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SOME FEATURES OF THE SEISIN (THE RIGHTFUL ACQUISITION OF THE INHERITANCE POSSESSION)

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Abstract: *According to the provisions of the Civil Code, there are many elements of novelty regarding the rightful acquisition of the inheritance possession, respectively of the seisin. That's why I considered auspicious to shed light in terms of this institution in the Romanian civil law and what its characteristics are.*
The seisin is the benefit conferred by the law to some categories of legal heirs of the deceased who can enter themselves into possession of the succession goods and may exercise the rights and actions acquired from the defunct, without prior notice, being however necessary to check and certify the quality of heir by a notary or judicial process. Seisin raises a particularly complex problem and acquires the legal nature of a fundamental right: to gain possession of the inheritance. The rules which have power over the institution of seisin are imperative. That's why the deceased cannot withdraw or grant benefit to other heirs than those prescribed by law, nor can they alter the effects of the seisin, after their will.

Key words: *acquisition, seisin, heirs, rights, possession.*

1. Introduction

According to the provisions of article 955 paragraph 1 Civil Code "The deceased's patrimony is transmitted by legal inheritance, to the extent that the one who left the legacy has not ordered otherwise by testament".

Inheritance rights to which heirs are entitled shall be transmitted to them from the opening of the inheritance.

According to the doctrine, regarding the acquisition of possession, we must distinguish between the successors as they benefit from the seisin, or should be required to vest in their possession, and if they are legatees, it should be forwarded to the legate [1].

In addition to the heirs provisioned by the law (surviving spouse, descendants and ascendants of the deceased heirs) the other heirs are forced to vest in their possession, because according to the Civil Code (article 1126 Civil Code), the surviving spouse, descendants and ascendants of the deceased are privileged regarding the possession of the inheritance. It should be kept in mind that these heirs who must request the vesting of possession can be both legal and testamentary heirs.

The civil code distinguishes between three categories of heirs [2]:

- heirs who have seisin;

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- heirs who don`t have seisin (who should be required to send in their possession);
- Legatees (who must ask for the deliverance of legacies).
- But what is meant by "possession of the inheritance" or "seisin"? Here's an issue that must be considered slightly more extensively.

2. The notion of seisin

The Civil Code defines the seisin as a benefit, according to which the seisin heirs, have the right to administer the inheritance and to exercise the rights and actions of the deceased.

Making a comparison between the definition of the new Civil Code and the resulting definition provided by the old Civil Code, we can say that there are no distinctions because the law confers the same benefits to the seisin heirs.

It can be noticed that the new Civil Code uses the notion of "control in fact" of the legacy, instead of those used by the doctrine, according to the old Civil Code, "possession of the inheritance." [3].

To be able to demonstrate that legal practice abides by this, we have chosen an exemplifying case[4], which we could analyze from the point of view of the new Civil Code.

"The Court has upheld the action in claim made by B.V. and forced the defendants to grant them complete and undisturbed ownership of the property acquired by the State in the conditions of the article 1(d) of Decree No. 111/1955, who belonged to G.A. The Court also rejected the exception of lack of legal standing of the applicant.

This ruling was maintained by the Court of Appeal which dismissed the defendants' declared claims as unfounded.

With reference to the legal standing of the applicant, the courts have noted that he is the testamentary heir of the so-called A.G., who, in its turn is the legal heir of her deceased husband G. M., according to the certificates of inheritance in question. With regard to G. M., son of former owner G.A., courts have noted that, being a seisin heir, he had possession of the estate, according to art. 1126 of the Civil Code (653 of the old Civil Code), so it was not necessary to go through a succession debate or to issue of a certificate of inheritance as there were relevant civil status acts which demonstrated the degree of kinship.

Against these decisions, the defendants appealed, invoking, among other reasons, the exception of the lack of legal standing of the applicant.

The appeals of the defendants are founded.

According to article. 1126 of the Civil Code (art. 653 paragraph 1 of the former Civil Code), the privileged descendants and ascendants had possession of the inheritance since the time of death of the deceased.

Thus, the general rule is that any heir of the surviving spouse, privileged descendants or ascendants, must request the vesting in possession in order to benefit from the effective use of the property inheritance.

Vesting in possession does not influence the possession which is gained by heirs without seisin.

