest: C.H. Beck Publishing House, 2006), 192; Liviu Stănciulescu, *Drept civil. Partea specială. Contracte şi succesiuni*, Third edition, revised and updated (Bucharest: Hamangiu Publishing House, 2006), 429; Ioan Adam and Adrian Rusu, *Drept civil. Succesiuni* (Bucharest: All Beck Publishing House, 2003), 394.

[4] Regarding the acceptance of the inheritance in the light of the new Civil Code in force, see also, as an example: Veronica Stoica, *Dreptul la moştenire* (Bucharest: Universul Juridic Publishing House, 2008), 286-96; Ioan Popa, *Curs de drept succesoral* (Bucharest: Universul Juridic Publishing House, 2008), 290-306; Ion Dogaru, and the others, *Bazele dreptului civil. Volumul V. Succesiuni* (Bucharest: C.H. Beck Publishing House, 2009), 285-99; Ilioara Genoiu, *Drept succesoral* (Bucharest: C.H. Beck Publishing House, 2008), 294-312.

2.2.1. The voluntary acceptance

Voluntary acceptance is the result of the *erede* free will. It may be: express and tacit.

A) The express voluntary acceptance

According to the dispositions of the article1108 paragraph (2) N.C.C., the inheritance acceptance is express when *erede* explicitly assimilates the title or the quality of heir thorough an authentic document or under private signature. So, in order to be in the presence of the express acceptance, the following conditions must be satisfied:

a) the *erede*'s willingness to accept the inheritance shall be evidenced by a document, whether it is under private signature or authentic;

Therefore, the explicit acceptance of the inheritance is a formal act, but not a solemn one. Consequently, the verbal statement of *erede,* towards the inheritance acceptance, doesn't have the value of an acceptance. The legislator gave an official character to the acceptance act of the inheritance, both to protect *erede*'s interests, who "is not bound up with a word spoken randomly and also to avoid the evidence given by witnesses to an acceptance by words"[5].

In the situation in which the acceptance is made by an authentic document, the acceptance declaration will be written, kept in electronic format, in the National Notary Register, according to law (article 1109 N.C.C). This condition is imposed by the legislator, for advertising reasons.

Regarding the document under private signature, where *erede*'s will to accept the inheritance is manifested, it must not contain sacramental formulas and must not be especially drawn up for this purpose. The express acceptance of the inheritance can result from a document, drawn up in another way than the inheritance option, such as a letter, as far as it has legal character (referring to matters that concern the inheritance) and it is not strictly confidential or does not contain different requests, addressed by *erede* to the court, to the public notary or to the public administration bodies, in order to solve some aspects related to the inheritance[6]. These documents, even if they are not exclusively drawn up with the purpose of the inheritance acceptance[7], must be accomplished by *erede,* respecting the legal rules regarding the capacity and must be within the one year prescription term.

The inheritance may be accepted by *erede* not only personally, but also through his legal representative (with the consent of the guardianship court) or through a representative, authorized in writing (as the mandate forms a total with the document for which it was given) and especially (as the successional option act is a disposal act) in this regard. In order to have the value of an acceptance, the assignee's will, expressed in the sense resulted from the received mandate, must be expressed in writing and within the legal term of option. The existence of the assignee's mandate of the inheritance acceptance, not followed by an acceptance under the law conditions, does not value as

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[5] Mihail Eliescu, *Moştenirea şi devoluţiunea ei în dreptul Republicii Socialiste România* (Bucharest: Academiei Publishing House, 1966), 122.

[6] Dimitrie Alexandresco, *Explicaţiunea teoretică şi practică a dreptului civil român,* vol. IV, second part (Bucharest: Socec & Co. Publishing House, 1912), 236; Ioan Rosetti-Bălănescu and Alexandru Băicoianu, *Drept civil român. Regimuri matrimoniale. Succesiuni. Donaţiuni. Testamente,* vol. III (Bucharest: Socec Publishing House, 1948), 287; Constantin Stătescu, *Drept civil. Contractul de transport. Drepturile de creaţie intelectuală. Succesiunile* (Bucharest: Didactică şi Pedagogică Publishing House, 1967), 219; Francisc Deak, *op. cit.,* 412; Dan Chirică, *op. cit.,* 219; Alexandru Bacaci and Gheorghe Comăniţă, *op. cit.,* 192-3.

