THE SUCCESSORY UNWORTHINESS RELATED TO THE CRIME OF MURDERING THE DECEDENT

Veronica STOICA [(*)]
Laurențiu DRAGU [(**)]

Abstract

The 2009 Civil Code reconfigured the institution of inheritance indignity, taking into account existing doctrinal critiques as well as the inconsistent judicial solutions. Thus, certain imperfections, such as those related to criminal conviction, have been addressed. The absence of a criminal conviction ruling for the author who committed one of the acts provided under Article 958 (a) and (b) of the Civil Code, due to the statute of limitations, amnesty, or the author's death, does not lead to the removal of inheritance indignity. The current regulation allows the application of indignity based on a final civil court decision, which is tasked with establishing the act when a criminal conviction cannot be rendered. The law punishes with disinheritance only the heir who intentionally sought to kill the person whose inheritance is in question or to remove another heir who is called before them to inherit de cujus. The 2009 Civil Code, being responsive to the critiques in the legal literature regarding this essential negative condition necessary to inherit from the deceased, as well as to the jurisprudential solutions that were not always consistent, regulated inheritance indignity under Articles 958-961 of Chapter II, Title I of Book IV. Although the 2009 legislator did not provide a definition of inheritance indignity, from the provisions regulating this civil sanction, we can infer that inheritance indignity refers to the disqualification of a legal or testamentary heir, both from the right to inherit the share of the deceased's estate that is due to them and from the right to inherit the reserved portion they would have been entitled to under the law, had they not been guilty of any of the acts expressly and exhaustively provided in Articles 958-959 of the Civil Code.

Keywords: *indignity, criminal conviction, disinheritance, final civil decision*

Introduction

The study addresses an important and current topic, both under the legislative dimension and from the perspective of the practical situations encountered, essentially aiming at an objective presentation of the issue of conventional representation by a lawyer of third parties involved. In the current civil procedural dimension, third parties are either legal subjects who have nothing to do with the civil process, being strangers to it, or persons who intervene voluntarily or are forcibly introduced into a process that has already started. In order for the third parties who intervene in the process to become parties, certain conditions must be met, namely: the existence of an ongoing process (the third parties intervene or are forcibly introduced through incidental requests made by those who are already parties to the process or are introduced *ex officio* by court or at its request, in the cases provided for by Article 78 of the Civil Procedure Code), the existence of a

[(*)] Professor, PhD, Faculty of Law, Academy of Economic Studies, Bucharest (e-mail: verostoica@yahoo.com).
[(**)] Lecturer, PhD, "Alexandru Ioan Cuza" Police Academy, Bucharest (e-mail: laurentiudragu@yahoo.com).

connection with the main claim is also necessary, which requires that they be tried together, but last but not least, the existence of an interest in being tried in a process initiated by other people.

1. Third party participation and legal representation

Depending on the method of participation, third parties intervene voluntarily or at the request of the parties in the process or because of the court's order. The forms of intervention are classified into voluntary intervention, which can be main (when the intervener formulates his own claims against the parties in the process) or accessory (when the intervener does not formulate his own claims, but only intervenes to support the defense of one of the parties to the process) or forced intervention which, in turn, has several forms: summoning another person to court (Article 68-71 Civil Procedure Code), summoning in guarantee (Article 72-74 Civil Procedure Code), showing the right holder (Article 75-77 Civil Procedure Code) and the *ex officio* introduction of other persons into the case (Article 78-79 Civil Procedure Code)[1].

The institution of procedural representation can be defined as that form of civil representation that highlights the circumstance in which a person, as a representative, empowered in this sense - conventionally or by law, concludes or completes procedural acts in the name and in the interest part of a process[2].

The procedural acts performed by the representative produce effects vis-à-vis the party they represent, within the limits of the power of attorney granted[3].

