

Particularities Regarding the Inheritance Disqualification of a Legal Entity

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Abstract

In the context of promoting inheritance disqualification as a general condition of the right to inherit, officially regulated by Articles 958-961 in Chapter II, titled General Conditions of the Right to Inherit, from Title I of Book IV, and the expansion of its application from exclusively legal inheritance to both legal and testamentary inheritance, it becomes necessary to analyze inheritance disqualification in the case of a legal entity. This is because a legal entity can acquire inherited property only by virtue of a will left by the deceased, whereas under prior civil regulation, inheritance disqualification applied solely to legal inheritance, not testamentary inheritance. Beyond the primary motivation behind this analysis, the extensive reorganization of the legislative corpus following Romania's return to representative democracy post-1989, including the adoption of the Civil Code - the significance of this analysis also stems from Romania's shift from a communist economic system characterized by nationalization, centralization, and planning, to a capitalist system characterized by private ownership of production factors and profit-seeking within a competitive market. Therefore, the convergence between the changes introduced by the 2009 Civil Code in inheritance matters and the capitalist system necessitates an examination of inheritance disqualification and its specificities in the case of a legal entity, particularly concerning the mechanism by which a legal entity becomes disqualified concerning the deceased, the individuals within the legal entity responsible for its disqualification, and the disposition of inherited property if the legal entity is dissolved.

Keywords: legacies; indignity; legal person; natural person.

JEL Classification: K15, K39

1. Introductory considerations

Before proceeding with the detailed analysis of the particularities of inheritance disqualification in the case of a legal entity, it is necessary to outline the legal framework in which legal entities, as subjects of civil law (as derived from the provisions of Article 25 of the Civil Code), may acquire the estate of a deceased individual. In this context, we consider it essential to introduce the concept of inheritance, the general conditions of the right to inherit, the legislative changes brought about by the adoption of the 2009 Civil Code that directly pertain to the topic under discussion, and the temporal application of the civil institution of inheritance disqualification as it relates to legal entities. We will limit ourselves to presenting these elements, constitutive parts of inheritance matters, in a concise manner, highlighting the specific differences between the individual heir and the legal entity heir, naturally excepting the institution of unworthiness in succession in the case of a legal entity, for which we will attempt a more detailed analysis. Additionally, the complexity of the subject under analysis necessitates narrowing the doctrinal approach only to the particularities of unworthiness in succession concerning legal entities in cases of unworthiness provided by art. 958 para.

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1, letters a), b) of the Civil Code of 2009.

2. General conditions of the right to inherit

The 2009 Civil Code, which came into effect on October 1, 2011, according to Article 220, paragraph 1 of Law No. 71/2011 implementing Law No. 287/2009 on the Civil Code² (published in Romania's Official Gazette, Part I, No. 409 of June 10, 2011), systematized the general conditions of the right to inherit as a triad (two positive conditions: inheritable capacity and inheritable vocation, and one negative condition: not being disqualified), which has been validated in legal literature³ and aligns with prior civil regulations.

a) Regarding the **condition of inheritable capacity**, established by Article 957, paragraph 1 of the 2009⁴ Civil Code, it maintains the same content as in previous civil regulations, with Article 654 of the 1864 Civil Code stipulating that, to inherit, an heir must exist at the time the inheritance is opened.

As consistently noted in legal literature⁵ related to both civil regulations, the following categories of persons have inheritable capacity: individuals alive at the time of the inheritance opening, conceived but unborn individuals (per Article 36 of the Civil Code), missing persons, since under Article 53 of the Civil Code they are presumed alive until a final declaration of death is issued, and legal entities established according to the law at the time of inheritance opening.

For legal entities, they gain the capacity to hold rights and obligations, including inheritable capacity, from the date of their registration if registration is required, or, as applicable, from the date of establishment, authorization, or fulfillment of any other legal requirements as stipulated in Article 205 of the 2009 Civil Code. Correspondingly, Article 205 of the 2009 Civil Code carries the same legal content as Article 33 of Decree No. 31/1954 on natural and legal persons, with the timing of capacity acquisition for legal entities being identical.

However, we observe that, regarding legal entities, the current regulation, unlike Decree No. 31/1954, grants legal entities anticipatory inheritable capacity (similar to that of a conceived but unborn child) even before acquiring legal personality (the capacity to hold rights), although receiving donations is not necessary for the legal entity to be validly established⁶. Thus, as a novelty, the Romanian legislator has recognized anticipatory inheritable capacity for legal entities, similar to that granted to conceived but unborn children, yet specifically limited to receiving donations, not from the date of legal establishment but from the date of the founding act or, in the case of testamentary foundations, from the opening of the testator's inheritance, as provided in Article 208 of the Civil Code.

Although Decree No. 31/1954 also recognized anticipatory capacity for legal entities with respect to rights conferred in their favor and corresponding obligations, this

² Published in Romania's Official Gazette, Part I, No. 409 of June 10, 2011.

³ Francisc Deak, *Treatise on Inheritance Law*, 2nd edn, Ed. Universul Juridic, Bucharest 2002, p. 40.

⁴ A person can inherit if, at the moment of the opening of the inheritance, the conditions are met.

