

# EFFECTS OF THE INHERITANCE UNWORTHINESS

*Ilie URS\**

## **Abstract**

*The inheritance unworthiness is the civil sanction of forfeiting the inheritance right, which applies to the heir/person having inheritance capacity and vocation, guilty of a serious deed against de cuius or against a heir of them.*

*The inheritance unworthiness sanction operates either by law, under the law, either based on a court order, and not on the will of the deceased.*

*The inheritance unworthiness sanction applies only to the perpetrator of the deed, not to other persons summoned to the deceased's inheritance.*

*The inheritance unworthiness effects consist in the retroactive cancellation of the title of heir of the unworthy heir. Practically, the heir unworthy of the inheritance loses the right to the portion of the inheritance that they would have been due to, including the right to forced heir ship.*

*The inheritance unworthiness effects may be removed by the person who leaves the inheritance either by will or by authenticated notary's deed, though only by express affidavit.*

**Keywords:** *civil sanction, inheritance capacity, vocation, perpetrator, heir, intent, guilt*

**JEL Classification:** [K 11, K 12]

## **1. Notion**

For a person to inherit, they have to meet a negative condition as well, along with the requirements of the inheritance capacity and vocation, namely *not to be unworthy to inherit*.

The inheritance unworthiness is the *civil sanction*<sup>1</sup> (Deak, 2013, p. 96) of forfeiting a person from their right to inherit, which applies to a person with

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<sup>1</sup> In the same way, the recent literature appreciates that since the decision of the civil court finds the inheritance unworthiness facts declarative, as it operates retrospectively and not constitutively, the unworthiness consequences are qualified as a *civil sanction* and not as a punishment, which implies a constitutive decision to enforce the punishment. Likewise, as mentioned before, the *civil sanction* nature of the inheritance unworthiness confers it a *personal* nature (it applies only to the perpetrator of the deed) and a *relative* nature (the unworthiness exists only in respect of the deceased or their successor in respect of which the deed was committed and must imply the existence of discernment and of criminal responsibility of the unworthy heir at the moment of the deed According to another opinion, in

inheritance capacity and vocation (Florescu, 2012, p. 31), guilty of a serious deed against *de cuius* or against a heir of them (Boroi, 2012, p. 526).

In compliance with art. 958 and 959 of the Civil code, the inheritance unworthiness sanction operates either *by law*, under the law, or based on a court order, and not on the will of the deceased.

According to art. 958 and 959 of the Criminal Code, the non-compliance sanction is either lawful, under the law, either based on a judicial decision and not on the will of the deceased (Chirică, 2014, p. 31).

Being a sanction, it applies only to the perpetrator of the deed, not to other persons summoned to the deceased's inheritance, on their own behalf or by inheritance representation. Furthermore, this sanction applies only in case of the deeds expressly and restrictively specified by the law, whereas the perpetrator must have acted with discernment, as in the absence of discernment we cannot talk about guilt.

We further on mention that, according to the new Civil Code, the inheritance unworthiness sanction operates both in case of legal inheritance and in case of testamentary inheritance.<sup>2</sup>

## 2. Effects of the Inheritance unworthiness

Based on art. 960 paragr. 1 of the Civil code, the unworthy heir is removed both from the legal inheritance and from the testamentary inheritance.

The specialty literature has specified that unworthiness/misdemeanour always produces effects from the date the inheritance proceedings are opened, regardless of whether the conditions required by the law are already met at this date or will only be met in the future (Chirică, 2014, p. 30).

### 2.1. Unworthiness effects against the unworthy heir

The main effect of inheritance unworthiness is the deprivation of the unworthy heir of their right to inherit, respectively their removal from the inheritance of the deceased (Chirică, 2014, p. 29).

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the light of the new Civil Code provisions, inheritance unworthiness is a *civil punishment* based on reasons of public morality.

<sup>2</sup> In the old Civil Code system of 1864 Art. 655 respectively, the inheritance unworthiness was improperly regulated. Thus, if the heir perpetrator, guilty of the offense of killing the inheritor had committed suicide before his conviction, he could not be considered unworthy, therefore he could finally inherit the patrimony of his victim. Such a legal anomaly was sanctioned by the European Court of Human Rights by the Judgment of 1 December 2009 (published in the Official Gazette no. 373 of June 7, 2010), in the case of Velcea and Mazare v. Romania as contrary to Article 8 of the European Convention on Human Rights (right to respect family life).

