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TACIT ACCEPTANCE OF THE SUCCESSION

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Abstract: *This paper examines some essential and contradictory aspects regarding the issue of tacit acceptance of succession in terms of distinction between documents valuing tacit acceptance of succession and other acts that would not justify such a solution. The documents expressly indicated by the legislator as having tacit acceptance value as well as those which do not have such value are presented and their most important legal effects are examined and discussed.*

Key words: *Civil Code, succession, inheritance, acceptance.*

In the regulatory framework of the former Civil Code, according to art.689, the acceptance "is tacit when the heir draws up an act, that he could only do in his quality of heir, and which necessarily implies the acceptance intention." According to art.1108 par.2 of the Civil Code 2009: "The acceptance is tacit when the person entitled to legacy draws up an act or makes a fact that he could only commit in his quality of heir".

The new regulation institutes therefore two conditions for us to be in the presence of tacitly accepting the inheritance, namely the act must only be done in guise of heir and the act must suppose the intention of accepting the heritage. The question of delimitating the acts that have the value of a tacit acceptance from those that would not justify such a solution has been extremely controversial along time.

This way, the art.690 of the former Civil Code stipulated for the acts of conservation, care and administration not to constitute in themselves acts of tacitly accepting the inheritance. This way, paying the fiscal taxes of a building in the succession cannot lead to the conclusion of tacitly accepting the inheritance, as such an act is not one of disposition, in the sense stipulated by the art.689 of the former Civil Code, but it has the nature of an administration act.

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In the former regulation, the issue of the acts that could receive the valence of a tacit acceptance of the inheritance was extremely lapidary, being left to the judge's assessment, and which generated many times various opinions. The issue was more radically dealt with in the new regulation of the Civil Code 2009; this way, according to art.1110, the legislator expressly indicated the acts of tacit-acceptance value, namely:

- alienation, free of charge, or against consideration, by the person entitled to legacy, of the rights to inheritance
- giving up, even free of charge, to the benefit of one or several determined heirs
- renunciation to heritage, against consideration, even in favor of all co-heirs or subsequent heirs.

The acts of disposition, definitive administration or use of some inheritance assets were catalogued as an act of tacitly accepting the inheritance, according to the par.2 of the same article.

In the paragraph 3 of the art.1110, the legislator showed that the acts of conservation, surveillance and temporary administration do not value acceptance, unless their circumstances show that the person entitled to legacy acquired through them the quality of heir. In the paragraph 4, it was shown that the temporary-administration acts are the urgent-nature acts whose fulfillment is necessary for briefly enhancing the assets of the inheritance.

In this order of ideas, there may have the value of acts of tacitly accepting the inheritance, the alienation of the goods or of a part of these goods, as well as the constitution of real rights over them (servitude, mortgage etc); the works to the buildings that are part of the legacy and that do not have urgent character. The actions in court targeting the heritage have this value, except those with conservative character.

What is however relevant only in the case of these acts is for them to be committed under the observance of the two previously mentioned conditions, respectively the act must only be done in guise of heir and the act must necessarily suppose the intention of accepting the inheritance.

As regards giving up the legacy in favor of one or several successors, the so-called renunciation *in favorem*, practically in this hypothesis we are in the presence of accepting the heritage, followed by its transmission free of charge or even against consideration. If the renunciation is done against consideration, we are in the presence of a sale and this time the sale is preceded by accepting the heritage. If the renunciation is done free of charge, it is called renunciation purely abdicative and in this case we are in the presence of a renunciation that involves by no means the acceptance of the inheritance, the apostate being deemed alien to the legacy[1].

In the hypothesis the person entitled to legacy wishes to fulfill an act that may have the significance of accepting the inheritance, he may, according to art.1111 of the Civil Code 2009, give a statement of non-acceptance previously to committing this act. It is about a notary authentic statement, and through its effect the person entitled to heritage is not reckoned acceptant. The reason of this declaration is for the person entitled to legacy to shelter himself of the overall effect of accepting the inheritance and which consists in the confusion between the estate and the heritage of the person entitled to legacy, in the hypothesis the danger exists for the liabilities to exceed the assets of the estate.

As regards the acts that do not value the tacit acceptance of the legacy, the legislator indicated the temporary-administration acts, the conservation acts and the surveillance acts. Consequently, there may be framed in this category the applications as regards the seal placement and taking, the inventory making, the acts aiming at interrupting the prescription, the funeral-expense making etc. Any act committed by the person entitled to the legacy must be non-equivocal and must be done in guise of heir; only in these circumstances he may have the effect of acquiring the quality of heir and of tacitly accepting the heritage.

In the vision of the new Civil Code, the acts of definitive disposition, the administration or the use of some goods that pertain to the legacy have the valence of a tacit acceptance only in the hypothesis these acts "engage the future"[2] and they are deemed as acts of acceptance because the person entitled to legacy behaves like a real owner and he could only have committed those acts if he accepted the inheritance.

It is important to note that tacitly accepting the legacy is incident, both in the case of the legal and testamentary inheritance.

It has not the value of acts of tacitly accepting the heritage, taking from the estate some assets that constitute family memories – photos, low-value pictures, low-value singular assets in relation to the overall estate.

It is obviously incumbent on the courts hearing such actions to settle which acts have the value of tacitly accepting the legacy and which not, and to determine this way the effects of such acts. It is clear that the general and special effects targeting the successional devolution only occur in the hypothesis of non-equivocal acts of inheritance acceptance and that the operation of correctly qualifying these acts is of special importance.

Notes

[1] Dan Chirica, *Succesiuni,* Lumina Lex Publishing House, 1996, page 222.

[2] Gabriel Boroi, Liviu Stanciulescu, *Institutii de drept civil in reglementarea noului Cod civil*, Hamangiu Publishing House, 2012, page 635.

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2. Chirica, Dan: *Succesiuni*. Bucharest. Lumina Lex Publishing House, 1996.
3. Civil Code from 1864.
4. New Civil Code.