

Attribution of Reportable Liberalities to a Forced Heir

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Abstract

The research aims to examine the methods for assigning a liberality bestowed by the decedent upon a forced heir who inherits alongside other forced heirs. The attribution process considers how to calculate and allocate the liberality provided to the forced heir in such a way as to respect the decedent's intentions within the legislative constraints. The decedent can grant liberalities exempt from collation, which means that they are definitive and they do not need to be brought into the estate for division according to the rules of legal succession, or through liberalities that are not exempt from collation, representing an advance on the inheritance. When the decedent provides for heirs through such reportable liberalities, the intent is often to grant an immediate benefit to the recipient without disrupting the statutory balance of inheritance shares as established by law. Accordingly, it is essential to identify, at the time of death, the part of the inheritance from which the reportable liberality is attributed and the legal implications which results in such scenarios.

Keywords: *reportable liberality, forced heir, attribution, reserved inheritance portion, disposable portion.*

JEL Classification: K15

1. Introduction

One of the freedoms with a particularly significant impact on the development of society is the freedom of will be recognized for its members. Through this freedom, individuals create legal relationships based on their own will and on their own interest, dynamically shaping their influence on society. Regarding the right to freely dispose of one's property, Article 12, paragraph (1) of the Civil Code states that "Anyone may freely dispose of their property unless the law expressly provides otherwise."

By virtue of the right to dispose of their estate, the holder of a property can manages their assets according to their own will and interests, both in *inter vivos* transactions and in matters concerning their death. This study considers the exercise of the right of disposal through gratuitous acts of transfer, or liberalities. These refer to legal documents through which are closed by the holder of the patrimony, without consideration, transfers part or all of their assets.² As a result, the execution of such acts automatically reduces the estate of the grantor and increases the estate of the beneficiary.³

Liberalities may be effectuated through donations⁴ (*inter vivos* acts) or through

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² See Article 984 of the Civil Code, which states: „(1) The liberality is a legal transaction by which a person disposes of their assets, in whole or in part, gratuitously in favor of another person.”

³ Unlike altruistic acts, which do not entail an increase in the patrimony of the beneficiary or a decrease in the patrimony of the person making the disposition.

⁴ See Article 985 of the Civil Code, which states: „A donation is the contract by which, with the intent to gratify, one party, called the donor, irrevocably disposes of an asset in favor of the other party, called the

legacies⁵ included in a will (*mortis causa*). A donation⁶ is a unilateral contract that brings about effects during the lifetime of the donor, from the date of the contract's conclusion, in contrast to a legacy, which is a unilateral legal act that takes effect upon the testator's death.

In this manner, the estate holder may freely express their will regarding their assets through liberalities that take effect either during their lifetime or upon their death. With regard to donations, the donor allocates assets through non-reportable donations, which need not be brought to the estate, as well as reportable donations⁷, which serves as an advance on the inheritance.⁸ Beneficiaries of the latter type of liberalities are required to bring the donated assets into the estate, where they will be distributed in accordance with legal provisions.

According to Article 1146, paragraph (1) of the Civil Code, the heirs required to collate are the decedent's descendants and the surviving spouse.

As previously stated, a person may freely dispose of their property through acts of liberality, which are actually either non-reportable, definitive (such as *preciput*), or reportable, serving as an advance on the inheritance.

In the following, the focus is on the method of calculating these liberalities from the decedent's estate when a reportable donation is made to an heir entitled to the reserved portion, inheriting alongside other co-heirs with reserved shares. Related to this analysis, several questions may arise: From which part of the decedent's estate will the donation be granted to the recipient? What happens if the donation exceeds the part to which it can be attributed?

2. Attribution of reportable liberalities to a forced heir

2.1. General notices⁹

The legal foundation for this matter is found in Article 1099, paragraph 3 of the Civil Code, which states that "if the grantee is a forced heir and the liberality is subject to collation, it shall be attributed to the grantee's reserved share, and, if there is an excess,

donee."