As for the property inheritance, it passes over to the heir without seisin at the time of death of the author or, just as the heir who has seisin.

Therefore, between the seisin and the mechanism of transmission of inheritance there cannot be made any connections as the seisin is not susceptible of having any influence on the methods of acceptance or on the waiver of succession.

Article 700 of the former Civil Code provisions that the right to accept the

succession shall prescribe after a period of 6 months counted since the opening of the succession.

The new Civil Code has changed both the period of succession option, bringing many clarifications to this institution, in the current language.

The new Civil Code defined the very notion of succession to cover the fact that the succession entails a person who fulfils the conditions laid down by law in order to be able to inherit, but who has not yet exercised the right of successional option.

According to article 1103 of the Civil Code, the right to successional option is exercised within one year from the date of the opening of the inheritance and makes no distinction as to whether heirs are seisin or not.

The seisin heir benefits from the seisin only if he/she accepted the succession.

It results that it is wrong from the point of view of the courts that have considered that it was not necessary to provide proof of acceptance of the succession of the deceased G.A., on the grounds that his son, G.M. took possession of the estate, according to art. 1126 of the Civil Code (article 653 of the former Civil Code).

Consequently, it is necessary to admit the appeals, the cassation of the issued decisions and resumption of judgments in front of the first instance for administering proof of the acceptance of succession of the deceased G.A, by his son G. M. "

By looking at the French law we can offer some short explanations with reference to the seisin. In the old French law the seisin was the equivalent of taking possession namely of taking in possession the material goods of the inheritance and the principle enshrined in the famous art. 318 of the Custom of Paris was "*le mort le vif, son Elliott hoir proche et le plus habile of succeder*" (the dead passes the possession to the living or the closest heir entitled to succeed him).

Therefore the situation was due to the fact that the property could not be transmitted from the deceased to the successor in an abstract mode, as it currently occurs, but only matched by putting in possession, as a positive expression.

Today, possession is a state of fact and not of law, and the transfer of property is abstract, not necessarily related to the transmission of possession in the classic sense of the notion.

As a matter of fact, possession is able to lead to the acquisition of property by adverse possession, the heirs shall be notified automatically regarding the date of opening of the succession, whether seisin or not.

In the French succession law, after modifying the French Civil Code through the law of 2006, a special institution *namely conventional mandate with posthumous effect* was introduced.

This type of mandate allows the deceased to designate, during their lifetime, a third party (successive, natural or legal person, a notary, a lawyer, a Bank, a property administrator, etc.), instead of the heirs, to be given his/her succession either in whole or in part when it is opened.

This mandate deprives the heirs of their powers to manage the succession period fixed through a mandate [5].

The French law established that the duration of such a mandate is two or five years.

The mandate must be justified by a serious and legitimate interest, it must have an authentic form and may be granted even to a notary but not to the one who will resolve the cause of the succession.

The trustee is not and nor will they become a land owner. The trustee will not be able to conclude acts of disposition or to exercise the right of successional option. At the end of each year, the trustee will

have to give account to the heirs about their mandate.

The revocation of the mandate can only be judicial and can intervene when the serious and legitimate interest disappeared, or in case of improper performance of the trustee.

The French law also regulates *the conventional post mortem mandate*, which can be concluded by the heirs or a third person after the opening of the inheritance of the legacy.

There is also a judicial mandate through which the competent judge shall appoint a legal representative where the heirs do not understand, in terms of the management of the legacy.

Therefore, all interested parties can request this to justice. A trustee can be appointed posthumously by anyone who is afraid of difficulties in dealing with the administration of the estate[6].

3. The seisin heirs

According to article 1126 of the Civil Code, seisin heirs are the surviving spouse, the privileged descendants and ascendants of the deceased.

It is noted that these seisin heirs are also forced heirs.

The criterion used by the Civil Code from 1864 to determine seisin heirs - kinship in the direct line of descent is replaced with the principle according to which heirs who benefit from the inheritance reserve, equally benefit from the inheritance seisin [3].

In the old Civil Code, seisin heirs were descendants and ascendants, the surviving spouse being excluded from the category of heirs.

The current Civil Code has eliminated from the category of seisin heirs the ordinary ascendants, giving this benefit to the surviving spouse.

