Reflections on the Timely Application of the Civil Law in the Heritage Matter

PhD. student **Liviu Alexandru NARLĂ**[1]

Abstract

After 1989, in the context of Romania's return to representative democracy, the transition to the market economy, the start of the Euro-Atlantic integration process and Romania's accession to the European Union, an extensive resistematization of the legislative corpus was imposed, with the Civil Code finally being adopted, which under art. 220 para. (1) from Law no. 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code, published in the Official Monitor of Romania, Part I, no. 409 of June 10, 2011, entered into force on October 1, 2011. In essence, the Civil Code from 2009 ensures the inheritance in general and the unworthiness of the successor in particular, a modern, flexible and coherent regulation, at the same time capitalising on the solutions proposed in the civil codification projects from 1940 and 1971, as well as those from foreign codifications, with mainly from France, Italy and Québec. The entry into force of the Civil Code from 2009, however, has generated a difficult challenge for practitioners of the law regarding the method of time applications of the civil law on inheritance, with especially in terms of the opening of the inheritance, its transmission and devolution, the report successions can stretch even over decades. In this context, the present approach aims to provide a coherent interpretation regarding the civil law applicable to the legal acts or facts found in closely related to the relationship of succession law.

Keywords: *retroactivity; ultraactivity; legacies; indignity.*

JEL Classification: K15, K36, K39

DOI: 10.62768/PLPA/2024/13/3/05

Please cite this article as:	**Article History**
Narlă, Liviu Alexandru, „Reflections on the Timely Application of the Civil Law in the Heritage Matter", *Perspectives of Law and Public Administration* 13, no. 3 (October 2024): 390-401.	Received: 23 May 2024 Revised: 15 July 2024 Accepted: 18 August 2024

1. Introductory aspects

There are situations, determined by the entry into force of the Civil Code from 2009, when during the procedure successions, carried out before the public notary according to the provisions of art. 103 et seq. of the Law no. 36/1995 or of the court, it is necessary, in advance, to establish the applicable civil law various legal facts (indignity, etc.) or legal acts (will, etc.) that influence physiognomy of the legal relationship of succession law.

In particular, in the matter of inheritances, the difficulty of establishing applicable civil laws resides in the fact that during his life, de cuius can conclude different legal acts having as object his patrimony (mainly liberalities), which can ultimately influence the way of dividing the inheritance. At the same time, certain legal facts, limited by law (we refer here to those facts limited to the cases of indignity), which can be committed both before the opening of the inheritance and afterwards, and which produce effects on the way of dividing the succession, require the identification of the civil law applicable to them.

Next, we propose to identify the law applicable to those legal acts or legal facts which may have an impact mainly on the opening of the inheritance, its transmission and devolution, without for this approach to pretend to be exhaustive.

2. The opening of the inheritance in the context of the principle of non-retroactivity of the civil law, of the application of the immediacy of the new law and the exceptions from these

According to the provisions of art. 954 paragraph 1 Civil Code from 2009, a person's inheritance opens in the time of her death. By opening the inheritance, the legal effect of the

[1] Liviu Alexandru Narlă - Doctoral School of Law, Bucharest University of Economic Studies, Romania, liviu.narla@gmail.com.

transmission is produced of the inheritance[2], and in relation to the date of the opening of the inheritance, the applicable law will also be established, in principle it, so that the exact establishment of the date of the opening of the inheritance is of legal special importance.

By Law no. 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code[3] at arts. 91–98 transitional and implementation provisions of the IV book 'On inheritance and liberalities' were provided; of the Civil Code, the rules of art. 91 stipulating that legacies opened before the entry into force of the Civil Code are subject to the law in force on the date of the opening of the inheritance. As it was noted[4], provisions of art. 91 of Law no. 71/2011 correlates with those of art. 6 of the Civil Code from 2009, the latter providing that the civil law is applicable while it is in force and has no force to retroactivate.

We note that the provisions of art. 91 of Law no. 71/2011 is limited to the principle of non-retroactivity of the civil law, regulated at the constitutional level in art. 15 paragraph 2 of the Constitution of Romania. According to this fundamental principle, the Civil Code from 2009 cannot produce legal effects with regarding the definitively formed legal situations (constituted, modified or extinguished) nor on the effects legal acts that they produced, before its entry into force and on the other hand it cannot imprint on past legal situations other effects (of their own) that they could not produce. So, in civil matter, the principle of non-retroactivity of civil law has absolute value, because there is none exception to this, an aspect that we will consider throughout our analysis, under the aspect applicable civil laws.

In this perimeter, it appears that the legacies always opened as a result of his death prior to October 1, 2011, will be subject to the provisions of the Civil Code from 1864 and to those opened later on the date of October 1, 2011, the norms of the Civil Code will be applicable from 2009.

Although at first impression it could be stated that the provisions of art. 6 of the Civil Code and art. 91 of Law no. 71/2011 fully clarify the issue of the timely application of the civil law applicable to the legal relationship of succession law, there are legal situations (legal acts and facts) formed under the auspices of the Civil Code since 1864, in relation to the inheritance, which produce effects even after the entry into force of the Civil Code from 2009. Moreover, there are situations in which legal facts regulated for the first time by the provisions of the Civil Code from 2009 and committed after the entry into force of this code, may have, at least apparently, legal consequences on to an inheritance opened before October 1, 2011.