⁵ Marilena Uliescu, Bogdan Pătraşcu, Ilieara Genoiu, *The new Civil Code. Studies and Comments*, Vol. II, Ed. Universul Juridic, Bucharest, 2013, p. 600.

⁶ In the same sense, *ibid*, p. 603.

recognition⁷ was conditioned on the valid establishment of the legal entity. Therefore, the difference between the two regulations lies in the fact that, under the 2009 Civil Code, the recognition of anticipatory capacity to receive donations is not contingent on any purpose related to the legal entity's establishment; this recognition is closer in scope to the anticipatory capacity granted to a conceived but unborn child as per Article 36 of the Civil Code.

It should be noted that the recognition of anticipatory capacity, unconditioned by the legal establishment of the entity, is limited solely to inheritance capacity. For the acquisition of other rights and obligations, Article 205, paragraph 3 of the 2009 Civil Code requires valid establishment of the legal entity. For example, prior to valid establishment, a legal entity with anticipatory capacity may enter into legal acts necessary for its creation, such as a lease for its registered office, a bank account contract for initial assets or share capital, and the hiring of administrative staff and others⁸.

Another noteworthy aspect of the legal entity's capacity is its scope. In this regard, the 2009 Civil Code extends the legal capacity of profit-oriented legal entities without limitation.

Thus, for non-profit entities, Article 206, paragraph 2 of the 2009 Civil Code restricts their capacity solely to those rights and obligations necessary to fulfill the purpose defined by law, the founding act, or the statutes, with these provisions being identical in content to Article 34 of Decree No. 31/1954. It is worth mentioning that the latter provisions applied to both profit-oriented and non-profit entities prior to the 2009 Civil Code.

With the entry into force of the 2009 Civil Code, profit-oriented legal entities have seen an expansion of their capacity. Article 206, paragraph 1 states that they may hold any civil rights and obligations, except for those that, by their nature or by law, are specific to natural persons, thereby removing the previous limitation imposed by Article 34 of Decree No. 31/1954. This relative relaxation of the specialty rule for legal entities⁹ capacity has also been noted by other scholars¹⁰, who have asserted that the regime of unlimited legal capacity, implicitly provided by the Company Law, has now been expressly extended through paragraph (1) of Article 206 of the Civil Code to all profit-oriented legal entities, aligning general civil provisions with pre-existing corporate regulations.

Establishing the limitations of the capacity to hold rights for legal entities is important in testamentary inheritance matters, as violating the specialty rule for this capacity results in the nullity of a bequest left to a legal entity through a will, as stipulated

⁷ The provisions of Article 33 of Decree No. 31/1954 stipulated that a legal entity has the capacity from the date of its founding act, regarding the rights established in its favor, the fulfillment of obligations, and any preliminary measures that may be necessary, but only insofar as these are required for the legal entity to be validly established.

⁸ Codrin Macovei, Mirela Carmen Dobrilă, in Flavius Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ion Macovei (coord), *The new Civil Code. Comment on articles*, Ed. C.H. Beck, Bucharest, 2014, p. 230.

⁹ Aurel Pop, Gheorghe Beleiu, *Civil Law. General Theory of Civil Law*, University of Bucharest, 1980, p. 362-365; Traian Pop, *Civil Law. General Theory*, Ed. Lumina Lex, Bucharest, 1993, p. 188; Gabriel Boroi, *Civil Law. General Theory*, Ed. All, Bucharest, 1997, p. 183.

¹⁰ Marius Șcheaua (coord.), Doru Trăilă, Mircea Dub, Lavinia Tec, Radu Rizoioiu, Sebastian Bodu, *The civil code commented and annotated. About civil law. About persons*. Art. 1-257, Ed. Rosetti, Bucharest, 2018, p. 414.

in Article 206, paragraph 3 of the Civil Code. Thus, based on the distinctions presented, we can conclude that profit-oriented legal entities can receive any type of property through a bequest, as their capacity to hold rights is unlimited. However, non-profit legal entities may only acquire, through *mortis causa* donations, those assets necessary to fulfill the purpose established by law, the founding act, or their statutes, under penalty of absolute nullity of the will.

Before analyzing the next general condition of the right to inherit, we should mention that the specialty rule for the capacity to hold rights applies only to legal acts involving the non-profit legal entity. This rule does not apply to juridical facts *stricto sensu*, as these generate rights and obligations by virtue of law rather than the will of the parties, nor does it apply to material operations or civil rights and obligations originating from law¹¹. This characteristic of the specialty rule's applicability—only in legal acts involving the legal entity and not in juridical facts—is significant in the context of inheritance disqualification of legal entities, as the cases leading to disqualification relate to juridical facts rather than legal acts. Thus, regardless of whether the legal entity is profit-oriented or not, its liability in this regard is unlimited.

An interim conclusion we can draw from analyzing this general condition of the right to inherit is that a legal entity must have inheritable capacity at the time the inheritance¹² is opened, and any bequest established by must respect the specialty rule for the capacity to hold rights, under penalty of absolute nullity. However, this rule is not relevant in the context of inheritance disqualification for a legal entity.

b) Regarding inheritable vocation as a condition of the right to inherit, the 2009 Civil Code explicitly¹³ provides in Article 962 that, to inherit, a person must have the status required by law or to be designated by the deceased through a will. Thus, inheritable vocation refers to the legal or testamentary call to inheritance for an individual or legal entity, granted either by law or through a will, allowing for a distinction between legal and testamentary inheritable vocation.