The parties may appear in court through an elected representative, in accordance with the law, unless the law requires their personal presence before the court. Thus, by way of example, the law requires that the procedural documents be completed personally by the parties in the divorce procedure, according to Article 921 para. (1) of the Civil Procedure Code, before the substantive courts, the parties will appear in person, outside only if one of the spouses is serving a custodial sentence, is prevented by a serious illness, benefits from special guardianship[4], resides abroad or is in a other

[1] I. Deleanu, *Noul Cod de procedură civilă. Comentarii pe articole. Vol. I (Article 1-612)*, Universul Juridic Publishing House, Bucharest, 2013, p. 120 and following. I. Leș, D. Ghiță (Coord.), *Tratat de drept procesual civil. Vol. I. 2nd ed.*, Universul Juridic Publishing House, Bucharest, 2020, p. 101-103. G. Boroi, M. Stancu, *Drept procesual civil. 6th ed.*, Hamangiu Publishing House, Bucharest, 2023, p. 136-138.; M. Dinu, *Drept procesual civil*, Hamangiu Publishing House, Bucharest, 2020, p. 93.

[2] M. Tăbârcă, *Drept procesual civil. Vol. I – Teoria generală. 2nd ed*, Solomon Publishing House, Bucharest, 2017, p. 457. We recommend consulting the article, V. Stoica, *Despre puterea de reprezentare*, in "Revista de Drept Privat", No. 2/2019; the article can be accessed in its entirety at the address https://sintact.ro/#/publication /151014688?keyword=reprezentarea&cm=SREST.

[3] Gh. Durac, *Drept procesual civil, Principii și instituții fundamentale, Procedura necontencioasă*, Hamangiu Publishing House, Bucharest, 2014, p. 158.

[4] Following the deliberations, the Constitutional Court, by Decision No. 601/2020, with unanimity of votes, admitted the exception of unconstitutionality and found that the provisions of Article 164 para. (1) Civil Code are unconstitutional. The Court held the violation of the provisions of Article 1 paragraph (3), Article 16 and Article 50 of the Constitution, as interpreted according to Article 20 of the Constitution and through the prism of Article 12 of the Convention on the Rights of Persons with Disabilities. In justifying the admission solution pronounced, the Constitutional Court held, in essence, that the protective measure of placing under judicial prohibition provided by Article 164 para. (1) Civil Code is not accompanied by sufficient guarantees to ensure respect for fundamental human rights and freedoms. It does not consider the fact that there may be different degrees of incapacity, nor the diversity of a person's interests, it is not ordered for a fixed period of time and is not subject to periodic review. Therefore, the Court held that any measure of protection must be proportional to the degree of capacity, be adapted

such situation, which prevents him from presenting himself. In such cases, the person in question could appear to you through a lawyer, trustee or through a guardian or curator[5].

Legal representation intervenes in the case of natural persons lacking procedural capacity, in the case of legal entities as well as in other cases expressly provided by law. The legal representatives of natural persons can be the parents (one parent being sufficient for a valid representation of the minor party) and the guardian. Although Article 80 para. (2) of the Civil Procedure Code refers exclusively to natural persons; legal representation also intervenes in the case of legal persons. Thus, according to Article 209 of the Civil Code, the legal entity exercises its rights and fulfills its obligations through its administrative bodies, from the date of their establishment. As such, the legal representatives of legal entities are their administrators. In the absence of administrative bodies, Article 210 para. (1) of the Civil Code provides that until the date of establishment of the administrative bodies, the exercise of the rights and the

to the person's life, apply for the shortest period, be reviewed periodically and take into account the will and preferences of the persons with disabilities. Also, when regulating a protective measure, the legislator must consider the fact that there can be different degrees of incapacity, and mental deficiency can vary over time. The lack of mental capacity or discernment can take different forms, for example, total/partial or reversible/irreversible, a situation that calls for the establishment of protective measures appropriate to reality and which, however, are not found in the regulation of the judicial interdiction measure. Therefore, the different degrees of disability must be assigned corresponding degrees of protection, the legislator in the regulation of legal measures having to identify proportional solutions. An incapacity must not lead to the loss of the exercise of all civil rights but must be analyzed in each individual case. Every person must be free to act in order to develop his personality, the state, by virtue of its social character, having the obligation to regulate a normative framework that ensures the respect of the individual, the full expression of the personality of the citizens, their rights and freedoms, the chances equal, resulting in respect for human dignity. Law No. 140/2022 establishes three forms of protection: assistance for the conclusion of legal acts, judicial counselling and special guardianship. See C. Roşu, S. Stănilă, *Procedura punerii sub interdicţie judecătorească în 'haine' noi,* in "Dreptul", No. 11/2022; the article can be accessed in full format at https://sintact.ro/#/publication/151025673?cm=URELATIONS.