The difficulty of identifying the applicable civil law arises mainly in those cases where some legal situations that influence the legal relationship of succession law, constituted before the opening inheritance and prior to 01.10.2011, continues to produce legal effects after the opening of it (after 01.10.2011). In this working version, it must be determined whether the effects of the legal situations formed before the entry into force of the Civil Code from 2009 will be subject to the principle of the immediate application of the civil law regulated by the rules of art. 6 paragraph 5 of the Civil Code[5] or the exception of his, respectively the ultraactivity of the old law.

The content of the principle of the immediate application of the civil law must be understood in the sense that as soon as a the new civil law has been adopted, it is to be applied to all legal situations arising thereafter its entry into force, excluding the application of the old civil law.

Correlatively, by the ultraactivity of the old civil law must be understood by those hypotheses in which, although entered into force a new civil law, the old civil law will still apply to some legal situations determined, if this is expressly provided by the new law, for the preservation of some subjective rights that the new law no longer recognizes[6].

---

[2] Francisc Deak, Romeo Popescu, *Succession Law Treaty*, Vol I, Universul Juridic Publishing House, 2019, Bucharest, p. 57.

[3] Published in the Official Gazette of Romania, Part I, no. 409 of June 10, 2011 (rectified in the Official Gazette of Romania, Part I, no. 489 of July 8, 2011), subsequently amnded and supplemented.

[4] Ilioara Genoiu, „Some possible solutions for the conflicts of laws over time that can be encountered in matters of succession after the entry into force of the New Civil Code and the law implementing this code," *Revista Dreptul* No. 8/2015.

[5] According to art. 6 paragraph 5 of the Civil Code the provisions of the new law apply to all acts and deeds concluded or, as the case may be, produced or committed after its entry into force, as well as legal situations born after its entry into force.

[6] Mirela Ștelușa Croitoru, „Application of the civil law over time from the perspective of the new Civil Code", *Romanian Journal of Private Law* No. 6/2011.

Thus, the effects of pending legal situations will be subject to the old law as far as the method of establishment, modification or extinguishment. We also show that the ultraactivity of the Civil Code since 1864 maybe regards both subjective (individual) legal situations that are freely established by the parties, by contract or unilateral legal act or objective (legal) legal situations, if the content and effects they produce derives imperatively from the law. It should be emphasized that in the Civil Code from 2009 this exception of to the principle of the immediate application of the new law is not regulated, but from the content of Law no. 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code, numerous assumptions emerge, including in the matter of the inheritance of ultraactivation of the provisions of the Civil Code from 1864.

Against the background of the interdependence of the legal effects of the various civil law institutions relating to the general conditions of the right to inheritance, indignity, liberties, inheritance sharing, etc. what characterizes the matter of inheritances, based in turn on legal situations (acts or deeds legal) regarding which the provisions of the Civil Code from 1864 or the Civil Code from 2009, it is required to propose a mechanism for resolving the conflict of laws over time, with general applicability.

3. The mechanism for resolving the conflict of laws over time

Beforehand, by conflict of laws in time, it must be understood that circumstance in which a legal situation is likely to be regulated by several successive legal norms and the whole regulations that establish the relationships between the laws that follow each other over time are called law transitory (intertemporal right).[7]

To be in the presence of a real conflict of laws in time, must be met, cumulatively, two conditions, respectively i) the legal situation established/modified under the empire of the old law continues to produce legal effects even after the entry into force of new laws; ii) the two successive legal provisions to regulate the legal situation (its effects) differently.

In specialised literature[8] a distinction was made between the real conflict of laws over time and a conflict apparently existing if the new law does not regulate the legal situation in relation differently with the old legal provision, but our argumentative approach will look, when this is also the case of apparent conflict between the provisions of the Civil Code from 1864 and 2009.

As can be seen, both types of conflict, real and apparent, have a common element, namely that the legal situation constituted under the empire of the Civil Code from 2009 to produce effects even after the date of the entry into force of the the Civil Code from 2009, what differentiates them is the different way of regulating the legal situation through successive civil laws.

Consequently, the mechanism required to resolve the conflict of laws over time, implies, on the one hand, verification of the fulfillment of the conditions for the existence of the conflict of laws regarding to a concrete legal situation, and if they are fulfilled, there are several incidents working assumptions as follows:

a) the legislator himself resolves the conflict of laws over time by establishing legal norms transients. For example, by Law no. 71/2011, at art. 91–98 transitional provisions were provided and implementation of the IVth book 'On inheritance and liberalities', but as we will find, they are not sufficient to establish the law applicable to all legal situations in correlation with the matter of the inheritances, or their content is inappropriate for the resolution of the conflict.

b) the legislator did not provide transitional rules regarding the legal situation regulated differently, thus, it is up to the judicial bodies to resolve the conflict, by referring to the principles general legal rules that govern the application of the law in time, respectively the principle of non-retroactivity of the law civil, which does not include any exception and the principle of the immediate application of the civil law, the exception from this being represented by the ultraactivity of the old

[7] Mihail Eliescu, *Conflict of laws in time*, in Traian Ionascu, E. Barasch, Yolanda Eminescu, Mihail Eliescu and others (eds.), *Civil Law Treaty, vol. I, General Part,* Ed. Academy, Bucharest, 1967, p. 89 (footnotes).

[8] Ibid, p. 80, 81 and Pavel Perju, „Conflict of laws over time in the regulation of the new Civil Code and the draft law for its implementation", *Revista Dreptul* no. 3/2011, p. 12.

law. Important to emphasize is that the provisions of the Civil Code of 1864 continue to be applicable to pending legal situations only if provided in expres manner.