If legal inheritable vocation is based on a person's status as a relative or surviving spouse in relation to the deceased and is granted by law to such individuals, testamentary vocation, however, is grounded in the will left by the deceased. Unlike legal vocation, which is generally abstract, testamentary vocation is specific (concrete, effective) and is determined through succession devolvement. The source of this vocation - law or will - ultimately dictates the type of inheritance, whether legal or testamentary, as defined by Article 955 of the Civil Code, which states that the deceased's estate passes by legal inheritance unless otherwise disposed by will.

Within this legal framework, we observe that a legal entity can only possess inheritable vocation through a will, being directly designated by the deceased. This vocation is concrete, making the legal entity a testamentary heir, whether universal, by title, or particular. Consequently, a legal entity cannot possess legal inheritable vocation, as it is not among those whom the legislator has designated as heirs by law; thus, the

¹¹ In this regard, see Radu RizoIU, in Marian Nicolae (coord.), George Alexandru Ilie, Vasile Bicu, *Civil law, Persons*, Ed. Universul Juridic, Bucharest, 2016, p. 363.

¹² According to Article 954, paragraph 1 of the Civil Code, the inheritance of a person is opened at the moment of their death.

¹³ In the regulation of the 1864 Civil Code, this condition was not expressly provided, but in specialized literature, it was recognized as a condition of inheritance.

right to inherit manifests solely as a general - abstract eligibility¹⁴.

c) **The final negative general condition of the right to inherit**, that of not being disqualified, has undergone a significant transformation in the 2009 Civil Code. The 2009 Civil Code elevates inheritance disqualification to a general condition of the right to inherit, officially regulated under Articles 958-961 in Chapter II, titled *General Conditions of the Right to Inherit*, from Title I of Book IV, thus adopting the recommendations of the legal literature. Therefore, in the 2009 Civil Code, the institution of inheritance disqualification has an expanded scope, applying not only to legal inheritance but also to testamentary inheritance.

This broader application of inheritance disqualification to testamentary inheritance necessitates an analysis of disqualification for legal entities as testamentary heirs, particularly regarding the mechanisms through which civil or criminal liability of the legal entity ultimately leads to its disqualification.

It is worth noting that this area of analysis is novel, as it was not addressed in the legal literature associated with the 1864 Civil Code, where disqualification did not apply to testamentary inheritance. Disqualification was instead analyzed in the context of legal inheritance, rendering its application to legal entities, which can only act as testamentary heirs, inconceivable. Similarly, the current Romanian legal doctrine associated with the 2009 Civil Code has not analyzed inheritance disqualification for legal entities, as this civil institution has been exclusively considered in relation to individuals who may inherit either by law or by testament. Thus, it falls upon us to identify the particularities of inheritance disqualification in the case of legal entities, noting that this analysis remains open to further doctrinal developments and does not aim to be exhaustive.

As for the *concept of inheritance disqualification*, it maintains a unified character for both individuals and legal entities, as indicated by Articles 958-961 of the Civil Code. It represents the loss of the heir's right, whether legal or testamentary, to receive a specific inheritance, including the right to any reserved share they would have been entitled to by law, due to the fulfillment of the constitutive elements of statutory or judicial disqualification cases expressly and restrictively provided by law. We limit ourselves to this definition rather than the one reiterated in the legal doctrine¹⁵ as we consider that the basis of inheritance disqualification, under the current legal framework which includes cases of judicial disqualification, is not causally linked to the commission of grave acts against the decedent but rather to the intent (motivation) of the perpetrator at the time of committing these acts – namely, the intention to circumvent the legal mechanism¹⁶ of inheritance devolvement.

Including the phrase *meeting the constitutive elements of statutory or judicial disqualification cases*, specific to criminal matters, in the definition of inheritance

¹⁴ Francisc Deak, *op. cit.*, p. 53.

¹⁵ The disqualification of an heir, whether legal or testamentary, from the right to inherit a specific inheritance, including the right to inherit the reserved portion they would have been entitled to from this inheritance, occurs when the heir is guilty of a serious act towards the testator or another successor of the testator. See Francisc Deak, Romeo Popescu, *Succession law treaty*, 4th edition, updated and completed, Vol. I, Ed. Universul Juridic, Bucharest 2019, p. 95; Veronica Stoica, Laurențiu Dragu, *Legal inheritance* 2nd edn., Ed. Universul Juridic, Bucharest, 2022, p. 65 et seq.

¹⁶ By this, we understand both the devolvement of the inheritance according to the legal provisions and in accordance with the wishes of the deceased.

disqualification ensures that it encompasses all conditions specific to each disqualification case. These include: the active subject of the disqualification acts, identified as a person with concrete inheritable vocation regarding the estate of the deceased; the passive subject, meaning the victim of the disqualification, either the deceased or an heir with concrete vocation; the objective element that represents the prohibited conduct (such as acts of murder or forgery of the will); and the subjective element, which refers to the form of intent and the specific purpose of each disqualification case.

