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THE EUROPEAN HEIR CERTIFICATE

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Abstract: *Opening the borders of member states and the circulation of all citizens within the European states resulted in succession procedures with foreign elements. In this context, the following question arose: which law will apply in the case of a succession procedure of a citizen who used to live in a state without having the citizenship of that state, but also when the inheritance contains goods that are located on the territory of another state? In order to unify European law and to avoid discriminatory treatment, these situations had to be regulated by a document which would apply throughout the entire European Union. That is why, starting with August 15th, 2015, The European Union enforced EU Regulation no 650 of July 4th, 20012, of the European Parliament and the Council regarding the competence, the applicable law, the acknowledgement and the execution of legal sentences and the acceptance and performance of authentic documents in regard to succession and the creation of a European heir certificate.*

Key words: *succession, law, Regulation.*

1. Introduction

Opening the borders of member states and the circulation of all citizens within the European states resulted in succession procedures with foreign elements. In this context, the following question arose: which law will apply in the case of a succession procedure of a citizen who used to live in a state without having the citizenship of that state, but also when the inheritance contains goods that are located on the territory of another state? In order to unify European law and to avoid discriminatory treatment, these situations had to be regulated by a document which would apply throughout the entire European Union. That is why, starting with August 15th, 2015, The European Union enforced EU Regulation no 650 of July 4th, 20012, of the European Parliament and the Council regarding the competence, the applicable law, the acknowledgement and the execution of legal sentences and the acceptance and performance of authentic documents in regard to succession and the creation of a European heir certificate.

The European heir certificate can be widely defined as that instrument provided by competent authorities, acknowledged on a European level, which allows legal heirs, legatees, testamentary executors or trustees of the successor's patrimony to prove their quality and exercise their rights in another member state.

According to article 69 of the Regulation, the certificate produces effects in every member state without the necessity of any additional procedures.

According to the second alignment of the same article, it is presumed that all

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information is accurate and that the people presented in the certificate as heirs, legatees, testamentary executors or trustees of the inheritance have all the rights and obligations which result from their quality as confirmed by the certificate. Thus, as opposed to the national heir certificate, the European one does not have the value of an authentic act, as it can be used only to prove the following, which are considered to be accurate:

- the statute and rights of each heir or legatee
- the awarding of one or more goods of the deceased's patrimony to the heirs or legatees mentioned in the certificate the duties of the testamentary executor or trustee of the successor's patrimony.

2. The issuing of the European heir certificate

From the very beginning, we must state that the European heir certificate will be issued only in those succession procedures in which the heirs (legal or testamentary), the testamentary executors or the trustees of the successor's patrimony will have to prove their quality or exercise their rights in another member state. Thus, the subsidiary character of the European heir certificate is regulated, as opposed to the national one, but also the principle of availability in this procedure.

Furthermore, a succession procedure can be finalized by the issuing of a European heir certificate, but it is also possible that the certificate is issued subsequently, after the succession procedure is finalized, if a foreign element is discovered, as they can both function at the same time.

The issuing of such a certificate is a procedure which depends on the request of the person who requires this document, as the principle of availability governs any notary procedure, as stated in article 65 of the Regulation.

Thus, according to article 65 first alignment, the European heir certificate will be issued upon request for any interested person. According to article 63 first alignment, the person who requests this document can be either the heir, or the legatee, testamentary executor or the trustee of the successor's patrimony, in person or by conventional or legal representative.

If, in regard to universal legatees there are no issues, as they have universal succession capacity, in regard to the particular legatees, the doctrine stated that the particular legatee can't be issued a European heir certificate, unless there is a universal or particular legatee who will give the legate[i].

We agree with this opinion because we feel that Regulation no 650/2012 considers the possibility of issuing a European heir certificate only to legatees with direct rights in the succession procedure or, in the light of legal internal provisions, direct rights to the inheritance are provided only for universal legatees.

In regard to the possibility of the heir's creditors or the heir's possibility to request a European certificate, the opinions are divergent. A first opinion claims that creditors do not have to possibility to request a European heir certificate, although they might have interest in the procedure; the reason for this interdiction is the listing stated in article 63 of the Regulation which is limitative. Another opinion, which we agree with, claims the contrary, namely the fact that the creditors of the heirs or the heirs themselves have the right to request a European certificate.

