

# THE SUCCESSIONAL INDIGNITY IN THE VISION OF THE NEW ROMANIAN CIVIL CODE<sup>1</sup>

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*Abstract: Law number 287/2009 regarding the Civil Code, published in the Official Gazette, but which date of entry in force has not been established yet, enumerates the successional indignity among the general conditions of the right to inherit. Thus, we notice that the new Civil Code, taking the doctrinal proposals in this regard, turns the successional indignity from an incident condition only in the legal inheritance matter, into a condition applicable to both forms of inheritance. Moreover, the new regulation in civil matter reforms almost entirely the institution of indignity, in respect with both the causes that generate it and with the produced effects.*

*In present paper we propose to analyze the successional inheritance issues, in the light of the new Civil Code's dispositions, in a comprehensive and critical manner, bringing our contribution to knowledge of the provisions of the new regulations in successional matter.*

*Key words: indignity of law, judicial indignity, unworthy, deceased, legal inheritance, testamentary inheritance.*

## 1. The notion and the legal regulation of the successional indignity

Law number 287/2009 regarding the Civil Code<sup>2</sup>, using the proposal made by the literature, considers the successional indignity among the general conditions of the right to inherit, along with the capacity to inherit<sup>3</sup> and with the vocation of inheritance<sup>4</sup>. As a consequence, in the light of the dispositions of the new Civil Code, the successional indignity characterizes both the legal inheritance and the testamentary inheritance. Thus we observe the first novelty brought by the new Civil Code in the matter subjected to our analysis.

The successional indignity, regulated in Law number 287/2009 in article 958-961, represents the fall of the legal or testamentary successor from the right to inherit, including the successional reserve, as he committed a serious offense, expressly stipulated by the

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<sup>3</sup> Regarding the issue of this condition to inherit see I. Genoiu, *Capacitatea succesorală în reglementarea noului Cod Civil roman*, in the National Scientific Session volume with international participation "Perennial ideas and values in social and human sciences", organized by the Romanian Academy, Iasi Branch, „Gh. Zane” Economic and Social Research Institute, 16-18<sup>th</sup> of September, 2010.

<sup>4</sup> For details regarding the issue of the successional vocation see I. Genoiu, *Vocația succesorală în noul Cod Civil român*, in International Symposium volume "Law and legitimacy", Târgoviște, 4-5<sup>th</sup> of June, 2010, Pro Universitaria Publishing House, Bucharest, 2010, pp. 5-10.

legislature, against the deceased or against one of his successors.

Indignity must not get confused with the *incapacity to inherit* - the other condition required by law for a person to be able to inherit. Incapacity appears because the person does not have the qualities or the conditions to inherit, from independent reasons of the successor's will (for example, the child, conceived at the time of the inheritance opening, is born dead), while the indignity occurs as a consequence of a serious offense committed by the successor against the deceased or against one of his successors. So, just the indignity serves to punish the successor, who would otherwise be capable to inherit, for his serious offenses.

## **2. The nature of the successional indignity**

Regarding the legal nature of the successional indignity, in the light of the dispositions of the new Civil Code in force<sup>5</sup>, the literature formulated two theories.

According to one of these, the successional indignity has the legal nature of a civil penalty, on grounds of public morality, not being able to accept that a person guilty of serious offenses against another one, to inherit the latter<sup>6</sup>.

The relatively new literature<sup>7</sup> considers, however, that the indignity, in the Civil Code in force regulation, represents only a civil penalty, as it has the following legal characters:

a) is applicable only to *ab intestate* inheritance, not to the testamentary one and for express and limiting cases only foreseen by the imperative and strict interpretation Civil Code's dispositions;

b) operates by right the one who leaves the inheritance, not being able in principle to remove this sanction.

Compared to the dispositions of the article 960 from the new Civil Code, under which "The unworthy person is removed both from the legal and testamentary inheritance" and to the dispositions of the article 961 paragraph (1) from the new Civil Code, which foreseen that "The effects of the legal or judicial indignity can be specifically eliminated by will or by an authentic notarial deed made by the person who leaves the inheritance", can no longer be sustainable, in our opinion, the thesis according to which the successional indignity represents a legal penalty. The new Civil Code, through its express dispositions, parts in a forceful manner the two considerations, which represent *de lege lata* the fundamental of the indignity qualification, as being a sanction and not a civil penalty.

