SOME CONSIDERATIONS REGARDING THE DELIVERY METHODS OF LEGATES IN ROMANIAN LEGISLATION

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Abstract

Legacies have an important influence in the Romanian law, respectively in the succession law. So that the legate was defined as the legal act encompassed in a testament by which the testator shall designate one or more persons who, at his death, will receive the entire heritage, a fraction of it or specific assets of the testator.

Precisely for this reason, the Civil Code covers a number of conditions related to teaching legacies in art. 1128-1129, which says that teaching legacy is done according to the typology, namely: universal legatee, legatee with a universal title or legatee with a particular title.

In this context, we can define the teaching of the legatee as remission of the goods forming the object of possession of the legatee.

Keywords: *universal legatee, legatee with a universal title, legatee with a particular title, succession law, possession*

Introduction

The legate is the legal document contained by a will by which the testator names one or more persons which, at his death, shall receive the whole patrimony, a fraction of it or specific assets from the testator's patrimony[1].

Legatees are not usual inheritors, and therefore can obtain possession of the goods forming the subject of the legacy with which have been gratified only by demanding the delivery of the legacy (Art. 1128 to 1129 of the Civil Code). By the delivery of the legacy, the legatee is allowed to make only by acts of conservation. He can not exercise any right or action, except the right to require the delivery of the legate. [2]

We can define the delivery of the legacy as being the remission material of possession of the goods that form the subject of the legate either in consent to their actual taking in possession.

If the object of the legate consists of generic goods or obligations, the delivery is made by payment.

It can be said that the legatee becomes the owner of the goods and also, he also acquires the status of holder of the rights contained by the legate at the date of opening the succession.

According to the civil code, in article 1128-1129, delivering the legate is made depending on its typology, respectively: universal legate, legate with universal title or legate with a particular title.

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[1] D. Macovei, I.E. Cadariu, *Civil Law.Successions,* Junimea Publishing house, Iaşi, 2005, p. 107; Fr. Deak, *Succesoral law treaty,* Ed. Actami, Bucureşti, 1999, p.126.

[2] L. Stănciulescu, op.cit., p. 204.

1. Delivering the universal legate

According to article 1055 from the civil code, the universal legate is the disposition by which it is conferred, to one or more persons, vocation to the whole inheritance.

No legatee even if universal, with universal title or with a particular title does not rightfully have the seisin[3].

By the new dispositions of the civil code, all inheritors*: surviving spouse, descendants and ascendants privileged.

In light of the law no.36/1995, entry into possession of the inheritance, by the universal legatee is made and takes effect as in the case of unseisin legal heirs, by releasing the certificate of inheritance by the public notary (after settling disagreements by the court if necessary) in all cases where the legal heirs have not consented voluntarily to the succession's dominion by the universal legatee. [4]

The Universal legatee may request coming into possession of the actual inheritance from unseisin legal heirs. If there are no such heirs or they refuse, the universal legatee comes into possession of the heritage by releasing the certificate of inheritance (art.1128 par. 1 Civil Code.).

When the deceased has no heirs that enjoy succession reserve , the legatee comes into possession of the goods contained in the will upon request by the release of the certificate of inheritance.

If the universal legatee was established by an authentic testament, the pubic notary, also to summon only by heirs that enjoy succession reserve, and in default of heirs, only the universal legatee.

If the will is handwritten, it also cites other legal heirs. In both cases the executor will also be summoned if it was appointed by will.

Based on the final conclusion of the succession debate, the public notary will draw up the certificate of heir or legatee, which will include the name and quality of heirs and their respective shares of the estate of the deceased.

The universal legatee will be sent in possession by releasing the certificate of inheritance, even when he is also the legal heirs that enjoy succession seisin reserve, for what he gains over its share of legal heir.

Making a simple observation, we can conclude that the entry of the universal legate in the possession of the actual heritage can be achieved when:

- inheritors that enjoy succession reserve willingly consent, express or implied, to the possession of the heritage by the universal legatee[5];

- in the absence of heirs in the event that they exist but refuses the heritage, the universal legatee comes into actual possession of the inheritance by issuing the certificate of heir by the competent public clerk;

- the universal legatee shall be issued by the competent public notary the certificate of inheritance, after the settlement by the court of disagreements related to the inheritance that arose between the implicated parties[6].

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[3] Dumitru C. Florescu, *The succesion law in the new civil code. Second edition, revised and completed,* Universul Juridic Publishing house, Bucureşti, 2012, p. 210.

[4] See Francisc Deak, *succession right treaty*, second edition, updated and completed, Universul Juridic Publishing house, Bucureşti, 2002, p. 473.

[5] See Ilioara Genoiu, *The right to inheritance in the new civil code,*C.H.Beck Publishing house, Bucureşti, 2012, p. 407.

