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Article

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Agora International Journal of Economical Sciences (AIJES)

Provided in Cooperation with:

Faculty of Economic Sciences, Agora University of Oradea

Suggested Citation: Rath-Boşca, Laura-Dumitrana; Barmos, Loredana Mirela; Mihale, Ioana Andreea (2016) : The need to harmonize the laws of the European Union regarding the succession law, Agora International Journal of Economical Sciences (AIJES), ISSN 2067-7669, Agora University Press, Oradea, Romania, Vol. 10, pp. 35-40, <https://doi.org/10.15837/aijes.v10i0.2864>

This Version is available at:

<https://hdl.handle.net/10419/302930>

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The need to harmonize the laws of the European Union regarding the succession law

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Abstract:

The inheritance implies a balance between the will of the one who plans the anticipated transmission of his assets and the ones waiting for it. The creditors are equally put into equation in the transmission of the succession. The relations between these three categories of interest are regulated differently regarding the laws of succession of the states that favor either the interests of the interested in planning his succession or trying a "equilibrium" dampening discretion of the author of the inheritance, trying to protect his close family members (reserved to).⁴

Key words: inheritance, European Union, harmonize, inheritance certificate, Europe

Introduction

In the past decades the technical scientific progress and continuous discovery of modern means of communication and the more refined information systems led to the rapprochement between people and people, states and countries, people and states.

The European Union law only regulates certain relations in civil law, family law, inheritance law, labor law, etc.

The legal relations parties with foreign elements can be state, individuals or legal entities.

The legal relations with one or more foreign elements are related to several legal systems.

The science of law, the foreign element has been defined as "a circumstance in effect of which is legally tied to several countries, and consequently, several systems of law or laws belonging to different states."

The objects, the content and the subject form the structure of the legal report and foreign element can be an attribute of each.

For example, in a closed marriage between two people of different nationalities, the question, before the officer of civil status, will be on the law applied to the conditions of fund and form of the marriage in cause.

In a legal report of the succession law which includes foreign elements we will encounter the same problem, the law applicability.

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⁴ Dan Andrei Popescu, Ghid de drept internațional privat în materia succesiunilor, Magic Print Publishing House, Onești, 2014, pag.6

Although some skeptic people see the "New Europe" as an experiment of transnational governing, those who believe that we are heading towards an impending globalization and believe in the European dream, which is characterized by a definite diversity in all aspects of social, cultural, economic, legal, etc., give hope to the generation's growing interest for global and locally connection.

The European Union in the harmonization of national laws

The European Union was created by several sovereign states that have decided to choose a common destiny and in order to achieve agreements and joint actions in specific areas. These specific areas are areas where it is preferable for the Member States to work and decide together not individual for their interest and common good.

If when the European Community began to be build namely the 1950 the harmonization of civil law was not among the objectives, the continuous development of relations and rapports between states and between nationals of the Member States, free movement of people, goods, capital and services show increasingly clear need for harmonization of civil law in general, and especially in what concerns the inheritance law.

Today the European Union is not technically a uniform system regarding inheritance law. This is a very difficult thing taking into account the specifics and peculiarities of the historical traditions evolution of each Member State and their own moral, family and religious rules.

The law of succession is regulated differently in each Member State, from the classes of heirs, surviving spouse share, reserve succession and other major issues. This is one of the oldest and most conservative parts of civil law, reflecting the nation's way of being itself. But we will certainly always remember death and its effects, but it also marks the new beginning for us.

The inheritance law is not confined only to an amount of technical rules, "accounting", aimed to distribute a heritage that risks of remains without an owner, but its principles designed to establish rules on transfer, transmission and share of the heritage, coming to legitimize posterity of the dead. This is concerned with maintaining and enhancing the harmony of this poster, which must mean dropping reasonableness and family ethics. The inheritance law is therefore closely linked to the idea of fairness and morality. But they are reported both in the author of the heritage and, equally, to those who make up the family. In addition, both equity and morality of an attitude are concepts that evolve over time and cannot be dissociated from the spirit of the age in which the succession is opened.⁵

The laws of succession in the Member States are characterized by their diversity. The unification efforts in this area are as sensitive as it seems insurmountable.

The succession law is an important branch because it reflects the profound traditions of a country and mark the end of the author's heritage and a new beginning for those who will inherit. It is an inexhaustible source of study because the national solutions of the Member States present a great variety.

Until recently, the European Union considered that the succession law is a branch of law that must be left to Member States for separate regulations, but the events and diversity, multiplicity of legal relations of inheritance law, and taking into account the free movement of persons, goods, capital and services and all the problems that arise from this, it is clear the need for cooperation and the development of cross-border relations between the Member States, to build both bridges between legal systems and possible regulation uniform.

It may be noted that in the current European context, on different levels, efforts are made to modernize the law of succession.

