

SUCCESSOR REPRESENTATION AS A CIVIL LAW INSTITUTION IN THE NEW REGULATIONS OF THE CIVIL CODE

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Abstract: *The civil law branch includes several legal institutions, each of which has its role and relevance. Whether they belong to the civil law of obligations, contracts, or civil law of succession, they assert their major importance in legal reports that are born, modified, extinguished, and transformed every day and every second in society.*

Within the framework of civil law, the successor has affirmed its importance, among the multitude of legal institutions, the Institution of Successor Representation;

Succession representation as an institution of civil law and other institutions of civil law of succession is always current, as long as people are mortal and some subjects inherit them.

Even more so, if we are to go from the general to the special, the institution of succession representation, through its specifics, asserts its importance in the protection it offers to the heirs of deceased heirs, who for objective reasons cannot inherit.

Keywords: *successional capacity; successional representation; heir classes; descendants; successional indignity, vacancy*

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Introduction

Legal successional devolution represents the process of establishing a circle of persons, according to legal provisions, that is called to collect the patrimony of the bequeath. It is based on kinship ties and marriage relationships between eventual heirs and those who leave the inheritance.

In general, successional transmission is based on the traditional practice of blood ties, which exist between members of the same family. Thus, kinship is a relationship based on the descent of a person from another person or the fact that several people have a common ancestor. Kinship can be in a straight line: ascending or descending (Băieșu, Chibac, 2010). Similarly, kinship can also be collateral. The degree of kinship is the distance between two relatives, which is established as follows: in a straight line according to the number of births, and in a collateral line according to the number of births ascending from one of the relatives to the common ascendant and descending from it to the other relative (Macovei, 1993).

Although the law establishes a circle of people called “collecting inheritance,” they are not allowed to collect the inheritance estate. It is obvious that if it had been done in this way, it would have resulted in an excessive fractionation of the inheritance estate.

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Succession representation is the institution that allows certain legal heirs (as a rule descendants) to rise to the place and rank of a deceased ancestor before the opening of the succession to collect in his place the part of the inheritance that would have been due to him if he had been alive.

The predeceased ascendant is called represented, and the heir who inherits through representation is representative.

Being a separate legal institution, which, apart from the common resonance of the name, has nothing to do either with the conventional representation of the principal by his/her agent, or with the legal representation of the minor, or is legally prohibited by parents or guardians after legal acts. Indeed, if in the case of conventional representation and the incapacitated by their legal representatives, it is a matter of concluding legal acts (from which rights and obligations arise) by the representatives in the name, and for those represented, successional representation only confers on the representative its successional rights.

For example, assume that after D's death, potential heirs who could reap the estate are F (the living son of the deceased) and two grandchildren N1 and N2 (children of F2), who is the deceased's predeceased son. Thus, F will collect 1/2 of the inheritance, while the grandchildren of the deceased, N1 and N2, will ascend to the place and rank of their predeceased father F2, collecting the part that would have belonged to him if he had been alive, i.e., 1/2 from the inheritance, which they will divide between them in equal parts, respectively, 1/4 of the inheritance each.

Successor representation is presented as a "benefit" or a "favor" of the law toward representatives who rise to the place and rank of the represented, thereby inheriting the deceased.

Representation can allow the representatives to inherit alongside the successors in a closer degree of kinship with the deceased, in which case, indeed, it constitutes a favor as it grants succession rights to relatives in a more distant degree of kinship with the deceased (by way of derogation from the principle of proximity degree of kinship), but it can also operate when the successors in a more appropriate degree of kinship with the deceased are all predeceased, the inheritance being divided among the stems, so that the representatives, even though they are relatives of the same degree, reap unequal shares of the inheritance, some of them receiving less than they would have received if they had not operated the representation.

For example, if the deceased D had two children, F and F1, both predeceased, and the two children of F come to his inheritance, namely N1, N2, and the only child of F, N3, In this case, the inheritance table will be shared in the following way: the inheritance will be divided into two stems (the number of predeceased children of the deceased), F and F1, and the descendants of the children the deceased's predeceased will each go up their stem in the place and degree of their predeceased parent, dividing the part of the inheritance belonging to that stem according to their number, so that the children of F N1 and N2, will divide between them into equal parts the half of the inheritance returning to their parent (1/4 of the inheritance each), and the child of F1 - N3, will collect the other half of the inheritance by himself, returning to his parent. From this, it follows that N1 and N2 will receive less from the inheritance than they would have received if the representation did not operate and the inheritance would be divided equally, according to the rule of dividing the inheritance into equal parts between relatives of the same class and the same degree of kinship (1/4 instead of 1/3 each), and N3 will receive more (1/2 instead of 1/3).

