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THEME:
National and European Regulations on the Successional Transmission of the Patrimony

Abstract

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SUMMARY

GENERAL ASPECTS CONCERNING THE RESEARCH STUDY PERFORMED

I. Current reality of the researched theme

The paper on *National and European Regulations on the Successional Transmission of Patrimony* puts on the map the transmission of an estate at national level, but also European Law features.

Our scientific approach tries to put the chosen theme into a better perspective by interpreting the law items on the succession both at a national, as well as at a European level.

Within our research, we took into consideration a series of opinions expressed by the literature in the domain on the right of successional option, transmission of the assets and liabilities of the succession, petition for an inheritance and aspects concerning the entering into possession of the inheritance.

II. Scope and objectives of the thesis

Our paper is an elaborate study of the transmission of a succession that analyses the ideas and conclusions of the doctrine and court practice based on the old Civil Code in comparison with the regulations of the new Civil Code. The solutions, ideas and conclusions drawn shall be compared with the practice of the legal life, helping in modernizing the regulations in the domain and bringing where needed certain influences in "remodelling" them.

We have sought to stress that transmission of the inheritance is both abstract and interesting at the same time by referring to the study of the specialty doctrine, at a national and international level.

Through its content, our doctoral thesis is an elaborate study of the transmission of the succession. The study contributes to the formation and adoption by the doctrine of either one or another of the opinions stated by the literature in the domain.

The main rule should ensure that the succession is regulated by a predictable law it has the tightest connection to. For avoiding fragmentation, when the estate is formed of assets on the territory of several states, but also for legal security reasons, this law should regulate succession as a whole, respectively all the assets composing the patrimony, regardless if they

are movables or fixed assets, and regardless if they are placed within or outside the European Union.

This scientific approach should simplify the procedures of establishing the inheritance and avoid disputes that might arise between successors given that a deceased party makes a will and the formalities involve legal systems belonging to several member states. The new legal provisions could lead to avoiding long and expensive lawsuits and also to reducing bureaucracy for inheritors.

III. Methodological and theoretical basis of the research study

For this scientific approach we have used the *historical method* which helped us investigate this phenomenon from its historic perspective and evolution across various social stages. Generally, regardless of the law domain, it follows the path of the social evolution, standing out by means of the level of cultural development of a society. For a good knowledge of law systems is imperious for the lawyer to know the conclusions of the historian, by referring to the history, the law can find out the conditions that could decipher the regulations. So, based on these ideas, the historical method helped us analyse the essence, form and functions of the phenomenon studied with reference to the present.

We have also used the *logical method*, a deductive method based on the premises that nothing can be proved unless starting from previous principles. The logical method is of large use regarding any intellectual activity, and in what concerns the law it represents a sum of procedures and specific methodical operations by means of which the possibility of detecting the structure and dynamics of necessary relationships between different components of a society's legal system. This method helped us analyse the legal phenomenon from a logic perspective, so as to give coherence and systematization to the entire scientific approach, by eliminating contradictions or notions not sufficiently clear. Therefore, we have established as starting point in our research, general conceptual approaches and problems related to them.

With the help of the *comparative method*, implying the comparison of identical or divergent elements within a series of studied phenomena, we have performed a comparison of systems from different states relating about specific features. We have used this comparison during the entire research, in all its aspects and at all levels. This method helped us identify the comparable elements in the domain of the succession at national and European level, from the national and European legislation, from the manner in which the succession problem is approached both at national and at European level.

By using the *systemic method*, respectively a systemic approach (which is a special unitary means of research) we have followed the description, based on empirical observations, of traits, particularities, connections of the studied object. For example, because of the difficulties regarding the transmission of the deceased party's patrimony, the legislator established that this procedure (of settlement of the estate) to be performed under the guidance of a Notary Public which, by means of one's experience and formation, is able to deal with the problems related to the rights of inheritance.

By means of the *sociological method* we have verified the manner in which the society influences the law and the manner in which the society is guided by the influence of the law. In other words, we have used the sociological method in order to obtain information concerning the measure in which the succession law is observed and in what degree this law finds support from citizens. By means of this method we wanted to identify the domain of acquaintance of the citizens with the succession law. The problems concerning the succession, especially between inheritors, cannot be settled directly by them because of the legal and practical impediments which can be found in practice. Therefore, in order to clear up the legal cases related to the patrimony of the deceased party, it is necessary to address the authority of the Notary or to a different legal authority, with the purpose of inheritors benefiting from the rights deriving from succession.

For the final part of the study, we have appealed to a *predictive analysis* concerning the evolution of the studied phenomenon, which materialized into a series of recommendations according to the intended law with the purpose of improving the existing legal framework.

Nevertheless, the research method used predominantly is the documentary analysis, on the basis of gathering information on a certain concept or phenomenon and on its effects.

The projects wishes to be a positive approach, without excluding criticism and interpretative approaches, elaborated exclusively with the purpose of explaining different concepts on the succession, patrimony, analysis of jurisprudence in what concerns the succession, as well as presentation of the manner in which European and international regulations are interpreted in the national legislation.

PRESENTATION OF THE PAPER

The paper is structured on 4 parts, each part being divided into titles, chapters, sections and parts.

The first part of the paper is entitled: "The right of successional option" and is divided into three titles.

The first title is entitled "General considerations on the right of successional option" and is divided into two chapters.

Chapter I is entitled "Notions, regulation, legal character and subjects of the right of successional option". The Civil Code in force doesn't give a legal definition of the right of successional option, but limits, in Title IV, Chapter I, to state that no person can be forced to accept an inheritance.

The right of successional option is represented by the inheritor's option to manifest one's will, meaning either to accept the inheritance or to waive it; it's essential for the execution of this right for the holder of the successional option to hold the capacity of inheritor. Therefore, in order for the right of successional option to exist, a person must fulfil the conditions to inherit and, consequently, to be able to exercise the right of successional option.

The successional option is a unilateral legal act, a voluntary legal act, an irrevocable legal act, indivisible, which cannot be affected by time or conditions.

The declarative character of rights of the act of successional option results from the content of Art. 1114 par. (1) of the Civil Code, establishing that the effect of acceptance is of consolidation of the transmission of the inheritance as of right on the legacy opening date, without taking into account if acceptance was expressed directly or if it was consolidated as a result of the withdrawal of waiver.

As a rule, the right of successional option belongs to all inheritors having general vocation at the inheritance, regardless if the inheritor actually has vocation or not.

Are entitled to exercise the right of successional option all the inheritors fulfilling cumulatively the following conditions: are successors, are called for the inheritance according to law or will, regardless if their vocation is universal, has universal or particular title; are not unworthy.

Briefly, the right of successional option belongs to legal inheritors, testamentary inheritors and personal creditors of the deceased.

According to Art. 963 of the Civil Code, "the inheritance is due, following the line and rules established in this title, to the surviving spouse and relatives of the deceased party, meaning to descendants, ascendants and collaterals, as the case may be".

The Civil Code grants the right of successional option to legatees as well, regardless if they are universal, have universal or particular title.

According to Art. 1114 par. (1) of the Civil Code, the acceptance consolidates the transmission of the inheritance as of full right at the date of death. Nevertheless, this transmission is temporary and is consolidated only after the right of successional option is exercised. Consequently, the right of successional option, although enforced after the opening of the inheritance, doesn't produce effects as of the date of enforcement, but retroactively, as of the date the author of the inheritance passed away.