This theory is supported by the provisions of point 45 and 46 of the preamble of the Regulation no 650/2012 which explicitly stated the following: „The current regulation

should not exclude the possibility of the creditors, by representative, to fulfill the additional procedures required by national law, should it be the case, in accordance with the relevant instruments of the European Union, in order to protect their rights.

The current regulation should allow that potential creditors from other member states in which the goods are located to be informed in regard to the inheritance procedure. In order for the current regulation to be applied, the possibility of creating a mechanism should be considered, a mechanism which, through the portal e-justice, will allow creditors from other member states to access relevant information, in order to present their claims".

In conclusion, we believe that the request of issuing a European heir certificate can be filed by the creditors as well, regardless of whether they are creditor of the inheritance or of the heirs; the listing of article 63 is merely declarative and it does not affect the rights of the creditors.

As shown above, the issuing of the heir certificate is performed on request. The request implies a form should be filed and published in the Official Bulletin of the European Union.

The request must contain the following information, expressly stated in article 68 of the Regulation:

a) information regarding the deceased: name (name before marriage, if applicable), surname, sex, date and place of birth, civil status, citizenship, personal number code (if required), address at the time of death, date and place of death;
b) information regarding the petitioner: name (name before marriage, if applicable), surname, sex, date and place of birth, civil status, citizenship, personal number code (if required), address and relation to the deceased, if required; RO L 201/128 Official Bulletin of the European Union 27.7.2012;
c) information regarding the representative of the petitioner, if required: name (name before marriage, if applicable), surname, address, capacity of representation;
d) information regarding the husband/wife or partner of the deceased, and, if applicable, ex husband/ex wife or former partners: name (name before marriage, if applicable), surname, sex, date and place of birth, civil status, citizenship, personal number code (if required) and address;
e) information regarding other possible beneficiaries as stated by death cause or by law: name and surname, name of the organization, personal number code (if required) and address;
f) the intended purpose of the certificate, according to article 63;
g) the coordinates of the court or other competent authority who handles the succession procedures, if required;
h) the elements, based on which the petitioner claims his right to succession as a beneficiary of the right to execute the will of the deceased and/or the right to administer the patrimony of the deceased;
i) an indication which states if the deceased drafted up a provision for cause of death; if the original document or a copy of it are not filed along with the request, the petitioner must state the place where the original can be found;
j) an indication of whether the deceased had a matrimonial convention or a convention regarding a relation which could result in effects similar to marriage; if the original document or a copy of it are not filed along with the request, the petitioner must state the place where the original can be found;

k) an indication which states if any of the beneficiaries made a statement regarding the acceptance of the succession or of the waver of the succession;
l) a statement that, as far as the petitioner knows, there is no litigation regarding the elements which are to be proven by the certificate;
m) any other information which the petitioner believes are useful in issuing the certificate.

The competence of issuing the European heir certificate lies with the court or with another authority which, based on internal law, is competent in the matter of succession. In the case of Romania, the competence lies with the court or the public notary.

Upon receiving the request, the notary has the following obligations:

- to check his territorial competence;
- to check whether other demands have been made in regard to the same inheritance in the same state or in another member state;
- to register the request in the European Register of Succession Procedures and to form a succession file;
- to inform the beneficiaries or potential beneficiaries by public announcement;
- to obtain the agreement of all people involved in the procedure;
- to issue the European heir certificate.

The European heir certificate has a predetermined content, established in article 68 of Regulation no 650/2012. According to these provisions, the certificate contains the following information, if it is necessary for the purpose of the certificate:

a) name and address of the authority which issued the certificate;
b) the reference number of the file;
c) the elements based on which the issuing authority is competent to issue the certificate;
d) date of issue;
e) information regarding the petitioner: name (name before marriage, if applicable), surname, sex, date and place of birth, civil status, citizenship, personal number code (if required), address and relation to the deceased, if required;
f) information regarding the deceased: name (name before marriage, if applicable), surname, sex, date and place of birth, civil status, citizenship, personal number code (if required), address at the time of death, date and place of death;
g) information regarding the beneficiaries: name (name before marriage, if applicable), surname, personal number code (if required)
h) information regarding a matrimonial convention or a convention regarding a relation which could result in effects similar to marriage and information regarding the patrimonial aspects of the matrimonial regime of another equivalent patrimonial regime;
i) the law which applies to the succession procedures and the elements based on which the law was established;
j) information which states whether the succession is ab intestat or based on a provision for cause of death, including information about the elements which come from the right and/or prerogatives of the heirs, legatees, executors of the will and the trustees of the successor's patrimony;
k) if required, information regarding the nature of accepting the succession or of waving it by the beneficiary;
l) the share of every heir and the list of rights and/or the goods which are awarded to