Since the title of heir of the unworthy heir is abolished as of the date of the inheritance, he loses the right to the portion of the inheritance that would have been due to him, including the right to forced heir ship. The other heirs will inherit his portion of the inheritance. For example, the unworthy heir's removal from the inheritance will bring advantage to his legal co-heirs, even to legatees or donors in case the unworthy heir was a forced heir (Boroi, Stănciulescu, 2012, p. 529).

Whether between the inheritance opening moment and the moment when all the requirements provided under the law are met to declare, ascertain and pronounce the inheritance unworthiness, the unworthy heir has inherited the assets of the inheritance, he must give them back to the persons entitled to inherit them (Macovei, Dobrilă, 2012, p. 1011). Possession thus exercised by the unworthy heir over the inheritance assets is considered *a mala fide possession* (art. 960 paragr. 2 of the Civil code).

Restitution of the inheritance assets is done, as a matter of principle, *in-kind*, and in case such restitution is possible (for example, the assets have disappeared, regardless the reason, or have been alienated, expropriated etc.), restitution is made *by equivalent*, at the highest value, reported either at the moment when the unworthy heir took possession of those goods, or at the time of their alienation or disposition (Art. 1641 of the Civil code.).

As for natural, industrial or civil fruits, being considered a *mala fide* possessor/owner, the heir unworthy of the inheritance must return them *in kind*, and in case *in-kind* restitution is not possible, as the unworthy heir has already consumed them or failed to harvest them, he must give back their value.

Likewise, the person unworthy of the inheritance must return to those entitled the amounts of money that he has received from the inheritance debtors, together with the related interest, which flows from the day on which the unworthy heir received the amounts of money.

Nonetheless, the heir unworthy of the inheritance has the right to be reimbursed the amounts spent to pay the inheritance debt (with interest) as well as the necessary and useful expenses incurred in respect of the assets of the inheritance, including the expenses incurred by the fruit receipt.

We shall also mention that the rights and obligations of the heir unworthy of the inheritance, considered extinguished by confusion, will be reborn.

## 2.2. *Effects of the inheritance unworthiness against the offspring of the unworthy heir*

In the old Civil Code system of 1864, the unworthiness sanction had effects on the descendants of the unworthy heir as well, in the sense that they could not inherit by representation their unworthy ascendant. The descendants of the unworthy heir could come to the inheritance of the *de cuius* only on

their behalf. But under the new Civil Code, art. 967 paragr.1 stipulates that: “*a person lacking the capacity to inherit can be represented, the same as the unworthy heir, even alive on the inheritance opening date*”.

Consequently, the unworthiness sanction does not currently have effects on the descendants of the unworthy heir who will be able to come to the inheritance both on their own behalf and by the representation of their unworthy ascendant.

### 2.3. *The unworthiness effects against third parties*

In relation to third parties with whom the unworthy heir has entered contracts, in the period between the inheritance opening and the unworthiness acknowledge mentor pronouncement, art. 960 paragr. 3 of the Civil Code stipulates that the *conservation and management deeds* remain valid insofar as they bring profit to the heirs. It is irrelevant whether the contracting third party acted in good or in bad faith as the law makes no distinction in this respect.

The *onerous or gratuitous legal deeds/legal deeds for pecuniary interests* entered between the unworthy heir and a bona fide third-party are maintained as well, but the rules of the land book are nevertheless enforceable. With respect to movable goods, the person who, in good faith, enters with a non-proprietor (ie, with a non-owner) a translative property deed for pecuniary interests in a movable asset becomes the owner of that good from the time of its effective possession (art. 937 paragraph 1 of the Civil code). The acquiring third party is considered in good faith if, at the time of the effective possession of the good, they did not know and should not, under the circumstances, know the lack of ownership of the unworthy heir (Deak, Popescu, 2013, p. 122).

Reported to the immovable property, the principle of material advertising, enshrined under art. 901 of the civil Code applies, according to which any person who has acquired in good faith any real right entered in the land book based on a legal deed for pecuniary interest shall be considered the holder of the registered right even if, at the request of the real owner, the right of its author is removed from the land book.

The acquiring third party is considered to be in good faith only if the following conditions are met at the time of registering the application for registration of the right for his benefit:

- a) no action was registered against the content of the land book;
- b) the content of the land book does not mention any cause justifying its rectification in favour of another person;
- c) did not otherwise know the inaccuracy of the land book (Deak, Popescu, 2013, pp. 123-126). For the rest of the cases the principle *resoluto iure dantis resolvitur ius accipientis* applies.