The literature in the domain provides that "in order to operate the retransmission, the deceased party's inheritors must be alive on the legacy opening date, but to have passed away before the end of the term for the enforcement of the right of option (1 year) an to have opted concerning the respective inheritance."

Chapter II is entitled "Validity conditions of the act of succesional option". According to Art. 957 par. (1) of the Civil Code, by capacity of inheritor one understands that a person may inherit if alive on the legacy opening date. Also, in compliance with par. (2), if, in case of death of several persons, it cannot established that one outlived another, they lack the capacity of inheriting one another.

As the act of successional option is considered an act of provision and not of administration, in order to enforce it the person must have full capacity of exercise.

The persons having the quality of successors and which can exercise their right of successional option are: natural persons alive at the legacy opening date, the child conceived born alive, not necessarily viable, the natural person gone missing, the legal person.

They are not successors and consequently cannot exercise their right as successors the natural persons unborn or unconcieved at the legacy opening date; natural persons deceased before the legacy opening date, natural persons deceased in the same time with the author of the inheritance, legal persons not validly incorporated, except for testamentary foundations; legal persons who ceased to exist at the legacy opening date.

According to Art. 1204 of the Civil Code, the consent of the parties must be solemn, expressed freely and informed. As such, the inheritors' consent exercised within the right of successional option must also be expressed freely and unaffected by vices of consent.

According to Art. 1125 par. (2) of the Civil Code, as any other legal act, the successional option must also have a well determined and legal object. According to law, are considered illegal the deeds by means of which one accepts succession or waives it before its opening.

According to Art. 1236 par. (1) of the Civil Code, the cause of the act of successional option must exist, be legal and moral.

Art. 1108, par. (2) of the Civil Code provides that the express acceptance of the inheritance may be done by public deed, wither by writ under private signature. Therefore, the solemn form of the act of acceptance of the inheritance is not its essence, but merely its nature. However, the waiver declaration is a public notary deed which can be drawn up by any Notary Public or by the diplomatic missions or Romanian consular offices.

Title II of the first part is entitled "The term of successional option (notion, nature, beginning, effects)". The term of successional option represents *the time span granted by the law to the inheritors in order to decide in full knowledge on the legal act of option.*

The Civil Code in force doesn't make specifications on the legal nature of the one-year's term, but from the debates occasioned by the adoption of the text in its present form it results that it regards a bar period, the main reason being that it regards a right of option which, being a potestative right, doesn't concern a substantive right to action which would be lost by its non-enforcement within the term provided by the law, as it happens with the extinctive prescription.

According to Art. 1103 of the Civil Code, the option term is running as of the legacy opening date, meaning as of the date the party transferring the inheritance passes away.

The option term is the same for all the inheritors, regardless of the category they belong to: legal inheritors or legatees, but also for subsequent inheritors (belonging to a farther class or degree or in case of the legatee appointed in case the first gratified could not or would not accept to receive the legacy).

Once the cause of suspension ceased, the term resumes its course, the time before suspension being also calculated for completion of the term (Art. 2543 par. (1) of the Civil Code). The prescription term shall not be completed before the expiry of a 6 months' term from the date the suspension ceased, except for the 6 months' time or shorter prescriptions, completed only after the end of a one month's term as of the ceasing of the suspension (Art. 2534 par. (2) of the Civil Code).

In conclusion, the suspension of the prescription of the right of successional option is possible as of the date the cause of suspension ceased, the option term being resumed (the time before suspension being also calculated for completion of the term). However, the option term shall not be completed sooner than the expiry of the 6 months' term as of the date the suspension ceased. In other words, the inheritor shall be granted a new term of 6 months to express his right of successional option.

The successional option term is resettled by the instance of judgement, according to provisions of Art. 2522 par. (1) of the Civil Code, only if found that the inheritor, for reasoned grounds, could not exercise one's right of successional option within the term provided by the law.

When the inheritor didn't exercise one's right of option within the one year's time period granted by the legislator according to Art. 1103 of the Civil Code, this makes the former be considered *non party to the inheritance.*

Title III of the first part is entitled "Acceptance and waiver of the inheritance" and is divided in two chapters.

Chapter I is entitled "Accepting the inheritance". Acceptance of the inheritance is a legal act by means of which the inheritor summoned for the inheritance of its author accepts, at his own free will, the capacity of inheritor. This capacity must exist even as of the legacy opening date, the transmission of the succession that took place at that time through the death of its author being consolidated; this way, the inheritors acquires succession rights (the assets of the succession) at the same time with the obligation to pay the succession debts (the liabilities of the succession).

According to Art. 1108 par. (2) of the Civil Code, the *acceptance is express when the successor explicitly acquires the title or capacity of inheritor by means of a public deed or under private signature.*

Acceptance of the inheritance can also be made through a representative, not only in person. According to the situation, the inheritance can be accepted by the successor through his legal representative or by an attorney-at-fact, by only by means of a written power-of-attorney. The attorney-at-fact must express one's acceptance in writing and within the legal term of option.

The acceptance may also be tacit; so, according to Art. 1108 par. (3) of the Civil Code, the acceptance is made by tacit agreement when the inheritor takes an action possible only if one has the capacity of an inheritor.

In conclusion, as in any case of acceptance of the inheritance, the tacit agreements must be expressed within the one year's term of the right of successional option.

According to Art. 1119 par. (1) of the Civil Code, the bad faith inheritor embezzled or hid goods belonging to the patrimony or hid a donation submitted for report or reduction is considered to have accepted the inheritance even if, previously, he waived it. One shall have however no right concerning the embezzled or hidden goods and, as the case may be, one shall be forced to report or reduce the hidden donation without taking part in distributing the granted good. In this case, the inheritor is forced to pay debts and duties of the inheritance proportional to his share of the inheritance, including with his own goods.

Therefore, once the acceptance is expressed, regardless if voluntary express, voluntary tacit or forced, a consolidation of the title of inheritor of the party accepting the inheritance takes place.

The general effects of accepting the inheritance, respectively consolidation of the title of inheritor, separation of patrimonies and affecting the goods belonging to the successional patrimony submitted to delegation, in order to settle the duties and debts, take place both in case of voluntary acceptance and in case of forced acceptance.

However, according to Art. 1119 of the Civil Code, in case of forced acceptance of the inheritance, a series of effects specific for this acceptance take place: termination of the right of successional option and acceptance of the inheritance, termination of succession rights over the embezzled or hidden assets, taking over the liabilities of the succession.

Chapter II is entitled "Waiving the inheritance". Waiver of the inheritance is a unilateral, express, solemn and indivisible legal action by means of which an inheritor, regardless of the ration motivating him, declares firmly in front of a notary public that one doesn't accept the title of inheritor and doesn't understand to use the rights its successional vocation grants him on the inheritance.

The waiver agreement is made by public deed by any notary, as it is a solemn act, non-observance of the form requested by law entailing the absolute nullity of the deed.

As a consequence of the waiver, the party waiving the succession doesn't acquire the title of inheritor and cannot use the rights of succession that his legal vocation, regardless if he is a forced inheritor or not, would grant on the inheritance.

The main effect of the waiver is given by Art. 1121 par (1) of the Civil Code, in the sense that the inheritor who waives it is considered not to ever have been inheritor. The waiver operates retroactively, the party being considered non party to the succession.

