Some Considerations Concerning the Imputation of Liberalities Made to a Non-reserving Heir

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Abstract

Legal inheritance presupposes the existence of some categories of heirs expressly regulated by law, who reap from the deceased's estate in the quotas and order established by law. There is a category of legal heirs called reserved heirs, protected by imperative rules against the will of the deceased, when they try to disinherit them directly or indirectly. The will of the deceased manifested through liberalities is the essence of testamentary inheritance. Testamentary freedom represents the rule of inheritance law, the bequeathed having the opportunity to dispose of his wealth as he wishes. When the two types of inheritance coexist, and the deceased disposes by liberality in the presence of reserved heirs, in order to comply with the rules of legal inheritance and to divide the deceased's wealth efficiently and correctly, it is necessary to determine precisely the part of the inheritance on which the liberality ordered by to de cujus. The study aims to analyse the situations that may arise when the deceased, in the presence of the reservators, disposes liberally in favour of a non-reservator heir and to identify balanced solutions that do not contravene the rules of legal inheritance and satisfy the principle of testamentary freedom.

Keywords: *legal inheritance, reserved heir, liberalities, imputation, reduction of excessive liberalities.*

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1. Introduction

According to art. 953 Civil Code, 'Inheritance is the transmission of the patrimony of a deceased natural person to one or more living persons.' We note that in order to be in the presence of the transmission of an inheritance, it is required that the owner of the patrimony be a deceased natural person. The regulation is not the same regarding the person who accepts the inheritance, this can be both a natural person and a legal entity[2], provided that he is alive.

The epicenter of succession law is represented by the inheritance (estate) of a person, which is transmitted according to the rules established by the letter of the law, so that the imperative of the legal norms that regulate the rights of legal heirs embrace the principle of testamentary freedom that enshrines the power of the testator to dispose as he wishes of his estate.

The coexistence of legal[3] and testamentary inheritance embodies the subtle harmony between the care shown by the state power, expressed by law, vis-à-vis the close relatives of the deceased and the autonomy of the will of the latter, expressed by the ability to test regarding his wealth, according to his own the will.

If the two parts of the inheritance (legal and testamentary) end up in 'conflict', that the will of the deceased violates the imperative rules of succession law, the latter take precedence. Thus, in this situation the legal heirs protected by the law will receive their share of the wealth with priority, and those gratified by the *de cujus* will reap from his inheritance only to the extent of what remains available (the available quota).

The legal heirs protected by law are the deceased's surviving spouse and the latter's next of

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[2] *Ubi lex non distinguit, nec nos distinguere debemus*.

[3] For more details on legal inheritance, see Fr. Deak, R. Popescu, *Succession Law Treaty, Vol. I, Legal Inheritance*, 4th edition updated and completed, Ed. Universul Juridic, Bucharest, 2019, p. 24–26.

kin, that is the descendants (deceased children) without degree limit and privileged ascendants (deceased parents). They are called reserving heirs[4], having a share of the inheritance reserved[5] by imperative rules, even against the will of the deceased, manifested either direct exhederations or indirect exhederations (liberalities).

The successional reserve of reserved heirs represents that part of the assets of the inheritance, enjoyed by those entitled and it is calculated as half of the share that would have been due to the legal heir, in the absence of all disinheritances (direct or indirect).[6]

Violation of the succession reserve of reserving heirs cannot remain without effect, so its sanction is the reduction of liberalities[7] that appear to be excessive, that those that violate the available quota resulting from the granting of reserves to reserving heirs.[8] The effect of the reduction of excessive liberalities is to ensure the successional reserve of reserved heirs, and the gratified ones reap from the deceased's inheritance only within the limits of the available quota.

