THE ACCEPTANCE AND THE REPUDIATION OF THE LEGACIS

ACCEPTAREA SI REPUDIEREA LEGATELOR

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Abstract. *The Civil Code stipulates that no one can be forced to accept an inheritance, but in the matter of the legacy there is no special disposal concerning the acceptance or the renunciation at the legacy. In this case the common right will be applied. In the juridical literature there are arguments concerning the application of the art.701 from The Civil Code (about the change of mindeover the renunciation at the inheritance) in the matter of the legacy, and as well about the possibility to accept the legacy "pro parte".*

The institution of the representation that we find in the matter of the legal inheritance has no application in the matter of the will. Because of that it couldn't be avoided the cases of the caducity of the will.

The Civil Code stipulates no special provision concerning the acceptance or the renunciation of the heir concerning the legacy left in his favor. Thus, where the law does not stipulate special rules, the common right will be carried out. The rules concerning the acceptance or the renunciation of the inheritance will be carried out for the legacy only when the rules are according to the common right. When they will be an exception from the common right they will not be applied anymore for the acceptance or the repudiation of the legacy**.**

As in art. 686 Civil Code is being stipulated "Nobody is obliged to accept the inheritance that is right for him". This way the heir can not be obliged to accept his legacy against his will either. Hei s free to make his option only after the death of the testator, when the will is going to be opened, before that his option having only the significance of an agreement concerning a future inheritance, which is specifically prohibited by law.

Art. 689 which stipulates the way the specific acceptance of succession (in written) will be carried out is not applied to legacies being derogated from the common right. The acceptance of the legacies can take place under any circumstance thought, even orally. This way the demand of the heir concerning the handing of the legacy from the other heirs or the fact that he makes final actions as an owner, involves the heir's unspoken

consent. Until the heir finds out about the legacy we can't talk about unspoken consent, because the intention of accepting can not exist without knowing the right of acceptance.

To renounce at the legacy is not related with a certain ceremony, therefore the renunciation can itself be expressed or unspoken. The renounciation at the legacy is an unilateral act, that is why it will have *erga omnes* effects; if this is made through a convention, it will only have an effect between the both sides.

In practice a question was raised: whether a legacy under condition can be accepted or given up, before the condition left by the testator is fullfield. Considering that the legacy affected by such a modality can be the subject of a convention, so that the heir can yield it, this implies first the acceptance, which is as well affected by the condition.

Concerning art 701 ("While the limitation of the right to accept is not obtained against the heirs who renounced to it, they still have the capacity to accept the inheritance, if it is not accepted by other heirs. The right of other people who obtained on inherited goods can't be damaged, or by limitation, or by other acts, that were made by the trustee of the vacant inheritance".) there was a controversy in the juridical -literature about whether this provision is applied or not to the testamentary heirs as well. Some writers consider that this provision can not be applied to testamentary heirs so they don't permit them to have them changing their minds upon the renunciation of the legacy.

Others (who's opinion we sustain as well) consider that the testamentary heir as well as the legal heir can reconsider his renunciation, as long as the legacy was not accepted by other heirs or by other subsidiary heirs, the rule stipulated in art 701 being an equal one. If there were no heirs to get the inheritance through the accretion right by the renunciation of the heir, the inheritance will still be vacant this if we don't apply, through resemblance, the provision of art.701 Civil Code. The heir that reconsiders his renunciation has to subdue to the limitation term of the successional option.

Differently of the renunciation, the acceptance is irrevocable and the heir can not renounce once he has accepted the legacy, except the case when his consent has been corrupted through error, cunning or violence or he didn't have the capacity required by law to accept it. We have to keep in mind that each time the will has not been made freely and consciously the acceptance will have no juridical value.

Both the acceptance and the renunciation to the legacy can't be made "*pro parte*" meaning it can't be accepted or denied only parts of the legacy. Some authors admit this possibility, but only when the legacy is

divisible. If the same person has received more then one legacy, the heir has the freedom to accept some and renounce to others, except the case when the testator has specifically considered the many legacies as one.

A difference between the acceptance of legal inheritance and the legacy is the representation institution. The legal inheritance allows this possibility while in the testamentary matter the heir can not be represented. If he dies before the testator, the legacy will become flimsy and it will not be given to his successors anymore. For this situation for future settlement, the legislator could reconsider the provisions considering the matter of the representation, and apply this institution in the testamentary matter as well, to avoid this way a case of the caducity of the legacy and even the vacancy of the inheritance.

There can be cases when the heir can decline a legacy and this by damaging his debtors. In this case the provisions of art 699 Civil Code will apply to this. "The creditors of someone who renounce in their damage can take an authorization from the justice in order to accept the succesion for their debtor, in his place. In this case, the renunciation is canceled only in favor of the creditors and only in the behalf of their debt.

The acceptance is not being made in behalf of the heir who renounced". Art.699 represents an application of a general principle-the revoking action-which must be taken into consideration in the case of the creditors of the testamentary heir too, who may have a successional option to defraud them. They can accept the legacy in heir's name in case he renounces in their detriment, only if this renunciation was not made from purely personal reasons.

Some discussions were stirred also by art. 897 Civil Code, which specifies that the universal heir or the heir of a fraction of the inheritance, can not get the legal goods he inherited unless he makes a previous inventory of them.

The heir who does not this inventory will be obliged to pay the debts of the inheritance *ultra vires hereditatis.* D Alexandresco considers that the intention of the testator was in this meaning to assimilate the heirs(legal or testamentary) in the same procedure, even if it was not repeated in the art 897. As others have agreed, we ourselves consider that the heir's obligation is limited *intra vires emolumenti* only if an inventory is made, as stipulated in art. 897, without any declaration as it is required in the case of the legal heir.

CONCLUSIONS

In the matter of the legacy there are no special disposals concerning the acceptance or the renunciation at the legacy, so in this case the common right will be applied. Both the acceptance and the renunciation at the legacy do not involve a special solemnity and there are some resemblances and differences between acceptance and renunciation at the legal inheritance and the testamentary one

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