By means of the provisions of Art. 1122 of the Civil Code, the legislator gives the possibility to the inheritor's creditors to revoke, by means of the revocatory action, their debtor's waiver if this action is unlawful. So, according to law, the creditors of the inheritor that waived the inheritance to their fraud can request the court the withdrawal of the waiver, but only within 3 months as of the date they announced the waiver. Admitting the withdrawal produces the effects of accepting the inheritance by the debtor successor only against the plaintiff creditor and only within the limits of his liability.

The main effect of accepting the revocatory action is the impossibility of opposing the withdrawal against the plaintiff creditor and shall determine the inefficiency of withdrawal within the limits necessary for settling the creditor's liability. The revocatory action filed by a creditor produces effects towards other creditors only in the measure in which they intervened in the process and requested as well the withdrawal of waiver.

Waiving the inheritance, as well as accepting it, is an irrevocable legal act, but according to Art. 1123 of the Civil Code, the legislator provides the conditions under which the waiver can be withdrawn (revoked). These conditions are:

- if the successional option term did not come to an end;
- if the succession was not accepted by other inheritors having vocation;
- if the withdrawal of waiver was express.

Thus, the main effect of withdrawing the waiver is the fact that the successor becomes accepting inheritor. The successor becomes accepting inheritor as of the legacy opening date.

Part II is entitled "Transmission of assets and debts of the succession" and is divided into three titles:

Title I is entitled "Object of transmission" and is divided into two chapters.

Chapter I is entitled "Transmission – notion, character" and has three sections. The objective of transmission of the succession is the patrimony that belonged to the deceased party. So, as it concerns the transmission of an estate, a comparison can be made with the transfer of the property right having as result the immediate transmission of the property with the agreements of the parties.

Regardless of the kind of inheritance, the succession is passed as of right at the legacy opening date, so that the estate is not left without holder at any moment. Therefore, transmission of the inheritance is made without the necessity of a party expressing one's will, but does not have as result the obligation of accepting it. Therefore, according to provisions of Art. 1106 of the Civil Code, the transmission of the inheritance is made without being

necessary the manifestation of will from the inheritors, but it doesn't mean that the acceptance of the inheritance is also compulsory for them.

The legal characters of the transmission are:

The *"causa mortis"* character – the inheritance is passed when a natural person passes away and as effect of one's death, either a death stated physically, or by court decision.

The *universal character* – the patrimony or fraction of patrimony forming the object of the transmission is seen universally as a whole and not as assets received in part.

The *unitary character* – because the deceased party's estate is seen as a whole.

The *indivisible character* – as the inheritance cannot be accepted partially, it must be accepted by the inheritors having vocation either in full, or they must waive it.

Chapter II is entitled "Further components forming the object of the transmission". The Civil Code does not include in its provisions mentions regarding the notion of furniture and objects of the household, leaving at the latitude of the jurisprudence to establish the actual content of this concept. If we consider the expression "objects of the household", one can notice that the legislator wanted to include in this category goods which by their nature and use are destined to serve in the household.

The category of goods and objects of the household include the furniture in the spouses' residence, belongings which, by their nature and allocation, were destined to be used in the household, taking into account the conditions and the standard of living of both spouses.

The following goods are not included in the category of the furniture and objects of the household:

a) goods which by their nature cannot be used within the household as buildings, automobiles or other vehicles, piano etc.;

b) goods intended for exercising of the deceased spouse's profession or occupation, not even when the spouses had the same profession or occupation;

c) goods that, even if by their nature or destination could have been used in the household, were not assigned for this, as they were acquired for other purposes, as for example for investments;

d) goods for the personal use of the spouses;

e) luxury goods as jewelleries, art works, rare objects or higher values;

f) goods belonging to a countryside household (animals for work or transportation, tools necessary for activities in agriculture). According to an opinion in which we acquiesce, these goods are considered absolutely necessary to ensure as far as possible the basic living and working conditions of the very livelihood in the countryside, so that including those goods in

the assets of the succession would lead to the collapse of the household and would affect the social and economic functions of the people in the household.

Chapter II also presents aspects of the right of habitation, right which might enter in the assets of the succession. The habitation right is treated, as shown, as a right belonging to the surviving spouse, but also to other persons, as the living spouse doesn't have this right under the law, we consider necessary the existence of a regulation by means of which the surviving spouse to be granted an exclusive right of habitation over one's shares of legal inheritance provided by the law.

In our opinion, the right of habitation of the surviving spouse can be considered a part of the assets of the succession as long as brings the spouse a profit to one's patrimony assets (because it is constituted on a free basis) and cannot be considered as part of the liabilities of the succession, as the surviving spouse, in exercising this right, cannot be forced neither towards its creditors nor towards the deceased spouse

Title II is entitled "Transmission of assets" and is divided into ten chapters.

Chapter I is entitled "Content of assets of the succession". The assets of the succession are composed, as a rule, from the patrimonial rights existing at the legacy opening date. In the category of the patrimonial rights composing the assets of the succession enter all those rights having patrimonial character, part of the patrimony of a party at the date of one's death. The patrimonial rights are those rights valuable in money, with economic content.

Those rights are: the right of property over the fixed and movable goods; real rights derived from the right of property (as for example the right of superficies or easement); real right of use or accession; outstanding debts, patrimonial author rights.

The assets of the succession include donation the deceased party made by exceeding the disposable portion of the estate, even if on the legacy opening date they are not part any more of the patrimony of the deceased party.

Also, the patrimony includes natural, industrial and civil fruits, resulting from the assets of the succession, subsequently to the legacy opening date, even if on the legacy opening date they are not part of the deceased party's patrimony.

As an exception, is transmitted by succession the right of requesting the admittance of the capacity of author of a creation. The inheritors have the right to conclude agreements in order to capitalize on the copyrights, are entitled to cash the due remunerations, to receive the payments due to the author and which have not been cashed by the latter during his life. The inheritors are entitled to demand compensations for all prejudice brought to the author or directly to them through the unlawful use of the creation.

Also as an exception, with the inheritance are passed over the patrimonial rights on inventions, rights on industrial sketches and models.

it is considered that the assets of the succession include also the natural and civil fruits resulting from the goods of the succession subsequent to opening of the inheritance, even the cash equivalent is case of use an inheritor exercises on a good from the estate. The industrial fruits shall complete the assets of the succession.

As novelty, the Civil Code attributed a distinct chapter to family memories and their manner of transmission. Consequently, are considered part of the assets of the succession family memories whose joint ownership has ceased either as a consequence of a voluntary partition, or failing agreement from a court decision, respectively the legal partition (Art. 1142 of the Civil Code).

Any person may dispose of the human body itself, even after death or by certain parts of it, as organs, tissues, human cells. in this regard, Art. 80 of the Civil Code states the right of disposing of one's body, of oneself by one's free will, the person being able to establish the manner in which one's funerals are organized, being entitled to dispose on one's body even after death.

To the assets may be added as object the burial places. According to Law 102/2014 on the cemeteries, human crematories and funeral services, Art. 17 from the Law makes strict references concerning the persons under the obligation to deal with funerals.

In the domain of successions, in what concerns the personal non-patrimonial rights from the provisions of Art. 78 of the Civil Code, the right for the respect owed to a deceased person is defined. Nevertheless, along with the death, the legal status of the party is considered to have ceased, respectively the rights of the personality cease once the person has passed away, being considered rights by virtue of the personality of the other party, the person who represented these rights is owed respect.

Chapter II is entitled "Notion and principles of passing the assets of the succession". Until the present, the notion of assets of the succession was not treated in a special study.