By proposing this definition, identifying the particularities of disqualification in the case of a legal entity cannot be done without an interdisciplinary approach, linking civil law with criminal law. This is because analyzing the cases of inheritance disqualification under Articles 958-959 of the Civil Code, as applied to legal entities, requires considering the conditions of criminal liability for legal entities provided in the 2009 Criminal Code. This approach ultimately aims to determine the conditions under which disqualification cases affect a testamentary heir that is a legal entity. Thus, we will present the cases of inheritance disqualification, as systematized in Articles 958-959 of the Civil Code, and their specific conditions, as they apply to legal entities.

3. Ineligibility for inheritance of legal entities

In essence, the Civil Code of 2009 has adopted both the cases of ineligibility for inheritance and their division into absolute and relative, based on their mode of operation, from the regulations of the Civil Code of Quebec, specifically Articles 620 – 621.

The provisions of Article 958 of the Civil Code establish two cases of absolute ineligibility by law: a) an attempt on the life of the deceased and b) an attempt on the life of another heir with a concrete right to inherit from the deceased, if the inheritance had opened at the time the act was committed.

In essence, the case of ineligibility provided by Article 958, paragraph 1, letter a of the Civil Code¹⁷, an attempt on the life of the deceased, protects public morals, validating the immutable rule that no one can open the path to an inheritance through murder¹⁸.

Regarding the second case of ineligibility by law, provided by Article 958, paragraph 1, letter b of the 2009 Civil Code¹⁹, this is unprecedented in the landscape of domestic legislation, as well as in comparison to the legislations from which the Romanian legislator drew inspiration. Its purpose is to protect the legal means of transferring the deceased's estate, regardless of the type of inheritance, whether legal or testamentary. Although the transmission of the deceased's estate in the case of testamentary inheritance is carried out according to their will, we believe that this

¹⁷ The provisions of Article 958, paragraph 1, letter a of the Civil Code stipulate that a person convicted of a criminal offense with the intent to kill the testator is automatically disqualified from inheriting.

¹⁸ Mihail Eliescu, *Inheritance and Its Devolution in the Law of the Socialist Republic of Romania*, Socialist Republic of Romania Publishing House, 1966, p. 73.

¹⁹ A person convicted of a criminal offense committed before the opening of the inheritance, with the intent to kill another successor who, if the inheritance had been opened at the time the offense was committed, would have excluded or limited the perpetrator's right to inherit, is also automatically disqualified from inheriting.

method is also protected by instituting this case of ineligibility, as the transmission of the deceased's estate according to their final will is also regulated by law.

Systematizing the content of the cases of ineligibility by law, the following common conditions emerge for both cases: a) the intent to kill; b) the conviction of the perpetrator of the crime by a final criminal court decision. In the case provided by Article 958, paragraph 1, letter b of the Civil Code, the following additional conditions apply: c) the intent to kill must target an heir of the deceased, with a concrete right to inherit from the deceased, if the inheritance had opened at the time the crime was committed; d) the criminal act must have been committed prior to the opening of the inheritance of the deceased.

Before analyzing the aforementioned conditions, it is important to clarify that these cases also apply to legal entities, not just natural persons. This conclusion arises from the wording of the provisions in Articles 958, paragraph 1, letters a and b of the 2009 Civil Code, as they refer to the *person convicted of the crime*, which includes both natural persons and legal entities in the sense of Article 25 of the Civil Code. Similarly, these cases of ineligibility apply to both legal and testamentary inheritance, as the 2009 Civil Code elevates ineligibility for inheritance to the status of a general condition for the right to inherit.

However, the difficulty that arises in the case of the ineligibility of legal entities lies in the impact of the conditions for the criminal liability of such entities, stipulated by Article 135 of the 2009 Criminal Code²⁰, on the conditions of hereditary ineligibility, and the way in which these interact—in other words, the interaction between the provisions of criminal substantive law and those of civil substantive law.

a) Regarding the first condition, **the intent to kill**, from the content of the provisions of Article 958, paragraph 1, letters a and b of the 2009 Civil Code, it follows that the form of culpability required for the act committed by the ineligible person is that of intent, in both its direct and indirect forms. According to the principle of legality of criminalization, intent as a form of guilt has been defined both by the Criminal Code and the Civil Code of 2009, with the provisions of Article 16, paragraph 2 of the Civil Code being identical to those of Article 16, paragraph 3 of the Criminal Code, stating that an act is committed with intent when the author foresees the result of their action and either seeks to bring it about through the act, or, even though they do not seek it, accepts the possibility of the result occurring.

While, in the case of a natural person who has committed acts falling under the cases of ineligibility provided by Article 958, paragraph 1, letters a and b of the Civil Code of 2009, identifying the form of guilt does not pose issues, as guilt is seen as a subjective process composed of two factors: the intellectual factor, or awareness, and the volitional factor, or will²¹, the same cannot be said for a legal entity.

