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THE EUROPEAN SOLUTIONS FOR THE UNIFICATION OF THE LAW OF SUCCESSION

-abstract-

In the series of legal spheres in which serious efforts have been made towards the unification of legal rules within the European Union, those in the field of family and law of succession come last. The reasons are quite clear and simple. The enormous influence of the already established tradition in the field of the succession seemed an insurmountable obstacle, especially because of the obvious differences between the continental, Common Law system, and the countries belonging to the Nordic legal family. For that reason, harmonization in the area of law of succession was approached at that moment when the real need for uniform rules that would be a basis or a roadmap to overcome the collision of norms between national legislations related to succession became evident.

Namely, the huge number of probate procedures that have a foreign element in them and whose value is not to be neglected, was a clear signal that the need to take specific steps that will lead to the desired goal is maturing. Of course, when we talk about the European perspective in the field of law of succession, we cannot in any sense say that the attempt to find appropriate solutions will mean a complete break with the succession legal systems of the member countries, but on the contrary, it should mean consistent respect for national regulations , placed in a wider context, with the aim of solving some disputed issues on the one hand, but also rationalizing the costs related to probate proceedings with a foreign element on the other hand.

In summary, the adoption of the European Regulation on Succesion 650/2012 was preceded by slow and cautious steps and activities of the authorized institutions of the European Union, of which we will single out as particularly significant the recommendations of the European Parliament from 16.10.2006, most of which are regulated in the new European Regulation

Key words: *law of succession, European Regulation on Succesion 650/2012, European Certificate of Succession*

I. INTRODUCTORY REMARKS

Examining the succession legal systems of individual countries, especially the regulation of testamentary succession, does not lead us to the conclusion that it is not an area that is particularly complicated or that in practice can cause serious problems due to which the realization of subjective inheritance rights can be difficult.

Such a statement is acceptable if one takes into account the national legislations of each country, which fundamental solutions in the law of succession are based on three basic assumptions lately: tradition and customs related to family relations (and thus the method of transfer of property from one subject to another); comparative experiences from countries that are close in mentality and examples from countries that are part or claim to be part of a

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supranational community[1]. For this reason, in cases where it is a question of probate proceedings in which a foreign element is present, a collision of rights inevitably occurs, due to the different treatment of national legislations in the field of international private law[2].
In that sense, the focus of our interest is the way in which the unification of the law of succession in the European Union is claimed, primarily because of the strategic interest of the Republic of North Macedonia to join the process of integration into the Union. For these reasons, a complete analysis and elaboration of the processes of harmonization and alignment of the national law with the law of the European Union is needed, primarily as a preparatory process that would simplify the integration in that sense. It must be noted that it is an extremely complex task primarily due to the fact that adapting to a completely new legal system in the area of the succession, will mean finding the ideal balance between a strong customary component and modern ideas that lead to simplification and rationalization of the foundations of the succession as a concept.
On this occasion, it is worth remembering that even Roman law, which as a universal matrix exerted a huge influence, especially on the continental legal system, in most of the cases failed to overthrow the local concept and implementation of the succession law rules, which is why in this area has significant deviations from the solutions of Roman law, adapted to the specific conditions (especially socio-economic, social and family relations).
The conclusion made above, only once again supports the seriousness and complexity of the task of harmonizing legislation in the field of succession. It speaks of the fact that it will be aimed at finding the most appropriate solutions for the realization of subjective inheritance rights, in the situations when a foreign element is present. For example that is when the testator has the citizenship of one country, but his heirs have the citizenship of another, or when it is a legacy located abroad or when the creditors of the legacy are foreign citizens, etc.
This phenomenon is almost an everyday situation in the European Union, due to the "open borders" and due to the size and diversity of the market and thus the opportunities of European citizens to freely choose their place of residence and work, which results in different situations in which the subjects can find themselves.. All the more so that in addition to the various national legislations, one that is not a member state of the Union may come into consideration, which further complicates the conduct of the probate procedure.
The trend of globalization in that sense, sometimes renders the national legislations in the field of succession law unusable, and because of that, the first statement about the relative simplicity and applicability of the regulation in the field of inheritance now can not be applied. For these reasons, the idea of unifying the law of the Union should bring the simple applicability of legal norms in different areas, but also in the area of succession as a very important part of the civil law.