At origins, the concept of *assets of the succession* is found for the first time in Art 1067 par. (2) of the Civil Code, stating that "If legacies with particular title exceed the net **assets of the inheritance**, they shall be reduced depending on the excess..."

A series of provisions concerning the transmission of the assets of the succession can be found in the Civil Code, title II, Legal Inheritance, Chapter IV entitled "Forced heirship, disposable portion of the estate and reduction of the gifts in excess". This transmission is

governed by the following principles: principle of unity of the succession, principle of continuance of the deceased party's person by one's successors and the principle of the succession of goods; the principle of succession to a person.

The principle of unity of the succession implies that, at the date a natural person passes away, one' assets belonging to the estate represent a whole submitted to the same rules. Distribution of goods between inheritors is made only on the basis of quantitative criteria and not of criteria concerning the nature of goods.

Concerning the succession to person, according to a traditional notion, the deceased continues to live by one's descendents, principle interpreted by the law through the rule of the transmission of goods from one generation to another.

As the inheritors receive the goods, they are bound to observe the deceased party's arrangements, taking therefore one's place.

According to tradition, to the Romanian succession law, the relatives closest to the deceased party assume with no other formalities the possession of one's patrimony, as it confounds with their own patrimony, with the feeling that they continue the deceased party's personality. According to law, the universal legatees and those benefitting from universal title are the one continuing as of right the deceased party's person, without seisin, as they acquire the universality of the deceased party's assets.

Chapter III is entitled "Determining the assets in the estate". The Romanian law, according to Art. 1091, par. (1) letter a) of the Civil Code, states that, by determining the gross assets of the inheritance, is obtained the total value of the goods existing in the patrimony on the legacy opening date, and letter b) of the same article provides that the net asset is determined by taking the liabilities out of the gross assets. The fictional reunion, just for purposes of calculus, is made by adding the net asset of value of donations made by the deceased. As such, establishing the net asset of the inheritance is made by taking the liabilities of the succession out of the gross assets. In order to establish the liabilities of the succession, one takes into consideration the totality of debts not refunded by the deceased party, but also of funeral expenses, of administration and preservation of the estate, not settled as a result of the holder's death.

Chapter IV is entitled "The assets of the succession in relation to the reduction of the gifts in excess of the freely disposable portion of the estate". There are rights which, although not part of the patrimony of the deceased party at the legacy opening date, shall be part of the assets of the succession as a consequence of the reduction of the gifts in excess of

the freely disposable portion of the estate of by effect of the donations' report, if inheritors benefit from forced heirship or of report.

Chapter V is entitled "Transmission of the active subject's succession" and presents that the transmission of the succession is customized by the fact that it cannot have as object an isolated good, but a patrimony.

The transmission of rights of the succession intervenes as of right at the legacy opening date without being compulsory and concerns all the inheritors, legal or testamentary, with vocation over the entire patrimony or only over a fraction of it, and operates by acceptance of the succession, either by waiver. The inheritance once accepted, the transmission of the succession as of right at the legacy opening date is consolidated.

Chapter VI presents the "Types of transmission of the assets of the succession". The transfer of assets of the succession (as well as of the liabilities) may be universal, having universal title or particular title. In all these cases, it operates as of full right as of the legacy opening date, but exhibits a series of particularities in case of legacies with particular title.

The universal transfer takes into consideration the patrimony as a whole, the totality of rights forming the object of the entire patrimony of the deceased party.

The transfer by universal title has limited character as it concerns only a fraction, a share of the totality of successional rights forming the assets of the succession. Therefore, it cannot be said that this type of transfer concerns only a fraction of the totality of successional rights forming the assets of the succession. The beneficiaries of the transfer by universal title can be legatees with universal title as they have limited successional vocation.

If the object of the legacy is formed out of the right of property or other real right over a series of individually determined goods or a right of the succession acquires by the testator and passed by legacy before the settlement of that inheritance, the legatees becomes the holder of that right as of the legacy opening date, receiving it directly from the deceased party. In exchange, if the object of the legacy is formed out of goods of a king, liabilities to make or not or in case of other person's goods, the legatee acquires only an outstanding debt, as the particular legatee is creditor and the universal inheritors or having universal title, debtors.

Chapter VII is entitled "The role of the executor in passing the assets of the succession". According to article 1077 of the Civil Code, the executor has the right to administer the estate for a period of at least two years as of the legacy opening date, even if the testator didn't invest him expressly with this right. The will can reduce the administrative right to only a part of the estate or for a shorter period. The period of two years can be

extended by the court of competent jurisdiction for grounded reasons, by successive terms of one year.

The quality of administrator of the assets of the succession allows the executor to carry out actions of preservation and administration of the estate, regardless of the fact that the estate includes tangible and intangible assets.

According to article 1080 of the Civil Code, the executor shall request the affixing of seals if the inheritors are also minors, legally incapacitated persons or missing persons, and shall insist upon making the inventory of the assets of the succession in the presence of the inheritors or upon their summoning. The Notary Public, which has been notified for the respective settlement of the estate, is the one normally making the inventory of the assets of the succession. Making the inventory is of importance in terms of protecting the assets of the succession, given that the inheritors are liable for the debts of the succession within the limits of the available assets, but also because the executor is personally responsible for the assets on the estate received from the testator.

At the end of his mandate, the executor must give account to the inheritors of the deceased concerning the manner in which he administered the assets of the succession, even if there weren't any forced inheritors; mainly, this provision stipulates that the executor has the responsibility to justify the use given to the assets of the succession and, ultimately, to restore the remaining assets.

Liability for this approach is expressed towards the general inheritors, legal or by will, as well as towards the curator of the vacant inheritance.

Chapter VIII is entitled "Inventory of goods". An inventory is necessary for the patrimony of the succession not to be confounded with the personal patrimony in case the inheritance is accepted; without the inventory, obstruction of the merging of patrimonies cannot be operated.

The inventory of goods in the patrimony of the succession can be requested by the inheritors, by the creditors, but also by any interested party with the purpose of making sure that the liabilities of the succession are not exceeding the assets. For this, when the request for performing an inventory was drawn up by an inheritor and another inheritor or third parties holding goods from the patrimony of the succession oppose to performing the inventory as they have an interest, the inventory is ruled by the court of competence for the place where the inheritance was opened.

The inventory report must necessarily include all assets of the succession; a description and a provisory evaluation of those assets must be made.

According to Art. 1117 of the Civil Code, if the notary public considers that there is a danger of alienation, loss, damage or replacement of the goods of the succession, shall put them under seal or submit them to a custodian.

The custodian is appointed with the approval of all interested parties from the inheritors or a third party chosen by the Notary Public.

The custodian or the curator has the obligation to return the goods in the same state they were submitted and account before the notary for all the expenses concerning the administration or preservation of the goods, either at the end of the successional procedure, or when requested by the notary.

Chapter IX presents a series of aspects on the "Special successor right of the surviving spouse on the assets of the succession". The surviving spouse is not included in any class of legal inheritors, as he is not a relative of the deceased due to the relations of affection between spouses. The law acknowledges nevertheless to the surviving spouse a right to legally inherit and grants him/her the vocation of a legal successor regardless of the category of inheritors along with whom one co-inherits; this doesn't excludes and is not excluded by any category of inheritors.

