



NEWS, LATEST, CURRENT TOPICS

RESTITUTION OF ASSETS TO THE INHERITANCE

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In the context of inheritance law, particularly when it comes to sharing assets, there are often problems between heirs. Here we will briefly explain how the heir(s) can act when, for whatever reason, assets are improperly removed from the estate.

Thus, whenever, for whatever reason, the estate is damaged by the misappropriation of some asset(s) (for example, the withdrawal/transfer of sums from the deceased's bank account to an account other than that of the estate, and without the authorisation of all the heirs), the injured heir can take legal action to ensure that the property is recovered.

In this context, the petition for inheritance is the legal mechanism through which the heir doubly requests recognition in that capacity - as an heir - as well as the restitution of assets held/possessed by third parties.

In these terms, for the petition for inheritance to be valid, there are three cumulative requirements:

- Quality of heir, i.e. the person bringing the action must prove that they are in fact an heir;
- Belonging to the estate, i.e., it must be demonstrated that the assets whose restitution is requested are part of the estate; and
- Possession by a third party: in this case, it must be shown that the third party illegitimately possesses the goods in question.

Failure to prove any of the aforementioned requirements naturally means that the action will be dismissed.

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There is, however, a strong parallel between the inheritance petition action and the claim action (also applicable to inheritance assets). This similarity has generated a wide range of jurisprudential decisions, of which we highlight, by way of example, the decision from Porto Court of Appeal in Case no. 7279/16.4T8VNG-A.P1. In short, the Court explained that *"the most striking difference between these actions is the respective central element of the cause of action: in the inheritance petition action, this is the recognition of the status of heir (the third party's possession of the assets of the inheritance and the respective claim being a consequence of this) while in the claim action, this is the third party's possession or ownership (the recognition of the right of ownership, rather than a claim, being the object of the action)."*

In light of the above, the difference between the two proceedings consists of the requests, which in the case of a claim are the recognition of the status of owner (and no longer of heir) and the restitution of a thing (no longer of a universality or part of it), and the cause of action, namely the right of ownership (and not the right to a hereditary share) and possession or detention of the thing claimed by the third party (in the case of a petition for inheritance, the law only refers to possession).

In this way, by means of either of the two mechanisms mentioned above - Inheritance Petition and Claim Action - depending on the specifics of the case, heirs can have assets that are illegitimately in the possession of third parties returned to estate!

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