a certain heir;

m) the list of rights and/or goods which are awarded to a certain legatee;
n) the restrictions which apply to the rights of the heir (heirs) and of the legatee (legatees) based on the law which applies to succession and/or in accordance with the provision of the cause of death;
o) the powers of the testamentary executor and/or the trustee of the successor's patrimony and the limits of these powers based on the law which applies to succession and/or the provision for the cause of death.

Article 70 the first alignment of Regulation 650/2012 states that the issuing authority keeps the original of the certificate and issues one or more certified copies to the petitioner and any other person who proves they have a legitimate interest.

We do not agree with the statement according to which the certificate is drawn up in just one original copy for the following reasons: the Regulation does not clearly state this, it only states that the original is kept by the issuing authority; also, the Regulation is completed by internal provisions, as stated by the preamble of the Regulation. As a consequence, as opposed to internal provisions which state the necessity of drafting up the heir certificate in two original copies, we feel that the European heir certificate must be drafted by the public notary in two original copies.

In case the quality and extent of successor rights is established by the court, this discussion is irrelevant.

The issuing authority can issue one or more certified copies to the solicitor and any person who proves they have a legitimate interest, by keeping a list of the people who were issued certified copies. The certified copies are valid for a limited time of 6 months; the date of expiration must be mentioned on the certified copy.

In exceptional cases, justified accordingly, the issuing authority can decide to extent the validity period. After the expiration of this period, any person who has a certified copy has the possibility to request an extension of the validity of the certified copy or to request a new certified copy from the issuing authority.

The succession procedure is not finalized in all cases with the issue of an heir certificate. Although Regulation no 650/2012 does not expressly state all the cases in which the issue of the heir certificate can be denied, we appreciate that, in these cases, the European provisions must be completed with national ones which apply to all succession procedures.

Thus, in addition to the two situations which are expressly stated in article 67 first alignment second thesis, namely when the elements which are to be certified are subject of litigation or when the certificate would not be in accordance with a court ruling regarding the same elements, there are a series of other situations which can prevent the finalizing of the procedures by issuing an heir certificate.

The phrasing chosen by the lawmaker shows that the issuing authority does not issue the certificate *especially* if we are in the presence of one of the two situations listed above, without excluding the possibility of another circumstance which would prevent the issuance of the certificate.

Among the situations which prevent the issuance of the certificate we can list, as an example, the disagreement of parties or their lack of representation. These are reasons which justify the public notary's refusal to issue the certificate, as the notary procedure is a non contradictory one, an amiable procedure, which can't be achieved if the parties are not in agreement or if the parties are not present.

The legal means by which the notary refuses to issue the certificate is regulated by Law no 36/1995 of public notaries and notary activity and it is a rejection document. Against this document, the interested party can file a complaint at the court where the public notary is registered.

If the succession procedure is performed by a court of law, the absence of parties or their disagreement does not prevent the issuing of the certificate, as the trial entails a contradictory element.

3. The effects of the European heir certificate

According to the provisions of article 69 of Regulation no 650/2012, „the certificate causes effects in each member state without any special procedure„.

It is presumed that the certificate proves with accuracy all the elements established based on the applicable law or based on any other law which applies to the specific elements. It is presumed that the person mentioned in the certificate as heir, legatee, testamentary executor or trustee of the successor's patrimony has the statute mentioned in the certificate and/or is the holder of the rights or powers stated in the certificate, without any other conditions and/or restrictions of those rights or powers, except for those mentioned in the certificate.

It is presumed that any person, acting based on the information stated in the certificate, makes payments or transmits goods to a person mentioned in the certificate as an authorized person to accept payments or goods has concluded the transaction with the above mentioned person, except for the case when this person knows that the information contained in the certificate is not accurate or has no knowledge of this fact due to severe negligence.