As Professor Ilioara Genoiu stated, I agree with the attribution of the seisin in favor of the surviving spouse, in detriment of ordinary ascendants.

This displays a special practical usefulness, because, most of the times the surviving spouse is the person closest to the deceased and it is natural that he/she should master the inheritance, property law, from the date of the opening of the legacy, independently of the issue of the certificate of inheritance and, on the other hand, ordinary ascendants cannot harness the attributes conferred by the seisin, in most cases, no longer alive at the time of the opening of the inheritance of their descendant(grandchild, great-grandchild, and so on).

This provision is in my view a regression of moral rights that is appropriate for the surviving spouse.

Privileged ascendants and descendants are seisin heirs. Under seisin, the descendants have the opportunity to get control of the estate prior to the issuance of the certificate of inheritance.

At the same time, they will be able to manage this heritage and will be able to exercise the rights and actions of the deceased [7].

4. The effect of seisin

As a main effect of the seisin it is worth noting that the seisin heirs are entitled to administer the succession property and to exercise all the actions of the deceased property, without being necessary to go through any procedure.

So the seisin produces two effects:

a) The seisin heir takes possession and can manage all the inheritance goods, even the right to the fruits of the succession assets, without carrying out any prior formalities, even before the issuance of the certificate of inheritance.

In accordance with the provisions of Law 36/1995 on public notaries and notarial activity, there are certain exceptions whereby the seisin heir cannot exercise the administration of some succession goods.

For example, under article 72 of Law 36/1995 if there is danger of alienation, loss, replacement or destruction of property, the public notary will be able to place the goods under seal or will surrender them to a custodian. The goods given into custody or in administration shall be submitted on the basis of a written report signed by the notary and the custodian or trustee.

An example of this type, according to art. 1117, is taking special measures for preservation of the goods, and art.1145 of the Civil Code which comes to reinforce this through its provisions according to which "the inheritance goods may be the subject of a protective measures, in whole or in part, at the request of the concerned party, in accordance with the law". In the case of an amount of money or other values such as securities, checks or other values, they will be kept under the conditions regulated by art. 1118 from the Civil Code, being lodged in the notary public's office or at a specialized institution.

In the situation in which there are succession goods in the possession of a third party, the seisin heirs can get them using the action in claim or actions of owners.

b) The seisin heir is entitled to exercise all economic rights that belonged to the deceased. Among these rights, we mention:

- He/she can trace the succession debtors and the owners of the succession goods;
- The right to exercise the actions of the holders with regard to the succession goods (even if not possessed in fact) and any other actions with the heritage character belonging to the one who leaves the inheritance; [8]
- The right to defend themselves, as defendants, towards third party plaintiffs with claims relating to inheritance.

The seisin heir will be pursued by creditors of the inheritance as a defendant, without prior certification of the quality of heir.

Also, an effect of the seisin is that the seisin heir will be able to carry out the actions of the owners and suitors even if the owners had never possessed the property which is the subject of this action [9], which is, incidentally, the most characteristic effect of the seisin [10].

Unlike the seisin heirs, the unseisin heirs will have the right to exercise the rights and actions of the property that belonged to the deceased only after a preliminary verification of their call to the succession and their successional legal standing, a certification which is meant to protect both the rights of other successors who would have a more significant legal standing, as well as the interests of third parties who had legal relations with the deceased and who have an interest in determining the legal standing of the successors.

Whereas the seisin does not eliminate the right division between the heirs of the assets and liabilities of the estate, the seisin heir may act or or he can be activated only for the part that lies in the claim, respectively the debts and charges of the succession. The seisin is therefore divisible [11].

In conclusion, we could say that the effects of the seisin occurs until the heir becomes the exclusive owner of the property or assets of the inheritance that is assigned.

5. Sending in the possession of the unseisin legal heirs

As I have indicated, according to art. 1126 of the Civil Code, seisin heirs are the surviving spouse, descendants or ascendants of the deceased.

Thus, we find ourselves in a situation where we can deduce that the unseisin heirs are all other legal heirs with entitlement to inheritance, namely the ordinary ascendants, privileged collaterals and ordinary collaterals.

