

## THE LEGAL NATURE AND PROBATIVE FORCE OF THE HEIR CERTIFICATE

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*Abstract: This article aims to analyze the peculiarities of the certificate of inheritance, the final act of the succession proceeding, and the only means of proof of the heir quality. The inheritance certificate is a summary of the activity concluded within the notary succession procedure and represents an official document. The inheritance certificate is a proof document and not a document constitutive of rights, the successors acquire the succession rights under the law or the will, or through a donation of future goods, directly from the deceased. The public notary performs a public service and his act is one of public authority, so the heir certificate issued by the notary public in the inheritance proceedings must respond to the same requirements.*

*Keywords: certificate of inheritance, succession, procedure, rights, will.*

The complex issue of the legal nature of the heir's certificate as well as the probative force of this document has always given way for some of the most diverse controversies in doctrine and jurisprudence, most times these controversies resulting in judicial or non judicial procedures with alternate character, as the heirs could choose between any of these.

According to the previous legal regulations regarding this matter, before the new Civil Code passed by Law no 287/2009<sup>1</sup>, and law no 36/1995<sup>2</sup>, regarding the activity of public notaries was adopted, the heir's certificate was the final document, unlike the final closing of the inheritance procedure by the public notary, as it contained the heir's agreement regarding the inheritance, the length of inheritance rights, the contents of the inheritance.<sup>3</sup> Thus the heir's certificate is, from a legal point of view, a convention containing the parties' agreement concluded in an authentic document.

Until the new Civil Code was passed, the majority's opinion in doctrine as well as in practice was that of giving the heir's certificate a probative force only in regard to proving the quality of the heir and the amount received from the inheritance, as this authentic document does not prove the property of the heir.<sup>4</sup>

It was noted that those who minimized the legal nature and the probative force of the heir's certificate as a notary document thought this was a conventional document even if it is signed by a public notary. Thereby, the conventional origin of this document is extrapolated in the sense that the release of this document is based on the agreement of the heirs, although it shows some distinctive features unlike other civil conventions<sup>5</sup>.

As we know, the conventions are based on the principle of autonomous will but this principle is applied circumstantially during the inheritance procedure. Thus, it is obvious there were restrictive limits regarding the convention of the parties, as well as the amount of the inheritance, the inheritance reserve and the available part of the inheritance, for example.

Also, civil conventions can be withdrawn by the parties under the same conditions in which they were signed but the heir's certificate can't be retracted or revoked by the parties,

<sup>1</sup> Published in the Official Bulletin of Romania, part I, no.511 of July 24th, 2009

<sup>2</sup> Republished in the Official Bulletin of Romania, part I, no.179 of December 8th, 2011

<sup>3</sup> Cf. C. Murzea, E. Poenaru, The notary inheritance procedure, d.CH.Beck Publishing House pag.128

<sup>4</sup> Cf. Ghe.Dobrican, The heir's certificate as an ownership title for heirs in the Public Notary Bulletin no 6/2011 year XVI pag.17-21

<sup>5</sup> Cf. M. Eliescu, The passing and distribution of the inheritance, The Academy Publishing House, Bucharest 1966, p. 183; Fr. Deak, Inheritance Law Treaty, second edition, The Legal Universe Publishing House, 2002, p. 482-483; C. Stătescu, Civil Law, The Teaching Publishing House, Bucharest, 1967, p. 228.

as it can be dissolved only by legal annulment action, as stated by article 88 of Law no 36/1995.

From a formal point of view, we can state that there are significant differences between the heir's certificate and a civil convention, as the latter is realized by the simple agreement between parties, and the written form is an "ad validitatem" request only in some cases and an "ad probationem" request in other cases. In the matter at hand, the agreement of the heirs can undertake several procedural forms<sup>6</sup>.

The main formal elements of the inheritance procedure are the final closing and the heir's certificate, documents which are elaborated during a non contradictory procedure. However, the public notary performs a "public service" and his act is "of public authority" as he performs what is called a

delegate justice<sup>7</sup>, and his acts must not disturb the public order. Those same rules apply to the heir certificate elaborated during this procedure. Considering the arguments presented above, we can conclude that the public notary finds himself in a situation similar to that of a judge called to rule on the will agreement of the parties.

This is also the reasoning used by the legislator in the old regulation, article 25, second alignment of the Decree no 40/1953 regarding the notary inheritance procedure<sup>8</sup>. By this law, all inheritance causes were given to state notaries claiming that "until it is legally annulled by court order, the heir's certificate proves the quality of the heir, the amount of the inheritance received and the goods of each heir"<sup>9</sup>. This regulation is maintained by article 85, first alignment, second thesis of the public notary activity law no 36/1995.

The resemblance is obvious in regard to the judge's role and also the notary's role in checking the legal character of all operations undertaken during these procedures.