The difficulty in determining the form of guilt in the case of a legal entity arises, on one hand, from identifying the individuals whose illicit conduct is such that it could engage the legal entity's responsibility and the relationship between their guilt and that of the legal entity, and on the other hand, from the way in which the evidence regarding

²⁰ A legal entity, with the exception of the state and public authorities, is criminally liable for offenses committed in the course of its activities or in the interest or on behalf of the legal entity.

²¹ Viorel Pașca, *Criminal law. The general part*. 3rd edn. updated with the latest amendments to the Criminal Code, Ed. Universul Juridic, Bucharest, 2014, p. 156.

the guilt of the legal entity is structured, particularly whether elements relating to proving interest or committing the crime in the name of the legal entity also serve as proof of its intent²². Additionally, this difficulty in determining the form of guilt for the legal entity is compounded by the novelty of the legal subject under criminal law (the legal entity), as the criminal liability of legal entities was introduced into the Romanian criminal law system in 2004 through Law no. 299/2004, which concerns the criminal liability of legal entities for currency or other value-related offenses. It is true that there were attempts to regulate the criminal liability of legal entities starting with discussions at the 1929 Congress of the International Association of Criminal Law in Bucharest and the stipulation of safety measures against legal entities in advance in Articles 84-85 of the 1937 Criminal Code (Carol II's Penal Code), but these were insufficient for developing consistent judicial practice and doctrinal debates on the matter.

Regarding the *scope of natural persons who can engage the criminal liability of a legal entity*, we observe that the provisions of Article 209 of the 2009 Civil Code limit the category of individuals through whom a legal entity exercises its rights and fulfills its obligations to its governing bodies, from the moment of their establishment, or, in their absence, to the founders or other individuals or legal entities designated for this purpose. This contrasts with the provisions of Article 135 of the 2009 Criminal Code, which broaden this scope to include any natural person who can act in pursuit of the legal entity's objectives or in its interest or on its behalf. Thus, it has been aptly stated in legal literature²³ that it is unjust that the provisions of Article 19 ind. 1 of the 1969 Penal Code and Article 135 of the 2009 Penal Code omitted the specification of individuals whose actions could engage the criminal liability of a legal entity. The conclusion derived from the material law provisions is that any natural person, regardless of whether they manage the legal entity or not, can engage its liability.

However, it is worth noting that the first legal regulation of the criminal liability of legal entities²⁴ as stated in Article 1, paragraph 1 of Law No. 299/2004, limited the scope of individuals who could engage the legal entity's criminal liability to its governing bodies or their representatives, similar to the proposed regulation in Law No. 301/2004 regarding the Romanian Penal Code (not adopted), which, in Article 45, stated that legal entities are criminally liable only if the crimes are committed in their name or interest by their governing bodies or representatives. These legal provisions were aligned with those of Article 209 of the Civil Code. However, as emphasized by the same author²⁵, the provisions of Article 135 of the Penal Code, similar to those of Article 19 ind. 1 of the 1969 Penal Code (introduced by Law No. 278/2006), provided for the possibility that a legal entity could be held criminally liable under less stringent conditions than those for tortious civil liability for its own acts, given that it is not only the governing bodies of the legal entity that can engage its criminal liability, but any person who acts in the performance of its activity or in its interest or on its behalf.

In summary, we can express that there is a substantial misalignment between the

²² See also: Lavinia Valeria Lefterache, in Andra-Roxana Trandafir, George-Alexandru Lazăr (coord.), *Criminal liability of the legal person*, Ed. Solomon, Bucharest, 2021, p. 95.

²³ Valeriu Stoica, *A Dangerous Trend: The Expansion of the Scope of Criminal Liability of Legal Entities*, 2016 published at <https://www.juridice.ro/essentials/408/o-moda-periculoasa-extinderea-sferei-de-aplicare-a-raspunderii-penale-a-persoanei-juridice>, accessed on 10 November 2025.

²⁴ Law No. 299/2004 on the Criminal Liability of Legal Entities for Currency or Other Value Offenses.

²⁵ Ibidem.

provisions of Article 209 of the 2009 Civil Code and Article 135 of the Penal Code regarding the natural persons who can engage the civil/criminal liability of a legal entity, with the criminal substantive law provisions expanding the scope of such persons.

Regarding the *relationship between the culpability of natural persons acting in the pursuit of the legal entity's objectives or in its interest or on its behalf and that of the legal entity*, we believe that it is first necessary to clarify the concept of the legal entity's will. In this context, the theory of fiction²⁶ is of interest, which holds that a legal entity cannot have its own will—a theory that has become obsolete with the legal regulation of the criminal liability of legal entities. In contrast, the theory of the reality of legal entities, which has underpinned this regulation in the Romanian legal system, asserts that a legal entity has a distinct and autonomous will, separate from the individuals who make up its governing bodies, and that this will is the sum of the individual wills of the physical persons in the governing bodies²⁷.

The hypothesis of the legal entity having its own will and the manner of its criminal liability regulation under Article 135 of the Penal Code impose a direct and personal responsibility for the legal entity in the Romanian criminal legal system. This responsibility aligns with the need to identify the subjective element for the legal entity. For example, in other countries²⁸ such as England, Norway, Estonia, Finland, and Canada, the legal entity is held indirectly liable, where the analysis focuses solely on the culpability of the natural person, the immediate perpetrator of the criminal act, without requiring the analysis of the subjective element pertaining to the legal entity.