However, an only juxtaposition between the laws of England and Germany is sufficient to see that the structures based on other traditions associated with different social, cultural or economic determinants are so far apart that it is difficult to reach a common and uniform settlement for the succession law within the European Union.

Despite this, and the position that for a short period of time was believed that the problems of succession law is outside the competence of the European Union, the vision of a uniform European law in matters of succession law always seemed tempting. Therefore, legislators irrespective of the possibilities of EU

⁵ Dan Andrei Popescu, Ghid de drept internațional privat în materia succesiunilor, Magic Print Publishing House, Onești, 2014, pag. 5

legislative and theoretical arguments of recent years have changed the laws concerning the pro-European spirit of succession law. The European integration has been one of the most important factors shaping the new regulation.

Although so far there have been no serious efforts to harmonize European succession law, the concept of Europeanization of this law is still alive.⁶

One question that is impossible to predict today would be whether other amendments to the law of succession should move towards integration, or whether they should be limited to a simple implementation of national needs. In any case, it should be noted that the possible drafting of a new law in matters of succession should be based on a deep discussion about the state law.

The influence of tradition stopped the circulation of national models beyond the state and the implicitly succession law harmonization at EU level. It is premature to talk about a unified European law of succession, common in all Member States of the European Union.

Although one of the most important objectives of the European Community was, and still is, to promote a common market, and not to promote the unification laws of succession.⁷

It is worth mentioning that there is still no international convention to standardize the law of succession. Even in Europe, in an era where a lot of discussion about the Europeanization of the private law, there is no concrete project regarding succession.⁸ But it was explicitly mentioned that the initiative does not refer to family law and succession law.⁹

Some harmonization attempts have been made at EU level since 1989, but this request was left aside considering that there are other more important areas of civil and criminal law to be harmonized.

In 1994 it was raised the issue of harmonization by designing a European Civil Code, but unfortunately neither this date has been successful. It was not until July 11, 2001 when a first concrete step in the harmonization of certain civil matters and contracts is realized. The second practical step has been made in the Action Plan of the European Commission "A coherent European contract law" on 12 February 2003, when the Commission presented the findings at the earlier positions taken.¹⁰

As can be assumed, the idea of a European Civil Code - at least on a philosophical level - seems fair and acceptable. While adjusting the succession law principles and concepts in a model is a very difficult process, such regulation is why the European Union should adopt measures to harmonize legislation in this area.

So in the absence of uniform rules and national disparities persist, they are a source of significant problems in legal relations with foreign elements, both for people who want to regulate in advance the situation of succession and potential beneficiaries, as for third parties holders or purchasers of the succession property.¹¹

The European Council meeting in Brussels adopted the "Hague Program" in 2004¹², which show the necessity to adopt of a unification instrument of the law relating to succession law in the European Union, and the creation of a European Certificate of Succession. This program does not regulate matters of succession law but the free movement of people within the EU and the opportunity to demonstrate, through the European Certificate of Succession, which is the heritage status of the deceased.

August 17, 2015, is the date when the European Regulation No 650/2010 regarding jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments of acceptance and not least the creation of a European Certificate of Succession governing this area of EU law came into force.

This regulation introduces some significant changes in harmonizing the rules on succession law in all EU countries. It sets a new tool for documenting the succession rights of Europeans.¹³

⁶ B. Ancel, *Le droit européen des successions. Commentaire du Règlement no 650/2012 du 4 juillet 2012*, eds. A. Bonomi, P. Wautelet, Brussels 2013, pp. 8

⁷ Walter Pintens, *Familia și succesiunea de drept în Uniunea Europeană. - Enciclopedia Internațională de legi. Vol. 1., 1997*, p. 11

⁸ <http://legeaz.net/dictionar-juridic/drept-succesoral-comparat>

⁹ idem

¹⁰ idem

¹¹ idem

¹² Dan Andrei Popescu, *Ghid de drept internațional privat în materia succesiunilor*, Magic Print Publishing House, Onești, 2014, pag. 8

¹³ Eleanor C. Ritaine, *National succession laws in comparative perspective*, 14 ERA Forum Publishing House, 2013, pag.131-154.

The purpose of such regulation should be a fair, but above all effective regulation of succession cases that affect various countries of the European Union.

It replaces the existing national regulations under international law of succession, which is a major achievement of EU legislation in this area. This act has caused a lot of controversy even before it entered into force. It questioned the competence of the European Union to harmonize legislation in this area. Another controversy is the application field of the regulation and its legal implications.

As a result of increasing migration within the EU and, more growth by acquisition of European assets outside their country of origin, were the starting points in the standardization of rules that apply to cross-border successions. Therefore, Regulation No 650/2012 is a response to the idea of unifying the succession law in Europe.

The divergences in national laws of countries belonging to the EU accounted for a long time a significant problem. To determine the law (the law of the countries) applicable to a succession or body should resolve the dispute but it is not always an easy task. This issue has become an increasing challenge for both law enforcement authorities and for doctrine.