[7] Entries like this are considered to be: the letter addressed to the creditors of the inheritance, containing an offer of giving in payment or through which is requested a payment term; deferment request of payment of the debt; the letter addressed to the co-heirs, containing an offer of voluntary division of the inheritance; the petition of heredity; opening request of the notary successional procedure, containing *erede* willingness to accept the inheritance; declaration given to the local council indicating the successional assets and heir quality, in order to submit the entry to the competent notary office responsible for the succession debate; the opposition formulated by *erede* against a forced sale of a successional tenement. On the contrary, it is considered that the appeal brought by an heir against a court decision, if its author was part of the process and then died, is not by itself an act of acceptance of the inheritance. See also, Alexandru Bacaci and Gheorghe Comăniţă, *op. cit.,* 193.

an acceptance of the inheritance, as the trust deed given to the assignee may be subsequently revoked by the mandatory. So, the mandate given to the assignee is revocable, but the acceptance that he is doing in the name and on behalf of the mandatory, is irrevocable. If the mandatory dies before the assignee applies the received trust deed, the latter may accept the inheritance, so that the delay does not cause damages to the heirs of the former[8].

According to the dispositions of the article 1107 N.C.C., the inheritance may be accepted also by the *erede'*s creditors, on oblique way, in the limit of their claim.

It obviously results that the act of accepting the inheritance, also like the successional option act generally, does not have an exclusive personal character.

b) From the acceptance act should directly result that *erede* had assimilated the title and the quality of heir[9]. The unequivocal nature of the *erede*'s is appreciated by the court, which will conduct an analysis of the actual contents of the document.

B) Voluntary tacit acceptance

According to the dispositions of the article 1108 paragraph (3) N.C.C., the acceptance is tacit when *erede* makes an act or a fact that he is allowed to do but only as an heir. So *erede* does not directly express his willingness to accept the inheritance, as in the case of the express acceptance, but this derives from the acts and facts that he commits.

In order to be in the presence of the tacit acceptance, the condition that, by the acts committed by *erede* should show unequivocally his willingness to accept the inheritance must be fulfilled[10].

Like the express acceptance, the tacit acceptance may be realised personally, through a representative, a legal or a conventional one or even through a business manager. The assignee must benefit of a special mandate and must realise the acts of the tacit acceptance of the inheritance in the one year prescription term. Even a co-heir can have the quality of *erede*'s assignee.

The tacit acceptance acts, made by the business manger, have the value of an inheritance acceptance, as far as *erede* ratifies the management, within the successional option term, transforming it in a mandate[11].

Both the legal and the testamentary inheritance may be tacitly accepted, since from the above mentioned dispositions it does not result the contrary. The legatee, no matter if he is general, with general or with particular title, may tacitly accept the legacy, but it is necessary to invoke in front of the interested persons the will that confers him vocation to inheritance and not to act occult[12].

The new Civil Code enumerates the acts with the value of a tacit inheritance acceptance. For this purpose, the legislator distinguishes between the acts of disposition, the administrative acts and the acts of conservation, which are related to a part or to all the rights on the inheritance.

In all cases, the acts made by *erede*, in order to be considered acts of tacit acceptance of the inheritance, must be made within the prescription term of the inheritance option right.

So, according to the dispositions of the article 1110 N.C.C., the following categories of acts *have value of tacit acceptance*:

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[8] Francisc Deak, *op. cit.,* 413.

[9] M.B. Cantacuzino, *Elementele dreptului civil* (Bucharest: All Educational Publishing House, 1998), 230; Stanciu Cărpenaru, "Dreptul de moştenire" in *Drept civil. Contracte speciale. Dreptul de autor. Dreptul de moştenire,* Francisc Deak and Stanciu Cărpenaru (Bucharest: University of Bucharest, 1983), 499-500, Fr. Deak, *op. cit,* 413.

[10] Mihail Eliescu, *op. cit.,* 122; Francisc Deak, *op. cit.,* 413; Supreme Court of Justice, civil division, decision no. 2193/1990, in *Deciziile Curţii Supreme de Justiţie pe anii 1990-1992*, 114-6; Supreme Court, the civil collective, decision no. 768/1963, in *Justiţia Nouă (*10/1964): 116.

[11] Mihail Eliescu, *op. cit.,* 123; Eugeniu Safta-Romano, *Dreptul de moştenire* (Iaşi: Grafix Publishing House, 1995)*,* 97-8; Francisc Deak, *op. cit.,* 414; Supreme Court, the civil collective, decision no. 1411/1973, in *Culegere de decizii pe anul 1973*, 183.

[12] Gh.D. Dimitrescu, "Acceptarea tacită a succesiunii de către legatarul universal"*,* in *Revista Română de Drept* (4/1972): 78-9; Eugeniu Safta-Romano, *op. cit.,* 101-2; Francisc Deak, *op. cit.,* 414; Dan Chirică, *op. cit.,* 225.

a) the legal disposition acts regarding a part or all the rights on the inheritance;

Included in this category, with limitative title, the following acts:

- the alienation, with free of onerous title, by *erede,* of the rights on the inheritance;

We are certainly referring to those acts made by *erede* for the rights on an open inheritance, so it is about those acts that were made by *erede* after the inheritance opening date.

- the renunciation, even the free one, in favour of one or more determined heirs (*in favorem* renunciation);

Thus we found the free title renunciation in favour of all the co-heirs or of the subsequent heirs (purely abdicative or impersonal renunciation) does not have the value of a tacit inheritance acceptance.