⁵ See Article 985 of the Civil Code, which states: „A legacy is the testamentary provision by which the testator stipulates that, upon their death, one or more legatees shall acquire their entire estate, a fraction thereof, or certain specified assets."

⁶ Francisc Deak, Lucian Mihai, Romeo Popescu, *Civil law treaty. Special contracts*, Vol. III, Ed. Universul Juridic, București, 2018, p. 171-172; Philippe Malaurie, Laurent Aynès, *Les successions. Les liberalites*, 3^e edition, Defrenois, Paris, 2008, p. 237 – 239.

⁷ See Article 1146 of the Civil Code, which states: „(1) The reporting of donations is the obligation of the surviving spouse and the descendants of the deceased who effectively and collectively inherit under the law to return to the inheritance the assets that were donated without the right of reporting by the deceased."

⁸ Francisc Deak, Romeo Popescu *Succession law Treaty. Testamentary inheritance*, Vol. II, Ed. Universul Juridic, Bucharest, 2019, p. 394; Ion Dogaru (coordinator), *Civil Law. Successions*, Ed. All Beck, Bucharest, 2003, p. 471; Flavius-Antoniou Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei, *The Civil code. Comment on articles*, 2nd edn., Ed. C.H. Beck, Bucharest, 2014, p. 1203; Romeo Popescu, *The right to inheritance. The limits of the right to dispose of the assets of the inheritance through legal acts*, Ed. Universul Juridic, Bucharest, 2004, p. 304-307; Veronica Stoica, Laurentiu Dragu, *Mostenirea legala*. Second edition, revised and added Ed. Universul Juridic, Bucharest, 2022, p. 142.

⁹ Stanciu D. Cărpănu, *Civil law. The rights of intellectual creation and the successions*, Didactics and Pedagogy Publishing House, Bucharest, 1971, p. 280-281.

this excess shall be attributed to the disposable portion, unless the grantor has stipulated its attribution to the global inheritance reserve.”

Thus, for Article 1099, paragraph 3 of the Civil Code to apply, the following conditions must be cumulatively met:

- The donor must dispose of property through an act of liberality—specifically, a donation;
- The liberality must be subject to collation (i.e., brought into the estate for distribution);
- The grantee must be a forced heir.

2.2. Calculation method

To illustrate the application of this legal provision, it is considered that the scenario where the decedent’s estate is inherited under the law by the two sons, C1 and C2. During their lifetime, the decedent made a non-exempt donation in favor of C1, which is valued at 6,000 euros. The gross assets amount to 4,000 euros, while the liabilities of the estate total is 2,000 euros.

By article 1091, paragraph (1), letter b)¹⁰ of the Civil Code, the net estate will be calculated by subtracting the liabilities from the gross assets. Therefore, the net estate is determined to be 2,000 euros.

To determine the estate, according to which it will be calculated the forced heirs’ inheritance reserve and the disposable portion, we apply Article 1091, paragraph (1), letter c) of the Civil Code, by hypothetically combining the net assets with the value of the donations. The estate estimated to 8,000 euros (net assets of 2,000 euros plus the value of C1’s donation, 6,000 euros).

Under these circumstances, there are distinguished how much of the estate represents the inheritance reserve and how much constitutes the disposable portion.

In this case, the only ones who can and wants to inherit from the deceased are the two sons, who will share the estate equally. C1 will inherit 4,000 euros, and C2 will receive the other half, also 4,000 euros.

Considering that both heirs belong to the category of forced heirs¹¹, it will be calculated each of their reserved parts. The inheritance reserve represents that part of the assets of the inheritances particularly reserved by law for a certain category of legal heirs who are closer to the decedent, even if the decedent has directly or indirectly disinherited them through liberalities.¹²

The same applies to calculating the inheritance reserve for C2. Half of C2’s share of 4,000 euros will constitute the inheritance reserve, or 2,000 euros.