As a consequence we appreciate that, in the light of the dispositions of the new Civil Code, the successional indignity, on grounds of public morality, represents a civil punishment, characterising both forms of inheritance and being able to be removed by the express will of the person who leaves the inheritance. This way we notice that the new Civil Code innovates also under the aspect of legal nature of the successional indignity.

We have to specify that the new Civil Code, through the dispositions of the article

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<sup>5</sup> Regarding the successional indignity in the regulation of the new Civil Code in force, see I. Genoiu, *Drept succesoral*, C.H. Beck Publishing House, Bucharest, 2008, pp. 36-47.

<sup>6</sup> Have formulated and sustained the theory of civil punishment, among others: M. B. Cantacuzino, *Elementele dreptului civil*, 1921, p. 221; M. Eliescu, *Moștenirea și devoluțiunea ei în dreptul R.S.R.*, Academiei Publishing House, Bucharest, 1966, p. 76; St. Cârpenaru, *Dreptul de moștenire*, in Fr. Deak, St. Cârpenaru, *Drept civil. Contracte speciale. Dreptul de autor. Dreptul de moștenire*, University of Bucharest, 1983, pp. 389-390; D. Chirică, *Drept civil. Succesiuni*, Lumina Lex Publishing House, Bucharest, 1996, p. 23.

<sup>7</sup> To see: Fr. Deak, *Tratat de drept succesoral*, second edition, revised and updated, Universul Juridic Publishing House, Bucharest, 2002, pp. 60-61; I. Adam, A. Rusu, *Drept civil. Succesiuni*, All Beck Publishing House, Bucharest, 2003, p. 58 and next ones; L. Stănculescu, *Drept civil. Partea specială. Contracte și succesiuni*, third edition, revised and updated, Hamangiu Publishing House, Bucharest, 2006, p. 315.

1069 paragraph (2), regulates also the possibility to revoke the legacy on legal way, for ingratitude. Cases of ingratitude, which may lead to the legal revocation of the legacy, are the following:

- the heir attempted on the testator's life, a person close to him or, knowing that others intend to attempt, didn't notify him;
- the heir is guilty of penal acts, cruelty or serious injury to the testator or serious injury to the testator's memory.

In this context, we consider that the legislature establishes a more harshly legal regime for the testamentary heir, than for legal one, in the matter of testamentary inheritance, operating both the indignity and the legal revocation of the heir for ingratitude.

The act of the unworthy person, testamentary heir, to attempt on the testator's life or on the life of a heir of the latter, and also serious acts of physical violence or the acts that resulted in the death of the testator are sanctioned twice: first through the indignity, a general condition of the right to inherit, and then through the possibility of legal revocation for ingratitude of the heir, disposed in favour of the unworthy person, but pardoned by the testator under the law conditions.

For reasons of space of the present paper, we can't analyze here, in a comparative manner, the two legal mentioned institutions, revealing their similarities and differences. This analysis will be implemented in a future paper.

### **3. Cases of successional indignity**

Law number 287/2009 regarding the Civil Code quasi-total reforms the cases that attract the successional indignity, distinguishing between legal and judicial successional indignity

#### *a) legal indignity;*

It is by law unworthy to inherit, according to the dispositions of the article 958 paragraph (1) from the new Civil Code:

- a) the person convicted for committing a crime with the intention to kill the one who leaves the inheritance;

Therefore, this indignity case intercedes for committing by the unworthy person, against the one who leaves the inheritance, of a first degree murder<sup>8</sup>, which has as a characteristic the intention, as a guilty form. As a consequence, we can not consider among the crimes that attract legal indignity, the manslaughter.