- the renunciation of the inheritance, with onerous title, even in the favour of all the co-heirs or of the subsequent heirs.

According to the legislator, the legal disposition acts, regarding a part or all the rights on the inheritance, attract the tacit inheritance acceptance. Therefore, in these cases, the inheritance acceptance operates by right, being excluded the appreciation of the court.

b) the disposition, the definitive administration or the usage acts of some assets from the inheritance.

The new Civil Code states in paragraph (2) of the article 1110 that these acts may have the value of the tacit inheritance acceptance. As a consequence, in this case, the court will appreciate, from case to case, if the disposition, the definitive administration or the usage acts represent inheritance acceptance acts. So, in this case, the inheritance acceptance does not operate by right.

Like in the light of the Civil Code in force, the acts related to the single successional assets may represent disposition acts as follows: the buying-selling contract, the exchange contract, the donation contract, the annuity contract, the maintenance contract etc., having as objects the successional assets, on matter if they are entered with a third party or with a co-heir: the dismemberments constitutional documents of the property right on the successional assets; acts through which successional assets are taxed; the renunciation to a right; entering a contract for exploitation of a copyright in respect of any literary, artistic or scientific work remaining from the deceased; entering a selling-buying pre-contract in respect of a successional building etc.

The acts of the successional assets regarded *ut singuli* can be used as examples of definitive administration: making some useful or for pleasure expenditure, that increase the value of the successional asset or that are realised for luxury or pleasure; the collection of some claims of the inheritance, which don't have the nature of some current incomes of the inheritance; long-term demurrage of the successional assets; significant pay debts of the deceased, as far as the paying *erede* does not have in the same time the quality of co-debtor; the payment of the taxes on lands, buildings or vehicles that are part of the inheritance mass, the payment of the taxes on the inheritances etc.

On the contrary, *it does not represent tacit inheritance acceptance acts,* in the light of the dispositions of the article 1110 paragraph (3) N.C.C., the acts of conservation, supervision and provisional administration if from the circumstances under which they were made it does not result that *erede* did not assimilate by them the status of heir. They are considered to be of provisional administration of the urgent nature acts whose fulfillment is necessary for the normal enhancement, on short-time, of the inheritance's assets [article 1110 paragraph (4) N.C.C.].

They may represent conservation acts of the inheritance's assets, for example: making the inventory, conducting emergency repairs; collection of some amounts due to the succession, the exercise of possessive actions in respect with a successional asset etc.

They may be qualified as provisional administration acts, for example: the payment of the funeral expenses; the debts resulting from the last illness of the deceased; the payment of the small debts of the deceased, made from considerations of respect for his memory etc.

In the context of the tacit acceptance of the inheritance, the new Civil Code regulates, in article 1111, *the non-acceptance declaration.* Therefore, *erede* who intend to commit an act which

may signify the inheritance acceptance, but who does not wish to be considered an acceptant, must give in this regard, previous to the fulfilment of the act, an authentic notarized declaration.

Therefore, the non-acceptance inheritance can be given by *erede* only in respect with the disposition acts, the definitive administration acts or the usage acts of some inheritance's assets, as only in their cases the acceptance does not operate by right and it can be ordered by the court. If *erede* enters the dispositions acts regarding a part or all the rights on the inheritance, he is considered by right an acceptant of the inheritance, and the non-acceptance declaration in such a hypothesis is not acceptable.

We also notice that the non-acceptance declaration, unlike the express acceptance of the inheritance, is a solemn act, the validity of the former being conditioned by its realisation in an authentic notarized form. On the contrary, the express acceptance of the inheritance must not be materialised in a genuine document, but it can be expressed in a document under private signature.

In conclusion, the new Civil Code regulates for the first time in our law system the non-acceptance declaration, a useful institution of the successional option, as we consider. The legislator's preoccupation to regulate in a complete manner a judicial institution, namely the inheritance acceptance, so that the letter of the law covers as much as possible from the practical situations can but be appreciated.

2.2.2. The forced acceptance

The notion of the forced acceptance and its legal regulation

The new Civil Code, in the article 1119, states that for *erede* who, in bad faith, defalcated or hidden assets from the successional patrimony or hide a donation subjected to the report or to reduction is considered to have accepted the inheritance, even if he previously rejected it. However he had no right on the defalcated or hidden assets, and, where appropriated, he is obliged to report or to reduce the hidden donation, without participating to the distribution of the donned asset. Moreover, the heir is the above descript situation is required to pay the debts and the duties of the inheritance, proportionally with his quote from inheritance, including his own assets.

So, the facts that attract the forced inheritance acceptance are the following:

- the defalcation or the hiding of some assets from the successional patrimony;
- the hiding of a donation subjected to the report;
- the hiding of a donation subjected to reduction.