In the European Union there are increasing cross-border succession cases. For this reason, it has been recognized that the rules of succession law could be the subject of many questions.

The unification of succession law rules took place so far primarily to the international conventions (international treaties), but this was not enough. As the EU has set itself the objective to ensure the free movement of people (art. 3 Par. 2 TEU), it was necessary to adopt some actions in the private law area, with cross-border implications.¹⁴

The regulation is therefore a comprehensive legal instrument governing international succession law of the European Union.

The European Certificate of Succession is the uniform document which may be issued by notaries or other competent authorities in successions with foreign elements and is governed by Article 62, art. 63 and (67) of Regulation (EU) no. 650/2012.

If the heirs apply for a legacy with foreign elements, so the clerk may issue a certificate of inheritance under Law no. 36/1995 and a European Certificate of Succession under Regulation (EU) no. 650/2012.¹⁵

The European legislature adopted an extensive conception notion of succession, which should include in its scope "all aspects of civil law relating to assets of a deceased person", that means "all forms of transfer of assets, rights and obligations of the concerned death, be it a voluntary transfer under a disposition of property upon death or a transfer form intestate succession." So the scope of the Regulation is expanded to include all matters that traditionally the law of the states circumscribes the scope of succession.¹⁶

The recital (67) of Regulation (EU) no. 650/2012 shows that: "For a succession of foreign elements into the Union to be resolved in a quick, simple and effective way, the heirs, legatees, executors or administrators of the estate should be able to prove easily the status and / or rights and powers in another Member State, for instance in a Member State where the property of the succession is located. To enable this, this Regulation should introduce a uniform certificate, the European Certificate of Succession (hereinafter referred to as "the Certificate") to be issued for use in another Member State. To respect the principle of subsidiarity, the Certificate should not substitute internal documents which may exist for similar purposes in the Member States. "

Article 62 of Regulation (EU) no. 650/2012 provides:

"The creation of a European Certificate of Succession

(1) This Regulation creates a European Certificate of Succession (hereinafter referred to as "certificate"), which is issued for use in another Member State and shall produce the effects listed in Article 69.

(2) Use the certificate is not mandatory.

¹⁴ Jonathan Harris, «The Proposed EU Regulation on Succession and Wills: Prospects and Challenges», 22 *Trust Law International* (2008), pp. 181-188

¹⁵ Laura Dumitrana Rath-Boşca, *Certificat european de moştenitor – vol. Studii și cercetări juridice europene*, Universul Juridic Publishing House, Bucharest, 2016, pg.35

¹⁶ Op.cit. Dan Andrei Popescu pag. 9

(3) The certificate does not replace the internal documents used for similar purposes in the Member States. However, a certificate issued for use in another Member State produces effects listed in Article 69 in the Member State whose authorities have issued it in accordance with this Chapter.

Article 63 of Regulation (EU) no. 650/2012 states that:

The purpose of the certificate

(1) Certificate is for use by heirs, the legatees having direct rights to the inheritance and the executors or administrators of the estate who must prove in another Member State status or to exercise that right of inheritance or legatee and / or duties of an executor or administrator of the estate.

(2) The certificate can be used, in particular, to demonstrate one or more of the following:

(a) status and / or rights of each heir or, where applicable, each legatee mentioned in the certificate and respective shares of the estate;

(b) the attribution of a specific asset or specific assets forming part of the estate heir / heirs, as appropriate, legatee mentioned (legatees mentioned) in the certificate;

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

From the foregoing it appears that "the certificate of inheritance is issued in inheritance proceedings in which the heirs, legatees having direct rights for the succession, executors and administrators of the estate must prove their status or to exercise their corresponding rights in another state member."¹⁷

When the last habitual residence of the inheritance author or some goods that make up the estate are located in another state a European Certificate of Succession is issued.

We can also encounter a situation where the element of foreignness to appear after the opening of succession proceedings, unless it has not been known that the deceased has assets in another European state, it leads to the issuing of a European Certificate of death after initially it had been issued a national certificate of death.

The general rule in this jurisdiction is written in art. 4 of the Regulation. According to the article, the courts "in the Member State in which the deceased was habitually resident at the time of death shall have jurisdiction to rule on the succession as a whole."¹⁸

Conclusion

"The succession institution is an important component in the economic development and strengthens family relationships, society as a whole. Beginning with the object, passing over the incipient and empirical rules and regulations, continuing with a developed and refined European or national law system, the "heritage" or "succession" has undergone various approaches both in terminology, and in philosophy, determined elements of economic development, legislative or policy that company"¹⁹

Currently, it is possible to identify some general areas in which practical solutions in many European countries do not differ from each other because they are based on the guiding ideas that any potential legislative divergence is not a reason to consider uniform law impossible in the future.

Given that the core values and principles divergent legislative concepts are the same, finding common principles (denominators) should allow, in the future, making a detailed discussion on specific solutions and unified law of successions in the European Union.

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