[5] G. Boroi (Coord.), *Noul Cod de procedură civilă. Comentariu pe articole, Vol. I Article 1-455. 2nd ed.*, Hamangiu Publishing House, Bucharest, 2016, p. 265.

In the jurisprudence of the Constitutional Court, it was noted that 'para. (1) of Article 918 of the Code of Civil Procedure is precisely the expression of the strictly personal character of the action in the dissolution of the marriage, in consideration of the respect of the spouses' right to private life and their personal determination regarding the continuation or termination of the marriage. The explicit provision of para. (1) of Article 918 of the Code of Civil Procedure cannot receive an interpretation - like the one developed by the author of the exception - that would overturn its meaning and be used to divert the norm from its purpose. On the other hand, Article 921 para. (1) of the Code of Civil Procedure establishes some exceptions to the rule of the personal presence of the spouses at the court of first instance, exceptions which are of strict interpretation, and which allow the court to resolve the divorce application in some precisely determined situations in which the personal presence of one of spouses is not possible. This is also an application of the recognized right of any of the spouses to obtain the termination of the marriage, without certain objective circumstances constituting an obstacle to this approach, but also an expression of free access to justice, which must allow any of the spouses, regardless of the procedural capacity in the divorce process, to exercise his procedural rights, by formulating defences, supporting the request, without the impossibility of presentation constituting an absolute obstacle in obtaining the dissolution of the marriage. Nor the provision of Article 922 of the Code of Civil Procedure does not violate, in the opinion of the Government, any constitutional principle, the provision regarding the rejection of the request as unsupported, in case of unjustified absence of the plaintiff, representing a presumption of lack of interest in supporting the request and an application of the principle of availability of the parties'. To consult in this sense, Constitutional Court of Romania, Decision No. 642/2018 published in Official Gazette of Romania, No. 70/29.01.2019; the decision can be accessed in its entirety at https://sintact.ro/#/act/16910520/82?directHit=true&directHitQuery=cod%20procedura%20civila.

fulfillment of the obligations concerning the legal person are done by the founders or by the natural persons or legal persons designated for this purpose[6].

Regarding judicial representation, according to Article 80 para. (4) Civil Procedure Code, when the circumstances of the case require it to ensure the right to a fair trial, the judge may appoint a representative for any part of the trial under the terms of Article 58 para. (3) Civil Procedure Code, finally showing the limits and duration of the representation[7]. In contrast of the curators from the field of civil law, special curators provided for by Article 58 Civil Procedure Code are appointed by the trial court (and not by the guardianship court) and are lawyers specifically appointed for this purpose by the bar for each court (and they cannot be any natural person with full legal capacity and able to fulfill this task). To appoint the special curator and to the extent that the corresponding bar has not previously submitted to the court the list of lawyers appointed to carry out the task of special curator, the court will issue an address to him to appoint a lawyer until the next court term in the sense indicated[8].

About conventional representation, as previously stated, the parties may appear in court through an elected representative, under the law, unless the law requires their personal presence before the court. Conventional representation involves the conclusion between the represented party and the representative of a mandate contract[9] (in the case of the non-lawyer representative-mandatory), of an employment contract or service relationship (in the case of the legal advisor representative) or of a legal assistance contract (in the case of the representative-lawyer), each of which essentially provides the right and, at the same time, the obligation to represent the party[10]. Therefore, in the civil process, the natural person can be represented not only by a lawyer, but also by a person who does not have this capacity. As a rule, legal entities can be conventionally represented before the courts only by a legal advisor or lawyer, under the law. Therefore, unlike natural persons, in the case of legal persons, conventional legal representation by a representative who does not have the capacity of either a lawyer or a legal advisor is excluded. Therefore, the legal persons and entities cannot be conventionally

[6] S. Bodu, *Organul administrativ și reprezentarea legală a societății comerciale*, in "Revista Română de Drept al Afacerilor", No. 6/2017; the article can be accessed in full format at https://sintact.ro/#/publication/151012506?keyword=reprezentarea%20legala&cm=SREST.

