

# THE SEPARATION OF THE ASCENDING

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## **Abstract**

*The ascendant paradigm is a derogation from common law and which the law permits, as heirs instead of being given the inheritance in the state of indivisibility, they receive goods directly in property by the will of their ascendant and not as a result of a division made by the will of these heirs.*

*The Ascendant Partial is a legal act that achieves a division and prevents a state of indivisibility between the heirs by donation or will.*

**Keywords:** sharing, ascending, indivisibility, sharing.

## **JEL Classification K0 K3 K30**

Ascendant paradigm is the legal act concluded between the living (eg donation) or an act of cause of death (such as the will) by which an ascendant divides all or part of his possessions between his eventual heirs of the first class of heirs; and namely his descendants, thus making dividing relations between them, so, according to Article 1160 of the Civil Code, ascendants can divide their property among the descendants.

This ascendant division is a derogation from the common law and which the law permits, as heirs instead of being given the inheritance in the state of indivisibility, they receive goods directly in property by the will of their ascendant and not as a result of a division made by the will of these heirs. Ascendant paradigm is a legal act that achieves a division and prevents a state of indivisibility between the heirs by donation or will.<sup>2</sup>

Formal conditions According to art. 1161 of the Civil Code, the ascending partition can be made by donation or by will, in compliance with the forms, conditions and rules stipulated by the law for these legal acts. Failure to comply with these formal requirements imposed by law results in the absolute nullity of the legal act of division concluded in violation of these provisions.

After the ascendant's death, the descendants who are the beneficiaries of the divide can confirm the null act by executing the ascension's disposition, knowing the cause of the nullity. Background conditions The legal act by which the ascension share is to be fulfilled must meet the general conditions applicable to all legal acts provided by art. 1179 of the Civil Code, namely: the capacity, the consent of the parties, the determined and licit object and a lawful and moral cause, as well as the special conditions such as: the persons between whom ascendant ascendant takes place, namely the ascendants and their descendants, the division and the way in which this division is made.

Special conditions of the legal act by which the ascending share is made:

a) Persons who have the right to divide their property by ascending. These people call ascendants, ie parents, grandparents or grandparents, who divide the goods among their descendants as presumptive heirs. Ascendants can be: from marriage, from marriage, or from adoption. Descendants can be: children, grandchildren or grandchildren from marriage, out of marriage or adoption.

The spouses can make upward ascension in favor of their descendants having as their object the common goods through a conjugal donation, that is to say, through a donation contract having as donors the two spouses who donate their common goods to their descendants (from marriage, from outside marriage or adoption). Wives can not conjunctive (mutually) testament because it is forbidden by law<sup>3</sup>.

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<sup>2</sup> Art.984 of the Civil Code

Liberty is the legal act whereby a person freely dispenses his goods, in whole or in part, in favor of another person. Liberties can only be made through donation or binding in the will.

<sup>3</sup> Art.1036 of the Civil Code

When the surviving spouse is omitted from the ascendant, this does not result in the nullity of partition, because ascendants can divide their possessions among descendants, the inclusion of the surviving spouse does not excite it as ascendant, but has received a liberty (donation or will) according to common law.

If the surviving spouse is not left to the surviving spouse, he may, by hereditary petition for heirs, inherit his share of the inheritance to which he is entitled according to the law, and if his right to inheritance has been violated, the surviving spouse is he / she may request through redemption action to complete the inheritance reserve to which he / she is entitled according to the law, namely  $\frac{1}{2}$  of the share to which he / she is entitled as a legal heir, ie in a contest with the descendants, the share of the surviving spouse is  $\frac{1}{4}$  of the inheritance,  $\frac{1}{8}$  of inheritance. Thus, according to Article 1163 paragraph 3 of the Civil Code, if the ascendant paradigm violates the inheritance reserve of any descendant or surviving spouse, the provisions relating to the reduction of excessive liberties<sup>1</sup>.

b) the descendants of which the upward division is made must have a succession inheritance to inherit the divisor, not to be unworthy, and to accept the inheritance. They can come to inheritance in their own name or through representation.

According to art. 1163 of the Civil Code, the absolute nullity is punished by the partition in which not all descendants who meet the conditions to come to inheritance, either in their own name or by succession representation, have suffered.