In case a person mentioned in a certificate as being authorized to administer the successor's goods, administers these goods to the benefit of another person, by acting based on the information contained in the certificate, it is presumed that the person becomes part of a transaction with a person who is authorized to manage the goods, except for the case in which that person knows that the information in the certificate is not accurate or has no knowledge of this fact due to severe negligence.

The certificate is a valid title to register succession goods in the corresponding register of a member state. Based on the content of the European provisions, we can easily acknowledge that this European tool only has proving power, as it is not an authentic act in the sense of article 269 of the Civil Procedure Code. The European heir certificate only creates an assumption of accuracy of the elements contained in the document. It has a declarative effect of the successor's rights and its purpose is to protect good faith.

Although it creates a justified appearance, the regulations of article 2 letters k and l of the same Regulation exclude real rights as well as any other registration of mobile or immobile property, including the legal demands for such a registration, as well as the effects of the lack of registration such rights in a register.

Thus, the issues regarding the acquiring and publicity or real rights are solved, as these institutions are governed by national law. Thus, this is another case in which European provisions are completed with internal ones, which apply in each member state, thus avoiding a contradictory and confusing legal context.

4. The procedure of rectifying, changing or retracting the European heir certificate

The rectifying of the European heir certificate entails the correction of material errors of

the certificate. Regulation no 65/2013 does not stipulate a special procedure according to which the certificate can be rectified.

As a consequence, European regulations will be completed with national regulations, as each state will apply the procedure according to its national law. In the case of Romania, the notary procedure of rectifying the European heir certificate will occur in accordance with the provisions of article 88 of Law no 36/1995.

The procedure of changing or withdrawing the European heir certificate is also not regulated by the Regulation. The cases in which the certificate can be changed or withdrawn are those situations in which it had been established that certain elements of the certificate were not in accordance with reality.

Internal regulations are also to be applied in these cases, thus we claim that the changing or withdrawal of the heir certificate can only be achieved by its annulment followed by the issuance of a new certificate.

The decisions of rectifying, changing or withdrawing the heir certificate, as well as those by which the request for rectification, change or withdrawal was dismissed can be contested by any person who proves legitimate interest.

The claim is filed before the judicial authority of the member state where the issuing authority is located, according to the laws of that state. In case it is established that the certificate is not accurate, the competent judicial authority rectifies, modifies or withdraws the certificate or ensures the rectifying, change or withdrawal of the certificate by the issuing authority.

During the procedure of rectifying, changing or withdrawing the heir certificate, as well as throughout the entire time needed to solve any possible contestation of the certificate, the effects of the certificate can be suspended.

Given the phrasing chosen by the lawmaker, we believe that suspending the effects of the certificate is not mandatory, thus it will be decided upon by the judicial authority, thus not operating by power of law.

In case the effects are suspended, the issuing authority or the judicial authority is obliged to inform all people who were issued certified copies of the certificate in regard to any suspension of the effects of the certificate. Disregarding the obligation to inform entails the liability of the issuing authority for any damages caused.

During the time the effects of the certificate are suspended, certified copies of the certificate can no longer be issued.

5. Conclusions

The European heir' certificate is a very useful tool in the attempt of unifying European law. By creating this tool, the need to solve succession procedures with foreign elements is addressed, as these procedures are more and more frequent since European borders have been opened.

The enforcement of Regulation no 650/2012 starting with August 17th, 2015 allows for issues which will have to be interpreted in a unified manner by all professionals, but will also urge the European lawmaker and the lawmaker of national states to perfect the text of law in order to usefully apply it.

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*** *The law of public notaries and notary activity no. 36/1995* was republished in the Official Bulletin of Romania, Part I, no 72 of February 4th, 2013; subsequently it was modified by Law no 54/2013 for the approval of the Government's Emergency Ordinance no 120/2011 regarding the extension of some deadlines for the change and completion of some laws, published in the Official Bulletin of Romania, Part I, no 145 of March 19th, 2013.

*** *Law no 134/2010 regarding the Civil Procedure Code*, republished in the Official Bulletin, Part I, no 247 of April 10th, 2015.