Analysing the dispositions of the article 1119 N.C.C., we notice that this governmental decree innovates also in this regard. Although the Civil Code in force regulates the forced inheritance acceptance and assigns it, in principle, the same effects as the new Civil Code, the latter mainly innovates as regards the causes that attract this sanction. *De lege lata*, only the defalcation or the hiding of some assets from the successional patrimony attract the forced inheritance acceptance. The new Civil Code adds to this cause the hiding of a donation subjected to the report or to reduction.

Therefore, in the light of the dispositions of Law no. 287/2009, the forced acceptance represents the sanction applied to *erede* who, driven by a fraudulent intention, has hidden assets that were part of the inheritance mass or a donation subjected to the report or to reduction with the purpose to exclusively appropriate them, respectively to defalcate the donation that already was subjected to the report or to reduction and to damage the co-heirs and the successional creditors.

The forced acceptance of the inheritance, common in practice, represents an exception from the voluntary character of the successional option act[13] and it is applicable both for the legal and testamentary inheritance.

De lege lata, from their legal nature point of view, the defalcation or the hiding of successional assets are classified as unlawful legal facts, as civil offenses and not as successional

[13] Mihail Eliescu, *op. cit.,* 125; Francisc Deak, *op. cit.,* 423; Alexandru Bacaci and Gheorghe Comăniță, *op. cit.,* 200.

option acts, and the penalty that accompanies them represents a civil penalty[14]. The same opinion can be supported, in our opinion, and in light of the new Civil Code's dispositions.

The conditions of the forced acceptance

In order to be in the presence of the forced acceptance, there must be met the following conditions:

a) the existence of the objective element;

The objective element consists of giving away, hiding or the non-declaration from the inventory of some successional assets or of a donation subjected to the report or to reduction, by *erede,* alone or in equity. In the light of the dispositions of the Civil Code in force, the jurisprudence and the doctrine have given a very broad interpretation of the concepts of defalcation and hiding, their scope being circumscribed to any acts or deeds of any kind to reduce the assets, rather in the damage of the co-heirs and / or of the successional creditors and in the bad-faith *erede*'s benefit. Same orientation can be hold, in our opinion, also after the entry in force of the Law no. 287/2009.

Therefore, the material objective can represent both deeds, like the material hiding of some assets, the drawing up of a false will or of a proving document of an unreal claim for the succession, and also omitted facts, like the non-declaration of some assets for the completion of the successional inventory, the non-declaration of some *erede*'s debts to the succession, the non-declaration of a donation subjected to report or to reduction etc.[15]. In all the cases, the existence of the hiding or of the not declared assets in the successional patrimony must be proven[16].

Following the commission of such acts, there is operating a clandestine self possession of one co-heir the expense of the others[17]. The lack of clandestinity (co-heirs knew about the assets' existence) entails the inapplicability of the sanctions by the article 1119 N.C.C.

In the judicial practice and in the literature has acknowledged that the defalcation or the hiding entails the forced acceptance of the inheritance and also in the following assumptions:

- these are not only about the movable assets, but also about the immovable assets of the successional patrimony[18];

- they are committed not only before the inheritance opening, but even before that time, perhaps even with the complicity of the deceased[19];

- they are committed not only before exercising the successional option right, but even after that moment[20].

We consider that these hypotheses may attract the forced inheritance acceptance in the light of the new Civil Code.

b) the existence of the subjective element;

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[14] Mihail Eliescu, *op. cit.,* 130-1; Francisc Deak, *op. cit.,* 423; Supreme Court, the civil collective, decision no. 2520/1989, in *Dreptul* (8/1990): 79.

[15] Dimitrie Alexandresco, *op. cit.,* 325-7; Ioan Rosetti-Bălănescu and Alexandru Băicoianu, *op. cit.,* 291-2; Mihail Eliescu, *op. cit.,* 130; Francisc Deak, *op. cit.,* 424; Dan Chirică, *op. cit.,* 227; Alexandru Bacaci and Gheorghe Comăniță, *op. cit.,* 201; Supreme Court of Justice, civil division, decision no. 622/1990, in *Dreptul* (9-12/1990): 236-7.

[16] Supreme Court of Justice, civil division, decision no. 1979/1992, in *Deciziile Curții Supreme de Justiție pe anii 1990-1992*, 119-25.

[17] Dan Chirică, *op. cit.,* 227.

[18] Dimitrie Alexandresco, *op. cit.,* 326, footer note 1; Ioan Rosetti-Bălănescu and Alexandru Băicoianu, *op. cit.,* 292.

[19] It can be seen the complicity of the deceased, in the hypothesis in which he states in favour of one of the heirs, through a donation, disguised under the appearance of a sale, in order to avoid the excessive reduction of the liberality. Mihail Eliescu, *op. cit.,* 129; Francisc Deak, *op. cit.,* 424.