Concerning the right of the surviving spouse on the assets of the succession, the paper studies aspects by means of which the surviving spouse hold a special right translated in his right over the furniture and objects of the household, right shared only with the descendants of the deceased party and not with other categories of inheritors.

The chapter presents the shares of furniture or objects of the household to which the surviving spouse is entitled, if one enters in competition with the descendants, by showing as well which are the categories of goods included by the legislator but also by the doctrine in the notion of "furniture and objects of the household".

Taking into consideration the evolution of the family and the relations of affection naturally created between spouse and children, we can admit the equality of rights between the surviving spouse and the deceased spouse descendants, but not advantaging the first to the prejudice of the others.

Chapter X is entitled "Special successor right of the surviving spouse on the assets of the succession" and presents that the vacant inheritance is that in which, if the legal or testamentary inheritors don't exist, the patrimony is taken, in whole or in part by the state, either by itself, as an entity, or by the territorial and administrative units, entering in their private property.

The chapter enumerates the cases in which one can refer to a vacancy of the succession. The assets of the succession shall pass into the property of the state either if there are no legal or testamentary inheritors, or if they exist but they don't have vocation for the entire patrimony or are no accepting the inheritance.

In conclusion, the total vacancy of the succession may intervene if the deceased party doesn't have a surviving spouse, relatives from no class of inheritors, nor did appoint legatees by means of the will, as well as if the deceased party has legal inheritors which are not entitled for a portion of the inheritance, which one disinherits also by means of the will, but doesn't appoint legatees by means of the will.

Regardless if one refers to a partial or total vacant inheritance, the assets of the succession shall enter the property of the state or of administrative and territorial units.

Concerning these provisions of the law, as the state is liable for the liabilities of the succession only within the limits of the assets, as opposed to forced heirs which are liable for the debts of the succession with their own goods as well (when the liabilities exceed the assets), we consider fortunate the legislator's option, as it would not justify, being even inadmissible that a society to take over the liabilities of the succession from the patrimony of a natural person.

In the contemporary society, the transmission of the assets of the succession has a special significance given the whole of the legal transfer of the inheritance, as by means of this transfer the observance of the principle of the deceased party's transmission is observed, because in most of the cases, the assets exceed the liabilities of the succession.

Title III is entitled "Transmission of liabilities of the succession" and is divided into thirteen chapters. Through the analysis performed on the institution concerning the **transmission of the liabilities**, Title III determines in what degree the patrimony of the inheritors is affected by this transfer.

Chapter I is entitled "Content of liabilities of the succession". The liabilities are mainly formed out of the debts and duties of the inheritance. The main elements of the liabilities of the succession are the debts left by the deceased party, with the duties as the obligations to emerge once the succession is opened.

The debts of the succession are the patrimonial liabilities appeared during the deceased party's life that one left as inheritance in the patrimony.

Regardless of their source, the duties, of contractual, in tort, legal nature etc., are those liabilities existing in the patrimony on the legacy opening date, even the personal debts with patrimonial content towards the inheritors.

Besides the debts of the deceased party, the duties of the succession can be found in the liabilities of the succession. These are not included in the patrimony, but emerge along with the opening of the inheritance or subsequently.

In the category of duties representing those liabilities devolving upon the inheritor subsequent to the date of death, but born strictly from the effective death of the party, are the funeral expenses; expenses with funeral customs; expenses for administering the inheritance; expenses concerning the settlement and division of the inheritance.

In what concerns the payment of legacies, as they are considered duties, the legacies are paid after settling all debts, as they are gifts , their payment being made subsequent to the payment of debts, rule applied by means of the apothegm *nemo liberalis nisi liberates,* meaning that a person who has debts cannot make gifts, until the debts are settled.

Chapter II is entitled "Liabilities of the succession – Notion and principles". Without defining the notion of liabilities of the succession, the literature in the domain states that by debts of the succession one understands those patrimonial obligations of the deceased party towards a third party or the inheritors, existing in the patrimony on the legacy opening date, regardless of their source (contractual, in tort or legal). There are not debts of the succession those liabilities extinguished at the death of the deceased party, as they were available during one's life or were contracted on a personal basis.

Concerning the duties of the inheritance, they are those obligations which didn't exist in the patrimony of the deceased party, but devolving upon the inheritors at the legacy opening date or subsequently, either according to the deceased party's free will, or independently of his will.

The principles governing the transfer of the assets of the succession are the same for the transfer of the liabilities; they are to be analysed from the perspective of the transmission of the liabilities of the succession.

This principle of unity of the succession applies as well when comes to the liabilities of the succession by the fact that, according to it, assignation of debts and duties of the inheritance is made towards the inheritors within the limit of the rights they acquires from the succession.

When talking about the continuation of the deceased party's persona in what concerns the succession in general, and the liabilities of the succession in particular, the idea is that the deceased party transfers to one's successors, along with the rights he owed while alive, duties and liabilities they shall continue until their fulfilment or settlement as a continuance of the deceased party's will.

Within the transfer of the succession, along with the transmission of the patrimony or of a fraction of it, are also transferred the rights and the liabilities forming together a unitary whole. The party acquiring the assets of the succession shall be liable to pay as well the debts of the succession, as they are strictly connected to the rights.

Chapter II analyses the principle provided by Art. 1155 of the Civil Code, of division as of right of the liabilities between the universal inheritors of having universal title, stressing that the duties and liabilities of the inheritance are transmitted between co-inheritors in relation to the hereditary part of each of them, even as of the legacy opening date; the division as of right of the liabilities takes place only in case of plain and simple acceptance of the inheritance. In applying this principle, the capacity of the inheritors is not relevant, as they can be universal, having universal title, having seisin, not having seisin, this payment obligation existing not as a consequence of the seisin, but as a consequence of the universal transfer or by universal title.

Regarding the division as of right of the liabilities of the succession, the chapter analyses the exceptions regulated by Art. 1155 par. (3) of the Civil Code. The first exception concerns the inapplicability of this principle in case the liability is indivisible but not joint, situation in which each of the inheritors can be held separately for execution of the entire liability, with the possibility for the restitution of the performances carries out. Another exception from this principle concerns the liability having as object a particular good determined by a certain performance on such an asset, case in which the inheritor shall be held liable separately, being able to sue for compensation the other co-inheritors.

Another exception concerns the liability guaranteed with a corporal security, case in which the inheritor receiving the assets affected by the duty shall be liable against the debts of the deceased party only within the limit of the value of the respective asset.

Seen as an exception from the principle of division as of right of liabilities, is the hypothesis in which the liabilities of the succession is not divided during the period on which the state of non-divisions between the co-inheritors is maintained.

Chapter III is entitled "Determining the liabilities of the estate". When determining the liabilities, one takes into consideration the link connecting the debts of the deceased, the ones part of the succession liabilities and which are uncontested, these debts having in common the person liable for payment. Another common trait of the deceased person's debts is their transmissible character, having at the basis the principle of the "survival of the deceased person's debts". In another train of thoughts, the deceased person's debts don't have an *intuitu persone* character concerning the debtor, having the same legal regime.

Chapter IV is entitled "Inheritors' liability and persons liable to pay the debts of the succession". Art. 1114 of the Civil Code states as a rule that the obligation to pay the liabilities of the succession devolves upon the universal inheritors, with universal title (legal inheritors), universal legatees or legatees with universal title, as they have vocation to the entire patrimony of the succession or to a fraction of it, therefore to liabilities of the succession as well. As shown, the legatee with particular title doesn't have the obligation to incur the debts and duties of the inheritance, so one doesn't contribute the payment of the liabilities, being without vocation for universality, as opposed to other categories of inheritors.