Using this set of rules, this article aims to identify a potential conflict of laws regarding the various legal situations specific to the succession matter, determined by the entry in force of the Civil Code from 2009, without this operation pretending to be exhaustive and offering a legal solutions, and additionally, where a possible apparent conflict presents certain particularities, its exposure.

4. Real conflicts and apparent conflicts regarding the timely application of the civil law in the legacies matter

Based on the previously established objectives, we will present various interrelated institutions of civil law circumscribed, mainly, to the opening of the inheritance, its transmission and devolution, and the law applicable to them.

4.1. General conditions of the right to inherit

The 2009 Civil Code regulates the general conditions of the right to inherit in Book IV entitled 'On inheritance and liberties' Title I Provisions relating to inheritance in general, Chapter II General conditions of the right to inherit, in art. 957 – 962 of the Civil Code. From the analysis of the legal provisions it appears that even in the current civil regulation, the general conditions of the right to heirs are the capacity to inherit, unworthiness and vocation to inherit.

We note, however, that in the Civil Code from 2009 the institution of indignity of succession benefits from an extension of the scope, from incidence exclusively in the matter of legal inheritance, to both types of inheritance, legal and testamentary. Thus, if the conditions represented by the capacity succession and succession vocation did not undergo transformations in the Civil Code paradigm from 2009, indignity has undergone a partial modification in the sense of its applicability to testamentary inheritance.

Another reconfiguration regarding the institution of indignity, inspired by the Civil Code from Quebec (art. 620 - 621) resides on the one hand, in their division into absolute and relative, according to their mode of operation, and on the other hand, in adapting cases of indignity to the present social reality, through the establishment, in particular, of cases of judicial indignity.

Thus, the Civil Code from 2009 establishes additional cases of indignity, and those existing in the previous civil legislation substantially reforms them, in which sense we can appreciate that the two provisions successive laws regulate differently the general condition of the right to inherit, namely that not to be unworthy.

Following this situation, we can ask ourselves the question at what time we report, to check if a certain person fulfills the conditions to inherit, especially that of not being unworthy. This question arises in the context in which, the facts are circumscribed to the cases of indignity provided of art. 959 paragraph 1 letter b) from the Civil Code from 2009, respectively concealment, alteration, destruction or falsification of the deceased's will, can be performed both before and after the opening of the inheritance.

Taking as a working hypothesis the opening of *de cuius* inheritance on 01.10.2010, previously of the entry into force of the Civil Code from 2009 (01.10.2011), we note that at least the facts sanctioned with indignity, mentioned in art. 959 paragraph 1 letter b) of the Civil Code from 2009, they can be carried out both previously the opening of the inheritance as well as after the entry into force of the Civil Code from 2009. In this situation, it appears legitimizes the question of whether the successor guilty of committing one of the acts listed in art. 959 paragraph 1 letter b) of the Civil Code after 01.01.2011, may be considered unworthy in relation to the deceased whose succession was opened before 01.01.2011.

In the legal literature[9], it was expressed, under this aspect, that the person who has a vocation

[9] Ilioara Genoiu, *op. cit.*, p. 55.

to an inheritance should be qualified as unworthy to inherit only if, on the date of the death of the one about whom inheritance is about, committed one or more of the acts that the law in force at that moment considered them causes of this decline from the right to inherit.

Before expressing our point of view, we note that regarding the application in time a cases of inheritance indignity provided by art. 958 paragraph 1 letter a and b and art. 959 paragraph 1 letters a), b), c) from the Civil Code from 2009, the legislator established transitional norms, stipulating in art. 93 of Law 71/2011 that the provisions of art. 958 and 959 of the Civil Code apply only to acts committed after the entry into force of Civil Code.

At the same time, as I stated previously, the provisions of art. 91 of Law no. 71/2011 provide for the fact that the inheritances opened before the entry into force of the Civil Code from 2009 are subject to the law in force at the date of the opening of the inheritance. Thus, it appears that the legacies opened prior to 01.10.2011 are subject to previous legislation, respectively the Civil Code from 1864, which, however, did not sanction with indignity concealment, alteration, destruction or falsification of the will of the deceased by his successor.

In support of the sanctioning solution with the attribute of indignity of the successor guilty for committing one of the acts listed in art. 959 paragraph 1 letter b) of the Civil Code from 2009, after entering the force of new regulations and implicitly after the date of the opening of the inheritance, it could be stated that these legal norms are not retroactive, the provisions of art. 15 paragraph 2 of the Romanian Constitution, as it applies to legal acts committed while these rules are in force. Moreover, it could state that the principle of the immediate application of the new law, established by art. 6 paragraph 1 of the Civil Code from 2009, both principles being respected.

On the other hand, in favor of the idea that committing one of the acts listed in art. 959 paragraph 1 letter b) of the Civil Code from 2009 after 01.10.2011 and the date of the opening of the succession, does not lead to the unworthiness of the successor, it could be argued that the verification of the general conditions of the right to a legacies refer to the date of the opening of the succession and not to a later date. Additional, we could support the fact that the effects of a legal act, consisting in the commission of one of the acts mentioned in art. 959 paragraph 1 letter b) of the Civil Code produces retroactive effects, up to the date of the opening of the inheritance, period prior to the entry into force of the Civil Code from 2009. In other words, although the reprehensible facts in relationship with the deceased is committed under the empire of the Civil Code from 2009, their effects would expand prior to its entry into force, which is equivalent to the production of retroactive effects a provisions of the new law.