According to art. 1500 paragraph 3, amended Civil Code, the succession representation operated in two cases:

- a) descendants to infinity;
- b) collaterals up to and including the 4th degree of kinship (privileged collaterals- grandchildren and great-grandchildren from siblings; ordinary collaterals-primary cousins).

Regarding the previous regulation of the Civil Code, the institution of representation is the only way that grandchildren and great-grandchildren of direct descendants can inherit their grandparents. Although they were members of the first class of legal heirs, grandchildren, and great-grandchildren in the direct line to infinity could not inherit in their names. In contrast to the current regulation of the civil code, which includes them even in Class I, with the possibility of collecting the inheritance mass in their names and not only through inheritance representation.

According to the provisions of the old regulation, the representation is applied in a straight line descending to infinity. This means that in a straight descending line, the representation operates regardless of the representative's degree of kinship with the deceased.

In this case, a nephew of a son, a second-degree relative of the deceased, can inherit the share of his predeceased parent, the son of the deceased, in competition with his uncle (son of the deceased), who is still alive. Likewise, a great-grandson of son B2, a third-degree relative of the deceased, can inherit his great-grandfather D alongside a surviving son of the deceased A if the conditions of degree-to-degree representation between him are met on the stem he represents and his grandfather B, whom he represents in his great-grandfather's inheritance. Similarly, a great-great-grandson inherits by representing his great-great-grandfather, and so on. To operate the representation in such cases, conditions required by law must be met at each intermediate level through which the representative must pass to reach the place and level of the representative, the representation not being able to operate per saltum or omisso medio.

Succession representation operates if the descendants of a more distant degree inherit together with the descendants in a closer degree to the deceased and if the descendants in a closer degree to the deceased are all predeceased, the descendants of a more distant degree from kinship with the deceased come to the inheritance having the same degree of kinship or different degrees.

An example that shows the last hypothesis is the one in which the deceased, D, had two sons, A and B, both predeceased; A had two sons, A1 and A2, the first alive at the opening of the inheritance, and the second predeceased leaving in turn two sons, A3 and A4, alive at the opening of the inheritance, B leaving one son, B1, alive at the opening of the inheritance, case in which the inheritance will be divided in the following way: the inheritance will be divided between two stems, A and B, each of which will receive 1/2 of the inheritance; on stem A, if there are two descendants of this predeceased son of the deceased, the stem will be divided into two sub-stems, A1 and A2, each of which will receive 1/4 of the inheritance, but A2 being predeceased, his share of the inheritance (1/4) will go to his descendants, A3 and A4, who will divide it in two, each of them will get 1/8 of the inheritance, they will rise through representation to the place and rank of A2, and from here, together with A1, to the place and the grade of A; on the stem B, the 1/2 part of the inheritance will go to B1, who in the place and degree of B.

The representation also works if the descendants who inherit are of equal degree of kinship and in equal numbers. Thus, if the deceased D had two children, A and B, both predeceased, and on the date

of the opening of the inheritance, two children of A, A1, and A2, and two children of B, B1, and B2, are alive, the inheritance will be divided in the following manner: the four grandsons of the deceased's sons, although they are relatives of the same degree, will not collect the inheritance in their name but through the representation of their deceased predecessors. Although in this case, the successors reap the same share from the inheritance as they would have reaped had they inherited in their name, the fact that they inherit by representation and not in their name has practical consequences. So, if one of them renounces the inheritance, his share will not be divided equally between the other three accepting heirs (as would happen if the grandchildren of the deceased inherited in their name), but will return entirely to the co-heir the strain to which the renouncer belongs; also, the four grandchildren of the deceased who inherit by representation, and not in their name, must report to the inheritance the donations received without an exemption from reporting from the deceased during his lifetime by their represented predecessors.

Representation in the case of collaterals up to the 4th degree of kinship inclusive (privileged collaterals-grandchildren and great-grandchildren from brother and sister; ordinary collaterals-first cousins).

