

## **EXPRESS VOLUNTARY ACCEPTANCE OF INHERITANCE THROUGH A DOCUMENT UNDER PRIVATE SIGNATURE: A THEORETICAL AND CASE- LAW ANALYSIS**

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**Abstract:** *In Romanian inheritance law, the acceptance of an inheritance constitutes an essential act with multiple legal implications, such as the consolidation of the heir's title, the transfer of the estate, which is finalised through the acceptance of the inheritance, and the liability of the heirs for the debts and encumbrances of the estate only with the assets forming part of the estate (intra vires hereditatis), in proportion to each one's share.*

*The Civil Code regulates two main forms of acceptance of an inheritance: express and tacit, express acceptance itself being possible either by authentic instrument or by a document under private signature.*

*However, the choice of this latter form raises a series of questions regarding its efficiency, legal certainty and, not least, its practical consequences.*

*The present study aims to analyse this form of acceptance of a succession not only from a theoretical, but also from a practical perspective, identifying its advantages and disadvantages and highlighting the impact of this option on heirs and third parties.*

**Keywords:** *inheritance, acceptance, document under private signature, opposability, case law, Civil Code.*

### **Introduction**

Acceptance of an inheritance can be a bittersweet experience for someone who is grieving the loss of a loved one—referring, on the one

hand, to the emotional suffering endured by the potential heir, and on the other hand, to the fact that, once the legal conditions for inheritance are fulfilled and the succession procedure is completed, the heir will acquire the assets that make up the estate.

The death of a person generates a series of patrimonial consequences that must be regulated and resolved, since every human being, at the moment of death, possesses—whether to a greater or lesser extent—a number of assets, rights and obligations whose ownership must be transferred. The transfer of the estate is necessary in order to ensure legal certainty, the conservation and preservation of these assets, rights and obligations and the value they embody, as well as the continuation of the activities and legal relationships arising from them, which contribute to the wealth and functioning of society.

For the exercise of the right of succession option, Romanian law grants successors a period of one year, according to Article 1103 paragraph (1) of the Civil Code, during which they may analyse the situation and, with full understanding of its consequences, choose between the two possible alternatives: acceptance or renunciation of the inheritance of the deceased.

The acceptance of an inheritance constitutes a unilateral and irrevocable legal act, meaning it is the manifestation of will of the successor, generally voluntary, and one which cannot be withdrawn. In this context, the successor is not required to justify their choice, yet must be fully aware of the legal consequences arising from it, since in certain situations the acceptance of an inheritance may be financially disadvantageous. It may give rise to various legal obligations that must be fulfilled, and of which heirs are often unaware.

Acceptance of an inheritance represents an act of disposition, therefore "for the validity of the option, the successor must have full capacity to exercise, and persons lacking limited capacity to exercise must exercise the option through the legal guardian, respectively with his approval and with the authorization of the guardianship court".

The acceptance of an inheritance constitutes an act of disposition<sup>1</sup>; therefore, “for the validity of the option, the successor must possess full legal capacity, whereas persons with limited capacity must exercise the option through their legal guardian, with the guardian’s approval and with authorization from the guardianship court.”.

The express voluntary acceptance of an inheritance must fully meet the general validity requirements that are absolutely mandatory for any civil legal act, requirements expressly stipulated by the legislator in Article 1,179 of the Civil Code<sup>2</sup>.

### **The Legal Framework Governing the Forms of Express Acceptance of an Inheritance**

In Romanian inheritance law, the forms of acceptance of an inheritance are regulated by the provisions of art. 1108 paragraph 1 of the Civil Code which provides that "acceptance may be express or tacit".

According to paragraph (2) of the same legal provision, “acceptance is express when the successor explicitly assumes the title or status of heir through an authentic instrument or a document under private signature.” It must be noted that the Romanian legislator chose to maintain the regulatory framework established by the Civil Code of 1864, where Article 689 provided that “acceptance may be either express

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<sup>1</sup> See in this regard Decision no. 58/2024 on the examination of the notification made by the Neamț Court - Section I of civil and administrative disputes, in File no. 5.367/291/2023, with a view to issuing a preliminary ruling, published in the Official Gazette, Part I no. 1128 of 12 November 2024.

<sup>2</sup> (1) The essential conditions for the validity of a contract are:

1. capacity to contract;;
2. consent of the parties;
3. a determined and lawful object;
4. a lawful and moral cause.

or tacit. It is express when the title or status of heir is assumed in an authentic or private act”.