Based on the legal framework described earlier, and without seeking to resolve the doctrinal debates regarding the culpability of the legal entity²⁹, we will limit ourselves to presenting a conclusion that has been validated by judicial practice³⁰: the need to establish the legal entity's own culpability in relation to the conduct of the natural person identified or identifiable³¹, who acts in the pursuit of the legal entity's objectives or in its interest or on its behalf. Thus, even in cases where the legal entity's will be not formed exclusively from the will of a single identifiable natural person, but requires the involvement of multiple natural persons within the governing bodies of the legal entity, identifying a subjective element specific to the legal entity is still necessary. There must be a correspondence between the culpability of the natural person and that of the legal entity, in the sense that the legal entity consented to or even encouraged the criminal acts committed by the natural person.

Furthermore, we can add that the relationship between the culpability of the

²⁶ See also: Andra Roxana Trandafir, *Criminal liability of the legal person*, Ed. C.H. Beck, 2nd ed., Bucharest, 2021, p. 4 for further details.

²⁷ See in this regard: Dorel Herinean, „Theoretical Considerations Regarding the Formation of the Subjective Link in the Criminal Liability of Legal Entities”, *Analele Universității din București – Seria Drept*, no. 1, December 31, 2019.

²⁸ Andra Roxana Ilie, *The engagement of the criminal liability of the legal person*, Ed. C.H. Beck, Bucharest, 2011, p. 156.

²⁹ In legal literature, there have been arguments both for adopting direct criminal liability for legal entities, as argued by Florin Streteanu, Radu Chiriță, *Criminal liability of the legal person*, Ed. C.H. Beck, Bucharest, 2007, p. 401, and for regulating indirect criminal liability of legal entities, as seen in Dorina Maria Costin, *Liability of the legal entity in Romanian criminal law*, Ed. Universul Juridic, Bucharest, 2010, p. 364.

³⁰ Criminal Decision No. 911 of September 30, 2015, pronounced by the Court of Appeal Bacău, Penal Section and for Cases Involving Minors and Family, available at www.rolii.ro.

³¹ Lavinia Valeria Lefterache, *op. cit.*, p. 115.

natural person and that of the legal entity corresponds to the following hypothesis: if the act was committed by the governing body, then the form of culpability with which the natural person committed the act can also be attributed to the legal entity. However, if the act was committed by another person, and not by the governing bodies, it is necessary to identify the legal entity's subjective attitude, through its governing bodies, toward the result produced³².

Regarding the institution of disinheritance, it is considered that, although in criminal law, crimes against the person protect a set of social relations regarding the defense of the person under all her attributes (life, physical integrity, sexual inviolability, freedom, dignity), and the special legal object of the crime of homicide are the social relations regarding the right to live of every person against which is carried out the homicide activity³³ in the case of inheritance, the sanction of disinheritance for committing a homicide aims to protect the social relations concerning the transmission of the inheritance, i.e., the legality of its transmission due to the natural fact of death or the will of the deceased. It follows that the intention to kill must be characterized by a goal, specifically the elimination of the life of the deceased (*de cuius*) in order to open the inheritance and acquire the assets of the succession.

The particularity of this condition of disinheritance in the case of a legal person consists in the double subordination of the intention to kill, with the goal of opening the inheritance through homicide and its exercise in the realization of the object of activity or in the interest or in the name of the legal person. Therefore, it is considered that in the case of a legal person, as a testamentary heir according to the bequest established by the deceased, it is not enough for the intention to kill to have the goal of opening the inheritance and acquiring the assets, but it is necessary for this to be exercised in the realization of the activity or in the interest or in the name of the legal person.

However, it is noted that even though the intention to kill in the case of a legal person must be circumscribed to the object of activity or interest or expressed in its name, this limitation is superficial, as any action aiming to preserve a patrimonial benefit, i.e., the inheritance/emolument which is part of the bequest made by the deceased in favor of the legal person, can be regarded as being in the interest of the legal person.

Consequently, the intention to kill the *de cuius* by the leadership of the legal entity or another person within the legal entity, in the latter case provided there is a link between the will of the individual and that of the legal entity, will be in the interest of the legal entity and will lead to the unworthiness of the legal entity.

As an example, we might imagine the following factual situation that could lead to the unworthiness of the legal entity: the author of the inheritance, under the care of a doctor, establishes by a holographic will a legacy in favor of the legal entity (the medical unit) where the doctor is the legal administrator, rather than in favor of the doctor, to avoid certain specific incapacities in receiving gifts. Later, the doctor intentionally performs a defective medical act within the legal entity to end the life of the author of the inheritance, against the backdrop of a legacy in favor of the legal entity. In this hypothetical situation, we can observe that the doctor, among other things also an

³² Anca Jurma, *The legal person-subject of criminal liability*, Ed. C.H. Beck, Bucharest, 2010, p. 369.