[20] Francisc Deak, *op. cit.,* 424.

The subjective element is represented by erede's intention to defraud the others co-heirs or the creditors of the inheritance[21].

In order to be in the first case (defraud of the co-heirs), there must be a plurality of heirs so that *erede* acts the fact to damage another or other co-heirs. *Erede* who committed the fact with this purpose is declined from the right to reject the inheritance and also from the right to receive his part from the subtracted assets.

For us to in the second case (defraud of the inheritance's creditors), the plurality of heirs is not necessary, being sufficient that the only deceased's *erede* to commit the fact with the purpose to damage the inheritance's creditors[22]. Being the only heir[23], he can be declined from his right to reject the inheritance but not from, his right to receive his part from the subtracted assets.

The non-declaration by *erede*, when the inventory is made, of some successional assets, by mistake or with the wrong belief that these assets are his, does not attract the application of the sanctions regulated by article 1119 N.C.C. For these sanctions to become applicable it is necessary that *erede* be conducted by a fraudulent intent. The *erede* bad-faith is not presumed, it must be proven by the one who invoke it (co-heir or creditor of the inheritance)[24].

If *erede* returns the hided assets on its own initiative, before this fact is discovered, the doctrine[25] considers that the provisions of the article 1119 N.C.C. are no longer applicable. But if *erede* who committed the act of concealment, dies before returning the hidden assets, his heirs will be punished in the sense that, for their part, the tacit acceptance of the inheritance operates, even if they return themselves these assets[26].

We believe that these views can be sustained also in light of the new Civil Code.

c) fraudulent facts are likely to damage other persons;

In order to attract the application of the sanctions of the article 1119 N.C.C., the fraudulent facts of *erede* must not harm the rights of other persons (co-heirs or successional creditors). This condition is not met, therefore the mentioned penalties are not available, in the following cases:

- *erede* has excusive rights on the inheritance[27];

- the surviving spouse, who comes to the inheritance of the deceased in contest with other heirs than the descendants of the latter, had stolen or concealed household items that have been affected to the common use of the spouses[28]. The household objects can be tracked by the creditors of the succession, only if their claims can not be met from other successional assets, including the surviving spouse part from these assets[29].

- the legatee with particular title has subtracted or concealed assets that are exclusively his, these assets not being subjected to any reduction[30].

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[21] Judicial practice and doctrine have acknowledged that *erede* fraudulent intent may be carried out and the creditors of the inheritance, not only the co-heirs. Supreme Court of Justice, civil division, decision no. 622/1990, in *Dreptul* (9-12/1990): 236-7; Francisc Deak, *op. cit.,* 425; Alexandru Bacaci and Gheorghe Comăniță, *op. cit.,* 201.

[22] Supreme Court of Justice, civil division, decision no. 622/1990, in *Dreptul* (9-12/1990): 236-7.

[23] Mihail Eliescu, *op. cit.,* 129. In the literature was sustained too the contrary opinion, according to which the applicability of the sanctions in question is conditioned by the existence of multiple heirs. Eugeniu Safta-Romano, *op. cit.,* 114.

[24] Supreme Court of Justice, civil division, decision no. 1979/1992, in *Deciziile CurțiiSupreme de Justiție pe anii 1990-1992*, 124.

[25] Mihail Eliescu, *op. cit.,* 131.

[26] Alexandru Bacaci and Gheorghe Comăniță, *op. cit.,* 202.

[27] Dimitrie Alexandresco, *op. cit.,* 329; Francisc Deak, *op. cit.,* 426; Dan Chirică, *op. cit.,* 229; Alexandru Bacaci and Gheorghe Comăniță, *op. cit.,* 202.

[28] Mihail Eliescu, *op. cit.,* 129; Supreme Court, the civil collective, decision no. 1349/1983, in *Culegere de decizii pe anul 1983*, 90-2.

[29] Francisc Deak, *op. cit.,* 426.

[30] Ibidem. The legatee with particular title is not responsible to the creditors of the inheritance, only if their claims can not be satisfied by the successors general and with general title from the value of the successional patrimony.

d) the author of the fact must have the quality of heir.

For the dispositions of the article 1119 N.C.C. to be applicable, it is necessary that the author of the fraudulent fact to have the quality of legal heir or general legatee or with general title. As we have shown before, for the legatee with particular title the discussed legal dispositions are not applicable, not in the case in which he concealed the assets that represented the object of his legacy and not in the case in which he concealed other assets. In the first case, the concealed assets are totally his, and in the second case he is in the situation of any third party. Correspondingly, the legatee with particular title is not entitled to seek the application of the forced inheritance acceptance sanction to the other heirs who have committed fraudulent acts provided by law[31].

In case in which *erede* who committed fraudulent acts provided by law dies before the liquidation of the inheritance, the transmission of his own successional rights to the own heirs operates, who are deemed to have accepted the retransmitted inheritance, not having the possibility to reject it.So, the sanction of the forced inheritance acceptance operates in the inheritance retransmission case.

