

EXTENDED SUMMARY

Disinheritance as a form of private or civil law penalty is a legal provision that allows the inheritor to deprive a reserved portion heir of their inheritance rights under certain conditions. Disinheritance applies exclusively to heirs entitled to the reserved portion. Non-reserved portion heirs are not subject to this provision, as the inheritor has full discretion over their inheritance shares. Similarly, any dispositions the inheritor makes concerning the portion of the inheritance beyond the reserved portion of the heir are not considered disinheritance under the law.

In cases of disinheritance as a civil law penalty, the inheritor can deprive a reserved portion heir of their inheritance rights only for the reasons specified in the law. One such reason, as outlined in Article 510 of the Turkish Civil Code, is if the reserved portion heir commits a serious offense against the inheritor or one of the inheritor's close relatives. The existence and nature of the offense are evaluated according to criminal law principles. However, for the offense to be considered "serious" under this provision, it must be of a nature that damages family ties and in the specific case, completely severs these bonds. Both objective and subjective criteria will be taken into account when determining the seriousness of the offense.

A conviction is not required for the disinheritance of a reserved portion heir who has committed a crime. Even if the crime remains at the attempt stage, this does not prevent disinheritance. It is also not necessary for the reserved portion heir to have personally committed the offense. The disinheritance can be based on the heir encouraging someone else to commit the crime or participating in the crime as an accomplice. However, for disinheritance to be valid, the crime must be unlawful. If the act is unlawful but the reserved portion heir did not act with intent, there will not be a valid reason for disinheritance as a penalty.

For the reserved portion heir to be disinherited as a penalty, it is not sufficient that they simply commit a serious crime; the crime must also be directed against the inheritor or one of the inheritor's close relatives. The use of the term "close relatives" instead of "family members" in Article 510 of the Turkish Civil Code suggests that this concept extends beyond family members or those with a blood relationship. In this context, the inheritor's spouse, blood

relatives, and in-laws can be considered "close," and individuals such as the inheritor's fiancé or close friends may also fall within this definition. The key criterion is the emotional bond the inheritor feels towards the person and the perception that a crime against that person is akin to a personal attack on the inheritor.

Therefore, the concept of "close relatives" should be interpreted broadly. For example, even a crime committed against the inheritor's beloved pet could be considered a valid reason for disinheritance. This is because crimes against individuals or beings to whom the inheritor has a strong emotional attachment can have a deeply damaging effect, potentially severing these bonds.

One of the reasons for disinheritance as a penalty is the reserved portion heir's failure to fulfill obligations arising from family law. Since these obligations must be based on family law, a breach of obligations under contract law cannot serve as a reason for disinheritance. Similarly, failure to fulfill moral or religious obligations does not constitute grounds for disinheritance as a penalty.

If a reserved portion heir neglects their obligations arising from family law, this neglect must be of a significant degree. By "significant degree," it is meant that the violation of these obligations must not only objectively damage or sever family ties but must also subjectively lead to the actual breakdown of family relationships.

According to the second paragraph of Article 510 of the Turkish Civil Code, the failure of a reserved portion heir to fulfill their family law obligations towards the inheritor's family members is considered a valid reason for disinheritance. The term "family members" includes the inheritor's parents, siblings, descendants, and spouse. Adopted children are also regarded as family members. Furthermore, the inheritor's fiancé should be considered a family member, as well as the spouses of the inheritor's children.

Disinheritance as a penalty can only be carried out through a testamentary disposition. The inheritor can disinherit a reserved portion heir either through one of the forms of a will or by entering into an inheritance contract. However, when disinheritance is made through an inheritance contract, this disposition falls under the non-binding part of the contract. As a result, the inheritor may revoke this disposition unilaterally at any time.

Disinheritance cannot be executed by a court decision. Any lawsuit filed with this aim must be dismissed due to the lack of legal interest. Similarly, a declaratory lawsuit to determine whether the grounds for disinheritance exist cannot be filed. This is because a declaratory lawsuit is a precursor to a performance lawsuit, and when a performance lawsuit cannot be filed, a declaratory lawsuit is also not permissible.

The reason for disinheritance must be stated in the testamentary disposition. This reason should be clearly expressed and supported by specific facts. For disinheritance to be valid, it is not necessary to use terms like "disinheritance" or "exclusion." What matters is that the intent to disinherit is clearly understood from the testamentary document. In other words, as long as the language used clearly conveys the intent to disinherit, the use of specific terms is not required.

It is not necessary for the act that constitutes the reason for disinheritance to have occurred at the time the testamentary disposition is made. Disinheritance based on a reason that has not yet occurred can also be considered valid. In this context, the disinheritance can be made conditionally, anticipating the reason will occur in the future. What is important is that the reason for disinheritance must have materialized by the time the inheritance is opened.