

THE INHERITANCE SUCCESSION PROCEDURE WITH EXTRANEITY ELEMENTS – CURRENT CONCERN IN THE EUROPEAN AREA

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Abstract: The inheritance procedure, exceeding the context of legal proceedings governed by specific rules and often with technical connotations, remains nevertheless a specific procedure within the notary's procedure. This feature is generated by the emotional burden of those who participate in this procedure, and due to the fact that an overlapping of will is achieved in the context that, when we refer to inheritance, we must take into account the will of the author of that succession, the will of the legislator but also the will of the heirs.

Since the primitive period, when the rules of inheritance were naturally unwritten, but intuitively observed by all members of the community, continuing with the refine of the rule governing the inheritance along each historical stage of social development and ending with contemporary rules related to the inheritance, it is obvious that inheritance is an engine of socio-economic development, of preservation of heritage, but also an element that indicates us the importance attached to values such as family and property at a given time.

Considering the age of the concept and respectively the procedure, we must recognize that, usually, when it comes to inheritance, the general perception is that we refer to a very conservative procedure and why not to a procedure that stirs passions and not rarely disputes on the estate of the deceased, but especially, as mentioned above, a procedure that raises and maintains special feelings about the man who died and became the author of the succession. Even if it is a quasi-general perception, in reality, the legal standard governing the inheritance, is a norm that has been modernized constantly, which had to grow and meet the social needs of the moment.

Keywords: inheritance, procedure, succession, European, law

The emergency of the European Union (as of 1 January 1958) generated new challenges for the Member States on the notary legal system Europeanization. Free movement - fundamental European value, namely the property title and encouraging the essential value of the family, obviously determined in the matters of inheritance law too, the imposing of certain European procedures applicable to EU citizens regardless of their nationality, but depending on the context, well-defined and delimited by European Regulation on inheritance or related to the inheritance law.

The succession procedure in the European area, has generated and still generates various situations determined due to the fact that in the same time we have European rules, national legislation or international treaties in force governing the same subject.

The existence of several parties involved in the same procedure, the possibility that each of the parties have different interests from each other related to the inheritance, and the coexistence of different legal systems in the European area, have led to difficulties in

interpretation and enforcement of the norms concerning the inheritance procedure. From this point of view, since 2004 the European Council has adopted the “Hague Programme” on strengthening freedom, security and justice in the European Union. In essence, the program claim the need to adopt at the level of the European Union of a regulation to clarify the situations generated by the conflict of laws in matters of inheritance, while establishing international jurisdiction rules on the inheritance, recognition and enforcement of judgments on that subject, but also the creation of a European Certificate of Succession. In this context we should also mention the Stockholm Programme “An open and secure Europe serving and protecting citizens and their family members”, adopted by the Council of Europe in 2009 and also the publication in 2005 by the European Commission of the document entitled “Green Paper on succession and wills”. All these documents launched into debate and assumed by the commission, have culminated in 2009 with the launch of the Regulation proposal “on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession”. This project shall become in 2012, the EU Regulation No. 650/2012, the Regulation of the European Parliament and of the Council, which is to govern the inheritance procedures applied to citizens of EU member states that died starting with August 14, 2015, however, giving the possibility that, even before that date, to have the possibility to choose the law applicable to inheritance. The entry into force of this Regulation has led to difficulties of interpretation for theoreticians, but obviously also difficulties in the implementation among the legal practitioners.

In this context, as indicated by the Regulation too, as well as in the rules we can find into national law, namely Chapter V, Section III, the provision of Article 102 - Article 119 of Law no. 36/1995 on notaries public and notary activities¹, and in Section IV, provisions of Article 233-Article 259 of the Regulation implementing the Law on public notaries and notary activities no. 36/1995, approved by the Order of Minister of Justice no. 2333/C/2013.²

In this regard, in order to solve an inheritance with foreign elements, we suggest the following steps:

1. “The establishment of the enactment in which includes the legal rules applicable to the inheritance;
2. determining the norm applicable when the relevant provisions are found in several national and international sources of law;
3. determining the content of the foreign law applicable and obtaining the customary law certificates;
4. determining the norms of conflict and material rule applicable, depending on the date of death of the author of succession, as a result of changing their content over time, by adopting the Law no. 287/2009 on the Civil Code and Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code and the application of Regulation (EU) No. 650/2012 of the European Parliament and of

¹ Published in the Official Gazette of Romania No. 92 dated May 16, 1995, republished in the Official Gazette of Romania No. 732 dated October 18, 2011, republished in the Official Gazette of Romania No. 72 dated February 4, 2013, as amended by Law no. 54/2013, Published in the Official Gazette of Romania No. 145/March 19, 2013.

² Published in the Official Gazette of Romania, Part I, no. 479 dated August 1, 2013.

the Council of July 4, 2012 on jurisdiction, applicable law, recognition and enforcement of judgments and acceptance and enforcement of authentic instruments in matters of inheritance and the creation of a European Certificate of Succession;

5. determining that an authority in Romania is competent to settle the inheritance (international jurisdiction);
6. verification of the competence of the Romanian notary informed;
7. determining the law applicable to the inheritance;
8. identifying where foreign law, considered as applicable, may be refused on grounds of public policy exception in private international law;
9. considering the matter and form validity of the inheritance options;
10. considering the matter and form validity of the will;
11. acceptance of effects produced by foreign documents in the inheritance procedure in Romanian succession procedure, including authentic instruments or court orders;
12. Issuance of the national heir certificate;
13. Issuance of the European Succession Certificate, in compliance with Chapter VI of (EU) Regulation No. 650/2012.”³

It is obviously that being a new concern from this perspective, this inheritance with foreign elements for professionals in law, any interpretation or suggestion presented in this paperwork supports discussions or proposals for amendments. Nevertheless, based on the diversification of the European system concerning the heritage and the need to unify the rules of conflict in the matter of inheritance within the European Union, it feels the need for a detailed and applied analysis of this (EU) Regulation No. 650/2012 regarding the scope of the principles laid down in the Regulation, issues related to the use of instruments such as the European Notary Network and the European Judicial Network in civil and commercial matters for identifying the content of the foreign law, the exequatur procedure in matters of inheritance, and the character, the competent authority, the procedures, content, issuance, amendment, withdrawal and effects of the European Certificate of Succession.