[7] V.M. Ciobanu, M. Nicolae (Coord.), *Noul Cod de procedură civilă. Comentat și adnotat. Vol. I – Article 1-526*, Universul Juridic Publishing House, Bucharest, 2016, p. 286-287.

[8] For further developments, consult, M. Dinu, *Aspecte teoretice și practice cu privire la curatela specială ca formă de reprezentare în cadrul procesului civil*, in "Revista Pandectele Romane", No. 5 din 2018; the article can be accessed in full format at https://sintact.ro/#/publication/151012836?keyword=curatela%20speciala&cm=STOP, Ș. Naubauer, *Curatela specială – monopol judiciar al avocaților,* in "Revista Română de Jurisprudență", no, 5/2017; the article can be accessed in full format at https://sintact.ro/#/publication/151012080?keyword=curatela%20speciala&cm=SFIRST.

[9] See also D.-A. Sitaru, *Considerații privind reprezentare în noul cod civil român*, in "Revista Română de Drept Privat", no. 5/2010; the article can be accessed in full format at https://sintact.ro/#/publication/151006556?keyword=mandat%20reprezentare&cm=SREST

D. Chirică, *Condițiile de validitate, proba și durata reprezentării convenționale*, in "Revista Română de Drept Privat", No. 2/2019; the article can be accessed in full format at https://sintact.ro/#/publication/151014692?keyword=mandat%20reprezentare&cm=SREST.

[10] V. M. Ciobanu, Tr. C. Ciobanu, C. C. Dinu, *Drept procesual civil. Ediție revăzută și adăugită*, Universul Juridic Publishing House, Bucharest, 2023, p. 128-132.

represented by a representative who is not a lawyer or who does not exercise the function of legal advisor. In the same light, it was established that a legal person cannot be judicially represented by another legal person[11].

2. Special provisions regarding the representation of third parties by a lawyer

Regarding the representation by a lawyer of the intervening third parties, it can intervene both in the admissibility procedure in principle and after the admissibility, in the actual judgment of the request for intervention. According to Article 28 para. (1) from Law No. 51/1995 for the organization and exercise of the profession of lawyer, republished[12], *'the lawyer registered in the bar, has the right to assist and represent any natural or legal person, based on a contract concluded in written form, which acquires a certain date by registration in the register record official'*.

In the content of the specific activity provided by the lawyer, in the case of the representation of third parties, there are activities such as consultations and the formulation of requests of a legal nature (as a rule, even the formulation of intervention requests)[13]. Legal consultations can be granted in writing or verbally in areas of interest for the third party involved and can include: the drafting and/or provision to him, by any means of legal opinions and information on the issue requested to be analysed, drafting legal opinions as well as assisting him in the negotiations related to them or any other consultations in the legal field[14]. The lawyer can draw up and formulate on behalf and/or in the interest of the third party, requests, notifications, memos or petitions to the authorities, institutions and other persons, in order to protect and defend his rights and legitimate interests. Therefore, the lawyer has the right to introduce a request for intervention (depending on the type of intervention that will be made before the court), to assist the intervening third party (when he is present in the courtroom), to represent the third party intervener (when he is not present in the courtroom), to draw up any procedural documents, to make conclusions on any litigious matter, including procedural exceptions or on the merits of the case, etc. Under the same conditions, the lawyer provides legal assistance and representation before the courts, criminal investigation bodies, authorities with jurisdictional powers, public notaries and bailiffs, public administration bodies and other legal entities for the defense and representation with means specific legal rights, freedoms, and legitimate interests of individuals. The assistance and representation of the intervening third party includes all acts, means and operations permitted by law and necessary for the protection and defense of its interests[15].