After the interpretation of the text of law mentioned earlier, we see that the new Civil Code, similar to the Civil Code in force, holds the indignity also for the attempt of any kind of homicide. *Intenția de a ucide există, în opinia noastră, și în cazul tentativei la infracțiunile de omor care, în materia acestora, se pedepsește.* In order for the indignity to intercede, the legislature does not require the production of the result (death), but only the existence of the intention to kill, grounds which entitles us to consider that the legal mentioned disposition refers, primarily, to the attempted and then to the homicides in a consumed form .

- b) a criminal convicted person for committing, before the inheritance opening, a crime with the intention to kill another successor who, if the inheritance would have been

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<sup>8</sup> Law number 286/2009 regarding the Civil Penal Code regulates that the committing of a homicide felony or of a first degree murder, attracts without reasonable doubt the successional indignity. The new Civil Penal Code regulates that if the felony of homicide at victim's demand is committed, also attracts, in our opinion, the successional indignity. Discussions can appear also regarding the felony of persuading or easing the suicide, which the literature qualifies it as a form of the homicide, because it violates the right to life. See for this O. Mastacan, *Drept penal. Partea specială*, Course notes, 2010.

opened at the date when the crime was committed, would be removed or should have restricted the vocation to inherit of the perpetrator.

Regulation by the new Civil Code of this case of indignity represents another novelty brought in the matter subjected to our analysis. In this case, the indignity is generated by the attempt or by the homicides in a consumed, mentioned in the first case, against another successor of the deceased.

In order to intercede in case of indignity, it is absolutely necessary that the unworthy to commit one of the mentioned crimes against one of the following categories of persons, before the inheritance opening:

- to a successor who, if he existed at the date of the inheritance opening, would eliminate the unworthy one from the inheritance, the first being in a preferable class or grade (for the legal inheritance assumption) or being universal heir, and the offender only a legal heir who can be totally disinherited ( for the testamentary inheritance assumption);

- to a successor who, if he existed at the date of the inheritance opening, would limit the offender's vocation to inherit, the first being co-heir of same class and of same grade or survival husband (for the legal inheritance assumption) or being heir (an universal one, with universal title or with private title) and the offender being legal heir (for the testamentary inheritance assumption).

Thus, we notice a substantial reconfiguration of the causes that attract the indignity of the heir.

Very severe, the legislature provides that if the conviction of the above facts is hampered by the death of the offender, through amnesty (prior to the conviction, we add) or by criminal liability limitation, the indignity is still operational if those facts were established by a final civil court [article 958 paragraph (2) of the new Civil Code]. So, unlike the Civil Code in force, according to which these policies preclude, without exception, the effects of the indignity, the new Civil Code establishes a very strict regime, stating that the indignity will occur even in the presence of these criminal policies, if the facts have been established through a final civil court.

Therefore, we cannot appreciate in the light of the new Civil Code's dispositions that the indignity intercedes only if there is a final civil court, its absence being supplied, according to the future regulation in successional matter, by the existence of a final civil court.

*b) the judicial indignity.*

May be declared unworthy to inherit, according to the dispositions of the article 959 paragraph (1) from the new Civil Code:

- a) the person legally convicted for committing, with intention, against the one who leaves the inheritance, some serious acts of violence, physical or moral violence, or, after the case, some acts that had as consequence the death of the victim;

Thus we notice that, in this case, the legislature sanctions with judicial indignity the committing of the following two crimes' categories against the one who leaves the inheritance:

- serious acts of violence, physical or moral violence, committed with intention;

In our opinion, serious acts of physical and moral violence that could attract the successional indignity are: the serious injury, the robbery, the unlawfully deprivation of liberty or the blackmail.

- acts that resulted in the victim's death, committed with praeterintention (we consider), other than murder (which attract, as we have seen, the law indignity). Such acts,

as far as we are concerned, are: hitting or injuries causing death, rape which resulted in the victim's death, robbery which resulted in the death of the victim or unlawful deprivation of liberty which resulted in victim's death.

b) person who, in bad faith, concealed, destroyed, altered or tampered with the will of the deceased;

This case is the first among those considered up to this point, focused exclusively on the testamentary inheritance, other cases of indignity being common to both forms of inheritance.

c) someone who, by fraud or violence, prevented the one who left the inheritance to prepare, amend or revoke the will.

