Turkish Law of Inheritance Series IV.:

Disinheritance, Successional Indignity, Renunciation of Inheritance and the Right to Disclaim

Authors: Attny. M. Tarık Güleryüz // Attny. Aziz Can Cengiz

While inheritance is considered an extension and an aspect of the property right, a person may be deprived of this right due to their own consent or in some cases, unlawful actions. These possibilities are regulated by Turkish law under the titles of disinheritance, successional indignity, renunciation of inheritance, and the right to disclaim.

In this fourth [IV.] article of the Inheritance Law Series, we will examine the aforementioned legal institutions.

I. When Does an Heir Lose Their Right to Inherit?

There are multiple possibilities in which an heir might lose their right to inherit. Typically, these possibilities are realised when an heir violates their civil obligations to the legator or commits a serious crime against the legator or their family. The first state is a reason for disinheritance, while the second is a reason for successional indignity. Furthermore, the right to inherit may also be lost in cases where the heir renounces the right through an inheritance renunciation contract, which is a negative inheritance agreement, or in cases where the heir disclaims the inheritance.

II. Is Disinheritance Possible and How Is It Done?

Disinheritance is the complete or partial elimination of the reserved portion of a statutory heir as the result of a faulty act described in Turkish Civil Code. Disinheritance takes effect with the unilateral disposition of the legator. Legally, heirs with statutory entitlement can be disinherited for punitive purposes only in two circumstances: [i.] a felony committed against the legator or one of the legator's relatives, and [ii.] violation of civil obligations to the legator or legator's family members.

However, the presence of one of these circumstances does not result in disinheritance by itself, as the legator must demonstrate their will in this direction through a testamentary disposition. Again, the reason for disinheritance must be clearly stated in the testamentary disposition for the disinheritance to be valid.

Unless the legator makes a disposition to the contrary, disinherited heir's statutory share will pass on to the heir's issue; and to the legator's statutory heir if the disinherited heir has no descendants.

III. Concept of "Successional Indignity" and Its Difference from Disinheritance

Successional indignity differs from disinheritance in that it becomes effective without the legator's disposition upon the realization of one of the acts stipulated by law. In this respect, an heir, testamentary or otherwise, or a beneficiary of the will who exhibits one of the acts stipulated set out in law automatically loses the right to inherit.

Acts that lead to successional indignity are as follows:

i. Willfully and unlawfully causing or attempting to cause the death of the legator,

ii. Willfully and unlawfully rendering the legator permanently incapable of making testamentary disposition,

iii. By malice, coercion or threat inducing the legator to make or revoke a testamentary disposition or preventing the legator from doing so,

iv. Intentionally and unlawfully eliminating or invalidating a testamentary disposition in such a manner as to prevent the legator from drawing up a new one.

IV. What is an Inheritance Renunciation Contract?

Since the legator cannot completely deprive heirs of their statutory entitlement unless the inheritance is renounced or the heir is disinherited, an inheritance renunciation contract is essentially an agreement that expands the legator's disposition ability that is normally limited by statutory entitlement.

By nature, renunciation of inheritance cannot be made with the unilateral disposition of the legator, and it can only be a subject of an inheritance contract. Such a contract therefore allows a future heir to waive their inheritance right in whole or in part.

V. What is Complete and Partial Renunciation of Inheritance?

In case of complete renunciation, the heir loses heirdom. In partial renunciation, either the heir's inheritance share is reduced, or the heir has no longer any statutory entitlement. While the heir may renounce their statutory entitlement altogether with an inheritance renunciation contract, renunciation of a specific good/asset can also be agreed upon.

VI. Is the Inheritance Renunciation Contract Binding for the Issue of the Heir?

The effect of the renunciation on the heir's descendants depends on whether the renunciation contract is onerous or not.

In cases where the heir is compensated for the renunciation in any way, as a rule, the issue of the heir also loses the right of inheritance. If no benefit is provided in exchange for the renunciation, however, it has no effect on the issue, and therefore the descendants will acquire the title of heir as a successor to the renouncer.

VII. Can a Statutory or Testamentary Heir Disclaim the Inheritance?

Yes. The inheritance can be disclaimed by both statutory and testamentary heirs. Even a beneficiary of the will has the right to disclaim.

However, since it is not possible to disclaim a right before it arises, the inheritance can only be disclaimed upon the death of legator. If an heir wishes to disclaim inheritance while the legator is still alive, inheritance renunciation can be used as an alternative method.

VIII. Is Partial Disclaimer of Inheritance Possible?

While inheritance renunciation may be partial, partial disclaim of inheritance is not possible. The inheritance must be accepted or disclaimed as a whole.

IX. What is the Legal Term to Disclaim Inheritance?

Statutory and testamentary heirs must use the right to disclaim within 3 [three] months after learning of the death of the legator. For those who are appointed as heirs by will, the 3-month period starts with the notification of the testamentary disposition. If the disclaimer right is not used within 3 months, the inheritance is acquired.

X. What If the Inheritance Is Not Disclaimed Within the 3-Month Period?

If an inheritance is not disclaimed within three months, it is presumed to be accepted under Turkish law.

As an exception, the inheritance is deemed to be disclaimed if the legator's insolvency is evident or officially determined at the time of death. In other words, regardless of the legal period, the inheritance is deemed to be disclaimed if the deceased person's assets do not meet their debts at the time of death.

XI. What are the Consequences of Disclaimer of Inheritance?

If the person who disclaims the inheritance is a statutory heir, their statutory share passes to their descendants as if they were not alive upon the opening of the succession.

On the other hand, if an appointed heir disclaims the inheritance, the heir's share is transferred to the closest statutory heirs of the inheritance. [e.g., if a person with only two children passed away and appointed their friend F as an heir with 1/10 share, F's disclaimer of inheritance means that this 1/10 portion will be shared equally between the two remaining children, who are the statutory heirs.

Finally, if a beneficiary of the will disclaims the inheritance, the relevant asset is left to the person who was supposed to give these assets to the beneficiary. Nevertheless, the legator can decide for this asset to be shared equally between their heirs.

Ayrıntılı bilgi için:

Dr. Zahide Altunbaş Sancak

z.sancak@guleryuz.av.tr

M. Tarık Güleryüz

t.guleryuz@guleryuz.av.tr