The power of representation of the intervening third party by the lawyer is based on the legal assistance contract, concluded in written form[16]. Moreover, the

[11] M. Fodor, *Drept procesual civil. Teoria generala. Judecata in prima instanța. Căile de atac,* Universul Juridic Publishing House, Bucharest, 2014, p. 200-202.

[12] In Official Gazette of Romania, No. 440/24.05.2018.

[13] See Article 3 paragraph (1) lit. a) from Law No. 51/1995 and Article 89 of the Statute of the lawyer profession.

[14] See Article 90 of the Statute of the lawyer profession.

[15] See Article 91 of the Statute of the lawyer profession.

[16] R. Viorescu, Aspecte practice privind încheierea și comunicarea contractelor de asistență juridică (și, nu numai...) prin mijloace electronice, in "Revista Română de Drept al Afacerilor", No. 4/2023; the article can be

lawyer's right to assist, represent or exercise any other activities specific to the profession arises from the legal assistance contract[17]. Consequently, the lawyer can only act within the limits of the contract concluded with his client, except in cases provided by law. The exceptions are of strict interpretation, provided exclusively by law and refer to cases of legal assistance and public judicial aid, respectively the appointment of a special curator lawyer[18], with the legal regime imposed by the normative act where they are provided and regulated[19]. The form, content and effects of the legal assistance contract are established by the Statute of the profession[20]. The relationship between the lawyer and the client-intervening third party is based on honesty, probity, fairness, sincerity, loyalty, and confidentiality[21]. The contact between the lawyer and his client cannot be embarrassed or controlled, directly or indirectly, by any body of the state. If the lawyer and the client agree, a third person may be the beneficiary of the legal services established by the contract, if the third party accepts, even tacitly, the conclusion of the contract under such conditions. As a rule, the lawyer will keep a strict record of the contracts entered into in a special register and will keep in his archive a copy of each contract and a duplicate or copy of any power of attorney received in the execution of the contracts. The legal assistance contract can also be concluded in electronic format, under the condition of obtaining the prior approval of the bar of which the form of practicing the profession is a part[22].

The legal assistance contract expressly provides for the extent of the powers that the client confers on the lawyer. For the activities expressly provided for in the scope

accessed in full format at https://sintact.ro/#/publication/151029402?keyword=contractul%20de%20asisten%C8%9B%C4%83%20juridic%C4%83&cm=SREST.

[17] See Article 108 para. (1) of the Statute of the lawyer profession.

[18] According to the Article 58 Civil Procedure Code.

[19] The existence of exceptions does not remove the general and mandatory nature of the rule of conclusion of the legal assistance contract.

[20] The legal assistance contract is called, expressly regulated by law, which gives rise to rights and obligations specific to the lawyer profession. depending on the concrete object of the legal assistance contract, it may have other named contracts, expressly regulated by the Civil Code (mandate, fiduciary, etc.) as a proximate type. The legal assistance contract is concluded in written form, required ad probationem. It must meet all the conditions required by law for the valid conclusion of an agreement and acquires a certain date by its registration in the official record book of the lawyer, regardless of the way in which it was concluded.

[21] C. C. Dinu, *Fișe de procedură civilă pentru admiterea în magistratură și avocatură. 6th* ed., Hamangiu Publishing House, Bucharest, 2019, p. 71-74.

[22] The legal assistance contract can also be concluded by any means of distance communication. In this case, the date of conclusion of the contract is the date on which the agreement of will between the lawyer and the client took place. It is assumed that the lawyer became aware of the conclusion of the contract on one of the following dates:

- the date on which the contract arrived by fax or e-mail (electronic signature) at the professional office of the lawyer.
- if the transmission by fax takes place after 19:00, it is assumed that the lawyer became aware of it on the working day following the day of the transmission.
- the date of receipt of the signed contract by registered letter with confirmation of receipt.