³³ George Antoniu, Constantin Duvac, Daniela Iuliana Lămășanu, Ilie Pascu, Constantin Sima, Tudorel Toader, Ioana Vasiiu, *Preliminary explanations of the new Criminal Code* vol. III, Ed. Universul Juridic, Bucharest, 2013, p. 33.

executive of the legal entity, intentionally performs the act of killing through a medical procedure conducted within the legal entity, an aspect that implicitly attributes the intention to kill to the legal entity, controlled by the attending doctor of the inheritance author.

We further emphasize that to meet this condition, the commission of crimes of voluntary manslaughter with exceeded intent (*praeter-intentio*), when an action or intentional omission produces a more severe result due to the perpetrator's negligence, or involuntarily, regardless of distinction with or without foreseeability, is not relevant. Similarly, it is not significant for a person to be considered unworthy, the form of participation in the act of killing (author, co-author, accomplice, or instigator), nor is the form of the crime of killing (attempted or consummated) or the method of committing the material element of the killing (by commission or omission).

b) *Regarding the requirement for the existence of a conviction of the legal entity by a final criminal court ruling*, we note that this is the rule arising from the analysis of art. 958 para. 1 let. a and b of the Civil Code; however, in cases explicitly and restrictively indicated by the legislator, unworthiness will also apply if the acts were established by a final civil court decision when a criminal conviction is impeded due to the death of the perpetrator, amnesty, or the expiration of the statute of limitations.

Before criticizing the provisions of art. 958 para. 2 of the Civil Code, we mention that by adopting the theory of the reality of legal persons, characterized by the existence of an independent will of the legal entity, similar to that of an individual, the legislator abandoned the principle of specialty established by Law no. 301/2004, instituting the principle of general liability of legal entities³⁴, meaning that they can, in principle, be held accountable for any offense.

As for the crime of murder, as noted in specialized literature³⁵, although a legal entity is an abstract entity, it may still be held criminally liable for murder under art. 135 of the Criminal Code when the act was committed in the performance of its activity, or in the interest or on behalf of the legal entity. Several examples can be imagined here, including: a private hospital intentionally agreeing to perform organ transplants from people who have not reached brain death; a legal entity compelling its employees to work without minimal safety measures when it is clear that the absence of such measures will inevitably lead to their death, with the employer accepting this possible outcome; a legal entity designates a member of its management to kill a competitor; or a legal entity organizes a competition without informing participants of life-threatening risks involved in certain actions that are against technical standards or medical recommendations, despite the organizers' knowledge of these standards or recommendations, as well as the risk of violating them, leading to the death of a participant during the competition due to exceeding technical or medical limits.

Analogous to an individual, who bears responsibility gradually from the formation of discernment until their death, a legal entity is liable from the moment it

³⁴ Lavinia Valeria Lefterache in Georgiana Bodoroncea, Valerian Cioclei, Irina Kuglay, Teodor Manca, Iuliana Nedelcu, Francisca Maria Vasile, *Criminal Code, Comments on articles*, 2nd edn, Ed. C.H. Beck, Bucharest, 2016, p. 409.

³⁵ Sergiu Bogdan, Doris Alina Șerban, George Zlati, *The new Penal Code, Special Part*, Ed. Universul Juridic, Bucharest, 2014, p. 21; Alexandru Rîșniță, „The Legal Entity as a Subject of the Crime of Murder”, *Caiete de Drept Penal* No. 1, 2013, pp. 99-100.

acquires legal personality until it is deregistered, reorganized through division, or merger, as stipulated in art. 16 letter f) of the Code of Criminal Procedure³⁶. Accordingly, a legal entity in the process of formation, which has limited legal capacity, will not be criminally liable until it obtains legal personality, a situation that can, by analogy, be equated to an individual who is not criminally liable until the age of 14, although they could commit a murder against the author of the inheritance.

We observe that a criminal conviction of a legal entity can only occur during the period in which it has legal personality, as the pronouncement of a conviction is prevented by the loss of this personality, which can occur through dissolution, reorganization by division, or merger. Therefore, the inability to pronounce a criminal judgment in the case of a legal entity is not due to its "death," a concept specific only to natural persons, but rather due to the dissolution of the legal entity; both concepts essentially signify the termination of these entities as legal subjects.

Based on this observation, we note that the provisions of art. 958 para. 2 of the Civil Code did not consider the possibility of unworthiness in succession applying to legal entities, as evidenced by the use of the phrase "death of the perpetrator," without considering the scenario of the termination of a legal entity's personality through dissolution. Moreover, this preliminary conclusion—that the institution of unworthiness in succession is systematized only with respect to natural persons—also follows from the lack of correlation between the provisions of art. 208 of the Civil Code, which establish the capacity of a legal entity to receive gifts prior to acquiring legal personality, and the provisions of art. 958 para. 1 letters a) and b) of the Civil Code, which require a criminal conviction as a condition for this rule's application, though such a conviction cannot occur for acts committed before the acquisition of legal personality.