Thus we identify the second case of indignity, with exclusive action in the matter of testamentary inheritance.

The declaring of the successional inheritance for the cases mentioned by the article 959 paragraph (1) is left by the legislature to the discretion of the court, the legislature using in the text law the expression “*may be declared an unworthy person...*”.

The legislature shows a special exigency also in the matter of judicial indignity, stating that, in the case in which the conviction for committing with intention, against the one who leaves the inheritance, some serious acts of violence, physical or moral violence, or, after the case, some acts that had as consequence the death of the victim, is prevented by the death of the offender, by amnesty (before the conviction, we complete) or by limitation of criminal liability, the indignity may be declared, if those crimes were established by a final court decision [article 959 paragraph (4) first thesis from the new Civil Code].

#### **4. The judicial regime of the indignity**

The difference between the two types of indignity lies in the aspects of the causes they shoot and in their legal status, the law indignity being characterized by a more energetic regime.

##### **4.1. The judicial regime of the law indignity**

Law indignity can be found, according to the dispositions of the article 958 paragraph (3) from the new Civil Code, any time, at the request of any interested person (like: the co-heirs; the subsequent heirs; the creditors of the co-heirs or of the subsequent heirs, via indirect claim; the prosecutor heirs or grantors who had excessive freedoms, subjected to reduction, consequently of the presence to inheritance of the unworthy person) or ex officio by the court or by the public notary, based on the court's decision from which it results the indignity. Since this type of indignity (similar to the indignity from the regulation in force) operates by right, it may be invoked, by the unworthy person itself. Due to the fact that this type of indignity (similar to the indignity from the regulation in force) operates by right, it can be sustained by the unworthy person himself<sup>9</sup>.

Therefore, the legislator confers a very energetic legal status to the law indignity, consecrating its indefeasibility and stating that it can be invoked by any interested person and even ex officio by the court or by the public notary.

It also follows that law indignity operates in the power of law, the court or the notary public having only the role to state it, but not to pronounce it.

Law indignity, like the judicial one, can be stated only after the inheritance opening,

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<sup>9</sup> See: M. Eliescu, *op. cit.*, p. 77; St. Cârpenaru, *op. cit.*, p. 393; I. Zinveliu, *Dreptul la moștenire în RSR*, Dacia Publishing House, Cluj-Napoca, 1975, p. 18; V. Stoica, *Drept succesoral*, Editas Publishing House, Bucharest, 2003, p. 61.

because, previous to this moment, the action of stating the indignity has no interest.

#### **4.2. The judicial regime of the judicial indignity**

The action in declaring the judicial indignity may be addressed to a civil court by:

- a person who has heir quality<sup>10</sup>;
- the village, city or, where if the case, the municipality in whose jurisdiction the assets were at the time of the inheritance opening, if, in addition to the offender who may attract the judicial indignity, there are no other successors of deceased.

The action in declaring the judicial indignity can be exerted only in term of one year. This term starts, usually, from the inheritance opening date. Exceptionally, the discussed term starts at another moment than the date of the inheritance opening, in the following cases:

- if the conviction decision for the crime stated by the new Civil Code in article 959 paragraph (1) letter a) – serious acts of physical or moral violence, or, after the case acts that had as consequence the death of the victim – is pronounced after the inheritance opening date, the one year term starts from the date of the final conviction decision [article 959 paragraph (3) from the new Civil Code];

- in case the conviction of the perpetrator can not be accomplished, for committing, with intention, against the one who leaves the inheritance, some serious acts of violence, physical or moral violence, or, after the case, some acts that had as consequence the death of the victim [article 959 paragraph (1) letter a)], because the perpetrator died, also because of the amnesty or of the limitation of criminal liability, and the indignity was established by a final court decision, the one year term begins to run from the occurrence of the cause which prevents the conviction, if it occurred after the inheritance opening [article 959 paragraph (4) from the new Civil Code];

- in the cases stated in the paragraph (1) of the article 959, letter b) - the disappearance, the alteration, the destruction or the tampering with bad faith of the deceased's will - and letter c) – the prevention by fraud or violence of the one who leaves the inheritance to modify or to revoke the will –, the one year term begins to run from the date the heir knew the reason of indignity, if this date is previous to the inheritance opening. The date of discovery of this cause of indignity may coincide with the inheritance opening date or it may be prior to this date, being related to the preparation, amending or drafting the will and not to the death of the one who leaves the inheritance [article 959 paragraph (5) from the new Civil Code].