There is no nullity of the ascendant paradigm in which a descendant who comes to the inheritance by inheritance is not included, but was the one he represents<sup>2</sup>.

Descendants between ascending ascendant must exist on the date when the donation ends or exist at the date of the opening of the succession if the division is by will<sup>3</sup>.

According to Article 1163, paragraph 3 of the Civil Code, if the succession reserve of a descendant or surviving spouse is broken by the ascendant, the provisions concerning the reduction of excessive liberties are applicable. c) the goods forming the object of the divide are the ascendant. Ascendant parcel includes goods belonging exclusively to the ascendants.

According to Article 1161 (2) of the Civil Code, the donation can only have as object the present goods of the possessor, ie they can not be included in the ascendant and future goods. If all the assets of the inheritance were not included in the ascendant, the goods not included in the division shall be shared according to the law.

d) the ascendant partition is effective, that is, the consignments formed to the heirs are constituted in nature rather than in parts because it is not a ascendant partition but a staying in the individual.

e) the divesting is a liquidation of the succession, the ascendant must respect the inheritance reserve of each heir. favoring heirs can only be done from the available amount. The effects of the upward division. The effects of the upward division differ as it is done through donation or will. The effects of the upward division by donation. The donors will acquire irrevocably through the conclusion of the donation contract, rights from the

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Under the sanction of absolute nullity of the will, two or more people can not dispose, by the same testament, either in favor of the other or in favor of a third party.

<sup>1</sup> Art.984 of the Civil Code

Liberty is the legal act whereby a person freely dispenses his goods, in whole or in part, in favor of another person. Liberties can only be made through donation or binding in the will.

<sup>2</sup> N.Grădinaru - Civil Law. Succession. Ed. Economic Independence. Pitești 2018. p.228

<sup>3</sup> Art.36 of the Civil Code

The rights of the child are recognized from the concept, but only if he is born alive.

Art.412 of the Civil Code

The time span of between three hundred and one hundred and eighty days before the child's birth is the legal time of the concept. It is calculated daily.

ascendant, which they can freely dispose of. The immovable property that is the object of the donation is recorded in the land book.

Creditors to the ascendant can attack the donation if they believe it was done in violation of their rights.

Upon the death of the descendant, descendants still remain donors while retaining goods received by donation.

The remaining goods, which have not been the object of the ascension, will be acquired by the heirs in the indivisible.

Goods that have been donated by the ascendant are an early liquidation of the inheritance among all descendants and are not subject to the report.

The effects of the ascendant division made by the will.

In this situation the partition is done through an act of death and only effects of the death of the author who leaves the inheritance.

At the time of death, the descendants acquire the goods in a divided state for each lot according to the ascendant division contained in the will.

Through the downward division the descendants remain legal heirs and not legatees, the testator does not establish related and linkers but only a division of the inheritance.

The testament gives rise to divisions among the descendants.

The remaining goods that have not been the object of the ascendant partition will be acquired by the heirs in the individual as if the ascension was made by donation.

If the testator, after having made the ascendant partition through the will, has alienated certain items that were included in batches of descendants, at the death of the testator they may request the annulment of the testamentary ascendant partition. If the testator has disposed of goods to affect the succession reserve of a descendant, he will be able to demand by reducing the batches of the other descendants until the reintegration of his succession reserve. Ineffectiveness of ascending partition.

The ascending partition may be ineffective for common law reasons as follows: - the partition may be hit by relative nullity for non-observance of the capacity conditions and the conditions of consent (vices of consent), or hit by the absolute nullity for non-observance of the formal conditions or for the obsolescence. The ascending donation may become ineffective by revoking the donation for not performing the task or for ingratitude or for admitting the pauline action introduced by the creditor of the ascendant who has completed the donation; - the partition may be ineffective and as a result of the provisions of art. 1163, which stipulates that an absolute nullity is punished by the partition in which not all descendants who meet the conditions for coming to inherit, either in their own name or by succession representation .

Those provisions do not apply to the separation in which a descendant who is inherited by inheritance has not been included, but the one to which he represents is included.

If the succession reserve of any descendant or surviving spouse is broken by the ascendant, the provisions on the reduction of excessive liberties apply.

If the ascension of the ascendant has been made by both parents, the right to act in the reduction is born at the death of the surviving parent, because the two parents' assets form a single table to be divided.

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