For the descendants of the deceased's brothers and sisters up to the fourth degree inclusive (grandchildren and great-grandchildren), the representation operates under conditions similar to those of the deceased's descendants (Bloşenco, 2003).

Representation in the collateral line produces effects both in the case of descendants of good (good) brothers and sisters who have both parents in common and in the case of consanguineous or uterine ones who have only one parent in common with the deceased, either the father or the mother, specifying that the representatives of the latter cannot inherit more than the representative can inherit in the place and degree to which they inherit, i.e., either only in the maternal line or only in the paternal line.

The current regulation of the Civil Code does not establish any restrictions on the operation of succession representation. Within all five classes of legal heirs, succession representation can be performed if the conditions required by law are met.

At the same time, the current regulation of succession representation is rather vague and limited to a single paragraph that covers all five classes of heirs, establishing an essential rule for the sharing of the succession mass through legal inheritance.

Article 2178. First-class legal heirs

(5) Children who replace the deceased parent according to the provisions of para. (3) inherit in equal shares the inheritance share to which the deceased parent would have been entitled.

Only paragraph 5 of Art. 2178 of the Civil Code of the Republic of Moldova regulates the operation of the inheritance reserve, both within class I of legal transferees, and establishes the same operation of the inheritance reserve for class II, class III, class IV, and class V.

Article 2179. The second class of legal heirs

(3) If at the time of opening the inheritance, one of the parents of the deceased is not alive, instead of the deceased's parent, his descendants are called to the inheritance by the rules applicable to first-class heirs.

Article 2180. The third class of legal heirs

(5) To the extent that the descendants take the place of their parents or more distant ancestors, the legal provisions regarding first-class heirs shall be applied accordingly.

For the institution of successor representation to be applicable, it is imperative to meet certain conditions both in the person of the represented (deceased) and in the person of the representative (successor).

Conditions required by the representative

The representative, on the one hand, must have predeceased his de cuius, and on the other hand, he must have had an effective claim to the inheritance if he had been alive.

1. The representative must be predeceased by the de cuius.

Representation always assumes that the representative has died before the opening of the succession because only dead persons are represented".

Since the missing persons are considered to be alive as long as there has not been a definitive judicial decision declaring the death, After the judicial declaration of death, depending on the date established as the date of death, the representation will be admitted or not, according to the rules of common law. Regarding the case of the comorientes, the doctrine persists that representation is allowed in the case of the son who died together with his father because "being presumed dead at the same time as the person whose inheritance is in question, he no longer exists at the time of the opening of the succession, so it is a dead person, not alive"(Fr. Deak, Succession Law Treaty, Ed. Actami, Bucharest, 1999). In reality, however, in the case of the deceased, it is assumed that they died at the same time, any "establishment" of an order of deaths is not only arbitrary but even contrary to both the legal regulation in the matter and the definition of the institution. Therefore, the succession of each co-orientant will be resolved "as if the other did not exist". For that reason, in the given example (the deceased father together with his son), none of the co-heirs can come to the inheritance of the other, neither in his name nor by representation, since the inheritance of each will be deferred to his heirs as if the other were not existed.

Art. 725-1 French Civil Code provides in the first two paragraphs the same rules in the matter of comorientes, but in the last paragraph expressly provides that if one of the co-deceased leaves descendants, they can come to the inheritance by representing their author. Analyzing the mentioned regulation, the doctrine emphasized that "this solution enshrines a presumption of predecession of the represented". However, our law not providing for such a presumption of exception applies in all situations (including the deceased father together with one of his children) the rule according to which co-heirs cannot inherit each other.

2. The representative must have had an effective call to the de cuius' inheritance if he had been alive (he meets all the conditions to be able to inherit the deceased).

For the representation to be able to produce its effects, the represented person must have inherited the deceased if he or she was alive at the time of opening the inheritance.

Thus, the unworthy, even the predeceased de cuius, cannot be represented by his descendants. The previous regulation expressly stated that - "the representation of the person whose inheritance was renounced, the person who renounced the inheritance, as well as the unworthy" is not accepted. We can deduce that people who renounce their inheritance or are alive and unworthy of the

deceased cannot be represented. Representatives of renouncers or unworthy persons can no longer inherit in their name or through successor representation.

The previous regulation of succession representation determines an inequitable and abusive situation regarding the descendants of the deceased who, in the previous example, can no longer inherit the succession, thus becoming vacant and being taken over by the state.