II. ATTEMPTS TO HARMONIZE THE LAW OF SUCCESSION IN THE EU

In the different legal spheres in which serious efforts have been made towards the unification of legal rules within the European Union, those in the field of family and inheritance law come last[3]. The reasons are quite clear and simple. The huge influence of the already established

[1] The comparative experiences reviewed above speak of the aspiration of the countries of the Balkans with their national legislations to get closer to those of the member states of the European Union, due to the desire to soon join the integration process.
[2] See: Eugene F. Scoles. *The Hague Convention on Succession* The American Journal of Comparative Law, Vol. 42, No. 1 (American Society of Comparative Law,1994). 85
[3] The idea of creating a European Civil Code, at the beginning, did not raise the question of harmonization in the area of family and inheritance law, and the initial attitude was that the best solution was that the EU should not get involved in a process that would be extremely difficult to implement. In addition, during the period when the

tradition in the field of succession law seemed an insurmountable obstacle, especially because of the obvious differences between the continental[4], Common Law system, and the countries belonging to the Nordic legal family. For that reason, harmonization in the area of law of succession was approached at that moment when the real need for uniform rules that would be a basis or a roadmap to overcome the collision of norms between national legislations related to succession became evident.

Namely, the huge number of inheritance proceedings that have a foreign element in them and whose value is not to be neglected, was a clear signal that the need to take specific steps that will lead to the desired goal is maturing. Of course, when we speak about the European perspective in the field of of succession, we cannot in any sense say that the attempt to find appropriate solutions will mean a complete break with the inheritance legal systems of the member states. On the contrary, it should mean consistent respect for national regulations, placed in one broader context, with the aim of solving some disputed issues on the one hand, but also rationalizing the costs related to inheritance proceedings with a foreign element on the other hand.

In summary, the adoption of the European Regulation on succession 650/2012 was preceded by slow and cautious steps and activities of the authorized institutions of the European Union, of which we will single out as particularly significant the recommendations of the European Parliament from 16.10.2006[5], most of which are regulated in the abovementioned European Regulation.

1. ***The European Regulation on Succession - the European Regulation on jurisdiction, applicable law, the recognition and enforcement of decisions and authentic instruments (documents) in the field of succession and the creation of the European Certificate of Succession***[6]

The efforts of the European Union regarding the harmonization of law of succession have recently resulted in the Regulation no. 650/2012 of July 4, 2012, which regulates the most important issues in the field of inheritance, with the help of which, specifically, given the status of law in the EU, probate procedures with an international element will be simplified. Adopted in July 2012, this Regulation, as we will see, started applying from 2015, more precisely, it is authoritative for probate proceedings where the *delatio* occurred at the earliest on August 17, 2015[7].

EU began full steam ahead with the harmonization of civil law, the number of probate proceedings that had a foreign element was probably much lower, so this issue was treated as secondary.

[4] House of Lords Report on the differences between French and English succession at the most general level

[5] In the Report of the Commission on Inheritance and Wills, a total of twelve recommendations are listed that refer to the following points: 1. Determination of the form and content of the instrument that the EU will adopt for the harmonization of inheritance law; 2. Determination of criteria according to which jurisdiction will be established in probate proceedings; 3. Choice of governing law depending on the will of the testator; 4: Governing law for the form of wills; 5. Jurisdiction for succession contracts; 6. General questions about the governing law; 7. European certificate of inheritance; 8. lex loci rei sitae and necessary part of the legacy; 9. Trusts; 10. Recognition and execution of foreign decisions; 11. Public documents and their recognition in member countries and 12. European network of wills. See more about this: Љиљана Спировиќ-Трпеновска, Мицковиќ, Дејан. Ристов, Ангел. Наследувањето во Европа.488-491

[6] REGULATION (EU) No 650/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 July 2012on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

