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European Certificate of Succession Necessity or Opportunity?

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Abstract: This paper aims at analyzing the chosen theme to all intents and purposes, yet emphasizing the extent of harmonization between national rules and EU regulations. The paper is based on the expertise in succession field, national and European notary regulations and also on the few published works within the field. Practical appearances noticed during the succession procedure containing a foreign element and the research in this field of interest were approached. The paper draws attention upon the possibility of the European Union residents to make succession arrangements beforehand and it determines that European law efficiently guarantees the rights of the inheritors, legatees and succession creditors. The object of this paper, yet of little repute within the national professional literature, meets the requirements of either the public notaries or any interested person within the European Union. Through the presented perspectives, the discovery of certain scanty aspects of the related regulations and the resolutions for their coping, the paper shall step forward to earning the citizens' trust in the Public Notary institution, emphasizing a new perspective upon European succession.

Keywords: Member States; heirs; European regulations

1. Introduction

Notary practice has proven that the debate of a succession with an element of extraneity raises serious difficulties as the States of the European Union have extremely diverse internal laws and regulations applicable to law conflicts. Moreover, the difficulty of an international succession debate also resides in the existence of a multitude of authorities which may be notified in such cases.

Therefore, the European Commission, together with the notary offices of the Member States of the Union have outlined the need to harmonize legislation in this field, starting with the conflict regulations in the European Union and ending with the training of those who are faced with international successions, namely, notaries public. Consequently, the European Parliament and Council adopted on the 4th of July 2012, at Strasbourg, Regulation (EU) no. 650/2012 which stipulates the creation of the European Certificate of Succession, applicable as of the 17th of August 2015 (Council, 2014).

2. Practical Aspects

In order to identify the objectives of this Regulation and the new principles it introduces, we shall analyze hereinafter several practical aspects regarding the current settlement of an international succession.

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We start from the following case: the deceased is a Romanian citizen having the last residence in Italy, he holds both movable and immovable properties on the territory of Italy, as well as on the territory of Romania and did not leave a will.

If a Romanian notary is notified for the possessions in Romania, he shall enforce article 2366 of the Romanian Civil Code which stipulates the settlement of the succession through the enforcement of the Law of the State on the territory of which the deceased had the habitual residence at the date of the decease. In our case, this is the Italian law. However, the notary public is bound to take into account article 46 of Law 218/1995 regarding the Italian private international law which submits the succession to the deceased's national law at the time of the decease. In our example, the deceased, has Romanian citizenship, so that the Italian law referred to the Romanian law which shall be applied to the succession.

Given the reasoning above, the Romanian notary, being competent for the Romanian goods, shall apply the Romanian law. Thus, he shall issue a Certificate of Succession which represents a title deed and certifies both the status of the heirs and their rights to the goods, following the procedure established by Law 36/1995 on notaries public and their activity.

In the case above, if an Italian notary is notified for the properties in Italy, he shall enforce the Romanian law, as law of the citizenship. However, on grounds of referral, the Romanian law shall refer to the law of residence which is the Italian law - for the properties in Italy, therefore, the Italian law shall be applied.

Regulation (EU) no. 650/2012 regulates these situations and provides solutions at a European level for the recognition of the foreign documents issued in an international succession, so that the difficulties we have mentioned in the beginning are overcome. Furthermore, as we will see below, the regulation harmonizes the norms regarding jurisdictional competence in terms of succession within the European Union. Hereinafter we shall try to clarify the most important aspects of the European Certificate of Succession, analyzing the articles from the European Regulation it consecrates.

3. Problem Statement

3.1. What is and what the European Certificate of Succession Aims at?

It is founded on article 62, article 63 and Consideration (67) of Regulation (EU) no. 650/2012.

"Article 62: This Regulation creates a European Certificate of Succession which shall be issued for use in another Member State and shall produce the effects listed in Article 69.

1. The use of the Certificate shall not be mandatory;
2. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter."

"Article 63:

1. The Certificate is for use by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate.

2. The Certificate may be used in particular, to demonstrate one or more of the following:

(a) the status and/or the rights of each heirs, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;

(b) the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;

(c) the powers of the person mentioned in the Certificate to execute the will or administer the estate.

Consideration (67) "In order of a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs, legatees, executors of the will or administrators of the estate should be able to demonstrate easily their status and/or rights and powers in another Member State, for instance in a Member State in which succession property is located. To enable them to do so, this Regulation should provide for the creation of a uniform certificate, the European Certificate of Succession (hereinafter referred as "the Certificate"), to be issued for use in another Member State. In order to respect the principle of subsidiarity, the Certificate should not take the place of internal documents which may exist for similar purposes in the Member States."