[6] See Mihail Eliescu, *Succession course,* Humanitas Publishing house, Bucureşti, 1997, p. 83

2. Delivering the legate with an universal title

According to art. 1055 of the Civil Code, universal title legate represents a testamentary disposition that gives one or more persons vocation at a fraction of the inheritance[7].

Particular to the universal title fund of the legate is that it covers a part of the legacy as well as a half, a third of all buildings and all the furniture, or a fraction of the estate or movable property, or a granulation of them[8].

The text of art. 1128 par. 2 Civil Code says that the universal title legatee may request entry into possession of the actual inheritance:

- from the heirs that enjoy succession reserve if there is only this category of legal heirs;

- from the universal legatee which came into possession of the actual heritage;

- heirs that do not enjoy succession reserve from heirs who came into possession of the heritage either by law or by the release of the certificate of inheritance.

If there are no heirs, nor universal legatee or heirs that do not enjoy succession reserve that got in possession of the heritage, or they refuse entering in possession, "the universal title legatee comes into possession of the heritage by releasing the certificate of inheritance" (art.1128 paragraph 2 Civil Code.).

The universal legatee may request entering in possession, under the same conditions as the universal legatee, in addition, he can ask to be put in possession of the acquired assets also from the universal legatee. [9]

According to the doctrine[10], the text of law contains a loophole, since in the light of the new Civil Code, only heirs who are also sesin heirs and heirs that enjoy succession reserve get legally a hold of the legacy. Heirs that do not enjoy succession reserve not being seisin heirs, can not come in to rightful possession of the inheritance. Therefore, it can be said that the expression of the legislator "... heirs that do not enjoy succession reserve not who came in possession of the inheritance either rightful is ...." is incorrect.

The legatee with universal title has the right to the fruits of the succession goods from the moment he requested to come in possession or when he was handed the legate (by persons liable to execution) [11].

The request of the legatee with universal title of coming in actual possession of the inheritance will be addressed, according to article 1128 paragraph two of the Civil Code, to the public notary, by releasing the inheritor certificate, if such heirs do not exist or refuse. Also in the case of the legatee with universal title, it is possible that we see misunderstandings between parties, therefore the public notary will release the heir certificate, after solving the issue by the court.

In conclusion, in the case of the legatee with universal title, there can be seen the two methods of coming in actual possession of the inheritance, willingly or trough the public notary, if the case, after solving the misunderstandings by the court.

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[7] By law, we can list some meanings of "fraction of inheritance":
- Ownership of a share of the inheritance (half, quarter, etc..)
- Partition ownership of all or a share of the inheritance;
- Property or one partition of the totality or on a share of the universality property caused by nature or their origin.

[8] See Dumitru Văduva, *Legal inheritance. Liberalities*, Universul Juridic Publishing house, Bucureşti 2012, p. 171.

[9] See I. Popa, *op.cit.*, p. 346.

[10] Ilioara Genoiu, *The right to inheritance in the new civil code*, C.H.Beck Publishing house, Bucureşti, 2012, p. 408.

[11] L. Stănciulescu, *Civil law course. Successions*, Hamangiu Publishing house, 2012, p. 206.

3. Delivering the legate with universal title

The right of the legatee with particular title over the tied object is born on the day of death of the testator, meaning he acquires ownership of an individual item determined from the date of opening the inheritance. (Article 1059 Civil Code)

The Civil Code does not define positively the legate with particular title but negatively, specifying in article 1057 that any other disposition other than those limitedly qualified will be a legate with universal title is a legate with particular title[12].

According to article 1129 of the Civil Code, the legatee with particular title comes in possession of the object of the legate from the day this has been given to him willingly or in absence, from the day of submission to the court of the delivery request.

For example[13], if the legate has as object the liberation of the legatee from a debt to the deceased (legatum liberation) there are no problems imposed at the execution of the legate because the debt disappears from the date of the opening of the succession. And in case of big amounts deposited at CEC and for which the legatee was designated by testamentary clause, he can request the release of the amounts in the account, based on the clause, from the moment of the succession's opening.

We specify that the legate with particular title will be submitted by the legal heirs or universal legatees or with an universal title. So that the delivery of the legate can be requested from the moment of the succession's opening, without waiting for the partition of the heritage[14].

The delivery of the legate will be requested from the legal heirs, or from the universal legatee or with universal title, if the case, and when the testator has instructed another legatee with particular title with the payment of the legate, delivery will be requested from him. In case of amounts of money deposited at CEC, when the legatee was instructed by testamentary clause, he can request the amounts deposited in the account from the moment of the succession's opening[15].

The term "delivering the legate" has the same terminology used in the Civil Code from 1864, therefore in what concerns the legatee with particular title, the language used by the new Civil Code, is the same.