2. The imputation of liberalities made to a non-reserving heir

The study aims to highlight the situations in which the bequeathed disposes, in the presence of reserved heirs, of a fraction[9] of his wealth in favour of an heir who is not reserved, especially identifying an efficient and fair solution for dividing the inheritance.[10]

In this sense, art. 1099 para. (1) The Civil Code states that 'If the beneficiary of the liberality is not a reserve heir, the liberality received is imputed on the available quota, and if it exceeds it, it is subject to reduction.'

From this legal text we identify two hypotheses:

- the liberality is greater than the available quota;
- the liberality is less than or equal to the available quota;

2.1. Liberality is greater than the quota disposable

In all the statements in which the deceased has through liberality in the present of the heirs reservations, it is required to calculate the inheritance reserve and the quota available. This is necessary to determine if the legacy is excessive, case in which he will be subjected reduction or fits in the quota available, case in which it will be executed.

If the deceased disposed of more than was allowed (up to the quota limit available), means that he violated inheritance reserve and the liberality will be subdued reduction up to the quota limit available.

To example, in the presence of his son C, the deceased has through a bond with universal of 7/8 of his fortune in favour of the third party A.

As I have accuracy previously, since the son of the deceased, descendant of first class of heirs

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[4] Fr. Deak, R. Popescu, *op.cit.,* p. 269–270; D. Chirică, *Treaty of civil law. Successions and liberalities*, 2nd edition, Ed. Hamangiu, Bucharest, 2017, p. 318–322.

[5] Fr. Deak, R. Popescu, *op. cit*., p. 257–259; D. Chirică, *op. cit*. p. 310–312.

[6] Fr. Deak, R. Popescu, *op. cit*, pp. 269–270, I. Genoiu, *The right to inheritance in the Civil Code*, 2nd edition, Ed. C. H. Beck, Bucharest, 2013, p. 218; Fl. A. Baias, E. Chelaru, R. Constantinovici, I. Macovei (coordinators), *New Civil Code. Commentary on chapters*, 2nd edition, Ed. C.H. Beck, Bucharest, 2014, pp. 1187–1189; M. Eliescu, *Inheritance and its devolution in the law of the Socialist Republic of Romania*, Ed. of the Academy of the Socialist Republic of Romania, Bucharest, 1966, pp. 319–320; Ph. Malaurie, L. Aynes, *Les successions. Les liberalites*, 3e edition, Defrenois, 2008, Paris, p. 309.

[7] See M. Grimaldi, *Droit patrimonialle de la famille*, troisieme edition, Dalloz, Paris, 2008, p. 710-711 ; R. Popescu, *The right of inheritance. The limits of the right to dispose of the assets of the inheritance through legal acts,* Ed. Universul Juridic, 2004, Bucharest, pp. 240–244; I. Dogaru (coordinator), *Civil law. Succession*, Ed. All Beck, 2003, Bucharest, p. 473–474.

[8] Fr. Deak, R. Popescu, *op. cit*. pp. 331–337. D. Chirică, *op.cit*, pp. 326–327; 346–347; I. Genoiu, *op. cit.*, p. 239; Fl. A. Baias, E. Chelaru, R. Constantinovici, I. Macovei (coordinators), *op. cit*, pp. 1192–1200; M. Eliescu, *op. cit*. p. 366–370.

[9] For situations where the deceased disposes of all his wealth (through a universal legacy) in the presence of reserved heirs, we cannot discuss about the execution of that liberality, since in the presence of even a single reserved heir, a universal legacy is excessive and would be automatically reduced at the available quota calculated according to the formula: Succession mass = Total inheritance reserve + Available quota.

[10] Fr. Deak, R. Popescu, *op. cit*. pp. 390–391. D. Chirică, *op. cit*, p. 340.

legal is the heir reserved, it is required to calculate them inheritance reserve, to establish if liberality consecrated by deceased falls or not in limits of the available quota.

For this example, we will apply the provisions of art. 1099 para. (1) Civil Code, as follows: the beneficiary of the liberality is a third party (not being a reserved heir) and we will impute (so calculate) his liberality on the available share. If the liberality exceeds the available quota, it will be reduced to the latter.