Therefore, from the provisions of law stating that the debts and duties of the inheritance are incurred only with the assets in the patrimony and proportional to the share of the succession to with is entitles each inheritor, it results that the liabilities of the estate are divided as of law between the inheritors, correspondingly with the share inherited by each at the legacy opening date.

The legislation marks as novelty the change in the vision existing in the past, stating that the universal inheritors, having universal title are liable for the debts of the succession only with the goods they inherited from the patrimony and only proportional to the share of the succession to which is entitled each party.

According to the rules provided by Art. 1155 par. (1) of the Civil Code, the universal inheritors and having universal title contribute to the payment of liabilities and duties of the succession proportional to the share of the succession to which is entitled each party.

By "share of the succession to which is entitled each party" one understands firstly the vocation to succession the inheritors have and not the goods they receive effectively.

This principle is based on the rule according to which the inheritors receive by means of the inheritance (if accepting it) a patrimony or a fraction of a patrimony, that is a universality formed not only by rights but also by obligations, which means that they shall be held liable for payment of the debts of the succession.

The extent of the obligation concerning the payment of the liabilities is not reported to the effective emolument collected by the `inheritors, but to the fraction of the inheritance to which the parties liable for this payment have vocation.

The legatee with particular title is not liable to incur the debts and duties of the inheritance. By exception, he answers for the liabilities of the inheritance, but only with the asset or assets forming the object of the legacy.

Chapter IV is entitled "Personal creditors of the inheritors". According to Art. 1156 par. (1) of the Civil Code, previous to the division of property, the personal creditors of an inheritor cannot trace one's share from the assets of the inheritance. The inheritors' personal creditors and any person justifying a legitimate interest may ask the division in the name of their debtor, may pretend to be present for the voluntary partition or may intervene in the partition process. Thus, according to law, the inheritors' personal creditors cannot trace their debtor's undivided shares from the assets of the succession before proceeding to the partition of the property, but the division can be made even at the request of these creditors.

From the assets of the inheritance assigned in the partition, as well as from those taking their place in the patrimony of the inheritor, the creditors of the inheritance shall be given preference in payment against the personal creditors of the inheritor.

Article 1560 of the Civil Code defines the derivative action as the situation in which the creditor whose debts are uncontested and enforceable and who may exercise the debtor's rights and actions when the later refuses or neglects to exercise them to the prejudice of the creditor. The creditor won't be able to exercise the rights and actions closely connected to the person of the debtor.

So, by means of the derivative action, the creditor doesn't become the holder of the title he recovered, but only replaces the inheritor in exercising his right.

For the case in which the inactive inheritor has a share of the inheritance smaller than the total value of the debts of the accepting creditors, the payment of the creditors is made according to their preference, and if they all are unsecured creditors, the payment shall be made proportionally.

We may deduce therefore that for the case in which the creditors of the inheritor didn't settle their debt after retaining the rightful share, part of the uncovered debt remaining unsettled shall pursue the debtor until the debt is covered entirely.

For the acceptance of the succession by the creditors of the inactive inheritor to make the latter an acceptant of the inheritance he is entitled to, it is absolutely mandatory for the inheritor to have exercised one's option to this end. For this, his summoning must be made in order for him to manifest his option.

The inheritor's creditor agreement for accepting shall be concluded afterwards without regard to the inheritor's presence at the settlement of the estate or to his option.

Chapter IV is entitled "The right to sue for compensation the inheritor". According to Art. 1157, par. (1) of the Civil Code, the universal inheritor or benefitting from a universal title, who, because of the real guarantee or of any other cause, paid out of the common debt

more than one's share, has a right to sue for compensation the other inheritors, but only for the share out of the common debt devolving upon each party even when the inheritor who paid the debt would have been subrogated to the rights of the creditors.

This regress action may have a different legal nature, as it may be a personal action, case in which the payment of an undivided liability is made, but also an action deriving from the business management, that is when the successor pays more than his share with the intent of administering the affairs of the other co-inheritors. The regress action has a persona character and is prescriptible within the general term of prescription (three years), without taking into consideration if it was brought by means of a separate action or exercised within the partition process.

Chapter VII presents the "Confusion between the successor's estate and the deceased party's estate". In case the inheritor was the holder of a beneficial interest or held the bare ownership over a right before the death of the deceased and subsequently inherits that good receiving through succession the benefit and the bare ownership, he becomes owner as of full right, the previous rights being extinguished by consolidation. This confusion between patrimonies that is produces by the effect of the law as of the legacy opening date doesn't exclude maintaining in the sole patrimony of the inheritor distinct estates, one formed of the estate including the inheritance in itself with the assets and liabilities, and the other estate belonging to the inheritor.

As a conclusion we can state that the confusion between the successor's estate and the patrimony of the succession can be produces in case of all categories of inheritors having universal vocation to succession and not only in case of legal succession, but also in case of the universal legatee, or holding universal title.

Chapter VIII is entitled "Liabilities of the succession in relation to other institutions and law branches". This chapter deals with the relation between the liabilities of the succession and the fiscal right showing that, in what concerns the fiscal law, the liability is incident when is taken into consideration establishing the base of assessment with the help of which are determined the taxes and duties owed to the state when transferring the rights of property over the assets that belonged to the deceased party to one's successors.

Chapter VIII deals with the relationship between the liabilities of the succession and the reduction of the gifts in excess of the freely disposable portion of the estate, showing that, according to law, the liberalities by *inter vivos* transfers or for *mortis causa*, when exceeding the available share, are reduced to it.

The potential gifts in excess of the freely disposable portion of the estate agreed upon by the deceased party shall be determined once all existing assets the estate of the deceased party are established, at the date the deceased party passed away, taking into consideration by means of fictitious transaction all the donations. Out of this estate partition are deduces (eliminated) the debts of the succession, then the available share is estimated.

Chapter IX is entitled "Influence of waiving the succession on the liability to pay the debts of the succession".

Concerning the payment of the liability of the succession, Art. 1121 par (1) of the Civil Code provides that the waiver successor is considered not to ever have been inheritor, being non party to the inheritance as of the legacy opening date, so with retroactive effects. Therefore, he is relieved from the rights on the assets of the succession, but also discharged of liens concerning the payment of the liabilities.

Between waiving the succession and the obligation of payment of the debt there is a relation of interdependency, therefore, by waiver, the payment obligation over the liability of the succession is erased.

Usually, a succession is waived for the inheritors not to be forced to pay the liability of the succession. There are cases in which the inheritor, after accepting the inheritance, finds that the debts and duties of the deceased party exceed by far the assets existing in ones patrimony. In this case, the successor cannot use anymore the right of waiver to the succession, being liable to pay the debt to its complete settlement, even with one's own goods.

Chapter X is entitled "Entering into possession of the vacant inheritance and liability for the debts". The state is liable for the liability of the succession within the limits of the asset, that is to the extent any inheritor accepting the inheritance is liable; the state shall have to pay one's duties and debts, but only proportional to the share received within the vacant succession, so only within the limits of the assets and only with goods part of the inheritance.

From the analysis it results that neither the doctrine nor the legislation in force enacts concerning the cases in which elements existing in the assets of the succession are insufficient for settling the debts and duties of the succession. As a consequence, we can presume that in this case, in absence of goods satisfactory for settling the debts of the succession, its creditors are the only prejudices parties.