The legal assistance agreement may take the form of a letter of engagement indicating the legal relationship between the lawyer and the recipient of the letter, including legal services and fees, signed by the lawyer, and delivered to the client. If the client signs the letter under any express acceptance of the contents of the letter, it acquires the value of a legal assistance contract.

The legal assistance contract is considered to have been tacitly concluded if the client has paid the fee mentioned therein, the payment of this fee signifying the acceptance of the contract by the client, in which case the date of conclusion of the contract is the date mentioned in the contract.

of the legal assistance contract, it represents a special mandate, under the power of which the lawyer can conclude, under private signature or in authentic form, acts of preservation, administration, or disposal in the name and on behalf of the client[23]. The client's signature must be inserted on the legal assistance contract, proving the birth of the respective legal relationship. Regarding the power of attorney, it is not necessary to be signed by the client in the situation where the form of exercise of the lawyer profession certifies the identity of the parties, the content and the date of the legal assistance contract based on which the power of attorney was issued, an aspect included in the model of power of attorney established by the Statute of the lawyer profession[24].

Also based on the legal assistance contract, the lawyer legitimizes himself vis-à-vis third parties through the power of attorney drawn up according to Annex No. II of the Statute, on a typed and serialized form, with the related logos, identical to the legal provisions of the legal assistance contract (typed and serialized forms that will contain the U.N.B.R. logo, that of the issuing bar, the name 'National Union of Romanian Bar Associations' and the of the issuing bar)[25]. The activities of the lawyer aimed at the exercise of procedural acts of disposition, assistance and representation must be expressly mentioned in the content of the legal assistance contract and in the power of attorney, the content of the latter having to be in accordance with the rights stipulated in the contract. As such, for the exercise of the acts disposition procedures, it is not necessary for the lawyer to present a special authentic power of attorney, the mention inserted in the content of the legal assistance contract in this sense being sufficient, also taken over in the power of attorney[26].

According to Article 221 para. (1) and (2) of the Statute of the lawyer profession, the contract expressly provides for the object and limits of the mandate received, as well as the established fee, and, in the absence of any contrary provisions, the lawyer can perform any act specific to the profession that he considers necessary to promote the legitimate rights and interests of the client. In this sense, the lawyer must assist and represent the client with professional competence, by using appropriate legal knowledge, specific practical skills and through the reasonable training necessary for the concrete assistance or representation of the client[27].

From the moment of signing the legal assistance contract, the lawyer will act tactfully and patiently to present and explain to the intervening third party all aspects of the case in which he is assisting and/or representing him. In such a situation, the lawyer will seek to use the most appropriate language in relation to the client's condition and experience, so that he has a fair and complete representation of his legal situation. Likewise, the lawyer will consult appropriately with the client to establish the purpose, methods, and finality of the advice, as well as the technical solutions he will

[23] See Article 126 para. (2) and (3) of the Statute of the lawyer profession.

[24] If the existence of the mandate is disputed, the court will ask the lawyer to submit the legal assistance contract to the file, in a certified photocopy for compliance with the original, the confidential sections may be covered.

[25] L. Crișțiu-Ninu, *Organizarea profesiei de avocat. Note de curs*, Universul Juridic Publishing House, Bucharest, 2023, p. 63-65.

[26] Tr. C. Briciu, C.C. Dinu, P. Pop, *Instituții judiciare. 2nd ed.*, C. H. Beck Publishing House, Bucharest, 2016, p. 400 and following.

[27] See also I. Leș, D. Ghiță, *Instituții judiciare contemporane*. 2nd ed., C.H. Beck Publishing House, Bucharest, 2019, p. 311-313.

follow to achieve, when necessary, the assistance and representation of the client, he will respect the client's options in terms of regards the purpose and finality of the assistance and representation, without abdicating his independence and his professional creed. At the same time, the lawyer is obliged to refrain from engaging whenever he cannot provide competent assistance and representation. Assisting and representing the client requires adequate professional diligence, thorough preparation of cases, files, and projects, promptly, according to the nature of the case, experience, and professional creed[28]. Moreover, the lawyer must have the appropriate professional competence for the case in which he represents the third party intervener, which implies the careful analysis and research of the factual circumstances, of the legal aspects of the legal issues incident to the factual situation, adequate preparation and permanent adaptation of the strategy, tactics, specific techniques and methods in relation to the evolution of the case, the file or the work in which the lawyer is employed[29].