Thus, a legacy can be established in favor of a legal entity, allowing it to inherit before acquiring legal personality, according to art. 208 of the Civil Code. During this period, founders, associates, representatives, and any other persons acting on behalf of a legal entity in formation may commit acts against the author of the inheritance that fall under the cases of unworthiness, without the legal entity being criminally liable for the acts of its representatives. We consider that the provisions of art. 205 para. 4 of the Civil Code, which establish the liability of this category of persons for legal acts conducted on behalf of the legal entity, unless the newly created entity, after acquiring legal personality, assumes these acts, do not address this legislative gap, as these provisions refer to legal acts rather than the factual acts (which would trigger unworthiness in succession). Although a similar possibility exists for individuals—where a testament is established and subsequently an act that would invoke unworthiness is committed against the author of the inheritance, preventing the pronouncement of a conviction—this scenario is justified by grounded arguments, such as the minor status of the perpetrator or lack of discernment. However, in the case of a legal entity in formation, minority or lack of discernment cannot be invoked, as founders, associates, representatives, and any other persons acting on behalf of a legal entity in formation must be adults according to legal provisions and are presumed to possess discernment.

Finally, we note that for this condition to be met, it does not matter whether the

³⁶ Criminal action cannot be initiated, and if already initiated, it can no longer proceed if amnesty or prescription has occurred, if the suspect or defendant as a natural person has passed away, or if the suspect or defendant as legal entity has been dissolved.

legal entity was convicted by final judgment as an author, co-author, accomplice, or instigator in the commission of a murder or an attempt thereof.

c) Regarding the specific conditions of the legal unworthiness case provided for by art. 958 para. 1 letter b) of the Civil Code, namely *the intent to kill directed toward an heir of the deceased with concrete eligibility for the inheritance of the deceased, if it would have been opened at the time of committing the offense, as well as the commission of the criminal act prior to the opening of the deceased's inheritance*, we observe that these have a more limited applicability in the case of a legal entity testamentary heir, we will elaborate on this observation in the following analysis.

In the 2009 Civil Code, the legislator defined the notion of “heir” in art. 1100 para. 2, specifying that an heir is understood as a person who meets the legal requirements to inherit but who has not yet exercised the right of inheritance option. From this definition, we can deduce that the heir must fulfill all conditions required to inherit, both general ones—such as succession capacity, right to inherit, and not being unworthy—as well as particular conditions specific to each type of inheritance, namely not being disinherited (a negative condition for legal inheritance) and the revocation of bequests for ingratitude, specific to testamentary inheritance.

The applicability of this case of succession unworthiness is further conditioned by two assumptions: on the one hand, the opening of the deceased's succession at the time of the unworthy act, and on the other hand, the exercise of the victim heir's right to inheritance in a positive sense, by accepting the deceased's inheritance, since only in the case of acceptance would the heir reduce the share of inheritance due to the perpetrator or remove the perpetrator from inheritance. Additionally, the text implies that the victim heir must have concrete eligibility for the inheritance of the deceased, as they limit or exclude the perpetrator's inheritance eligibility.

As previously mentioned, a legal entity can have succession eligibility only by means of a testament, being designated by a direct bequest from the deceased, with its eligibility being concrete. The legal entity can be designated as a universal testamentary heir, a universal legatee, or a particular legatee. Therefore, having concrete eligibility and in competition with any other heir of the deceased, the legal entity, as a testamentary heir, cannot be excluded from the succession of the deceased by any other heir. Consequently, this aspect of the legal provision—exclusion of a legal entity from the succession of the deceased—is not applicable to a legal entity but only to the natural persons who are legal heirs of the deceased, since an heir with a closer kinship to the deceased excludes one with a more distant kinship.

In contrast, the second hypothetical application of unworthiness as provided under art. 958 para. 1, let. b of the Civil Code, involving the limitation of the perpetrator's inheritance rights, does apply to the legal entity heir, provided that the victim heir is a forced heir³⁷ and the legal entity's legacy infringes upon the forced heir's reserved share. We support this conclusion since, if the legacy established in favor of the legal entity exceeds the available portion, the forced heir can request the reduction of excessive liberalities in accordance with art. 1093 of the Civil Code, thus limiting the inheritance rights of the legal entity.

Considering the above, we can conclude our analysis of these specific conditions

³⁷ According to the provisions of Article 1087 of the Civil Code, the reserved heirs are the surviving spouse, descendants, and privileged ascendants of the deceased.

of unworthiness as outlined in art. 958 para. 1, letter b) of the Civil Code. Unlike the application specific to natural persons as legal heirs, in the case of legal entities, the victim heir is qualified, meaning they can only be a forced heir, assuming they exercise their right of inheritance by accepting the deceased's estate.

4. Conclusions

Concluding this series of observations, we can state that although the 2009 Civil Code expanded the applicability of unworthiness from being exclusive to legal inheritance to encompassing both types of inheritance—legal and testamentary—the content of this institution was not sufficiently adapted to include testamentary heirs who are legal entities. Additionally, the novelty of the concept of the criminal liability of legal entities, officially introduced in 2004, and the expanded applicability of unworthiness to testamentary inheritance in 2009, within a recently capitalist Romania, has led to the lack of jurisprudence on the unworthiness of legal entities and the limited (if any) interest in this subject in local legal literature.

In this context, we have attempted to identify the specific characteristics of inheritance unworthiness in the case of legal entities as compared to natural persons, whether legal or testamentary heirs. Although we do not claim exhaustiveness, we hope this analysis may serve as a starting point for future doctrinal discussions on this matter.

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