[7] The EU Succession Regulation grants extensive protection to choices of law made prior to 17 August 2015 and to dispositions of property upon death likewise made prior to this date if the person dies on or after 17 August 2015 (see Article 83 of Brussels IV for details). Previously made dispositions (including any choice of law made therein) remain generally admissible and valid if they are admissible and valid according to the provisions of one

The European Succession Regulation governs three aspects of transnational succession cases: It regulates which national law of succession is applicable to successions with a transnational component (Articles 20 et seqq. of Brussels IV) if no special international treaties exist (such as those with Turkey and Iran); It stipulates which court or other authority has jurisdiction in such cases (so-called *international jurisdiction*, Articles 4 et seqq. of Brussels IV); It defines the European Certificate of Succession (Articles 62 et seqq. of Brussels IV).
The European Certificate of Succession is applicable in almost the entire EU. It is primarily used to verify an heir's status and is designed to serve alongside the existing national inheritance certificates (such as the German *Erbschein*), making it easier for heirs to settle inheritance matters abroad.
This EU Succession Regulation does not, however, affect the provisions of individual Member States in the areas of substantive inheritance law (e. g. the question of who is a legal heir) and inheritance tax law.
In the introductory articles of the Regulation, it is recognizable its exclusivity, that is, its inapplicability to other areas of the law, in which there is also a transfer of ownership. Thus, the rules contained in the Regulation are reserved exclusively to the succession with effect *mortis causa*[8]. In that sense, both family relationships and bond relationships are excluded, for which special EU rules apply. Furthermore, in the first part, the basic definitions of terms related to law of succession are given.
The second chapter of the regulation determines the jurisdiction[9] for the discussion of the succession according to the place where the testator had a residence at the time of death[10], except when the testator previously declared for the jurisdiction with the probate procedure[11].
The regulation provides for subsidized jurisdiction in the case when the residence of the testator is not located in an EU member state, determining jurisdiction for the court where the immovable property from the inheritance is located[12], but also *forum neccessitatis* in case of inapplicability of any of the specified criteria for determining the jurisdiction[13].
With regard to the law to be applied[14], the Regulation determines as applicable the law of the country in which the decedent was domiciled at the time of death[15] or the law applicable in a country with which the decedent had much closer ties than the country in which he was domiciled, except in cases where he made a choice of law according to which his inheritance will be discussed[16]. Regardless of which law will be applied, it is necessary that the legacy be discussed in its entirety by the specific law, which excludes the possibility of applying different rights for different parts of the legacy[17]. In that sense, the law that will be chosen as the governing one for the discussion of the legacy will also be applied to the possible succession-

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of the alternative legal systems mentioned in Article 83 of Brussels IV (such as the law of the deceased's nationality).

[8] Art.1

[9] The model is partly taken from the Norwegian law, according to which, the jurisdiction for the probate procedure belongs to a Norwegian court and the Norwegian law is applicable in the event that a foreign citizen who has a residence in Norway, died on Norwegian territory. See: Atle Grahl-Madsen. Conflict between the Principle of Unitary Succession and the System of Scission The International and Comparative Law Quarterly, Vol. 28, No. 4 (Cambridge University Press: 1979) 601

[10] Art.4

[11] Art.7

[12] Art.10

[13] Art.11

[14] Jurisdiction may be different from the applicable law (applicable law). See House of Lords, European Union Committee, 6th Report of Session 2009-10. The EU's Regulation on Succession (London: The Stationary Office Limited, 2010) 14