Making a difference between the universal legatee or with universal title and the legatee with particular title, we can observe that the legatee with particular title can not use the petition of heredity or the action for partition for gaining the object of the legate.

The legatee with particular title can use two methods which are:

- a personal action whose object are generic goods or obligations.

- a real action, which may be an action for recovery, if the object of the legate is a proprietary right over an individually determined object, or the confessor action[16] (if it has been let for him another real right) [17].

The delivery of the legate with particular title is not necessary when the object of the legate with particular title is represented by the liberation of the legatee of a debt to the deceased, in which case the debt disappears from the date of the succession's opening[18].

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[12] See Dumitru Văduva, *op.cit.*, p. 172.

[13] See Francisc Deak, *Succession right treaty*, second edition, updated and supplemented, Universul Juridic Publishing house, Bucureşti, 2002, p. 475.

[14] See M. Eliescu, *op.cit.*, vol. II, p. 83-84.

[15] Fr. Deak, op. cit., p. 532.

[16] The real action by the plaintiff asked the court to set the judgment that will decide that he is the holder of a real right dismemberment of ownership (usufruct, use, habitation, servitude or superficies) on the property of another and to oblige the defendant, who may be the owner or other person, to enable the pursuit of full and undisturbed. It is a INTERPLEADER as questioning the actual existence of the right applicant. Unlike the other suitors actions, it is prescriptive period of 30 years.

[17] See Trib.Suprem, s.civ., dec. Nr. 875/1969, în R.R.D. nr. 2/1970.

[18] See I. Rosetti-Bălănescu, Al.Băicoianu, op. cit., p.583.

The delivery of the legate with particular title is not necessary when the object of the legate with particular title is represented by an individually determined object, in which case, the legatee receives its propriety, based on the dispositions of article 1059, paragraph 1 of the Civil code from the moment of the succession's opening[19].

According to article 1049 paragraph 2 of the Civil Code, the delivery of the legate with particular title is not necessary when the object of the legate is represented by amounts of money, valuables or valuable titles, deposited at specialized institutions, and the legatee was designated trough the testament of the amounts and valuables deposited, in which case the specialized institutions will not be able to proceed in delivering the legate, unless based on a court's decision or of the heir certificate, which establishes the validity of the testamentary disposition and the legatee quality.

Although the legatee with particular title is not held by the payment of the heritage liabilities, he can not request the delivery of the legate until the full payment of the debts of the inheritance, even if unsecured, the application being made based on the principle *nemo liberalis nisi liberatus. The creditors of the inheritance are prefered in favor of the singular legatee*[20]. *If it's about the* heirs that enjoy succession reserve and they consider that their succession reserve has been violated they can request the reduction of the legate limit of the available shares[21].

The legatee with particular title will come in possession of the legate object from the date of release of the legatee certificate(notary act) or after the release of the legal decision of the court(to the right of usufruct for example) or a personal action in the event that the singular legatee has a right to claim[22].

In conclusion, the delivery of the legate with particular title shall be made by the rules of the universal title legate. But in the case of the legate with particular title, delivery can be requested also from the legatee with universal title and even from the legatee with particular title, instructed by the testator with its payment.

Unlike the Civil Code from 1864, which contains express and direct references to seisin only in one legal text, the new civil code dedicates to this legal institution five articles, regulating it under all aspects that it presents[23].

So law number 287/2009 offers first of all an appropriate definition of seisin. Also the new civil code assigns seisin to the surviving spouse.

A very important thing represents the change and use of some terms, such as "actual possession of heritage" in stead of "possession of heritage" and "coming in possession of the ingeritance" in stead of "sending into possession", with the purpose of avoiding any confusion between seisin and rightful common possession.

The universal title legatee can harness the successional rights within the notarial succession procedure, obtaining the inheritor certificate(legatee) as proof of the legatee quality that the notary establishes based on the testament that fulfills legal shape conditions, does not contain dispositions that are against the law and does not bring harm to the rights of heirs that enjoy succession reserve or their approval exists.

Law number 36/1995 expressly states that, under the circumstances, "the notary could have established the rights of the legatee particular, of the goods specified by will" and can proceed with the consent of the heirs, even to reduction of liberalities, up to the limits set by law[24].

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[19] Ilioara Genoiu, *The right of inheritance in the New Civil Code*, CH Beck Publishing House, Bucureşti, 2012, p. 409.
[20] See Trib. Suprem, col. civ., decizion nr. 1192/1957, în Repertoriu I, p. 443.
[21] See Trib. Suprem, civil section, decizion nr. 1393/1978, în C.D. 1978, p. 129-131.
[22] See I. Popa, *op.cit.*, p. 346.
[23] See Ilioara Genoiu, *op.cit.*, p. 409.
[24] See Francisc Deak, Treaty of succesoral law, the second edition, updated and supplemented Legal Publishing House, Bucureşti, 2002, p. 476.

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