Therefore, although apparently, the sanctioning of the successor guilty of committing a legal act circumscribed to the case of indignity provided by art. 959 paragraph 1 letter b) of the Civil Code from 2009, after the date of 01.10.2011, respects the principle of non-retroactivity, we appreciate that the date of occurrence of these facts cannot represented the only element of analysis. This is because, although the reprehensible act occurs later dated 01.10.2011, its legal effects retroactive until the moment of the opening of the inheritance, in the context of the effects of indignity, identical in the two successive civil regulations. Consequently, we consider that although the material facts that attract indignity are produced under the auspices of the Civil Code from 2009, their retroactive effects stop on the date of entry into force of the Civil Code from 2009, respectively 01.10.2011, they cannot be extended before this date, because it would violate the principle of the non-retroactivity of the civil law, which knows no exception.

Finally, the acts of indignity circumscribed to the case of indignity provided by art. 959 paragraph 1 letter b) of the Civil Code from 2009, they can also occur after the opening of the inheritance, but their effects remain cantoned in the paradigm of this code, not being able to retroactive until the date of the opening of the inheritance, and in consequently, they cannot lead to the sanctioning of the successor with indignity.

Another facet of a possible actual conflict of laws over time, regarding the general condition of the right to inherit, consisting in not being unworthy, was referred to by other authors[10] and has as

[10] Kocsis József, Paul Vasilescu, *Civil Law. Successions*. Hamangiu Publishing House, Bucharest, 2016, p. 30.

premise of the following factual situation: the commission of a reprehensible act, circumscribed to the cases of indignity provided by art. 655[11] of the Civil Code from 1864, by a successor to its author, in the period of applicability of this code, but the opening of the inheritance takes place after the entry into force of the Civil Code from 2009. In this circumstance, the question arises whether the successor guilty of committing the act sanctioned with indignity according to the provisions of the old Civil Code will have the quality of unworthiness towards its author, under the conditions in which the inheritance opens after the expiry of the Civil Code from 1864.

Similar to the previously analyzed hypothesis, the transitional rules provided by art. 91–98 of the Law 71/2011 does not offer a way to resolve the exposed legal situation, so a potential answer in regarding the law applicable to the factual situation can be provided by appealing to the general principles of law which governs the application of the law over time. As I pointed out previously, according to art. 91 of Law no. 71/2011 inheritances opened before the entry into force of the Civil Code from 2009 are governed by these provisions, and the cases of indignity provided by arts. 958–959C.civ from 2009 applies only to the facts made after 01.10.2011.

Unlike the factual situation previously discussed, in this case, the question that raises interest, is if the rules of art. 655 of the Civil Code of 1864 superactivates, respectively if the legal effects consisting in forfeiture of the successor guilty of committing a reprehensible act from the right to inherit its author, they also extend after the repeal of the Civil Code from 1864, until the date of the opening of the inheritance. This is in the context in which, the deed that meets the constitutive elements of indignity, circumscribed to the cases stipulated by art. 655 of the Civil Code of 1864 is carried out under the prescriptions of this code, but the legal effects of it is to be produced on the date of the opening of the inheritance, a date that we fixed in the C.civ paradigm from 2009.

Anticipating a potential conflict of laws in time under this aspect, the French legislator, towards unlike the Romanian one, stipulated in art. 25 point 3 of the Law of December 3, 2001, as indignity succession to be determined in relation to the law in force on the date on which the facts were committed attract indignity. Such a special transitory norm[12], such as the one in French legislation, express developed to govern the legal situations born under the empire of the old law, would have been useful, in the context in which the provisions of Law no. 71/2011 do not provide that the provisions of art. 655 Civil Code from 1865 ultra activate.

Instead, we appreciate that the interpretation of the general transitional provisions, provided by art. 6 paragraph 6 from the Civil Code from 2009 are likely to provide a fair solution to the working hypothesis. Thus, according to art. 6 paragraph 6 of the Civil Code from 2009, the provisions of the new law are also applicable to the future effects of legal situations born before its entry into force, derived, among others, from the state and the capacity of individuals, if these legal situations exist after the entry into force of the new law.

We affirm this, since as expressed in the legal literature[13] indignity represents the inability of relative use, and constitutes an attribute of the person, thus characterizing its capacity. Of course, it could be objected that this interpretation is forced, intended to impress provisions of art. 6 paragraph 6 of the Civil Code from 2009 applicability to the analyzed case, but we appreciate that the effects of future legal consequences determined by the commission of the act of indignity, are attached to the guilty person as part of his future capacity in the context of the legal relationship of succession law.

Next, we can state that this legal situation is characterized by the commission of the act illegal in terms of objective reality prior to the repeal of the Civil Code of 1864, and by producing its sequel, what consists in the specific effects of indignity, after the entry into force of the Civil Code from 2009, at the moment the opening of the succession, and has the legal value of a pending deed. This

[11] According to art. 655 of the Civil Code from 1864, are unworthy to succeed and therefore excluded from the succession: the convicted for having killed or attempted to kill the deceased; the one who made a capital accusation against the deceased, declared by the court to be slanderous; the major heir who, having knowledge of the deceased's murder, did not report it to the justice system.

[12] Marian Nicolae, „Transitional law problems. The law applicable to the nullity of the civil act", *Romanian Journal of Private Law* no. 6/2007.

[13] Michel Grimaldi, *Droit des successions*, 7th edition, LexisNexis, Paris, 2017, p. 81, no. 105; Anthony Murphy, *Successor indignity and disinheritance*, Universul Juridic Publishing House, Bucharest, 2022, p. 87.

aspect requires the exit from the field of non-retroactivity to enter that of the immediate application of the new law, or as the case may be survival of the old law.