Starting from the definition given in the specialized literature to the form of the civil legal act as being “the manner in which the will of the parties to conclude it is expressed” (Chelaru, & Duminică, 2024), from the analysis of the legal text cited above it results that the intention (*negotium*) to accept the inheritance must be present, being expressed through a written instrument (*instrumentum*) (Kocsis, & Vasilescu, 2016). In this context, it follows that express voluntary acceptance may be carried out in two ways, namely either by an authentic instrument or by a document under private signature, in both cases requiring the explicit assumption of the title/status of heir.

In the specialized literature, there is a controversy regarding whether express voluntary acceptance constitutes a formal act (Deak, & Popescu, 2019, vol. III; Boroi, & Stănciulescu, 2012) or a solemn act (Chirică, 2017; Veress, & Szekely, 2020).

In our view, the written form required for express voluntary acceptance is demanded *ad validitatem*, and failure to observe this form results in the absolute nullity of the legal act.

### **Express acceptance of inheritance through a document under private signature**

By “written instrument” is meant “any declaration regarding a legal act or legal fact *stricto sensu*, made by handwriting, typing, lithography, printing on paper or on any other material” (Cercel, 2006).

A document under private signature is that instrument “drawn up by the parties, without the participation of any state authority, signed by the person from whom it emanates” (Tăbârcă, 2005).

In relation to these aspects, it follows that in matters of inheritance such a written instrument through which a succession is accepted may be executed in any language and by any means, handwritten or typed, the essential requirement being that its content clearly shows the explicit assumption of the title or status of heir.

In the legal doctrine, numerous examples have been provided

regarding the forms that express acceptance through a document under private signature may take: a simple letter addressed to another heir or to a creditor of the estate, even if the document was not drafted specifically for the purpose of accepting the inheritance, as long as it clearly reveals the successor's unequivocal intention to accept the inheritance (Stănciulescu, 2012); documents addressed to the court for resolving issues related to the inheritance in question, or a request submitted to a notarial office (Deak, & Popescu, 2019, vol. III); opposition to the forced sale of an immovable asset belonging to the estate; a declaration made to the tax authorities in which the successor indicates the composition of the estate and his or her status as heir; or even a declaration made for this purpose in a simple letter (Baiaș, Chelaru, Constantinovici, & Macovei, 2011).

### **The evidentiary force of a private-signature document in relation to third parties**

With regard to the content of a private-signature document, it may be invoked against third parties as a simple juridical fact, until proven otherwise (which may be established through any means of evidence). Given that the successor must explicitly express the intention to accept the inheritance within the statutory option period of one year from the opening of the succession — namely from the date of death of the decedent, as a general rule — in the event of disputes arising between successors concerning the recognition of the heir status, the issue of the date of the document becomes relevant.

In such situations, the requirement of opposability must be fulfilled. “The condition of opposability is deemed satisfied when the juridical act is subjected to a certain formal procedure, a procedure known as publicity. By way of exception, opposability is considered achieved even without publicity when the juridical act bears a certain date” (Tița–Nicolescu, 2018).

The exception to the rule according to which a private-signature document is proven until the contrary evidence is admitted is explained

by “the legislator’s concern to protect third parties against the danger posed by entering a false date in writing, in the form of antedating the document” (Boroi, & Stancu, 2015).

1. According to the provisions of Article 278 paragraph 1 of the Civil Procedure Code, “The date of private-signature documents is opposable to persons other than those who drafted them only from the day on which it became certain, by one of the methods provided by law, namely:
2. from the day on which they were presented to obtain a certified date from the notary public, the bailiff, or any other competent official;
3. from the day on which they were submitted before a public authority or institution, with this mention being made on the document;
4. from the day on which they were registered in a register or another public document;
5. from the day of the death or from the day on which the physical inability to write of the person who drafted it, or of one of the signatories, as the case may be, occurred;
6. from the day on which their content is reproduced, even briefly, in authentic documents drawn up under the conditions of Article 269, such as minutes, official records for sealing or for drawing up inventories;
7. from the day on which another fact of the same nature occurred, which proves beyond any doubt the anteriority of the document.”

### **Jurisprudential/Case law analysis**

Although successors generally prefer to accept an inheritance either by an authentic instrument or, most commonly, tacitly, the Romanian courts have also been called upon to resolve disputes in which the issue concerned the acceptance of an inheritance by a document under private signature.

By way of example, we briefly present below the reasoning of the courts regarding this form of express voluntary acceptance of an inheritance, as reflected in recent case law:

- “By Civil Decision no. 541/2025 delivered on 30 April 2025 by the Braşov Tribunal<sup>1</sup>, the court held that the defendant’s requests, formulated in the statement of defence and seeking the dismissal of the claimant’s request for the allocation of the entire undivided share, amount to an act of express acceptance, as the appellant’s intention to assume the status of heir was clearly and unequivocally manifested.
- by Civil Decision no. 1712/2025 of 14.11.2025, delivered by the Iaşi Tribunal, the court held that *‘in accordance with Article 12 of Law*

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<sup>1</sup> Civil Decision no. 541/2025 delivered on 30 April 2025 by the Braşov Tribunal, available at <https://www.rejust.ro/juris/726298793>, accessed on 18.11.2025.