Chapter XI is entitled "Settlement of liabilities". According to Art. 120 of the Law, within the notary successional procedure, the Notary Public shall be able to proceed in settling

the liability of the succession with the agreement of all inheritors. As such, we refer to a notary procedure used when all the successors give their consent, as it has an optional character.

In the preliminary phase of the settlement procedure of the successional liability, the Notary Public appointed for settling the cause of the succession shall issue a succession settlement certificate including, besides the estate formed of the assets and liabilities of the succession, the inheritors and the shares they are entitled to, as well as their agreement concerning the manner in which the liability is paid, naming the a liquidator within the term established for concluding the settlement.

The settlement of the liability shall be made by one or more liquidators, which, as the case may me, shall act separately or together. The conclusion is that it can be a liquidator even the Notary Public who settled the estate, and if it is not him, the liquidator can be named by the deceased party by will or authenticated writ, either by the party fulfilling the mission of testamentary executor, or one can be named by the inheritor of the deceased party, by them or by a third party.

The liquidator can be named also by the court if the inheritors don't agree on appointing the liquidator.

The liquidator is entitled to payment, established by the inheritors as of the date one was appointed, as well as to reimbursement of expenses made with the payment of the settlement procedure.

The law provides that the duration of the settlement procedure of the successional liability cannot exceed one calendar year; it can be extended by mutual agreement of all the inheritors. The Notary Public can ask the court the replacement of the liquidator found in the impossibility of performing one's task, which neglects or doesn't observe one's mission (Art. 130 of the Law no. 36/1995).

After conclusion of the settlement procedure, the Notary Public shall issue the inheritance certificate, with the net result of the settlement to be mentioned in the estate.

Chapter XII is entitled "Report of debts". By report of debts we can understand the legal operation by means of which a person having the right to inheritance, who has a liquidated and cash debt to the deceased party, has the obligation to report it, either before or within the inheritance partition.

According to the art. 1158 par. (2) of the Civil Code, if the inheritor has several debts in regard to the inheritance, not covered by his part of the inheritance assets, these debts are proportionally extinguished, in relation to the limit of the relative party. The report isn't

operated regarding the receivable which an inheritor has in relation to the inheritance, but the inheritor, who is both creditor and debtor of the inheritance, can stand on the legal compensation, even if its conditions wouldn't be met. Through the consent of all successors, the report of debts can be also realized before the partition of the inheritance.

With regard to the way of performing the report of debts, the provisions of the Civil Code are clear enough showing that this operation can be realized by taking less, meaning through equivalent, for the situation in which, at the time of the inheritance partition, an inheritor has a liquidated and cash debt in respect to the inheritance.

Therefore, the accomplishment of the report of debts by taking less, respectively through equivalent, either through takeover or through charge, assumes that the inheritor who has a debt in regard of the inheritance will take in his lot less goods that the share to which he has the right by means of the inheritance, corresponding to the value of the debt, respectively the value of the debt is deducted from the share to which he has the right by means of the inheritance.

In order to operate the report of debts, certain conditions must be met. In the case of the inheritance partition, this supposes that the inheritor accepts the inheritance because, otherwise, he losses the quality of co-inheritor. It's irrelevant if he is joint holder in the capacity of legal successor or universal legatee or with universal title. The legatee with particular title, acquiring one or several determined goods, cannot have the quality of joint holder and cannot be subject regarding the report of debts.

Consequently, a first condition for the report of debts to exist is **to accept the succession.** Another condition to be met is **the existence of a debt regarding the succession**, debt which wasn't extinguished through compensation. Another condition for the existence of the obligation of report of debts, which derives from the provisions of the Civil Code, is for **the inheritor to have a liquidated and cash debt regarding the inheritance**, debt which shall exist on the date of the inheritance partition, without being needed to be due and without taking into account its source.

A last condition to be accomplished is for **the share inherited by the co-partner debtor to be sufficient so that the receivable be totally imputed on him**. In the absence of this condition, the report produces effects only for the part from the debt which is equivalent with the rights of the debtor to the divisible property and for the rest of the debt, he (the debtor) will have the obligation to divide its value equivalent.

To the report of debts can be obliged not only descendants of the deceased party and the surviving spouse, but also his legal heirs, universal legatees or with universal title.

The report of debts presents the advantage that it brings a simplification within the liquidation operations of the chart of heirs through the fact that, assigning the succession receivable to the co-inheritor debtor, confusion is created without being needed any operation for its execution. Through the report of debts is ensured the transposition in practice of the principle of equality between joint holders through the fact that there isn't the risk that, if the receivable is assigned to other joint holder, this one be put in the situation of not realizing the receivable because of the debtor's insolvency.

Chapter XIII is entitled "Bankruptcy of the natural person – advantage or disadvantage for heirs?" At present, within the Romanian Parliament, there is a bill regarding the bankruptcy of the natural person according to which a person can enter in insolvency if he doesn't afford to pay his creditors from his revenues. The debtor can ask the protection of the court which will appreciate if the bankruptcy is or isn't justifiable. Thus, the debtor will be present before the court that can declare him bankrupt either at his request or at the request of the creditors; in this situation, the debtor has the possibility to propose a plan by means of which he pays the debts to the creditors, plan which is developed under the strict supervision of an official receiver, but also with the periodical control of the court, as he is declared bankrupt.

The bill rules that, if the personal bankruptcy is set up, the judge can grant to the debtor and to his family the right to stay in the house for 2 years. The legislator makes the distinction between the debtor of good faith and that of bad faith, in the sense that the last one will also receive the right to live on the property for only three months.

The bankruptcy law doesn't mention which would be the situation of the debtor's inheritor in case of his death; can the inheritors continue with the person of the deceased party in terms of personal insolvency declared by him during his life? What happens with the releasers, will they be forced by the creditors of the succession to accept the succession by means of the indirect action?

Even if, according to the common law, the creditors of the succession force the releasers to accept the succession by means of the indirect action in order to satisfy his receivables, the law doesn't explain what happens with the difference of uncovered receivable (inheritable debts remained), being known the fact that the Civil Code stipulates that the heirs are responsible for the debts within the limits of the assets received. From the provisions of the bill it results that this difference of the uncovered receivable is extinguished.

On the other hand, the law could include provisions which don't force the inheritor to accept a bankrupt succession by means of the indirect action, as it is currently stipulated in the

common law. In this case, the legislator shall also consider the situations in which the heirs of the deceased party debtor don't want (and therefore they shouldn't be forced) to accept a succession which brings them no material benefit and to continue with the person of the deceased party through the payment of some instalments to banks or through the payment of other debts.

We appreciate as being beneficial the adoption of the law of the bankruptcy of natural person and of the implementation methodology, with the amendments and the additions mentioned above, since it would support the inheritor of the deceased party debtor, creating for them the possibility to continue the person of the deceased party also under this aspect or to renounce to the inheritable rights when the acceptance of the succession is not to their advantage.

Part III - Petition for inheritance is divided in two titles.

Title I is named "Notion, legal character and distinctions from other actions" and it is divided in five chapters.

Chapter I is entitled "Notion, legal character and parts within the action of petitioning for an inheritance". *The hereditary petition* represents the action by means of which the plaintiff asks the court to recognize his quality of legal inheritor or legatee and to oblige the defendant to reimburse the inheritable assets he holds without having the right.

