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**LEGAL ASPECTS REGARDING THE REPORT OF
DONATIONS**

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Legal Aspects Regarding the Report of Donations

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Abstract

The mass subject to the inheritance partition is not limited to the goods that represent the estate of the deceased at the opening sequence, but it can be supplemented in some cases with further goods. Such a category of goods consists of those goods which are the object of liberality. With regard to this issue, there are two legal institutions that are meant to ensure the return to nature or mass equivalent share of goods extracted from the estate of the deceased, namely: reduction of excessive liberalities and the donations report. Clearly these institutions do not work for the sole heir; they are relevant only if the inheritance is supposed to be divided among many heirs.

Therefore, the report of donations should not be confused with the reduction of excessive liberalities because the report may be removed by the will of the dispose, while the reduction will not; on the other side, while the reduction always has the effect of abolishing all or part of excessive liberalities that exceed the available bends, the only effect of the report is to take into account the value of the donation report in order to determine the rights that the heirs are entitled to report.

I have chosen to discuss this topic as I found a number of uncertainties regarding the report of donations that we wanted to present in order to find possible solutions for elucidation.

Keywords:

report, donation, partition, inheritance, liberality, patrimony.

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1. The notion of the donation report

The legal rules that govern the reduction of excessive liberalities are mandatory, their application cannot be rejected by the deceased, and the rules concerning the donation report are devices, making the deceased responsible he exempts the gratified heirs or not from the report. However if the donation exceeds the available quotity and violates the successor reserve it will necessarily be subject to reduction as excessive liberality.

Besides the usual liberties made by the defunct through documents or mortis causa by the gratified ones to the extent in which they are not subject to the reduction, they can enjoy without having to give an account of it in any way, even if the beneficiaries are the legal heirs of the forced or non forced guardians, there is a special category of liberality, namely that subjected to specific obligations – the report obligation.

Only donations are disposed to report and only if they were made in favor of the surviving spouse or descendant and the gratified one come to the legal inheritance of the late together with other heirs of the same class. (Chirică, 2014: 564)

In a certain opinion, the lack of expression of the will of the disposer in this respect, the law requires that such donations are made by the donor in order to benefit in any way from his joint-heirs with gratified that comes to inheritance, but as an advance on account of the legal inheritance rights, so that donation, through the mechanism of inheritance report, will not alter the legal quotas in terms of value, each of the heirs receiving from the deceased as legal inheritance what he would have received whether the donation would not have been made, re-establishing thus equality between them, either by the mechanism of taking less of the inheritance by the most gratified, or by cash compensation of value differences. (Guével, 2007: 2)

The lawmaker has regulated the institution of the donations report to ensure the descendants' equal rights. The report shall be made only upon their request and it is a measure of protection and the assets will be included in the residual estate. These assets are not part of the succession; therefore the report cannot be achieved by an action for bringing an action. The assets will be included in the estate only if requested by the other heirs, and the report can be made either by cash equivalent or in kind from the one obliged to report.

This report was characterized in the doctrine as a personal, patrimonial right, recognized to the heirs who received donation. The fact that the action is not an action against real and is not inalienable emerges from the fact that the heirs do not own the property donated and are not intended to claim the action that result in good or right of ownership. Heirs who requested the report are co-owners of the property donated, but only from the opening sequence. In

this case the grantee's ownership right is abolished, but the applicant heirs are denied a prior right of ownership of property.

According to Article 1146 par. 1 of the Civil Code, the donation report represents the obligation between the surviving spouse and the descendants of the deceased that effectively come together to the legal legacy to restore the heritage assets that have been donated without exemption from report by the person who leaves legacy.

The object of the donations report is represented by all private donations from the deceased by the heir obliged to report, regardless if they were direct or indirect.

In a review, from all regulations related to the obligation to report, to the object, the following result:

- only donations and not legacies are subject to report;
- only donations received from the deceased are reported;
- donations are presumed reported;
- some donations will not be subject to report by law or the donor's will.