In Romanian civil law, the solution is similar to the current regulation of this institution - *"the children of the unworthy coming to the succession, by their right, without the help of representation, are not removed for the mistake of their father"*, which means that per a contrario, they are not entitled to inherit through representation. Descendants of renouncers or unworthy persons can inherit in their names if there are no heirs of a preferable rank. For example, if deceased D leaves at his death two sons, A and B, both renouncers, A has two sons, A1 and A2, and B has a son, B1. The three grandchildren of the deceased, A1, A2, and B1, will come to their grandfather's inheritance in their names, each getting 1/3 of the inheritance.

The heir who renounces his/her inheritance is considered to have never been an heir and can never be represented.

Non-reserved legal heirs (such as the deceased's brothers and sisters) who were disinherited cannot be represented by their descendants because as a result of the disinheritance, they are deprived of the ability to inherit the deceased (Fr. Deak, Succession Law Treaty, Ed. Actami, Bucharest, 1999). In the case of partial disinheritance of non-reserved heirs, as in the case of reserved heirs who cannot be fully disinherited but only within the limits of the available quota of the inheritance, representation remains possible for the part of the inheritance that does not fall under the scope of the ex-inheritance of the represented person.

Starting from the reasons underpinning the institution of successional representation, the doctrine criticizes the current legislative solution that conditions its application on the ability of the represented to inherit his de cujus, demonstrating that unworthiness and renunciation of inheritance should not have consequences on their descendants, as currently occurs, but only on the unworthy or the renouncer, the imperative of equality between the strains demanding this solution.

Conditions required by the representative

Coming to the inheritance of de cujus, the representative ascends by the will of the law in the place of the represented but inherits for himself and not for the represented. From this, it follows that the representative must have the aptitude to inherit the deceased.

Being called by law to inherit the deceased, the representative must inherit the deceased. In this sense, the representative must be alive or at least conceived on the date of the opening of the inheritance, not be renouncing or unworthy of the deceased, and have his/her vocation in the inheritance of the deceased.

Therefore, to operate the representation, the representative must inherit both the principal and the represented.

Effects of successional representation

Successive representation produces effects consisting of placing the representative in place of the represented and dividing the succession into stems. If the conditions required by law are met, the representation operates by law.

The representative takes the place and degree of kinship of the representative.

Because of representation, the representative takes over the place and degree of kinship of the represented, collecting the part that would have belonged to him from the inheritance if he had been alive. "representation has the effect of placing the representatives in the place and the right to the represented".

However, this does not mean, as we saw above, that the representative inherits for the represented; he inherits in his name but acquires the rights and obligations that would have belonged to the representative if he had been alive at the time of opening the inheritance. Successor representation therefore allows the representative to prevail over the rank of the represented, inheriting what would have been his/her inheritance if he/she had been alive, but for himself, and not for the represented.

The division of inheritance in successional representation is performed on stems.

If successional representation operates, the division of the successional mass is performed on stems. This means that the inheritance will be divided into as many parts as there are children (descendants of the legal heirs with a preferential rank to reap the inheritance table), who come to the inheritance or who, being predeceased, are represented by their descendants and not on their heads, regardless of whether the heirs who inherit the succession are in different or equal degrees of kinship with the deceased.

Within each stem, the division of the part that belongs to it will be done evenly (depending on the number of heirs being part of it), unless one of the descendants of the stem of the one represented is in turn predeceased. In the latter case, if the representation conditions are met, a new division into stems is performed between the branches (sub-stems) of the respective stem.

The representation operates by law.

No one has to accept the inheritance; any heir is free to accept or renounce the inheritance at his/her discretion. However, once inheritance is accepted, successional representation operates by right, that is, under the law, without the need for any manifestation of will on the part of the representative.

Successional representation operates only within the framework of legal inheritance; therefore, the question of changing the rules of representation through the will of the deceased cannot be raised in the sense of applying it in other cases than those provided by law or of changing the inheritance quotas going to the heirs as a result of it. Of course, within the limits of respecting the rights of reserved heirs, the acts of disposition mortis causa made by the deceased are valid, including those that would "derogate" from the rules of representation, only that these, in reality, are not changes to the legal regime of representation successions but acts of testamentary disposition (ex-inheritance or institutions of legacies) that exceed the scope of legal inheritance.

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