However, in order to determine whether or not the liberality exceeds the available quota, the following stages must be completed, in the following order:

- the inheritance reserve of the reserved heirs is calculated;
- based on the inheritance reserve, the available quota is calculated according to the formula MS = RS+CD[11]. It results that CD = MS – RS;
- the available quota is compared with the liberality. If the liberality is greater, it will be reduced to the available quota, the bequest being amputated to the value of the available quota.

In our example, the child of the deceased being the only legal heir, in the absence of the liberality consented in his favor he would have collected the entire inheritance. Thus, his inheritance reserve is half of the entire wealth, so 1/2 of the inheritance. Therefore, the available quota represents 1/2 of the deceased's estate.

Knowing both the value of the bequest and the available quotient, we note that the bequest is greater than the quotient (7/8>1/2). In this situation the bequest cannot be executed and is reduced to the available quota of 1/2.

Finally, the son of the deceased will collect the inheritance reserve of 1/2, and the third party A will receive the legacy reduced by 1/2, the value of the available share.

The reduction of excessive liberalities can also be found in the situation where the deceased disposes through several bonds with universal title.

We consider the hypothesis in which, in the presence of the surviving spouse, his father and a brother, the deceased disposes in favour of A through a bequest with universal title of 3/5 and in favour of B a bequest with universal title of 1/3.

Going through the previously mentioned stages, by applying the rules of legal inheritance, we will grant the surviving spouse a share of 1/3 (in competition with the second class of legal heirs, both privileged ascendants and privileged collaterals), the father a share of 1/4 (art. 978, letter a Civil Code) of the remaining 2/3 (remaining after granting the husband the share of 1/3), so 1/6, and the brother 3/4 of the same remaining 2/3 (art. 978, letter a Civil Code), i.e. 1/2.

As the surviving husband and the deceased's father are reserved heirs, we must calculate their inheritance reserve as follows: the husband's reserve will be 1/2* 1/3= 1/6, and the father's reserve 1/2*1/6=1/12. Taken together, we get a total reserve of 1/4 of the inheritance, and the available share is 3/4 of the deceased's estate.

To check if the legacies can be executed, we compare the available quota with the total of the legacies. Thus, the available quotient of 3/4 is less than the tied total of 14/15 (1/3+3/5 = 14/15). And in this case, since through the legacies ordered the deceased affects the inheritance reserve of those entitled, the legacies will be reduced for excessiveness, but according to the rules of art. 1096 para. (2) Civil Code, which states that 'Legacies are all reduced at once and proportionally, except if the testator decided that certain legacies will have priority, in which case the other legacies will be reduced first.'[12]

The legacies will all be reduced, at once and proportionally using the simple rule of three as follows: if the deceased disposed through a legacy of 1/3 in favour of B of the total of 14/15 legacies, how much would he be allowed to dispose of the available quota by 3/4? It follows that the amount he could have disposed of in favour of A is 1/3*3/4*15/14= 15/56.

Likewise, if the deceased disposed through a legacy of 3/5 in favour of A of the total of 14/15 legacies, how much would he be allowed to dispose of the available share of 3/4? It follows that the

[11] Succession table = Succession reserve + Available share; Table succession is always an integer, i.e. 1.
[12] Fr. Deak, R. Popescu*, op. cit*., p. 338–341.

amount he could have disposed of in favour of A is 3/5*3/4*15/14= 27/56. For verification, we add the two proportionally reduced legacies and note that together they are worth 3/4 of the wealth, exactly the value of the available share. Finally, the husband collects the reserve of 1/6, the deceased's father the reserve of 1/12, A the bequest of 27/56, and B the bequest of 15/56.