(Bacaci, Comăniță, 2013: 273)

Regarding the categories that can be reported as donations are: donations made by authentic, hand gifts, simulated donations (not relevant if the simulation regards the gratified person or has covered the nature of the donation), direct donations.

2. Individuals who may request donations report and individuals to whom the report is due

The report of donations assumes that at the legacy at least two heirs of the statutory categories come, one of them benefited from a donation from the deceased in life and vocation to realization of each heir inheritance law, to consider the liberality made as an advance on account of inheritance, complementing the shared table under the law, so this meal to benefit the limits of its share of the inheritance was not gratified by the deceased.

As we have shown, in the Civil Code, Article 1146 par. 1 states that the obligation to report incubated descendants and the surviving spouse when the cumulative capacity of the legal heir to the beneficiary of the donation is not exempted from report.

Therefore, the report of donations obliges persons who have the quality of descendants or surviving spouse and cannot be done, unless in the case of legal inheritance, not in the case of the will as the latter is based on the will of the deceased. Legal heritage aims to ensure equality between legal successors under the presumed will of the deceased, or report no longer has meaning if

one of these favored heirs of deceased donations made waiver or related report over to the legal.

Such final liberality is imputed only on the available quota of the legacy and where it is exceeded; the only problem that arises is, as shown, that of reduction.

“Liberties made by the deceased in favor of third parties (category in which, besides foreigners of inheritance, the legal heirs of the deceased are legally included who are not required to report - privileged and ordinary ascendants as well as privileged and ordinary collaterals) will be always imputed on the available quota to heritage, without putting the question of the relationship”. (Chirică, 2014: 575)

It is understood that universal or universal legatees are not required to report, so when the two come legacy legatee one of which received a donation from the deceased, he keeps to himself than share its share of succession tied.

Basically the report is not due only to those legal heirs accepted, and those who renounce to the succession, making it stain and within the limits of available quota will retain donation.

In this case, the donation will become final by the will of the gratified which seems unnatural if we consider that the donation was made on account of future inheritance rights, not only for the gratified. Just for this, the Civil Code Article 1147 paragraph 2 inserted the disposer's possibility that can, exceptionally, be the result of an express provision of the contract of donation required to report donations to grantee in such a case.

Subject of the donations report cannot be a descendant of the grantee who comes to the donor's legacy if the donation was made up or even if the latter accepted the inheritance.

So in principle the report is due only between descendants and the surviving spouse. Those who have renounced to the inheritance having this right. The report is due between them, so the one who is obliged to report is gratified by the deceased through donation and has the right to turn and claim report from another gratified.

If none of the heirs entitled to claim report does not, its creditors can do for them in an action usually is not about a personal action.

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“Despite the current support that heirs could benefit indirectly as the calculation board was increased, it could increase the value and the available quota. In fact, the report can be profitable only for the co-heirs of the deceased,

among which it works for all add weight for calculating the ratio is divided between the descendants of the deceased and the surviving spouse under the law of inheritance shares, even if the donation reported, exceeding reserves the gratified, is imputed to available quota. If the heir is also the legal heir of the deceased entitled to the report, he can request the report in this last quality taking advantage of the report only within its lawful vocation inheritance". (Terré, Lequette, 1997: 708)

Regardless of their quality, whether they are legal or testamentary heirs they may require both share, but heirs without inheritance rights cannot ask for partition.

Although the Civil Code Article 1151 inserted the subtitle the way to make the report, the text of the law states that the report is made in two ways: by equivalent and nature, representing the first rule and the second exception. Legislator states that report such grantee can perform report if the request is still owner of the property, not encumbered real and not given the lease for a period longer than three years.

The doctrine in the case reported in nature, the grantee is entitled to recover in proportion to their share, reasonable expenses that we did with the added work and the work of independent, necessary and useful to the date of the report.

The grantee is responsible for damage of the asset if they decreased its value due to his culpable deed.