Analyzing these provisions, we can define the European Certificate of Succession a uniform **document,** with probatory value, meant to be used by heirs and/or legatees, executors of the will or administrators of the estate in order to be able to prove their status, rights or competences in another Member State than the State in which the certificate was issued (Olaru, 2013, p. 23).

Seeing the effects it produces, we may state that the European Certificate of Succession is a standard form which does not represent a definitive solution for an international succession. This conclusion is also founded on the provisions of article 65 item g, which stipulates that the application for a European Certificate of Succession must also include the coordinates of the court which is in charge with the succession itself, therefore, a court can settle the succession itself and another authority can issue the certificate.

In the Romanian law, the settlement of a succession is completed with the issuance of a certificate of succession which represents a title deed and fully proves its findings until statement of forgery[1]. From the provisions of Regulation (EU) no. 650/2012[2] it results that the European Certificate of Succession does not constitute a real title as no effects are granted to it which would have turned this document into a title deed.

Still in this European Regulation, precisely, article 3 paragraph 1 letter I, we find that the European Certificate of Succession is neither an authentic document, nor a court order, legal transaction, as these terms are defined. The issuing authority checks the information provided by the applicant, however, all the data recorded in the certificates represent a mere checking of the reality of certain information provided by the applicant.

[1] Article 1133: The Certificate of Succession proves the status of testamentary heirs or heirs-at-law, as well as the heirs' right to the estate, in the extent each are entitled to.

[2] Article 69: […] The certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements […].

3.2. Competence in issuing the European Certificate of Succession

In establishing the competence of the authorities to issue the certificate we start from the provisions of the same Regulation (EU) no. 650/2012. Thus, article 64 states that "the Certificate shall be issued in the Member State whose courts have jurisdiction under Article 4, Article 7, Article 10 or Article 11. The issuing authority shall be:

a) a court as defined in Article 3(2); or

b) another authority which, under national law, has competence to deal with matters of succession."

The general rule attributes the competence of issuing the European Certificate of Succession to the authorities of the Member States where the deceased had his habitual residence.

Article 4: "*The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole*."

On the side, according to the article 10 of the European Regulation, the competence can also be granted to the authorities from the place of the properties only if the habitual residence of the deceased is not situated in a Member State, the deceased had, at the time of death, the citizenship of the Member State or had had his habitual residence in this State provided that, at the time of notifying the court, it was not more than 5 years since changing it.

The Regulation also provides solutions in the case in which no court of any Member State is competent to issue the European Certificate of Succession. Under the name of "Forum necessitatis", article 11 stipulates that, in this situation, the courts of a Member State can pronounce, in exceptional cases, on the succession, however, they must have sufficient connection with the Member State of the notified court.

The European Certificate of Succession is issued based on a request formulated by the interested party. Article 63(1) limits the category of interested parties to: heirs, legatees, with direct rights in the succession, executors of wills or administrators of the estate. We notice that the European Regulation eliminates from this category the creditors of the succession who, although would be interested by it, cannot apply for the issuance of a European Certificate of Succession.

3.3. The Issue of the European Certificate of Succession

The individual who requests the issuance of the certificate shall prepare an application using a form which is still in discussion.

By filling in this form, the applicant must provide the information required for the delivery of the European Certificate of Succession and shall attach to this form the supporting documents regarding the information included in the application, either in certified copies, or in original. The information comprised in the application concern the applicant, the deceased, the husband or wife, the beneficiaries of the succession, the beneficiaries' succession options, the will prepared by the deceased, the prenuptial agreement, if applicable.

In practice, as well as in the few papers published regarding the European Certificate of Succession, it has been discussed about the compulsoriness of submitting both the death certificate and the civil status documents which establish the relation with the deceased, here included the documents which

certify name changes, if applicable. It has been considered that, regarding the death certificate, not even the issuing authority can free the applicant from the obligation to present the supporting documents and to replace the documentary evidence with other probatory means (Olaru, 2013, p. 27)

We specify that, in this context, it is highly necessary to practically concretize the right of access to the civil status registries from the States involved.

After receiving the application, the competent authority examines it, checking the information provided therein. The examination of the application is regulated by article 66 of Regulation (EU) no. 650/2012.