It is our opinion that, from a legal point of view, the heir's certificate is a synthesis of all activities undertaken in an inheritance notary procedure and is an official notary document. Based on these conclusions, the doctrine expressed the opinion according to which the heir's certificate, elaborated during a notary inheritance procedure<sup>10</sup>, a non contradictory procedure which is not different from the judicial procedure of the court, is an authentic document which represents legal ground for judicial operations, such as: buying, selling, donation, exchange and more<sup>11</sup>.

As a consequence, we can state that, in the new Civil Code, the legislator capitalized all the pertinent solutions mentioned in doctrine and jurisprudence according to which the heir's certificate elaborated during a notary inheritance procedure serves not only to probate the quality of the heir but also to prove the quality of heir as the holder of the action.

Thus, as the changes brought on by article 1133 of the new Civil Code by Law no 71/2011 for the passing of Law no 287/2009 regarding the Civil Code, the article is formulated as follows: the heir's certificate proves the quality of the heir, be it legal or testamentary, as well as the right of ownership of the accepted heirs over the goods in the amount which is due to each of the heirs.

Thus, we believe that the above mentioned regulation is corroborated with the acquiring of the ownership right in the new Civil Code and the provisions of article 557 which talks about that legal and testamentary inheritance, both proven by the heir's certificate released during a notary inheritance procedure or, in case there is litigation between the

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<sup>6</sup> C. Murzea, E. Poenaru, op. cit., p. 129.

<sup>7</sup> Jean Francois Pillebout și Jean Yagre, Droit professionnel notarial, Editura Litec, Paris, 2004.

<sup>8</sup> Republished in the Official Bulletin no. 22/10 october 1960.

<sup>9</sup> I. Leș, The judicial nature and the probative force of the heir's certificate as well as the annulment of this document in Law no 11/1997, p. 43.

<sup>10</sup> Gh. Dobrican, op. cit., p. 18.

<sup>11</sup> Ibidem.

parties, by the court order; both these solutions cause the same legal effects from a probation point of view in regard to the heir's quality as well as in regard to the ownership rights of the holders<sup>12</sup>.

As a consequence and in the light of the new regulations of the new Civil Code, the mention of the heir's certificate are opposable to third parties, thus representing ownership titles as the heirs will not be asked to prove the ownership rights of the deceased through a contradictory procedure.

Even before the new Civil Code came in effect there were some courts which correctly appreciated the legal nature of the heir's certificate released in the contradictory procedure elaborated by the notary, thus the right acquired through a notary act will be registered in the land registry upon the request of the heir, in accordance with the law.

The heir's certificate, in the light of the new legal provisions, is not only a probation tool, but also an official act as it is signed by the public notary who not only establishes the agreement between the heirs regarding their quality, the amount of inheritance which is due to each heir and the goods which constitute the inheritance. However, the agreement is concluded in a legal frame established under the direct supervision<sup>13</sup> and counseling of the public notary who, much like the judge, supervises the procedure and administers evidence in order to release an official act which constitutes an ownership title acquired by the heir.

In the light of those mentioned above, the probation power of the heir's certificate and its legal nature is changed as opposed to the previous regulation, Law no 36/1995 because, in case an heir claims goods from a third party who owns a good which is part of an inheritance, he is no longer held to prove the ownership of the person he inherited from; he is held only to show his heir's certificate acquired during a notary procedure. For these reasons, the heir's certificate elaborated by the notary is an act of public authority, much like a court order, and it is sealed and signed "ad validitatem" by the notary; thus it is given the probation force stated by law - article 1133 of the new Civil Code and it is a guarantee of the authenticity of those established.

The legislator gave the heir's certificate released by the public notary during the non contradictory procedure similar effects to those of a court order during a contradictory procedure, as the heir's certificate is given the legal nature and the ability to prove the ownership title of all the "de cuius" heirs.

By this, the legislator gives all the participants of the civil circuit complete trust in all notary documents, an element which is likely to consolidate the social order and the legal order in our society.

### **Bibliography**

1. Fr. Deak, *Inheritance Law Traty*, second edition, The Legal Universe Publishing House, 2002.
2. Ghe. Dobrican, *The legal nature of notary procedures and the institution of the public notary* in Law no.4.
3. Ghe. Dobrican, *The heir's certificate as an ownership title for heirs* in the Public Notary Bulletin no 6/2011 year XVI.
4. M. Eliescu, *The passing and distribution of the inheritance*, The Academy Publishing House, Bucharest 196.
5. I. Leș, *The judicial nature and the probative force of the heir's certificate as well as the annulemntn of this document* in Law no 11/1997.

<sup>12</sup> According to the Bucharest Tribunal s.a.IV civil, dec.2936/1990, și Ghe. Dobrican, opcit, 108

<sup>13</sup> Ghe. Dobrican, *The legal nature of notary procedures and the institution of the public notary*, Law no.4 p.99

6. C. Murzea, E. Poenaru, *The notary inheritance procedure*, d.CH.Beck Publishing House.
7. Jean Francois Pillebout și Jean Yagre, *Droit professionnel notarial*, Litec, Paris Publishing House, 2004.
8. C. Stătescu, *Civil Law*, The Teaching Publishing House, Bucharest, 1967.