3. Set up of the report

According to the Civil Code Article 1152, paragraph 1, the report shall be made in the partition by agreement or by court.

Therefore, the report of donations must be understood as a specific preparatory partition operation that does not matter anything but to compose the partition mass, having no point after it. The discovery of reportable donations after partition may justify additional partition, but does not mean that the report could exist independent of partition. Before finding report, the division may have reason only if it was a good value in kind which become the power of law from the opening sequence, his heirs entitle the grantee to invoke rights accounted heirs of the property was in joint tenancy. (Chirică, 2014: 585)

According to the principle of freedom of will, the Law no. 36/1995 (Article 77 par. 4 of the Law no. 36/1995 republished in the Official Monitor, Part I, no. 444, 18 June 2014) stipulates that the documents related to notary documents shall be drafted according to the will of the parties and as provided by law.

The donations report by agreement can be achieved based on the understanding of inheritance, within the notary inheritance proceeding.

Following this agreement, the notary public shall issue the certificate of inheritance. The report requested by one of the heirs offers advantage to the other heirs entitled to request the report, except the heirs who have expressly renounced the report. In conclusion, the report is a benefit of the heir entitled to ask, that he may give benefit and should not be understood as a requirement to receive the report.

Waiver of the right to request the report must occur after the opening sequence, but before they meet limitation. A waiver may be made earlier made a pact succession to succession prohibited by law. (Popa, 2013: 444)

The donations report is made judicially if the heirs do not agree, not only on the report of donations, but any interested sharing aspect regarding the succession.

In an opinion, in accordance with the law, the question of the relationship of donations is most often envisioned in the partition process. According to judicial practice, however, before the entry into force of the present Civil Code, the right to report can be harnessed and a separate action can be promoted or partition action before or after this. (Genoiu, 2012: 323)

“It seems that, with regard to the provisions of article 1152 of the Civil Code, such a possibility does not exist of the law that exists, although some discussion can be made on this issue. Thus, I have identified another major way dedicated the current Civil Code in matters of the donations report”. (Genoiu, 2013: 264)

This method refers to the donations report request (Annex 2) which is made in the action for partition of succession (according to article 1152 of the Civil Code).

The report request takes the form of donations as a genuine request for summons it will be charged with 3% of value of goods whose reporting is required.

According to some opinions expressed in the literature, the civil action of report is a civil action by which creditors have the obligation to report calls from this obligation successors kept returning to the succession of the assets received by donation from the deceased or their equivalent. (Bacaci, Comăniță, 2013: 277)

The action taken in the realization of the report must be understood as part of the action of sharing, borrowing the features of the latter.

Conclusions

The donations report is made in kind or equivalent. The report by equivalent means bringing the value of the donated property to the heir mass retaining the ownership of the property. The report by equivalent can be achieved through acquisition, i.e. by taking the succession of heirs entitled to report the goods as far as possible in the same category and the same quality as those that formed the subject of donation in relation to inheritance shares that are entitled.

The report can also be done in money, which means that the obligation to report is put at the disposal of the other heirs a sum of money representing the difference between the values of the property donated and the part corresponding to its share of inheritance.

The grantee may effectuate by kind if the report filing date he is still the owner of the property, has not encumbered it real and has not given the lease for the period longer than three years. This report therefore involves restoring the nature of the accommodation that was the subject of a donation from the estate, to be divided.

In the case of the report of the object in nature that has the effect that the grantee is responsible for degradation leading to diminished value of the property if the fault has occurred and the grantee must be compensated by the other heirs receiving report for expenses they he made the work necessary and useful additions to the date of the report.

The civil action of report may be brought only report against forced heirs to the report, not against those who have been sent the donated goods by any title. This action obviously has a patrimonial character because the assets have economic value and inalienable character. On the other hand, the action against donations has an indivisible character in the sense that it can be formulated by one of the heirs entitled to the report, but the others will take advantage of it. It is an action in achievement, a character which is derived from the fact that the report is produced only as a result of a request to that effect.

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