[15] Art.20

[16] Art.22

[17] Art.23

legal agreements of the testator[18]. The regulation also refers to the case of *comorientes* determining that when two people died in certain circumstances and the exact moment of death cannot be determined, none of them can have inheritance rights over the other, although the governing law for the discussion of the succession of one of the *comorientes* allows it.[19]
The recognition, enforceability, and execution of decisions between member states are regulated in the fourth chapter of the Regulation, which prescribes the obligation for their recognition without a special procedure[20], while exempting the interested persons from paying fees related to the recognition of decisions[21]. In the same sense, the obligation for reciprocal recognition of authentic documents, or instruments is prescribed between the member states[22], at the same time proclaiming the recognition and enforceability of court decisions made in the member states[23].
One of the most important solutions of the Regulation is the sanctioning of the European Certificate of Succession, with which the citizens of the member states can prove the capacity of heir, legatee, manager of the legacy or beneficiary of a right from it, which will facilitate access to the final realization of inheritance rights in the countries of the Union[24]. The Regulation regulates the Certificate in its entirety, both in terms of the way it can be obtained and in terms of its content, the goals it should achieve, the method of proof and its enforcement. The report on the usability and effects of this regulation is planned for 2025[25],and it has been applicable to testators whose legacies are opened after August 17, 2015[26], when the Regulation had started to apply. Since 17 August 2015, the European Succession Regulation (otherwise known as Brussels IV) has been applicable in every EU Member State with the exception of Ireland and Denmark.

III. ON THE JUSTIFICATION AND EXPECTATIONS FROM THE HARMONIZATION OF INHERITANCE LAW OF THE EUROPEAN UNION

As mentioned above, the adoption of the EU Succession Regulation came as a logical consequence of the growing need to put another sphere of civil law within precise frameworks. Taking into account the statistical data that says that it is about 450,000 probate proceedings with a foreign element per year[27], it can be freely concluded that this step of the EU was almost necessary in order to avoid the collision of rights in this area, but also to reduce costs, which undoubtedly cause probate proceedings that have a foreign element.
On the other hand, also cannot be objected to the haste of adopting the Regulation either, because it is a logical consequence of the already detailed situation and conditions at the specific moment. Compared to other areas of civil law, the harmonization of the law of succession moves relatively slowly due to the reasons already mentioned.

[18] Art.25
[19] The provision has its genesis in the decision of the Benelux countries from 1972 on the regulation of the legal consequences related to the inheritance of *comorientes*.
[20] Art.39
[21] Art.58
[22] Atr.60
[23] Art.61
[24] Art.62,63
[25] Art.82
[26] Art.83
[27] The data is from prof. Deville, at the February 2014 Foreign Element Inheritance Seminar. According to statistics from 2010, 4.5 million people die in the EU for one year, and every tenth probate proceeding contains a foreign element. See House of Lords. op.cit. 15

Possible negative criticisms of the Regulation can come from critics in certain member countries because of the hardened attitude that there should be no intrusion into that sphere and that positive results cannot be expected in that sense. However, one should not overlook the fact that the Regulation does not go directly into the content of the concept of the succession of the member states, but regulates the issues related to the procedural elements to a greater extent and as can be seen, it only sets the framework in which probate proceedings with a foreign element should move.

So, harmonization in this sense comes down to finding methods and mechanisms that bring national rights closer to each other, to a greater or lesser extent in the specific area[28] a process that inevitably begins within the framework of the national legislations themselves, which use the comparative experiences of the member states. while retaining the basic principles and characteristics of the national identities.

On the other hand, the modern tendencies between the countries that receive the attribute of modern civilizations begin to gradually loosen from the restraints of tradition. The law of succession, significant shifts towards the modern family and family ties that have been drastically weakened in recent times. Such an occurrence causes a need for change where traditional understandings translated into norms do not correspond to the actual situation.

For the reasons stated above, we have to take the position that accepting the process of globalization and functioning as a single market fully justifies the effort to create universal rules available under equal conditions to the citizens of the member states.

On this occasion, we should refer to some significant problems or questions, which especially come to the fore in this sphere, due to the apparently insurmountable and deep-rooted concepts present in the specific legislation[29].

For example, the first question that requires a solution is the question of the method of transferring the legacy from the testator to the heirs[30]. According to the concept present in continental systems, the estate passes to the heirs at the time of the testator's death, which differs greatly from the solution in Anglo-Saxon law according to which the estate passes indirectly, through the person authorized to dispose of it from the time of death until the transfer of the heirs. It is difficult to bridge this difference, which arises from another characteristic of the mentioned inheritance-legal systems. Namely, the Anglo-Saxon system prefers testamentary inheritance due to the proclamation of the testator's almost completely free will regarding the distribution of the property, and the continental law leans towards intestacy due to the idea that the best distribution is carried out in this way, but also because of the instruments that limit the free disposal of the inheritance. In close connection with the method of transfer, the method of calculating the value of the legacy can be brought. In French law as a model ,for example, gifts received from the testator before his death are also calculated in the share of the heir, while in English law, they are not part of the inheritance quota, but have the treatment of benevolent dispositions made before death.