It will bear the consequences of committing the fraudulent facts, to which the dispositions of the article 1119 N.C.C. refer, only *erede* with fraudulent capacity in their committing moment. Are relatively presumed[32] to have fraudulent capacity (have acted with discernment) persons who have aged 14 years and are not put under interdiction. With regard to incapacitated persons (those under 14 years and persons under interdiction), the existence of the discernment when the deed was committed must be proved. It is possible, therefore, that the minor placed under interdiction or the individual to be affected by the forced inheritance acceptance. The sanction of the forced inheritance acceptance is applicable for them in the hypothesis in which they committed with discernment the fraudulent facts foreseen by law.

In the hypothesis of committing the fraudulent facts by *erede* in participation, the consequences regulated by law will affect everybody, and in regards the restitution of the concealed assets to the inheritance, their responsibility will be in solidarity[33].

2.3. The effects of the inheritance acceptance

2.3.1. The general effects of the inheritance acceptance

The successional patrimony transference, which has operated provisionally since the inheritance opening, is strengthened, becoming final by accepting the inheritance. By accepting the inheritance, the heir title of *erede* is strengthened, but his right of successional option is definitely off, meaning *erede* decades of the right to reject inheritance.

The inheritance acceptance generates this effect, whether it was voluntary acceptance (whether express or tacit) or forced, or it was the result of inheritance rejection revocation. In all cases, the effect of acceptance rises over time until the date of the inheritance opening [article1114 paragraph (1) N.C.C.]. Therefore, although it is exercised after the opening of the inheritance, and within the prescription term of the successional option right, the inheritance acceptance produces retroactive effects. This effect is common to both valences of the successional option right, and thus to the rejection of the inheritance, too.

As a specific effect of the inheritance acceptance, however, the legal heirs and the general legatees and with general title are responsible for the debts and burdens of the inheritance only with the assets from the successional patrimony (*intra vires hereditatis*) proportionately to each quote.

Thus we identify, the major novelty brought by the Law no. 287/2009 in the matter of the successional option right, namely the ascribing of the acceptance under inventory benefit specific effects from the regulation in force, deriving from the inheritance acceptance.

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[31] Mihail Eliescu, *op. cit.,* 129; Francisc Deak, *op. cit.,* 427.

[32] Article 1366 N.C.C.

[33] Francisc Deak, *op. cit.,* 427.

Consequently, the inheritance acceptance generates the following specific effects:

A) separation of the patrimonies;

In accepting the inheritance case, the successional patrimony remains separate from the heir's personal patrimony. Therefore it operates under the provisions of the article 1114 paragraph (2) N.C.C., the separation of the patrimonies, as an exception to the principle of unity which patrimony entails.

The separation of patrimonies specific to the inheritance acceptance produces effects to all the successional creditors, including to the legatees with a particular title, as well as to the accepting heir and to his personal creditors.

The patrimonies' separation, resulting from the acceptance of the inheritance, leads to the following consequences:

a) the liabilities or claims of the accepting heir towards to *de cujus* are not extinguished by confusion. In contrast, the mutual claims (the claim that the heir has for his inheritance and *de cujus* claim towards the heir) can be compensated. Also, the confusion does not stop the real rights that the heir has on a successional asset, respectively the real rights that *de cujus* has on an asset from the heir's patrimony[34].

b) *erede* is considered third party against the successional patrimony so that he may become the contractor subject to some of the successional assets on sale at auction;

c) the heir may acquire new rights and obligations in respect with the successional patrimony;

d) third parties can not impose to the heir the personal exceptions, they could invoke against the *de cujus*, as the heir does not take place of the deceased, in the latter's contracted relationships with third parties[35];

e) from the price obtained from the sale of successional assets, the claims of the successional creditors and of the legatees will be satisfied preferentially, while the personal creditors of the heir claims will be fulfilled only from the remaining liabilities after liquidation.

B) the responsibility of the heir to the liabilities, only within the asset limit (*intra vires hereditatis*).

As for the responsibility for the liabilities, the new Civil Code regulates that the legal heirs and general legatees with general title are responsible for the debts and burdens of the inheritance only in proportion to each quote.

So, unlike the Civil Code in force, the new Civil Code no longer regulates the possibility of the heir to abandon the succession's assets in favor of creditors and legatees by particular title.

According to the dispositions of article 1114 paragraph (3) N.C.C., as a rule, the legatee with a particular title is not obliged to pay the debts and the inheritance duties. By exception, however, it responds for the liabilities, only with his asset or assets which form the object of the legacy and only in the following situations:

a) the testator had expressly disposed for this purpose;

b) the right left by legacy has as its object an universality, such as an inheritance collected by the testator and non-cleared yet;

c) the other assets of the inheritance are insufficient to pay the inheritance debts and the inheritance duties.