### 3. Removal of the inheritance unworthiness effects

Based on art. 961 paragraph 1 of the civil Code, the inheritance unworthiness effects or its legal effects may be *expressly* removed by will or by an authenticated notary's deed entered by the person who leaves the inheritance. Without *an express statement*, the legacy left to the unworthy heir after committing the inheritance unworthiness deed does not eliminate the unworthiness effects.

Although a matter of committing serious deeds, that attract the inheritance unworthiness sanction, our legislator has considered it possible for the person who leaves the inheritance to forgive the perpetrator, given the close relationship between them. As a result, the legislator has regulated the possibility of removing the unworthiness effects by his will of *de cuius*, option which can only be achieved *expressly*, based on a last will/testament (any form of testament: authentic, handwritten testament, privileged, etc.) or by an authenticated notary's deed (express authenticated affidavit, an expression of the will which may be included in another notary's deed, such as a sales contract, donation, maintenance etc.)<sup>3</sup>. However, the requirement which must be thus met is that the person who leaves the inheritance should forgive the unworthy heir, by being *fully aware of the situation* (Deak, Popescu, 2013, p. 130).

We further on mention that the removal of the inheritance unworthiness effects can only take place subsequent to committing deeds which effect in inheritance unworthiness. An eventual declaration for the removal of the unworthiness effects for future deeds would fall under absolute nullity, as it contravenes public order and good morals.

The unworthiness effects removal belongs exclusively to the person who leaves the inheritance, as it is a purely personal deed. Forgiveness on the part of the *de cuius* does not remove the criminal responsibility of the unworthy heir.

Likewise, the unworthiness effects cannot be eliminated through the rehabilitation of the unworthy heir, by amnesty after conviction, by clemency, or by the prescription of the criminal punishment execution (Article 961 paragraph 2 of the Civil Code).

To the question whether the provisions of art. 961 of the new Civil Code, referring to the removal of the unworthiness effects, can be applied or not in case of deeds committed before the enforcement of the new Civil Code, the answer was positive. It has been appreciated that unworthiness becomes effective only from the inheritance opening date, therefore, if before the occurrence of such effects the *de cuius* forgives the perpetrator, the provisions of art. 961 become incidental (Chirică, 2014, p. 33).

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<sup>3</sup> The removal of the inheritance unworthiness effects by testament or by authenticated notary's deed is subject to the registration into the National Notarial Registry for Liberalities (RNNEL), based on art. 95 of Law no. 71/2011 for the enforcement of the civil Code.

#### 4. Invoking the inheritance unworthiness

As for the *unworthiness by law*, it can be called forth by any concerned person who is to take advantage from the removal from the inheritance of the unworthy heir, namely:

- co-heirs or subsequent heirs;
- the legatees or donators, if the unworthy heir would have been a legitimate forced heir, and thus his presence could have attracted the reduction of the liberality;
- the creditors of the above-mentioned persons, by the derivative action, provided that the requirements for exercising such action are met (Article 1560 - 1561 of the civil code) (Pop, Popa, Vidu, 2012, pp. 764-766);
- the court of law or the public notary ex officio, based on the court judgment resulting in the lack of dignity (art. 958 paragr. 3 of the civil code);
- the prosecutor, under the provisions of art. 92 of the civil procedure code;
- the district, town or municipality on the territory of which the assets are at the inheritance opening date, if by removing the unworthy heir from the inheritance the inheritance becomes vacant; in the same way, the Romanian state by the Ministry of Public Finances, in case the inheritance which would become vacant by the removal of the unworthy heir is abroad (Deak, Popescu, 2013, p. 127);
- the unworthy heir himself, in case they justify legitimate interests (Macovei, Dobrilă, 2012, p. 1007).

As unworthiness operates by law, by the civil action the court of law is requested to ascertain the unworthiness, which operates by virtue of the law at the time of the inheritance.

As far as the *judicial unworthiness*, is concerned, it can be invoked by

- any of the deceased person's heirs, in case they justify legitimate interests (Chirică, 2014, p. 28);
- by a prosecutor (in case minor children are involved, the same as people under interdiction or missing persons, etc.);
- by the district, town or municipality on the territory of which the assets are at the inheritance opening date, if the only heir is the unworthy heir; under the same terms, in relation with vacant inheritances from abroad, the Romanian state can ask the court of law to rule on the unworthiness of the only heir (Deak, Popescu, 2013, p. 129);
- the unworthy heir himself, in case they justify legitimate interests.

In all cases, the inheritance unworthiness can be ascertained or ruled by the court only as soon as the inheritance has been opened and only in case the inheritance vocation of the unworthy heir is undoubted, not being removed from the inheritance by the presence of preferential heirs.

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