Making out a complete regulation of the successional indignity problem, the legislature determines in an express manner the judicial nature of the one year term during which the action in declaring the judicial indignity may be introduced. According to the dispositions of the article 959 paragraph (2) from the new Civil Code, this term is of decay, so suspension and cancellation cannot apply to it.

Introducing the action in declaring the judicial indignity represents, according to the dispositions of the article 959 paragraph (2) second thesis from the new Civil Code, an act of tacit acceptance of the inheritance by the plaintiff successor.

#### **5. The effects of the successional indignity**

Indignity produces effects both for the unworthy person and also for the third

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<sup>10</sup> The new Civil Code, in the content of the article 1100 paragraph (2), defines the successor notion, eliminating this way any doctrinal controversy that may be generated by such a subject. So, "by successor we understand a person who meets the conditions foreseen by law in order to be able to inherit, but who did not exercised his right of successional option".

parties. Thus we notice that the new Civil Code does not assume the unfair dispositions of the Civil Code in force, according to which the indignity produces effects also for the heirs of the unworthy person. So we welcome the vision of the new Civil Code, which provides a fair regulation for the successional indignity, under the aspects of its effects.

### **5.1. The successional indignity's effects to the unworthy person**

The main effect that indignity produces, no matter if it is law or judicial indignity, is the total and retrospectively removal of the unworthy person from the inheritance, thus rendering him incapable to collect even the successional reserve, if he belongs to the heir's category that can not be totally disinherited.

The unworthy person's part will be given, after case, to the co-heirs, to the subsequent heirs or to the heirs/grantors whose excessive freedoms are subjected to restrains, as a consequence of the first person's presence, as an heir that can not be totally disinherited.

With novelty title, the new Civil Code, through the dispositions of the article 965 and next ones, allows the representation of the *unworthy person*. He may be represented even if, at the opening time of the inheritance, he is alive and even if he renounces to the inheritance<sup>11</sup>. More over, the representation operates even if the representative is unworthy to the represented or renounced to the inheritance left by him or was disinherited by him [article 967 paragraph (3) from the new Civil Code].

If the unworthy heir came in the possession of the assets from the successional mass before the indignity was declared, he has to turn them back in kind. In the case in which it is impossible to return in kind the successional assets, due to the disappearance (of fortuitous circumstance or of majeure force), to the alienation or to the expropriation for the public utility causes, the unworthy person will have to pay damages. The unworthy heir is considered to be a bad faith holder [article 960 paragraph (2) from the new Civil Code] and he is by right put in delay, from the entry into use date of the successional assets (from the opening date of the succession and not from the date when the indignity was determined). It follows that the unworthy person is treated more severely than the possessor in bad faith, so that the bad faith of the former one should not be established, since it is implicit from the determination, respectively from the declaration of the successional indignity.

Along with the successional assets, the unworthy person must also return in kind and from the opening date of the inheritance, the fruits (natural, industrial or civil) produced by the assets. If the unworthy person consumed them or neglected to collect them, he will return their value. So the unworthy person owes not only the fruits that he has to collect, but also those that he would have had to charge [article 948 paragraph (5) from the new Civil Code].

If the unworthy person collected money from the debtors of the inheritance, he pays interest on them, from the day of the receipt. Also, all the rights and obligations to the unworthy person, extinguished from the self patrimony through one debtor or creditor succeeding to the estate of the other, are available again.

The unworthy person, in turn, is entitled to claim the amounts paid to the other heirs the money paid in order to clear the inheritance debts, together with the interest, with the necessary and useful expenses, made for the successional assets, and the value of the work

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<sup>11</sup> For details regarding the issue of the successional vocation in the regulation of Law number 287/2009 see I. Genoiu, I. Popa, *Instituția reprezentării succesoriale în viziunea noului Cod civil român*, in the volume of National Scientific Session "Challenges of the knowledge society", Prouniversitaria Publishing House, Bucharest 2010, pp. 357-367 (english version) and pp. 368-377 (romanian version).

done to collect the fruits of the inheritance.