C) the assets entered into the successional patrimony after the inheritance opening, by effect of subrogation, may be affected to debt settlement and inheritance duties.

Thus, according to article 1114 paragraph (4) N.C.C, where alienation of assets after the inheritance opening, goods entered in the successional patrimony by the effect of subrogation may be affected to the debt and burdens of the inheritance extinguishment. From the expression of the

[34] Ididem, 445 and the footer note 2.

[35] Ibidem.

legislature, we can assume that these assets can be affected to the debt and burdens of the inheritance extinguishment only if the other successional assets do not appear to be sufficient.

2.3.2. The special effects of the inheritance acceptance

The general effects of acceptance (the strengthening of title of heir, the separation of patrimonies and damage to goods entered in the successional patrimony, by the effect of subrogation, to satisfy debts and inheritance duties) occur in both voluntary acceptance, and in forced acceptance. In addition, however, the forced acceptance of the inheritance generates, under the provisions of article 1119 N.C.C., the following specific effects:

a) forfeiture of the *erede* from the right of successional option, not being able to reject the inheritance;

If the heir had renounced his inheritance, before committing the act liable to attract the forced acceptance of the inheritance, he decays of the quitting quality, becoming thus acceptant of inheritance.

b) forfeiture of the *erede* from the successional rights on the assets stolen or hidden;

Erede who has stolen or hidden successional assets, is void of any right on these. These assets will revert to the statutory rates, to the co-heirs of the guilty party. It follows, therefore that the forfeiture of the successional right of stolen or hidden property occurs only in relation to fraud co-heirs[36].

c) the obligation of *erede* to report or to reduce the hidden donation, without participating in the distribution of donated asset;

d) although the guilty heir does not collect his share of the stolen or hidden assets, respectively from the reported or reduced donation, he will be bound to pay the duties and the succession burdens, in proportion to the quote of the inheritance due to him, including his own assets.

So, in the forced inheritance acceptance, the separation of patrimonies no longer operates, thus the guilty *erede* will incur debts and inheritance duties, which correspond to its quote of inheritance, in case of failure of successional assets, even with his own goods (*ultra vires hereditatis*).

2.4. Inventory and special measures to conserve the successional assets

2.4.1. Inventory of the successional assets

As for the inventory, the new Civil Code provides in article 1115 paragraph (1) that *erede*, the heritage creditors and anyone interested may require the empowered notary to have an inventory of the assets from the successional patrimony, expenses incurred by it being in charge of the inheritance.

Therefore, the inventory can be requested to any competent notary by any *erede* (with legal or testamentary vocation), by the inheritance creditors and even by any interested person, for the purpose of ascertaining the exact composition of the successional mass, so that the entitled one to exercise the successional option right should do so in full knowledge.

According to the dispositions of the paragraph (2) of the same law text, if *erede* or persons who hold assets from the successional patrimony object, the carrying out of the inventory is ordered by the court from the place of the inheritance opening. Consequently, regarding the inventory we may encounter two situations:

a) those who hold assets from the successional patrimony (whether or not they have the quality of *erede*) do not oppose the request of those entitled by law to make an inventory of the successional assets, in which case the public notary is empowered to dispose of inventory performance;

[36] Mihail Eliescu, *op. cit.,* 130.

b) those who hold assets from the successional patrimony (whether or not they have the status of *erede*) oppose the request of those entitled by law to make an inventory of the successional assets, case in which the inventory carrying can be ordered by the court from the opening place of the inheritance.

There are also two situations as far as the person who makes the inventory is concerned. Thus, according to the dispositions of the article 1115 paragraph (3) N.C.C., the inventory is made by the person designated by the *erede* and creditors' agreement, or failing such agreement, by the person designated by either the notary or, where appropriate, the competent court.

So the two situations that can be found regarding the person who will carry out the inventory are the following two:

- the person who will carry out the inventory is designated by *erede* and creditors;
- if there is no agreement between the *erede* and creditors, the person who will carry out the inventory will be designated either by the competent notary (in case those who have assets from the successional patrimony have no objection to achieve the inventory) or by the competent court (in case those who have assets from the successional patrimony have objection to achieve the inventory).

Inventory results will materialize in the power of the dispositions of the article 1116 N.C.C., in a report of inventory, which contains references to both the assets and the liabilities of the inheritance. As for the assets of the inheritance, goods of the inheritance whose ownership is contested must be shown separately.

For the inheritance assets whose ownership is not contested, the person conducting the inventory must distinguish between goods, that on the opening date of the inheritance, were in possession of the deceased and the goods that at the same date, were in possession of another person. The goods that were in possession of the deceased on the inheritance opening date will be listed, described and assessed provisionally, while the successional assets owned by other persons will be counted, stating the place where they are and why they are there.