Regarding the succession procedure in Romania, some notaries public, whose opinion we share, suggested that this stage should be as follows (Olaru, 2013, p. 28):

- Upon the receipt of the application, the issuing authority checks its own territorial competence by applying the appropriate provisions of the Regulation;
- After finding that it is competent to deliver the certificate, the authority checks if a similar application has been submitted regarding the same deceased person in another Member State. In this case, it requires an evidence of the international succession cases at the level of the European Union so as to avoid the delivery of several European Certificates of Succession for the same deceased person, but with a different content and issued by different authorities;
- Registering the application in the Registers of the issuing authority, in the European Register of Succession Causes and preparing a file of the succession cause;
- Obtaining the evidence necessary for proving the aspects specified in the application. This stage may involve several hearings for solving the case;
- Notifying the beneficiaries by means of public announcements. We consider that a simple notification is not enough given that the beneficiaries might have the residence in different States, therefore their summoning must be regulated as this procedure is regulated by the civil procedure norms of the Member States. We support the need for an efficient evaluation procedure, both for avoiding correcting and withdrawing the certificate and for the credibility of this new uniform instrument;
- Obtaining the consent of the persons involved for the delivery of the European Certificate of Succession, as a certificate cannot be issued if there is a contestation regarding the aspects to be certified.

3.4. The Content of the European Certificate of Succession

After covering all the stages above, the issuing authority must deliver, without delay, the European Certificate of Succession.

According to article 68 of the European Regulation, the aspects which the issuing authority clarifies concern the law applicable to the succession and the basic elements on which the law was founded, the establishment of the heirs and of the shares they are entitled to, the rights and/or possessions which accrue to a certain legatee, as well as the powers of the executor of the will and/or of the administrator of the estate and their limits.

The European Regulation provides the possibility of delivering certified copies of the certificate, mentioning in article 70 paragraph 3 that these are valid for 6 months, with possibility of extension in exceptional cases or upon the certificate holder's request.

The decisions adopted by the issuing authority may be contested by any person who has the right to request a certificate and who proves a legitimate interest (Genoiu, 2013). The contestation shall be submitted to a legal authority from the Member State of the issuing authority, according to the laws of that State.

If, following the contestation, it is established that the certificate is not true to the reality, the competent legal authority corrects, amends or withdraws the certificate or sees to the correction, amendment or withdrawal of the certificate by the issuing authority.

During the settlement of the withdrawal or amendment, the European Certificate of Succession may be suspended. During its suspension, no certified copies of the certificate may be issued.

4. Solution Approach

In order to avoid the situations which affect the probatory value of the European Certificate of Succession, as well as the vitiation of its issuing procedure, we consider that the deficiencies of the European Regulation we have outlined throughout the paper could be overcome if one takes into account the proposals of the notaries public from the European Union.

Thus, we deem necessary the introduction in the European Certificate of Succession of mentions regarding the deceased's marital status, the compulsoriness of submitting the death certificate and of all the civil status documents which attest the relation with the deceased, the heir's status and, if applicable, the decease of certain heirs calling for representation.

Moreover, we consider highly important the need to set up an electronic register of the European Certificates of Succession, a unique record of all international succession causes.

Other beneficiaries of the certificate or persons who intend to engage in contractual relationships with the persons registered in the certificate are also interested in checking the truthfulness of the data recorded in the European Certificate of Succession, therefore, the obligation of the issuing authority to inform those who have been delivered copies of the certificate on its amendment or withdrawal is not sufficient.

We wish to emphasize the warnings of the French notaries concerning the succession reserve in the light of the new regulations.

Along the principles of succession reserve, the children and spouse of the deceased have a guaranteed right to a part of the heritage.

This principle is not applied solely in France, but generally the legislations of Latin law countries, among which Romania as well, safeguard descendants on this ground.

At the other end, in the countries with systems based on the Anglo-Saxon common law, the testator can make his will as he wishes, with no restriction whatsoever. This thing, as outlined by the French notaries will allow the legal disinheritance of one or several successors by settling in one of the countries of the Union which allows this.

As the European Regulations concerns all the possessions, if a person owns goods in several countries, he may choose the law applicable to his succession. Thus, a citizen of a Latin law country, if he

settles, for instance, in a State of the United Kingdom, will be able to leave his properties to any persons, the surviving spouse or children being unable to contest it.

5. Conclusions

In the light of the new provisions brought by Regulation (EU) no. 650/2012, we can distinguish two general principles. Firstly, if a person dies in a Member State which is not his country of origin, the succession shall be done according to the law of the country of his last habitual residence. And, secondly, the citizen who prepares his will shall be able to decide upon the execution of the will according to the law of the country of origin, Member State of the European Union.

For instance, a Romanian man marries an Italian woman and has his habitual residence in France. According to the new provisions, he shall be able to decide whether his successors will inherit according to the Romanian or to the French law.

Given the large number of people who live in another country of the Union than their country of origin and the multitude of international successions annually taking place in Europe, we conclude, in the spirit of the Notaries of Europe, that "the new rules introduce a number of changes which represent some significant steps forward as far as European citizens' rights are concerned" (Europe, 2014), so that the European Certificate of Succession becomes a **necessity** for the citizens of the European Union to prove their status, rights and competences in the Member States of the Union, as well as an **opportunity** for the notaries public and institutions faced with international successions to eliminate the difficulties of debating these kinds of succession.

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