The indignity decays the heir only from his right to collect the inheritance, to which he proved that he's unworthy, and not the right to collect other bequests. Moreover the indignity takes effect only on the rights of the unworthy person acquired under the inheritance and not his other rights against the deceased in respect of which became unworthy. For example, the unworthy surviving spouse, although he is declined from the right to come to the inheritance of the deceased spouse, maintains nevertheless, the right to a share the goods acquired during the marriage.

### **5.2. The successional indignity's effects to the third parties**

The indignity abolishes retroactively, from the opening date of the succession, the title of heir of the unworthy person.

Conservation and administration acts, in the way that they are profitable to the heirs, concluded between the unworthy person and others are valid [article 960 paragraph (3) first theses from the new Civil Code]. Since the legislator doesn't make a difference, in this law text, between the third parties that are in good or bad faith, will be considered valid acts any conservation or administration acts concluded between the unworthy person and others, regardless that the latter are in good or bad faith, since the heirs benefit from this acts.

However the disposition acts with certain obligations, concluded between the unworthy person and the third parties in bad faith, who had knowledge about the invalidity of the heir title of the unworthy person, will be abolished retroactively, under the principles *nemo dat quod non habet* and *resoluto jure dantis resolvitur jus accipientis*.

On the contrary, however, the acts with certain obligations will remain available for consideration, whether they relate to movable or immovable property, if they are concluded between the unworthy and the third parties in good faith (who believed in the validity of the heir title of the first), considering nevertheless that the rules from the matter of land book must be obeyed [article 960 paragraph (3) second thesis of the new Civil Code]. Compared to the disposition of the Law number 287/2009, we consider that the payment made in good faith by the debtor to the unworthy heir is valid.

### **5.3. The indignity removing**

The effects of the indignity, law indignity or judicial indignity, can be expressly removed from the will or from an authentic notarial deed by the person who left the inheritance. The legacy left to the unworthy person does not represent a removal of the indignity's effects without an express declaration, after committing the crime that attracts the indignity [article 961 paragraph (1) from the new Civil Code]. Therefore, unlike the Civil Code in force, Law number 287/2009 allows that the one who leaves the inheritance to forgive the unworthy person, in this way being removed the indignity's effects for the latter one. The forgiveness of the unworthy person must be realised in an express manner and by a solemn act, either a will, either an authentic notarial deed. It follows that the forgiveness of the unworthy person represents a solemn act, and the non-fulfillment of the conditions required by law attracts its nullity.

Forgiving the unworthy person under the law conditions, the one who leaves the inheritance makes possible that the first one can come to the inheritance, legal or testamentary, of the latter.

The indignity effects can not be removed by rehabilitation of the unworthy person, amnesty appeared after conviction, indemnity or after the execution's prescription of the legal penalty [article 961 paragraph (2) from the new Civil Code]. Under this aspect, Law number 287/2009 regarding the Civil Code offers a similar solution with the one

consecrated *de lege lata*.

Additionally, ruling in this manner in the content of the article 961, the legislature proves consistency, in articles 958 paragraph (2) and 959 paragraph (4) showing that the effects of the indignity are removed by the before conviction amnesty or by the prescription of the criminal liability, if the discussed crimes have not been stipulated by a final court decision.

## 6. Conclusions

Law number 287/2009 regarding the Civil Code reforms in a fair and quasi-total manner the issue of the successional indignity. Thus, in the light of the new Civil Code: the indignity is considered to be a general condition of the right to inherit; its legal nature is that of punishment; cases that attract it are in their quasi-totality reformed; the distinction between legal and judicial indignity is realised; the effects of the indignity concern only the unworthy persons and other related parties; the unworthy person may be represented and in turn may also represent another person.

Compared to all these considerations, we consider that the new Civil Code provides to the matter of successional indignity a complete, consistent and fair regulation.

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