

DEBARRING FROM SUCCESSION – COMPARING THE REGULATIONS OF THE FORMER CIVIL CODE AND THE NEW CIVIL CODE FROM 2009

Ioana NICOLAE¹

Abstract: *This paper presents the changes in the legal framework regarding succession issue. These changes have been examined in light of three hypotheses arising from the former Civil Code. The distinction between judiciary debarring and lawful debarring introduced by the New Civil Code from 2009 is also presented. The conditions for cancelling the effects of debarring from succession stipulated by the New Civil Code are explained. Finally, several legal circumstances for declaring a person unworthy of succession are comparatively presented.*

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

1. Introduction

The conditions required by the law for a person to collect an inheritance are the following: title to inheritance and that person should not be unworthy to inherit.

The new Civil Code regulates the debarring from succession in art. 958-961, and in the former Civil Code the residence of the matter was represented by the art. 655-658.

If in the former regulation, the indignity was reckoned incident negative condition in the case of the legal devolution of the heritage, according to the optics embraced by the new Civil Code, this sanction was extended, according to the art. 960, to the testamentary legacy, so that in the current regulation “*The unworthy person is debarred both from legal and from testamentary succession*”.

2. The notion of debarring from succession

The notion of debarring from succession keeps its content, in the sense that it is a civil sanction that consists in debarring the heir who has been guilty of a serious offence to the deceased or to his memory, from the right to be his successor.

In the juridical literature, it was stated that debarring from succession stood for a civil sentence [2] based on motives of morality, not being admissible for a person guilty of serious offence to the deceased to be his successor.

In the former regulation of the Civil Code from 1864, the cases of debarring from succession were stipulated in art. 655 and they were expressly and in a limitative manner regulated for the following hypotheses:

¹ Law Faculty, *Transilvania* University of Braşov.

1. attack on the life of the one who leaves the legacy
2. libellous capital charge against the one who lives the legacy
3. not denouncing the murder whose victim fell the one whose inheritance it is about.

As regards the libellous capital charge, we show that this case of debarring from succession was no longer operating in the sense that the libellous capital charge that the text of the art. 655, point 2 of the former Civil Code referred to, aimed at the accusation that might lead to the death warrant, which sentence has been removed in our law system.

3. The Civil Code from 1864 vs. the New Civil Code

In the current regulation of the new Civil Code, the indignity has the following characteristics [1]:

1. First, the application of this sanction was also extended to testamentary legacy, beside the legal one, therefore its application field was enlarged.
2. If in the former regulation, no distinction was made between judiciary debarring and lawful debarring, in the current regulation these notions were legislated.
3. Thirdly, as regards the debarring effects, regardless if it is about lawful or judiciary debarring, the new Civil Code has expressly stipulated the possibility of removing these effects through testament or through notary authentic act by the one who leaves the legacy.

This way, the art. 961 of the new Civil Code stipulates that: “The effects of the lawful or judiciary debarring may be expressly removed through testament or

through a notary authentic act by the one who leaves the legacy.

Without explicit declaration, there does not constitute removal of the debarring effects the legacy left to the unworthy after perpetrating the fact that entails the debarring.

The debarring effects cannot be removed through rehabilitating the unworthy, amnesty intervened after the condemnation, pardon or through prescribing the execution of the penal sanction.”

As similitude with the former regulation, this civil sentence is applied and produces effects only for the author of the fact, and the application range of the sanction only targets the legacy of the one against whom the facts were perpetrated and it cannot be extended to other legacies.

Likewise, another similitude aims at this sanction only intervening in case the facts were guiltily committed.

The lawful debarring – art. 958 of the new Civil Code – targets the person with penal condemnation for having perpetrated a trespass aiming at murdering the one who leaves the legacy and the person with penal condemnation for having committed, before the opening of the heritage, an offence aiming at murdering another person entitled to succession which, had the inheritance been opened at the date of committing the fact, would have removed or restrained the perpetrator’s title to inheritance (article 958 of the New Civil Code stipulated : “*Is unworthy to inherit*

- a) *the person with penal condemnation for having perpetrated a trespass aiming at murdering the one who leaves the legacy;*
- b) *the person with penal condemnation for having committed, before the opening of the heritage, an offence aiming at murdering another person*

entitled to succession which, had the inheritance been opened at the date of committing the fact, would have removed or restrained the perpetrator's title to inheritance. The indignity de jure can be ascertained at any time, at the request of any interested person or ex officio by the court or by the notary public, based on the judgement of the resulting indignity".

This last case of lawful debarring was not regulated in the former Civil Code.

There is important to know that, in case the author of the fact deceased or the amnesty or prescription of the penal responsibility intervened, and the condemnation through penal decision is impeded, however the debarring operates if those facts were notified through definitive civil court order.

As regards the sphere of the persons that may solicit the notification of the lawful debarring, the legislator stipulated in par.3 of the art. 958 of the new Civil Code that this fact may be required by whatever interested person or ex officio by the court or by the notary public based on the court order wherefrom the indignity ensues.

With respect to judiciary debarring, according to the provisions of the art. 959 of the new Civil Code:

"There may be declared unworthy to inherit:

- a) the person with penal condemnation for having wilfully perpetrated against the one that leaves the legacy, some serious facts of physical or moral violence or, as appropriate, some facts resulting in the victim's death*
- b) the person who ill-wilfully hid, altered, destroyed or falsified the deceased person's testament*

c) the person who, through deceit or violence, impeded the one leaving the legacy to draw up, modify or revoke the testament."

As regards the term in which the court may be asked to declare the debarring, the art. 959, paragraph 2 of the new Civil Code stipulates it to be an year since opening the heritage, and this term is one of decay : *"Under penalty of forfeiture, any potentially successor may request the court to declare the indignity within one year from the date of opening of inheritance"*.

The legal text stipulates that instituting such proceedings in court constitutes a case of tacitly accepting the inheritance by the one who formulates it.

If the penal decision is sentenced subsequently to opening the legacy, the previously mentioned one-year term is calculated since the date of the definitive decision, according to par. 3 of the art. 959 within the new Civil Code (article 959 paragraph 3 from the New Civil Code :*"If conviction for acts specified in paragraph 1 letter a is delivered after the date of opening of inheritance, within one year is calculated from the date when the judgment of conviction remain definitive."*)

As regards the debarring cases stipulated at art. 959 letter b) (*the person who ill-wilfully hid, altered, destroyed or falsified the deceased person's testament*) and letter c) (*the person who, through deceit or violence, impeded the one leaving the legacy to draw up, modify or revoke the testament*), the one-year term begins to flow since the person entitled to legacy has known the indignity reason, if it is subsequent to the heritage-opening date.

The debarring effects are regulated in the art. 960 of the new Civil Code and they consist in the fact that the unworthy person is debarred both from legal and from testamentary succession and that the possession exercised by the unworthy

person on the inheritance is deemed possession in ill faith.

The conservation and administration acts clinched by the debarred person with third parties are valid, and likewise there are maintained the disposition acts against consideration clinched between the unworthy person and the acquiring third parties in good faith.

References

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