By Law no. 71/2011 or by the general provisions provided by art. 6 of the Civil Code from 2009 what regulates the application of the law over time, no legal norms have been provided to establish legal effects of the cases of indignity listed in art. 655 of the Civil Code from 1864 with an ultraactive character. More, the provisions of art. 6 paragraph Civil Code from 2009 which provide that prescriptions, lapses and usucapions started and unfulfilled on the date of entry into force of the new law are entirely subject to the legal provisions that have instituted, they cannot be extended in this case as well, because the legislator's reference to the notion of forfeiture concerns the statute of limitations, and not the statute of limitations in the sense of civil penalty, respectively the statute of limitations the unworthy from the right to reap his inheritance. Thus, the only analysis perspective an of this legal situation, in terms of the application of the civil law over time, is represented by that of the application immediately of the civil law.

We consider that the principle of the immediate application of the provisions of Civil Code from 2009 in this case it is an incident, because the legal effects of indignity are provided by art. 960 of the Civil Code, so that the provisions of art. 93 of Law 71/2011 which provides that the rules of arts. 958 and 959 of the Civil Code apply only to acts committed after the entry into force of the Civil Code, they are not applicable by the way the provisions of art. 93 of Law 71/2011 are faithful to the principle of the immediate application of the new law, but have reference vector date of the material act circumscribed to the cases provided for by art. 958–959 of the Civil Code and not the date of the production of the legal effects generated by the legal acts consisting in the commission acts sanctioned with indignity.

So, in the context of the opening of the heritage under the empire of the Civil Code from 2009, whether the facts materials that attract indignity were committed before the entry into force or after it moment, the legal effects of the successional indignity are to occur at the time of opening inheritance, in the Civil Code paradigm from 2009. Moreover, the legal effects of indignity, as far as he is concerned on the successor guilty of committing reprehensible acts against the author of the inheritance, are identical in both civil regulations and consist in the removal of the unworthy from his de cuius inheritance, on the basis non-fulfillment in his person of the general conditions to inherit.

At the same time, it could not be argued that through this interpretation, the application of the provisions of the Civil Code from 2009 of the effects of the indignity of succession regarding acts of indignity committed prior to the entry into its validity, these provisions would be retroactive, because as it was ruled in jurisprudence[14] of the Constitutional Court of Romania, the immediate application of the new law means that a legal situation produces those legal effects that are provided by the law in force on the date of its establishment (tempus regit factum) and does not amount to a violation of the provisions of art. 15 para. (2) from the Constitution, but it is in agreement with the principle of the activity of the law, according to which any normative act acts as long as it is in force, being applicable to all acts, facts and legal situations born after this moment.

In conclusion, we propose as a legal solution for the stated problem, as verification of the fulfillment of the constitutive elements of the cases of inheritance indignity provided by art. 655 of the Civil Code from 1864 to be carried out according to the prescriptions of this code, and the analysis of the effects of the facts that attract indignity, according to the provisions of art. 960 of the Civil Code from 2009 by virtue of the principle of the immediate application of the new law, established in this particular case, by the provisions of art. 6 paragraph 6 of the Civil Code. This is because the situation legal determined by the commission of acts of indignity is distinguished by two temporal landmarks, one of these consisting of the date of committing the acts sanctioned with indignity, in relation to which it will analyze the fulfillment of the conditions specific to the case of indignity, and another, represented by the date of the production of legal effects, at the time of the opening of the inheritance. Interpreting in this way intertemporal law, we eliminate a possible situation of impunity

[14] See in this regard Decision no. 755 of December 16, 2014, published in the Official Gazette of Romania, Part I, no. 101 of 9 February 2015, paragraphs 19 and 21.

for a successor guilty of the commission of reprehensible acts towards its author, generated by the inconsistency of the application over the time of the legal provisions regarding indignity, previously mentioned, and on the other hand, we avoid solutions questionable legal[15] in terms of the application of the civil law over time.

In the same sense is our opinion, but with several amendments, as follows:

Removing the effects of indignity through a unilateral act (will or authentic notarial act), can intervene only after committing the acts that attract indignity, a legal act issued for this purpose, prior to committing acts of indignity being struck by an absolute nullity, as a result of non-compliance with the laws which interests public order or good morals (art. 5 Civil Code of 1864, respectively art. 11 Civil Code from 2009). Therefore, a first conditioning of the unilateral legal act of forgiving the unworthy is represented by the fact that this act must be issued after the commission of the facts leading to the indignity of the guilty.

Moreover, the preparation by the author of the inheritance of a will or the conclusion of a notary authentic deed having as its object the forgiveness of the unworthy for committing the acts that attract the indignity, prior to the entry into force of the provisions of the Civil Code from 2009, it has no legal effect. This one conclusion follows from the provisions of art. 6 paragraph 2 of the Civil Code from 2009 which stipulates that the acts and the legal acts concluded or, as the case may be, committed or produced before the entry into force of the new law they cannot generate other legal effects than those provided by the law in force on the date of conclusion or after the case, of their execution or production. So, a second limitation of the legal act whose object is forgiveness unworthy, resides in the fact that the act must be issued by the author of the inheritance after it enters into force of the Civil Code from 2009, because only through this civil regulation was the possibility of forgiveness established to the unworthy, these legal effects generated by the will of the deceased manifested through a legal act unilaterally, being foreign of the Civil Code from 1864.