¹⁰ Article 1091, paragraph (1) of the Civil Code states: „(1) The value of the estate, which is used to determine the reserved portion and the disposable quota, is established as follows: a) determining the gross assets of the estate by summing the value of the assets existing in the estate at the time of the opening of the succession; b) determining the net estate by subtracting the estate liabilities from the gross assets; c) the fictive reunion, solely for the purpose of calculation, of the value of donations made by the deceased.”

¹¹ Article 1087 of the Civil Code states: „The reserved heirs are the surviving spouse, the descendants, and the privileged ascendants of the deceased.”

¹² See Article 1086 of the Civil Code, which states: „The inheritance reserve is the part of the estate assets to which the reserved heirs have a right by virtue of the law, even against the will of the deceased, as expressed through their disinheritances or liberalities.”

The method for calculating the inheritance reserve is provided in Article 1088 of the Civil Code¹³. Since C1 would have been entitled to 4,000 euros in the absence of liberalities, the inheritance reserve will be half of that amount, which estimated 2,000 euros.

At this point, we can calculate the total inheritance reserve of the forced heirs, which is 4,000 euros (2,000 euros for C1's inheritance reserve + 2,000 euros for C2's inheritance reserve), and the disposable portion, which will be 4,000 euros (8,000 euros as the estate value - 4,000 euros as the total inheritance reserve).

Taking into account that even if C1's donation was brought into the estate for inheritance purposes, it will be offset, per Article 1099 paragraph 3 of the Civil Code, with priority against the inheritance reserve of the beneficiary (C1). This means that C1's donation of 6,000 euros will be first be attributed from his inheritance reserve of 2,000 euros. However, this reserve is insufficient to satisfy the full value of the donation. As a result, the remaining 4,000 euros will be offset against the available share, which will be entirely absorbed.

Since C1's donation is not intended to advantage him but merely serves as an advance on the inheritance, even though the donation was first allocated to his inheritance reserve and subsequently to the entire available share, C1 will not retain the full donation amount. The purpose of the donation exempts from collation, as directed by the deceased, is precisely to prevent inequalities between his two sons. Therefore, C1 can only retain 2,000 euros from his inheritance reserve and an additional 2,000 euros from the available share.

C2 will receive a net asset of 2,000 euros along with another 2,000 euros (from the available share) received from C1. In this manner, the legal balance between the two heirs is maintained, even though one of them received a donation exempt from collation during the decedent's lifetime.¹⁴

There is also the possibility that, in addition to lifetime donations, the deceased may make a bequest in contemplation of death (ties included in the will). What happens in this case? Can the *mortis causa* disposition be executed? It will be presented some illustrative scenarios.

It is assumed that the two sons inherit the decedent's estate, with a donation of 180,000 RON made during the decedent's lifetime in favor of C1 (subject to collation) and a universal bequest in the amount of 30,000 RON in favor of a third party, X, where the gross assets of the estate amount to 60,000 RON, and there is no estate debt, this results in a net asset of 60,000 RON and a calculation base (succession mass) of 240,000 RON (60,000 net asset + 180,000 donation subject to collation made to C1). It is proceeded with the same steps as in the following example:

1. Calculation of each heir's inheritance reserve: Taking into account the legal share due in the absence of disinheritances and liberalities, C1 is entitled to half of the estate, i.e., 120,000 RON, making his inheritance reserve 60,000 RON. C2, with the

¹³ Article 1088 of the Civil Code states: „The inheritance reserve for each reserved heir is half of the hereditary share that, in the absence of disinheritances or liberalities, they would have been entitled to as a legal heir.”

¹⁴ Dan Chirică, *Civil Law Treaty. Successions and liberalities*, 2nd edition, Ed. Hamangiu, 2017, p. 341; Ilioara Genoiu, *The right to inheritance in the Civil code*, 2nd edition, Ed. C.H. Beck, Bucharest, 2013, p. 272.

same legal share, has an inheritance reserve of 60,000 RON. The total inheritance reserve is therefore 120,000 RON.