2.2. Liberality is less or equal with the quota disposable[13]

When liberality falls in the the quota disposable we will impute liberality on available meandering. The text of the law provides directions just for concerning imputation liberality in the situation in which this can be executed, but does not distinguish if through this it possible affects or not to the heirs reservations. Are hypotheses which we will expose, below, in some examples.

a) By imputation liberality on available meandering is not brought to affect inheritance reserve successors of those justified. We keep same example in which the deceased, in presence of the husband, the father and of one brother, it's free through a bond with title universal of 3/7 on third party D. As I have calculated above, reserve spouse is 1/6, the father's 1/12, and the quota available 3/4. Since we don't know if we can execute the legacy, we will it compare with the available quota. We notice that 3/4 is greater than 3/7, thus that the legacy is possible to be executed. Although art. 1099 para. (1) Civil Code shows that liberality will impute on available meandering, this does not mean that the legacy is executed from quota, but from all the succession table. The text of the law is considering that the consecrated bound by defunct must to fit in the the available quota, not to be executed (be subtracted) from the available quota[14]. The legacy will be executed from the succession table (1–3/7 = 4/7), and the obtained rest will be divided by the heirs legal (including the reserved ones), after heritage legal rules, as follows: Ss = 1/3*4/7 = 4/21; T= 1/6*4/7= 4/42, and F= 1/2* 4/7= 4/14. We note that the resulting quotas do not violate the inheritance reserve of the reserving heirs. Thus, Ss will collect the share of 4/21, T 4/42, F 4/14, and D will receive the bequest of 3/7. For verification, we add the given quotas: 4/21+4/42+4/14+3/7 = 42/42 = 1.

b) By imputation liberality on available meandering is brought to affect inheritance reserve successors of those justified. If in the same example, the bequest in favour of D would have been 5/7, the solution will not be the same. We compare the bequest of 5/7 with the quotient of 3/4 and notice that also in this case the quotient is greater than the bequest. We proceed to execute the bequest from the inheritance table and obtain a remainder of 2/7 (1–5/7= 2/7), which we distribute it to the legal heirs with concrete vocation as follows: Ss = 1/3*2/7 =2/21; T= 1/6*2/7= 2/42, and F= 1/2* 2/7= 2/14.

Although we applied the same calculation system, we note that, by the quotas obtained, the inheritance reserve of the husband and the father are violated. As the inheritance reserve represents a minimum that cannot be lowered, regardless of the will of the deceased, the reserved will receive their reserve of 1/6, respectively 1/12, and the one who will bear the effects of D's gratuity will be the brother of the deceased. Thus, F's share will decrease from 1/2 to (2/7 – – 1/6+1/12 – = 2/7 – 1/4 = 1/28). In this way we protect the succession reserves of the reserving heirs, D enjoys the legacy received, and the share of F, who is a non-reserving legal heir is reduced from 1/2 to 1/28.

3. Conclusions

In conclusion, the legal provisions regarding the legal succession vocation of the legal heirs, the establishment of the legal quotas due to the legal heirs, the inheritance reserves of reserved heirs as well as the will of the deceased manifested through liberalities would remain without finality if the

[13] In the same sense, see D. Martalog, *Particularities of the succesoral reserve from the second class inheritors*, in *Proceedings of the international conference of law, European studies and international relations*, 12th edition, Bucharest, May, 16–17, Ed. Universul Juridic, Bucharest, 2024, pp. 244–253.

[14] If we admit that the bequest is subtracted from the available share, we will end up in situations where the bequest has a very small value compared to the estate, the one who is indirectly disinherited will receive a share higher than his legal share due in the absence of disinheritance. Such a situation would lead to an absurd system of inheritance division.

part of the inheritance on which it is imputed would not be determined liberalities made by the deceased. At the same time, the rules derived from the legal norms established for the protection of the reserved legal heirs are guaranteed by the possibility of the entitled person to ask for the reduction of liberties that exceed the limit of the available inheritance. Such a possibility necessarily requires the individualization of the reserve and the available quota, as well as the extent to which the realization of the freedom of the right to dispose has been achieved or not within the limits drawn by the legislator.

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