Consequently, we appreciate that the author of the legacy can remove the effects of the indignity by a unilateral legal deed, expressly, but only if the act is issued after the entry into force of the Civil Code from 2009 and logically, prior to the opening of the inheritance, the conclusion of such a deed prior to the entry into force of the provisions of art. 961 of the Civil Code from 2009 being devoid of legal effects in terms of removal of the effects of indignity.

4.2. Forgiveness of the unworthy

For the first time in the landscape of Romanian legislation[16] the possibility of removal was foreseen by the effects of successional indignity, stipulating in art. 961 of the Civil Code from 2009 that they can be removed expressly by will or by an authentic notarial deed by the bequeather. How it is noted in legal doctrine[17], unlike the Civil Code since 1864, the current civil regulation allows ca he who leaves the inheritance to forgive the unworthy, being removed from the latter, the effects of indignity. Regarding the institution of pardoning the unworthy, from the analysis of the aforementioned legal provisions, it follows that this constitutes a strictly personal and unilateral act, belonging exclusively the author of the inheritance (victim of inheritance indignity), and must be carried out in an express and solemn manner.

Against the background of the possibility of committing acts that attract indignity prior to the entry into force of a provisions of art. 961 of the Civil Code from 2009 and the opening of the legacy after this moment, different authors[18] asked if the forgiveness of the unworthy can also intervene for acts of unworthiness committed previously of this code, taking as a working premise the opening of

[15] Kocsis József, Paul Vasilescu, *op. cit.,* p. 30, The authors proposed as a solution for the resolution of the conflict of laws in time for the ultraactivity of the provisions of art. 655 of the Civil Code since 1864, although they themselves admit that the survival of the old law is applicable only to subjective legal situations.

[16] Francisc Deak, Romeo Popescu, *op. cit*., p. 130.

[17] Marilena Uliescu, Bogdan Pătraşcu, Ilioara Genoiu (coordinators), *The New Civil Code. Studies and Commentaries, Volume II Book III and Book IV*, Ed. Universul Juridic, Bucharest, 2013, p. 613.

[18] Dan Chirică, *Treaty of civil law. Successions and liberalities*. Second edition, Hamangiu Publishing House, Bucharest, 2017, p. 28; Kocsis József, Paul Vasilescu, *op. cit.*, p. 30.

the inheritance after the date of 01.10.2011, this questions were answered in the affirmative, reasoning that the principle of immediate application of the new law requires the application of this institution of civil law specific to the matter of succession.

4.3. Exercising the right of succession option

According to the provisions of art. 1100 paragraph 1 Civil Code from 2009, the one called to inherit under the law or of the will of the deceased may accept the inheritance or renounce it. These provisions are similar in terms of content to those of art. 685 and 686 of the Civil Code from 1864, the successor having the option between accepting the inheritance or renouncing it.

In correlation with the provisions of art. 1100 paragraph 2 Civil Code from 2009 that define the notion of successor, it appears that the meanings of the succession option are, in principle, two: subjective law and legal act[19]. Through that of subjective law means the possibility of the successor exercising a prescribed conduct and protected by law, in the sense of accepting or renouncing the inheritance and the exploitation of this right, implies the externalization of the right holder's manifestation of will, with the intention of producing the effects of legal terms of acceptance or renunciation, through a legal deed of succession option.

In essence, acceptance of inheritance can be defined as the unilateral legal act or fact through which the successor definitively consolidates his capacity as heir of the deceased[20]. At the same time, may state that the successor option is in a dependency relationship with the transmission successional, determined in turn by the legal fact of the death of the person whose inheritance it is about. Therefore, the death of the author of the inheritance determines the transmission of the inheritance to his successors, abstractly, the possession being exercised by the seisinary heirs, and by the exercise of the right of succession option, in the sense of acceptance, will strengthen the transmission of the inheritance realized by full right on the date of death.

Given these distinctions of the right of successional option, for our approach regarding the resolution of the conflict of laws over time, we will limit ourselves only to the acceptance of the legal act, by this understanding both the actual legal act and the legal fact, in the sense of external manifestation a the will of the successor to accept the inheritance.

Regarding the condition that the two successive legal provisions regulate the legal situation differently, to be in the situation of a real conflict, we mention that this institution of civil law underwent several transformations, including regarding the forms of the option and the term in which this option can be exercised.

Thus, unlike the Civil Code of 1864, according to which the exercise of the option right succession, in the sense of acceptance, could be, either pure and simple, or under the benefit of inventory, according to the Civil Code from 2009, the succession option can only be exercised in the form of acceptance or waiver. In what regarding the option term, it has undergone changes in terms of its extension, from 6 months to one year, but also on its legal nature, in the regulation of the Civil Code from 1864 being qualified as being of extinguishing prescription, while in the current Civil Code is qualified as a statute of limitations. The main argument in the sense of qualifying the option term as one of forfeiture resides in the fact that the option right is a potential one, which does not concern a material right to action that would loses by not exercising it within the term provided by law[21].

Therefore, we are forced to speculate on a potential conflict of law enforcement civil laws over time, determined by the succession of the two Civil Codes, fixing us as temporal landmarks the

---

[19] Marilena Uliescu, Bogdan Pătrașcu, Ilioara Genoiu (coordinators), *op. cit.,* p. 911.