Where, during the count a will left by the deceased will be found, it will be attested as unchanged and deposited in the public notary office [article 1116 paragraph (5) N.C.C.].

The inventory is signed by the person who carried it out, by *erede* who were there, and if they are absent or if they refuse to sign, the inventory will be signed by two witnesses [article1116 paragraph (6) N.C.C.].

The deadline to realize the inventory

As a consequence of the dispositions of article 1104 N.C.C. the inventory can be realized as it follows:

- prior exercising the successional option right, in which case the one-year option term will not be fulfilled before two months from the date on which the applicant *erede* shall be notified of the minutes inventory, in this case we are now extending the deadline of the successional option term;
- after exercising the option right, in which case the successional option term mustn't be extended.

During the realization of the inventory, *erede* can not be considered heir unless he has accepted the inheritance. So, only *erede* who commissioned the inventory of the successional assets, after accepting the inheritance, will be considered an heir. In other words, only the inheritance acceptance makes him heir, not the request to carry the inventory of the successional assets, this does not have the significance of the tacit inheritance acceptance.

2.4.2. Special conservation measures of the successional assets

The new Civil Code contains provisions relating to special measures and conservation of the assets. So, according to the article 1117 N.C.C., in case of danger of alienation, loss, substitution or destruction of the successional assets, the notary will be able to put them under seal and will submit them to a custodian.

Custodian may be appointed by agreement of the concerned parties or by failing such agreement, the custodian will be appointed by the public notary. In the first case, the custodian will be one of *erede* and in the second case he will be a third party.

From the mentioned legal dispositions, we conclude that the role of custodian is to conserve the successional assets, avoiding alienation, loss, substitution or destruction. Any storage costs will be contracted only with the approval of the notary.

The successional assets can also be transferred in administration to a special guardian appointed by the notary. Just like the custodian, the trustee may incur expenditure on the successional assets in order to preserve it, but only with the notary's approval.

In all cases, the assets are delivered protocol based, signed by both parties, by the public notary or by special guardian and custodian. If the delivery takes place in the same time with the inventory, the inventory report will be mentioned the delivering statement, a copy of the minute report in question being handed to the custodian or to the trustee.

The custodian or the curator is forced to return the assets and to account for them to the notary regarding the preserving or the administration expenses of these goods, when the successional procedure ends or when the notary sees it fit.

Regarding the sums of money, the bonds, the checks or any other values found when carrying out the inventory of the successional assets, the new Civil Code regulates special measures, in article 1118. They consist in submitting the values listed in the notary's store or in a specialized institution, mentioning this in the minute report of the inventory.

From the sums of money found in the inventory, will be left to the heirs or to those living with the deceased and that kept the household together with the amounts required for:

- the maintenance of the persons who were in charge of the deceased for up to 6 months;
- the payment of the amounts due under employment contracts or social insurance payments;
- the expenditure for conservation and management of heritage assets.

Entitled to receive such amounts, are therefore only:

- the heirs of the deceased, legal or testamentary (general or with general title);
- in the absence of the heirs of the deceased, the persons who lived with the deceased and who kept the household with him.

We consider that the new Civil Code, that contains references to the inventory and the preservation of the successional assets, registers another positive aspect.

Analyzing the dispositions of article 1115-1118 N.C.C., we identify the concern of the legislature to regulate in a more complete manner the acceptance of the inheritance problem.

3. Conclusions

After an analysis of the inheritance acceptance, we can appreciate that the new Civil Code assigns to this valence of the successional option right a new configuration. Law no. 287/2009 preserves from the regulation in force of the inheritance acceptance only items whose correctness and timeliness have not been denied by the literature and by the judicial practice, bringing many new elements imposed, however, by the new social realities.

As regards the acceptance of the inheritance, we reveal the following new aspects brought by Law no. 287/2009: it does not regulate anymore the acceptance under inventory benefit, form of the inheritance acceptance in the regulation of the Civil Code in force, but it contains dispositions only regarding the inheritance accepting, but to which it assigns the legal effects of the acceptance under inventory benefit from the regulation in force; it enumerates the acts with tacit acceptance value, respecting under this aspect the line of the Civil Code in force; it regulates for the first time in our law the non-acceptance declaration; adds new causes that attract the forced inheritance acceptance; it contains dispositions regarding the elaboration of the inventory and of the special measures of

conserving the successional assets; it regulates the possibility of extension of the option term, as a consequence of the inventory's elaboration, before exercising the successional option right.

In our opinion, all these aspects represent advantages of the new regulation in successional matter, constituting its strengths. We particularly highlight the new Civil Code's concern to ensure to the inheritance acceptance a regulation as complete as possible and assure protection for any acceptant *erede*, stating that the debts and inheritance duties shall be considered *intra vires hereditatis.*

We conclude therefore that the new Civil Code, using a modern specialized language, ensures to the inheritance acceptance a proper, complete, consistent and fair regulation.

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