In the activity performed, the lawyer will limit himself only to what is reasonably necessary according to the circumstances and the legal provisions. In this case, the lawyer will refrain from intentionally ignoring the objectives and goals of the representation established by the intervening third party, so as to fail to achieve them by reasonable means, permitted by the Law and the Statute of the profession and prejudice a client during the professional relations.

Equally, the lawyer will act promptly in the representation of the intervening third party, according to the nature of the case. The lawyer is not bound to act exclusively in obtaining advantages for his client in the confrontation with the adversaries. The strategies and tactics established by the lawyer must lead his activity on the principle of using professional approaches in favour of the third party.

One of the most important obligations of the lawyer is related to the observance of professional secrecy regarding the strategies, tactics and actions expected and carried out for the client[30].

The lawyer who, for various reasons, cannot fulfil his mandate towards the party at a certain moment, has the right and, at the same time, the obligation to ensure his substitution by another lawyer, if this right is expressly provided for in the contract of legal assistance or if the client's consent is obtained after the conclusion of the contract, by reference to Article 226 para. (5) and Article 234 para. (2) of the Statute. Substitution covers only those professional activities that do not suffer delay or those in connection with which delaying the process

[28] D. Oancea (Coord.), Legea privind organizarea și exercitarea profesiei de avocat. Comentariu pe articole, C.H. Beck Publishing House, Bucharest, 2015, p. 130-132.

[29] As it follows from the legal provisions in the matter, only by way of exception, the possibility to assist and employ the client is recognized even to the extent that at that moment he does not possess a professional competence appropriate to the nature of the case, if due to delay violation of the client's rights and interests (in situations and circumstances that are urgent to safeguard and/or protect the client's rights and interests).

[30] D. Oancea, Legea privind organizarea si exercitarea profesiei de avocat. Comentariu pe articole. 2nd ed, C.H. Beck Publishing House, Bucharest, 2019, p. 188-200, S. Tiberiu, Noțiunea și conținutul secretului profesional al avocatului în lumina dreptului comunitar, in ”Revista de Drept European (Comunitar)”, No. 6/2007; the article can be accessed in its entirety at https://sintact.ro/#/publication/151000449?keyword=respectarea%20secretului%20profesional%20avocat&cm=SREST, D. Cherteș, Infracțiunea de divulgare a secretului profesional de către avocat prevăzută în Legea nr. 51/1995. Scurte considerații, in ”Penalmente Relevant”, No. 1/2017; the article can be accessed in its entirety at https://sintact.ro/#/publication/151022348?keyword=respectarea%20secretului%20profesional%20avocat&cm=SREST.

damages the client's interests. At the respective court term, the substitute lawyer will attach the delegation of substitution to the file, having the right to the fee corresponding to the submitted activity, according to the terms of the agreement between the lawyers. The insurance of substitution will be done only through another lawyer, and not through any other person.

Regarding the obligations of the intervening third party towards the lawyer, he has the obligation to provide the lawyer with accurate and honest information in order for him to carry out the steps necessary for the execution of the entrusted mandate, in this case the third party intervening is the only one who bears the responsibility for the accuracy and sincerity the information provided to the lawyer.

Equally, he owes the lawyer the payment of the fee and the coverage of all expenses incurred in his interest[31]. The intervening third party has the right to renounce the legal assistance contract or to modify it in agreement with the lawyer, under the conditions provided by the Law and the Statute. At the same time, the third party has the right to unilaterally renounce the mandate granted to the lawyer, this circumstance not constituting grounds for exoneration for the payment of the due fee for the legal services rendered, as well as for covering the expenses incurred by the lawyer in the procedural interest of the client[32].