[20] Francisc Deak, *Succession Law Treatise*, ed. II, updated and completed, Ed. Universul Juridic, Bucharest, 2002, p. 411; Dan Chirica, *Civil law. Successions*, Ed. Lumina Lex, Bucharest, 1996, p. 218; Alexandru Bacaci, Gheorhge Comăniță, *Civil law. Successions,* Ed. C. H. Beck, Bucharest, 2006, p. 192; Liviu Stănciulescu, *Civil law course. Successions*, Ed. Hamangiu, Bucharest, 2012, p. 184; Ioan Adam, Andrei Rusu, *Civil Law. Successions*, Ed. All Beck, Bucharest, 2003, p. 394.

[21] Codrin Macovei, Mirela Carmen Dobrila, *Commentary on art. 1103*, in Flavius-Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei (coord.), *New Civil Code. Comment on articles*. 3rd edition, Ed. C.H. Beck, Bucharest, 2021, p. 1144.

opening of the succession prior to the entry into force of the Civil Code from 2009, but no more than 6 months, again exercise of the option right after 01.10.2011. In this factual circumstance, having as an assumption that at least one of the successors of the author will exercise his right in the sense of acceptance of succession option, the question arises as to which of the civil provisions will be applicable.

The lack of an individual existence of the legal act of the succession option and the predetermined destiny of the legal fact of the opening of the inheritance, creates a special difficulty in terms of establishing the law of civil laws applicable to this act of acceptance, in the context of the succession of the two Civil Codes. As it was expressed in the legal literature[22], if the act of succession options had presented its own character permanent, independent of the opening of the inheritance with regard to which it is exercised, the resolution of the conflict would be easy, because the tempo rigid actum principle would apply, the validity to be analyzed in relative to the conditions of the regulation in force on the date of its exercise.

However, for the concordant arguments that we will present next, we are of the opinion that the law applicable to the legal act of the succession option is the one from the moment of the opening of the inheritance, and not that from the moment of the effective exercise of the option right.

A first argument in this sense is represented by the fact that according to the transitional rules provided for in art. 91 of Law no. 71/2011, inheritances opened before the entry into force of the the Civil Code are subject to the law in force on the date of the opening of the succession. Being determined by the legal fact of the opening of the inheritance, without which the legal act of the option would not have its own existence, it is natural that the legal regime applicable to it be governed by the same legal rules as those applicable to the fact legal generator of the subjective right of options. Moreover, the application of another civil regulation with regarding various legal acts/facts regarding the succession law relationship, different from the one in force at the moment of the opening of the inheritance, empty the norms of art. 91 of the Law 71/2011, because they refer to the notion of inheritance, essentially meaning all legal situations circumscribed to the opening of its inheritance, transmission and devolution.

Another argument in support of the point of view according to which the provisions of the Civil Code from 1864 ultraactivates the option right, in all its aspects (holders, validity, effects, term, etc.) is provided by the rules of art. 6 paragraph 2 of the Civil Code from 2009 and art. 3 of Law no. 71/2011. Conformable of these provisions, the legal acts and facts concluded or, as the case may be, committed or produced before the entry into force of the new law cannot generate other legal effects than those provided by the law in force on the date of conclusion or, as the case may be, of their execution or production. As I mentioned before, the fact legal of the death of the author of the inheritance, represents the source of the subjective civil right of the heirs, characterized by the possibility of the successor to exercise conduct prescribed and protected by law, in the meaning of accepting or renouncing the inheritance. Therefore, the component elements of law subjective civil that takes the form of a legal act in objective reality, are determined at the time of death, only its exercise being subsequent to this moment.

In support of this argument, we show by way of example the fact that according to art. 58 of Law no. 71/2011, in all cases where artificial real estate acquisition involves the exercise of a right of option by the property owner, the effects of the accession are governed by the law in force on the date the start of the work. By analogy, we note that the legislature could have expressly stipulated that the right to succession option or its effects are governed by the law in force on the date of opening inheritance, in the absence of such a transitional norm, being forced to resolve the conflict of laws in time by appealing to the general principles of time application of the law.

In addition to the evidence brought in support of the expressed opinion, we verify that according to art. 6 para. 4 from the Civil Code from 2009 and art. 201 of Law no. 71/2011 prescriptions, lapses and usucapions started and unfulfilled on the date of entry into force of the new law are entirely subject to the legal provisions that have them instituted. Being umbilically linked to

[22] Ilioara Genoiu, *op. cit.*, p. 56.

a term, the right of successional option, which is born at the time of the opening of the inheritance, is subject from this perspective to the provisions of art. 6 para. 4 of the Civil Code from 2009 and art. 201 of Law no. 71/2011. As a rule, from the date of opening the inheritance, the term begins to run of successional option, having the legal nature of an extinguishing prescription, and the entry into force of the Civil Code from 2009 which substantially modifies the option right, cannot determine a new legal nature a of this right or another moment of starting its course, the option term being subject to the old law, which ultraactivates. Therefore, the application of successive and different civil regulations to the right of successional option, in terms of its aspects, is likely to create a lex tertia. This because lex tertia[23] appears when the conditions of existence of an institution are taken from a law, and the effects of the same institution are taken over from another law, respectively when they are combined favorable provisions of different laws within the same legal institution.

Also, similar to the opinion of legal doctrine[24] under this aspect, we appreciate that the provisions of art. 6 paragraph 5 of the Civil Code from 2009 which stipulates that the norms of the new law apply to all acts and deeds concluded or, as the case may be, produced or committed after its entry into force, as well as legal situations arising after its entry into force, they are not applicable, because they are premised on those acts or facts legal entities that have an independent existence, and not those subordinated to another legal situation, with its own legal regime.