Here the second basic difference between the mentioned legal systems can be recognized. On the one hand, the compulsory succession as a concept consistently respected in the continental legal systems, as opposed to the absence of such a limitation in the Anglo-Saxon ones. In the

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[28] Види A. S. Hartkamp.*Towards a European Civil Code.* Alain Verbeke. Leleu Yves Henru *Harmonization of the Law of Succession in Europe*. (The Hague:Kluwer Law International, 1998) 173

[29] for details on these issues see: A. S. Hartkamp. *Towards a European Civil Code*. Alain Verbeke. Leleu Yves Henru op.cit.176-180

[30] See: House of Lords, European Union Committee, 6th Report of Session 2009-10. *The EU's Regulation on Succession* (London: The Stationaru Office LImited,2010) 10

case of the former, an objective criterion is taken into account in order to protect a narrow circle of relatives and thereby avoid the destruction of the traditional value of kinship relations, in complete contrast to the latter, where the law does not assume such a possibility in advance, but only allows it, if they exist. circumstances that determine the necessity of such protection of relatives.
As one of the most important issues , the regulation of the forms of wills that can be made in the member states should be raised[31], but this could give a result if a compromise is reached on the previous problems, because the form and the provision of minimum standards for formalism, depends on the place and role of testamentary, as opposed to intestate inheritance. That is why "loose formalism" is present in the legislations and their interpretation that prefer testamentary succession against the "stricter formalism" present among those who use intestacy to a greater extent in practice.
We could summarize such observations as a significant step towards the idea of harmonization of the law of succession in the European Union, especially with the adoption of the Regulation on Succession in 2012. Considering the scope of content, positive results are undoubtedly expected from its application. First, it is assumed that the availability and clear setting of the principles and criteria in the choice of the jurisdiction, the governing law, the recognition of the decisions and documents between the member states, as well as the definition of the Certificate of Succession, will contribute to the simple realization of the subjective inheritance rights of the citizens of the EU, who at the same time, will not be exposed to unnecessary costs during the probate procedure, which means that a faster and cheaper probate procedure within the European Union is expected.

IV. CONCLUSION

Regulation (EU) No 650/2012 has governed successions opened since its entry into force on 17 August 2015. Soon after, some 200 000 people working as notaries across Europe were faced with these new rules, and it can already be said that the regulation's aims of legal certainty, predictability and simplification have for the most part been achieved. This is certainly true from a private international law perspective; replacing 25 systems with one is a major step forward and, in the vast majority of cases, enables a single law to be applied to the succession as a whole. For successions with links to Member States only, problems have been relatively limited in so far as these States have since applied identical rules of conflict. Most problems have arisen primarily as a result of successions with links to third countries, including Denmark and Ireland with their own conflict-of-law rules. Attempts were made to take this into account in the regulation by agreeing in particular to include a specific article on renvoi, which was welcomed. However in a large number of cases, this does not prevent the fragmentation of the succession. Another problem has arisen with respect to notaries of certain Member States now being obliged to apply most times the law of another Member State, and thus raising specific issues of accessing legal content, especially if this law is of a third country, where previously a conflict rule would have resulted in the law of the forum being applied more often than not (at least for immovables), as is the case in France.
The EU Succession Regulation has two objectives in its approach to transnational succession cases. First, it aims to make it easier for individuals to plan their succession in advance. Second, by shortening the required proceedings, it should enable heirs to settle estates more quickly.

[31] The first steps in that sense are clearly recognizable in the Washington Convention on the Form of the International Testament of 1973

The EU Succession Regulation's underlying concept for all of this can be summarised as follows: one succession case, one court, one applicable law, one European Certificate of Succession. In other words, each succession case should be handled by the courts of just one country in accordance with that country's applicable law.

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