Finally, the third party has an obligation not to use the lawyer's opinions and advice for illegal purposes without the knowledge of the lawyer who provided the opinion or advice. Otherwise, the lawyer is not responsible for the illegal action and purposes of the third party.

From the perspective of Law No. 51/1995, the termination of representation relations, as a rule, is carried out with the fulfilment of the obligations assumed by the form of exercise of the profession. The previous termination can be done by unilateral denunciation, by the third party or, as the case may be, by the lawyer, but this fact, as I mentioned before, does not exempt the client from paying the due fee for the services rendered, nor does it exempt him from covering the expenses incurred by the lawyer in his interest[33].

Upon termination of the legal assistance contract, the lawyer of the third party intervening has the obligation to take appropriate measures in a timely and reasonable manner to protect the interests of the client, in the sense of notifying him, giving him sufficient time to hire another lawyer, handing over documents and assets to which the customer is entitled such as notification of judicial bodies. The lawyer has the right of retention on the entrusted assets, except for the original documents that have been made available to him in case the client owes the lawyer arrears from the fees and expenses incurred in his interest.

Finally, the lawyer has the obligation to return to the client the sums

[31] C.C. Dinu, Considerații asupra caracterului de titlu executoriu al contractului de asistență juridică și formalitățile necesare în vederea punerii în executare silită a acestuia, in ”Revista Română de Drept Privat”, No. 5/2009; the article can be accessed in its entirety at https://sintact.ro/#/publication/151006697?keyword=contractul%20de%20asisten%C8%9B%C4%83%20juridic%C4%83&cm=SREST.

[32] L. Săuleanu, Limitarea caracterului de titlu executoriu al contractului de asistență juridică la onorariu și la cheltuielile efectuate de avocat în interesul clientului, in ”Dreptul”, No. 12/2018; the article can be accessed in its entirety at https://sintact.ro/#/publication/151020869?keyword=contractul%20de%20asisten%C8%9B%C4%83%20juridic%C4%83&cm=SREST.

[33] The contract can also be terminated by the agreement of the parties or the loss of the lawyer's capacity.

advanced by the latter if, until the termination of the contract, the lawyer has not performed the activities for which the fee was paid in advance or has not recorded expenses covered by the sums advanced by the third party in this regard.

3. Conclusion

The participation of third parties intervening in the judgment is a natural thing since in relation to them the litigious legal report deduced from the judgment can produce effects both directly and indirectly, and by way of consequence, both the old regulation and especially in the New Code of Procedure civil, gives them increased attention through the possibility of becoming parties to a process.

Regarding procedural representation, this is a frequently used approach, as a rule, the parties resorting to representation by a lawyer, whether they are natural or legal persons.

Probably the main reason why third parties choose to be represented by a lawyer is his legal training, as a specialist in law. In this sense, the lawyer can be employed based on the legal assistance contract and can represent the third party intervener, both in the case of the voluntary formulation of a request for intervention and in the case of being forcibly brought to court. In these two scenarios, the representation consists, as a rule, both in the phase of admissibility in principle (where applicable), and after this moment, when the intervening third party participates as a party in the judgment of the contentious report brought to the judgment.

Analyzing the conventional representation by a lawyer, it is found that the existing provisions in the Civil Procedure Code are usefully combined with the existing regulations in Law No. 51/1995, the Statute of the lawyer profession as well as in the Code of Ethics of the lawyer profession, creating in this context certain particularities.

A first feature is the legal assistance contract, i.e. the agreement between the intervening third party and the lawyer, based on which the lawyer undertakes to represent the legitimate and legal interests of his client. What differs from a simple representation mandate results from the specialized form of the contract whose clauses are regulated by the legislation specific to the lawyer profession and based on which the party's representation activity is carried out.

A second particularity is given by the legal delegation (power of attorney), the content of which is special compared to a simple power of attorney, having a specialized regime subject to the legal guarantees of the legal profession.

Finally, what differs substantially from common law representation is the extremely broad scope of action of the mandate granted to the lawyer. He has the possibility to carry out a variety of procedural acts in accordance with the legal situation established in relation to the case, to carry out the mandate granted by the client.

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