Therefore, despite the opinion expressed in the legal doctrine, but before the entry into force of the Civil Code from 2009,[25] in the sense that the law in force on the date of exercise would be applicable to the successor option them, we consider that the law applicable to the right of succession option is the one at the time of opening of the inheritance, motivated by the previously stated, regardless of the moment of its exercise.

4.4. The law applicable to the succession procedure

With regard to the succession procedure, regardless of whether it takes place through to the public notary or the court, the applicable law will be the one from the date of notification to the notary public or of the court, regardless of the date of the opening of the inheritance.

According to the provisions of art. 24 of the Civil Procedure Code, the provisions of the new procedural law only apply processes and enforced executions started after its entry into force. It follows that it is possible that the opening of the inheritance to occur before the entry into force of Law no. 134/2010 regarding Civil Procedure Code (15.02.2013) but the notification of the competent bodies for the inheritance debate should be made at a later moment, in some specific cases, over decades from the date of opening the succession. In that situation, the applicable law from a procedural perspective, will be the one from the date of promotion of the action which has ca ultimate goal is the distribution of the inheritance among the successors who have positively exercised their right of option successor.

5. Conclusions

We propose to exhaust, on the one hand, the legal situations generating a possible conflict of laws in time, in the matter of inheritances, and on the other hand of the arguments that can be offered in support one solution or another, regarding the conflict of laws over time, I have exposed some legal situations for which the determination of the applicable civil law by legal practitioners may create difficulties. In support the resolution of potential conflicts of laws over time, regarding the legal situations circumscribed by the report legal inheritance law, I proposed a general mechanism,

[23] See Decision no. 265 of May 6, 2014 pronounced by the Constitutional Court of Romania, published in the Official Gazette no. 372 of May 20 2014.
[24] Ilioara Genoiu, *op. cit.*, p. 57.
[25] Mihail Eliescu, *Inheritance and its devolution in the law of the Socialist Republic of Romania*, Academiei Publishing House, Bucharest, 1966, p. 63; Francisc Deak, *Succession Law Treaty, updated and completed II edition*, Universul Juridic Publishing House, Bucharest, 2002, p. 32.

with two working hypotheses, likely to facilitate the provision of a pertinent response to the various conflicts of law, but also the provision of solutions unity of different legal situations.

Finally, we appreciate that the present approach is likely to provide a coherent interpretation in what concerns the civil law applicable to legal acts or facts closely related to the legal relationship succession, especially in terms of the opening of the inheritance, its transmission and devolution, in the context in which successional relations are characterized by a long development over time.

Bibliography

1. Adam, Ioan & Andrei Rusu, *Civil Law. Successions*, Ed. All Beck, Bucharest, 2003.
2. Bacaci, Alexandru & Gheorhge Comăniță, *Civil law. Successions,* Ed. C. H. Beck, Bucharest, 2006.
3. Chirica, Dan, *Civil law. Successions*, Ed. Lumina Lex, Bucharest, 1996.
4. Chirică, Dan, *Treaty of civil law. Successions and liberalities*. Second edition, Hamangiu Publishing House, Bucharest, 2017.
5. Codrin Macovei, Mirela Carmen Dobrila, *Commentary on art. 1103*, in Flavius-Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei (coord.), *New Civil Code. Comment on articles*. 3rd edition, Ed. C.H. Beck, Bucharest, 2021.
6. Croitoru, Mirela Țeluța, „Application of the civil law over time from the perspective of the new Civil Code", *Romanian Journal of Private Law* No. 6/2011.
7. Deak, Francisc & Romeo Popescu, *Succession Law Treaty*, Vol I, Universul Juridic Publishing House, Bucharest, 2019.
8. Deak, Francisc, *Succession Law Treaty, updated and completed II edition*, Universul Juridic Publishing House, Bucharest, 2002.
9. Eliescu, Mihail, *Conflict of laws in time*, in Ionascu, Traian, E. Barasch, Yolanda Eminescu, Mihail Eliescu and others (eds.), *Civil Law Treaty, vol. I, General Part,* Ed. Academy, Bucharest, 1967, p. 89 (footnotes).
10. Eliescu, Mihail*, Inheritance and its devolution in the law of the Socialist Republic of Romania*, Academiei Publishing House, Bucharest, 1966.
11. Genoiu, Ilioara, „Some possible solutions for the conflicts of laws over time that can be encountered in matters of succession after the entry into force of the New Civil Code and the law implementing this code," *Revista Dreptul* No. 8/2015.
12. Grimaldi, Michel, *Droit des successions*, 7th edition, LexisNexis, Paris, 2017.
13. József, Kocsis & Paul Vasilescu, *Civil Law. Successions*. Hamangiu Publishing House, Bucharest, 2016.
14. Murphy, Anthony*, Successor indignity and disinheritance*, Universul Juridic Publishing House, Bucharest, 2022.
15. Nicolae, Marian, „Transitional law problems. The law applicable to the nullity of the civil act", *Romanian Journal of Private Law* no. 6/2007.
16. Perju, Pavel, „Conflict of laws over time in the regulation of the new Civil Code and the draft law for its implementation", *Revista Dreptul* no. 3/2011.
17. Stănciulescu, Liviu*, Civil law course. Successions*, Ed. Hamangiu, Bucharest, 2012.
18. Uliescu, Marilena, Bogdan Pătrașcu & Ilioara Genoiu (coordinators), *The New Civil Code. Studies and Commentaries, Volume II Book III and Book IV*, Ed. Universul Juridic, Bucharest, 2013.