“With regard to the acceptance of the inheritance by a private signature document—specifically, the statement of defence filed in the case at first instance on 09.11.2023—the Tribunal finds that this document produces the legal effects of an express acceptance made by a private signature instrument.

According to Article 1108 paragraph (2) of the Civil Code, acceptance is express when the successor explicitly assumes the title or status of heir through an authentic document or a private signature document.”

“Upon examining the statement of defence filed in the case at first instance on 09.11.2023 (p. 41 of the case file), it is observed that this document does not constitute an authentic instrument, but rather a private signature document within the meaning of the law. According to the specialised literature, with regard to express acceptance, the successor’s intention to accept the inheritance must be manifested in written form, express acceptance being ‘a formal act, but not a solemn one’, meaning that ‘for the document to constitute an express acceptance, its content must show that the successor has unequivocally assumed the status of heir’ (##### #####, ##### ##### – ‘Treatise on Inheritance Law’, 3rd updated and supplemented edition, Vol. III. Transmission of Inheritance, p. 72 and p. 74).

In the present case, agreeing with the criticisms raised by the appellant, the Tribunal finds that the statements made by him in the statement of defence filed on 09.11.2023—where he asserts that he contests the claimant’s statements alleging that he had not performed acts of acceptance of the inheritance and that he supposedly declared before the notary public that he wanted his share, as well as his request to dismiss the claimant’s claim for the allocation of the entire co-owned share to the latter—amount to an act of express acceptance, since the appellant has manifestly and unequivocally expressed his intention to assume the status of heir.”

no. 18/1991 in its initial version: “The status of heir shall be established on the basis of the certificate of inheritance or of a final court judgment or, in their absence, by any evidence demonstrating the acceptance of the inheritance. Heirs who cannot prove this status, given that the land was not in civil circulation, shall be deemed by operation of law to have been reinstated in the term of acceptance with regard to the share to which they are entitled of the land that belonged to their author. They are considered to have accepted the inheritance through the application they submit to the commission.”

➤ by Civil Judgment no. 1138/2025 of 12.11.2025 delivered by the Filiași Court, the court held that ‘Even if the defendant did not prove his status as heir of the deceased through a certificate of inheritance, he is nevertheless the beneficiary of the will authenticated under no. 21 of 24 January 1967, and according to Article 13 paragraph 2 of Law no. #####, heirs who cannot prove this status, since the land was not in civil circulation, shall be deemed by operation of law to have been reinstated in the term of acceptance with regard to the share to which they are entitled of the land that belonged to their author. They are considered to have accepted the inheritance through the application they submit to the commission – the filing of the reconstitution application constitutes proof of acceptance of the inheritance.”

➤ by Civil Judgment no. 9165/2024 of 17.06.2024 delivered by the 2nd District Court of Bucharest, the court of first instance held that the defendant accepted the succession through a private signature document, namely through the settlement agreement by which he undertook to obtain the certificate of inheritance and to conclude with the claimant the sale contract concerning the apartment that was the object of the bilateral promise.

From the analysis of the judicial decisions indicated as examples, it results that the express voluntary acceptance of an inheritance necessarily requires the existence of three elements:

- the manifestation of will must be made through a written document,
- the content of the document must show the explicit assumption of the title/quality of heir,



- the document must have a certain date, so that the court may verify whether the acceptance of the succession was made within the legal term of the inheritance option, thus avoiding the possibility of pre-constituted documents.

## **Conclusions**

From the analysis of the legal provisions and case law, it follows that the express voluntary acceptance of an inheritance through a document under private signature constitutes an efficient legal solution, as it ensures a clear and unequivocal manifestation of the successor's will. Among its benefits, we may also include the fact that this form stands out through a high degree of accessibility and reduced costs, eliminating the need for notarization before a public notary and thus facilitating the exercise of the right of succession option within the legal term.

Furthermore, the flexibility of this form must be highlighted, as it allows the successor to draw up such an instrument in any situation in which physical presence before the notary public is difficult.

However, the acceptance of an inheritance by means of a document under private signature also presents a number of significant limitations. The most important limitation is the lack of publicity and opposability to third parties, which can generate difficulties in proving the acceptance of the inheritance. Vulnerabilities regarding the authenticity or the certain date of the document under private signature may lead to the possibility for the other successors to contest the document under private signature more easily. In this context, in conflictual situations, the heir will be compelled to resort to the courts for the validation of the instrument, which involves additional time and costs, thereby diminishing the initial advantages of this form of acceptance.

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