2. Calculation of the available share: Subtracting the total inheritance reserve from the succession mass gives an available share of 120,000 RON.

3. Offsetting the donation made to C1: The donation is offset against C1's inheritance reserve of 60,000 RON. For the remaining 120,000 RON, it is offset against the available share, which is thereby fully absorbed.

4. Retention by C1: C1 will retain a portion of his donation, specifically, 60,000 RON from his inheritance reserve and 60,000 RON from the available share, so that the remaining 60,000 RON is transmitted to C1, who aggregates this with the net asset of 60,000 RON, achieving the equilibrium of legally determined inheritance shares.

5. Ineffectiveness of the bequest in favor of X: The bequest in favor of the third party, X, becomes ineffective.

Under Article 1099 paragraph (3) of the Civil Code, as applied in the previous examples, the grantor may modify the method and order of offset by expressing his wishes, particularly if he stipulates that the offset is to occur with priority against the global reserve (total inheritance reserve).

If it were to consider that, in the previous example, the deceased stipulated that the offset of the reportable liberality should occur against the global reserve, the distribution of rights would differ from the scenario previously presented.

It would offset C1's donation against the global reserve of 120,000 RON, with the remaining 60,000 RON offset against the available share. This leaves 60,000 RON in the available share.

In contrast to the previous example, where the bequest was rendered ineffective due to the depletion of the estate's available share, in this case, the 30,000 RON bequest will be executed from the remaining available share of 60,000 RON, leaving an available share of 30,000 RON, which is allocated to the deceased's reserve heirs.

Once and for all, X receives the 30,000 RON bequest, while C1 and C2 each receive 105,000 RON: C1 retains 105,000 RON from the donation and transfers 75,000 RON to C2. C2 aggregates the 75,000 RON with the remaining net asset of 30,000 RON, overall 105,000 RON.

In this last scenario, where the deceased requested priority offset against the global reserve, the equality between the two legal heirs is preserved, yet the extent of the rights has been modified, as the bequest to the third party can now be executed.

In the examples provided, the donation granted to the reserve heir exceeded his inheritance reserve. What would be the calculation method if the donation were less than the gratified heir's reserve?

In order to clarify this scenario, let us consider the situation where, in the presence of two children, C1 and C2, the deceased allocates a universal bequest of 3,000 euros in favor of a friend, Z. During his lifetime, he liberalized C2 a reportable donation of 2,000 euros. Assuming the gross estate is 10,000 euros and estate debt amounts to 2,000 euros, the net estate totals 8,000 euros (10,000 - 2,000 euros), and the succession mass is 10,000 euros (8,000 net asset + 2,000 donation to C2).

Each of C1 and C2 has a legal share of 5,000 euros, making each heir's inheritance reserve 2,500 euros. The sum of these two reserves provides a global reserve of 5,000 euros. The available share amounts to 5,000 euros (10,000 succession mass -

5,000 global reserve).

The donation of 2,000 euros made to C2 will be offset against his reserve of 2,500 euros. Since the donation value is less than the inheritance reserve and the rules governing the reserve are mandatory and cannot reduce below this legally set minimum, C2 will receive an additional 500 euros, making up the value of his reserve to avoid impairment. C2 receives a reserve of 2,500 euros, and the bequest of 3,000 euros to Z will be executed. The remaining 2,000 euros will be equally divided between the two equal heirs, C1 and C2.

3. Conclusions

It is observed that when the deceased benefits a reserve heir with a reportable liberality, the intention is to provide an advance on the inheritance without disadvantaging other legal co-heirs who are owed this protection. By regulating the offset system of reportable liberalities with priority against the inheritance reserve and subsequently against the available share, the objective of the legal obligation of collation is achieved, ensuring equality/proportionality of co-heirs' rights and, if applicable, leaving a part of the available share intact, allowing the deceased to dispose of it through *inter vivos* or *mortis causa* liberalities.

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