We can say that they belong to the category of unseisin heirs and legatees. From this class of heirs the Legate with a particular title is excluded, where the delivery of the legate is necessary, actually coming into possession of the inheritance.

It can be deduced that the current Civil Code dropped the phrase "vesting of possession", and used the phrase "the entry in possession of the actual inheritance", bringing stability to avoid confusion between seisin and possession of the common law[3].

Possession of the common law is governed by art. 916 of the Civil Code, assuming the reunion of the two corpus elements, namely the physical mastery of goods and animus, i.e. intention to master the goods for oneself.

We can say that the substance of the seisin is represented by the mastery of the material, excluding the item of possession animus.

According to the provisions of article 1127 para. 1 of the Civil Code "unseisin legal heirs acquire the seisin only through the certificate of inheritance, but with retroactive effect as from the day of opening of the inheritance".

According to article 1139 paragraph 1 of the Civil Code "the village, town or city, as the case may be, the municipality actually enters into possession of the inheritance as soon as all qualified as known legal heirs have renounced the inheritance, at the fulfillment of the term stipulated by art. 1137, if no heir is known. The legacy is acquired retrospectively from the date of its opening."

The procedure of vesting in possession is non-contentious and shall be carried out by the notary public from the location where the opening of inheritance is made, at the request of the unseisin legal heirs [12].

The unseisin legal heirs to be put in possession, i.e. to enter in possession of the successional goods and to exercise the rights and actions of the succession must prove their legal standing, the vocations of the inheritance.

This is done only after the consent of their entry into possession, i.e. after the issuance of the certificate of inheritance by the notary public. Thus, the document establishing the vesting in possession is the certificate of inheritance.

The certificate of inheritance, the proof of the quality of heir, legal or testamentary, as well as proof of ownership of the accepting heirs of the goods from the succession, in the share that is due to each and every party.

The certificate of inheritance shall be released by the notary public and includes findings related to inheritance, the number and the legal standing of the heirs and their share of this heritage, as well as other conditions required by law. Those who consider themselves deprived of their rights through the issue of the certificate of inheritance may require the court to declare or, where appropriate, a declaration of invalidity, and to establish their rights, in accordance with the law.

When the issue of the certificate of inheritance is not possible on a non-contentious way, due to disagreements between the parties, the claim of vesting in possession is addressed to the Court[13].

Until the entry into possession of the inheritance, the unseisin legal heir heritage

cannot be taken into consideration as heir, but may request the notary public to order measures for the conservation of the inheritance goods.

As a result of the vesting in possession of the unseisin legal heirs, they produce the same effects as in the case of seisin legal heirs (right to track the debtors of the succession, to pursue the actions of owners, the right to defend oneself as a defendant against third party claimants) [14].

So, according to article 1127 of the Civil Code, unseisin heirs acquire the seisin through the inheritance certificate, the universal legatee from the forced heirs, or in case of refusal by means of the certificate of inheritance, and the legatee with a universal title, depending on the case, from the legal successors of the beneficiaries or the unforced heirs vested in possession of the inheritance through the issue of a certificate of inheritance. In case of refusal, also, the legatee with a universal title would enter in possession of the inheritance through the certificate of inheritance (article 1128).

In conclusion, the certificate of inheritance or the ruling (when applicable) proves that the unseisin heir has gained possession of the succession goods retroactively from the date of the opening of the inheritance.

6. Conclusions

I agree to limit the granting of seisin to privileged ascendants, but also with the granting of seisin to the surviving spouse because usually the spouse is the closest person in one's life.

Therefore, I consider that the new Civil Code has concluded correctly regarding the inclusion of the surviving spouse amongst the seisin heirs.

The entitlement of seisin heirs will be recognized only for those heirs who possess specific vocation to inherit.

From the seisin will benefit only those heirs who are willing and entitled to inherit, not being unworthy, and who are not removed from the succession, through the presence of some heirs of a nearest class or a degree closer in descent to the deceased.

Please note that, the deceased cannot deprive of seisin the descendants that are provisioned and entiled by the law, nor can it give seisin to other persons than those prescribed by law, nor can it change the powers conferred to the seisin by the law.

The seisin has an individual character, i.e. it is not granted to all seisin heirs at the same time, regardless of the order of inheritance, but, on the contrary, according to the order in which they are called upon by the law to inherit.

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