In this regard we consider and recommend the work paper “International law guide in matters of inheritance”, of Dan Andrei Popescu, PhD.⁴

All these challenges generated by the procedure applied to the inheritances with foreign elements, proves that in addition to the principles of everlasting conservatism of the principles of the inheritance law, rules governing the inheritance are in constant modernization to meet the social needs of the moment.

³ Ioana OLARU, *Dreptul european al succesiunilor internaționale: ghid practic*, Bucharest, Notarom Publishing House, 2014, pp. 9-10.

⁴ Ministry of Justice, 2014. The guide was developed within the project “Improvement of cooperation between judges and public notaries in cross-border civil matters” implemented by the Ministry of Justice in partnership with the National Union of Notaries Public in Romania, the German Foundation for International Legal Cooperation Council of Notaries of the European Union and the Italian National Council of Notaries. Author Dan Andrei Popescu, PhD, University “Babeș-Bolyai” Cluj-Napoca, *Ghid de drept internațional privat în materia succesiunilor*, Magic Print Onești Publishing House, 2014.

Regarding the procedures to international inheritance, legal norms governing the matter must be identified and the relation between the applicable rules, setting the powers in case of the persons deceased after August 18, 2015 and the competence of establishing by bilateral agreements or treaties, and the applicable law to successions.

We also mention, regarding the procedures of the international successions, the rules of using a foreign authentic document, as well as the judgment related to successions which come from another EU Member State and which are applicable to Regulation (EU) No. 650/2012.

Typically, in the procedure of inheritance with foreign elements, we can find the use of civil status records from other states. In this context, we have to mention that in the case of a Romanian citizen, the documents of civil status drawn up by foreign authorities will be mandatory entered or transcribed into the Romanian civil status registers, under the penalty of their lack of probative force.

“Article 44 of Law no.119/1996 on civil status documents.

Para. (3) Civil status documents of Romanian citizens, drawn up by foreign authorities have evidential value in the country only if they are entered or transcribed into Romanian civil records. The transcription of certificates and extracts of civil status documents is carried out with the approval of the mayor of the administrative territorial unit of the place of residence of the applicant, with the prior approval of the county public services of civil service record. Romanian citizens have the obligation, within 6 months after returning to the country or receiving from abroad the certificate or extract of civil status documents to apply for the transcription of such documents with the local community service of civil records or the city hall of the administrative unit in whose territorial jurisdiction he/she resides.”⁵

Regarding foreign citizens residing or temporarily residing in Romania, according to Article 4 of Law No. 119/1996, republished, may apply for the registration of civil status documents or acts as well as Romanian citizens.

“Article 4

(1) Foreign citizens residing or temporarily residing in Romania may require the registration of civil status documents and deeds of civil record in the same conditions as Romanian citizens.

(2) Stateless persons are required to apply for the registration of civil status documents and deeds to local public community service of civil registry or, where appropriate, the competent city hall.

(3) Foreign citizens may apply for, and Stateless persons are required to apply for entry of particulars on civil status documents drawn up in Romanian civil records.

(4) If a foreign citizen married or died in Romania, the Civil Registrar who drew up the document will send, within 5 days after the registration, an excerpt of that document to the competent office of the Ministry of Internal Affairs, which will send it to the diplomatic mission or consular office of that country accredited in Romania, according to the obligations

⁵ Ioana OLARU, *op. cit.* pp. 147-148.

arising from treaties, agreements and conventions to which Romania is a party or on a reciprocal basis.”⁶

Obviously, transcribing or recording of the death certificate issued abroad is a mandatory procedure before establishing the succession file.

“Using the extracts from foreign documents of birth, marriage or death is facilitated when the state that issued the document is a party into the Convention no.16 of the International Commission on Civil Status and the extract was issued in accordance with Form A, B or C, Annex to the Convention. By the Law no. 65/2012 Romania joined the Convention no.16 of the International Commission on Civil Status on the issue of multilingual extracts of civil status documents signed in Vienna on September 8, 1976.”⁷ It is certainly that with the application of Regulation (EU) no. 650/2012 in practice, the law professionals will identify situations that will generate different interpretations. Therefore the application of the Regulation must be monitored, unclear situations or situations that can be interpreted in a different way must be inventoried in order to find clear, effective and workable solutions, which can be unified and applicable in the European area.

The succession proceedings with foreign elements becoming a procedure to be met more often, remains a challenge for theoreticians and practitioners of law in order to identify the tools and procedures that make this procedure fair, efficient and easy to use by all EU citizens.

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4. **Order of Minister of Justice no. 2333/C/2013**, Published in the Official Gazette of Romania, Part I, no. 479 dated August 1, 2013.

⁶ Ibidem, pp. 149.

⁷ Ibidem, pp. 150.