The hereditary petition has a real character since the inheritor is seen as a real owner of the succession opened and has as an apparent purpose the dispossession of the inheritor from the inheritable assets.

The divisible character of the hereditary petition refers to the situation in which there are several plaintiffs heirs, case in which they should introduce each action in hereditary petition, in order to be recognized their quality of heirs and to reimburse them the inheritable assets to which they have the right by the virtue of this quality.

In order to eliminate the controversies existing in the speciality literature to this effect, the Civil Code, in the Art. 1130 stipulates that the action can be introduced **any time**, conferring in this way the **indefeasibility** to the hereditary petition.

As in any civil action, the hereditary petition has two parties: the plaintiff and the defendant.

As resulting from the provisions of the Civil Code, the plaintiff in the hereditary petition can be the person who pretends having the quality of universal inheritor or with universal title, but also the heirs in right of this person, such as the assignees of inheritable rights or their inheritable representatives in case of death.

As regards the defendant, it is understood that he can be a person who pretends that he is a universal inheritor or with universal title and who has one or several inheritable assets by the virtue of this alleged quality.

Chapter II presents the "Distinctions from other actions". The hereditary petition presents similarities and distinctions in report to other actions through its distinct object and also by its nature. The hereditary petition takes after the following civil actions: action for property recovery, personal action by means of which is required the payment of a debt of the defendant to the succession or the division of property (in division).

We can say that the hereditary petitions takes after the action for property recovery by the fact that both actions follow the same goal, respectively the recognition of the property right on some assets in dispute, but it differs from it by the fact that in the case of the hereditary petition is disputed the quality of inheritor which confers vocation at the possession of the assets. If the title of inheritor is not contested, but only the fact that the goods in the defendant's possession would belong to the succession, we deal with an action for property recovery, not with a hereditary petition.

The hereditary petition shouldn't be confused with the action by means of which the plaintiff asks the court the payment of a debt which the defendant has in respect to the inheritance, if the defendant debtor refuses to pay not because he would have the quality of heir, but because he considers that the debt is extinguished by another way (for example, by prescription).

Frequently, the hereditary petition is developed as a prejudicial matter, within an action of division of property, but with which it shouldn't be confounded.

The hereditary petition shouldn't be confounded with the action of finding the quality of inheritor, because in this case is required only the finding that the plaintiff has the quality of inheritor if the deceased party and the delivery of goods to by the defendant isn't r required.

Chapter III is entitled "Quality of inheritor". In case of hereditary petition, it's essential to prove the quality of inheritor, being an action which has as purpose the elimination of the conflict between two or several persons, where each of them pretends to be inheritor of the deceased party.

In case of heredity petition, the main aspect brought forward for discussion is to prove the quality of inheritor, regardless he is the legal inheritor, universal legatee or with universal title. Taking into account the evidence submitted, the court shall establish which title is preferable and, according to this, who is the real inheritor having inheritable vocation, in full

or in part, to the assets of the deceased party; this prove is firstly made with the certificate of inheritance or with the certificate of capacity of inheritor.

The certificate of inheritance is issued as a result of the agreement which shall exist between the inheritors, by the Notary Public who has the competence to settle the notary inheritance procedure, according to the provisions of the Law no. 36/1995 and to the provisions of Article 1132 of the Civil Code.

The certificate of inheritance is a title deed which proves the essential elements in order to make possible for the heirs to enjoy the inheritable rights they have according to the law, in an effective way.

According to the Article 1132 of the Civil Code, the certificate of inheritance is issued by the notary public and includes findings regarding the assets of the deceased person, the number and the capacity of inheritors and the shares they have from these assets, and also other mentions provided by the law.

This chapter presents the content, the functions of the certificate and the proving power of the certificate of inheritance. According to the law, until its abolishment through a court order, the certificate of inheritance fully proves the quality of inheritor and the share or the assets each inheritor has. Thus, according to the legal provisions, when a inheritor alienates assets acquired through succession, the proof of these inheritable rights shall be made not only with the certificate of inheritance issued according to the law, but also with other documents which the deceased party or his authors had, concerning these rights.

The certificate of inheritance can be hit either by absolute nullity or by relative nullity for reasons regarding the violation of some imperative rules or provisions or regarding the absence of some essential elements for concluding the document.

Chapter IV is entitled "Further documentary evidence" and presents: the certificate of heirs, the certificate of quality of inheritor, the additional certificate of inheritance, the certificate of executor, the certificate of succession holiday.

In the legislator's mind and according to the provisions of the Law no. 36/1995, through the collocation "inheritor" it was taken into account the notion of continuity of the personality of the deceased party, respectively of the successors who receive both the debts and the assets of the inheritance. As a consequence, the certificate of inheritance can be issued to legal inheritors, but also to universal legatees or with universal title.

In exchange, the certificate of legatee can be issued only to the legatee with particular title who receives certain goods individually determined through the inheritance.

According to Article 116 par. (1) of the Law no. 36/1995, at the request of inheritors, the Notary Public can issue a certificate of quality of inheritor, which attests the number, the capacity and the extension of the rights of all legal heirs, meeting the procedure provided for the issuance of the certificate of inheritance, excepting the provisions regarding the chart of heirs. The certificate of quality of inheritor includes also provisions concerning the succession shares.

According to Article 118 par. (1) of the Law no. 36/1995, after the issuance of the certificate of inheritance, another certificate can be issued only under the conditions provided by the law. With the consent of all heirs, the Notary Public can continue with the succession procedure, in order to fill the final conclusion with the assets issued from the chart of heirs, issuing an additional certificate of inheritance.

In turn, Article 115 par. (5) of Law no. 36/1995 stipulated that, upon request, the notary can also issue a certificate of executor in case of a testamentary inheritance within which is presented a will by means of which the deceased party established a executor. Through the certificate of executor, the notary will find the quality of executor and also the extension of his rights and obligations deriving from the content of the will and the legal provisions regarding the testamentary execution.

According to Article 117 par. (1) of Law no. 36/1995, in the absence of legal or testamentary heirs, when goods exist in the chart of heirs, the notified notary public finds that the succession is void and issues a certificate of succession holiday. If the chart of heirs is formed only by a succession right or by a possession right on a burial or committal place, without funeral constructions, through the conclusion the notary will find its extinction without issuing a certificate of succession holiday.

Therefore, a certificate of succession holiday can be issued when there are goods in the chart of heirs, but there aren't any legal or testamentary heirs.

Chapter V has the title "European Certificate of Succession". Being a new institution, chapter V gives particular attention to the European certificate of inheritance.

Within the context of globalization and dynamics of international private law reports, especially of those in succession matters, was shaped as absolutely necessary the elaboration of a legislative framework on European level which regulates a legal document with the value and the competences of a certificate of inheritance.

In order for European citizens to take advantage, in conditions of full legal security, of all the benefits given by the internal market, the Regulation 650/2012 should provide them the possibility to early know the law applicable to their succession, should be introduced in this

Regulation harmonized rules regarding the conflicts of laws, in order to avoid contradictory results.

The main rule is to ensure that the succession is regulated by a predictable law with which it has the closest connections. In order to avoid the fragmentation, when the chart of heirs is composed of goods located on the territories of several states, but also for legal security reasons, this law should regulate the succession in its entirety, respectively all the goods entering in the composition of the assets of the deceased person, regardless if they are movable or fixed assets and regardless these are located in a member state of European Union or in a state from outside the European Union.

This scientific and legislative approach would have the designation to simplify the determination procedures of the inheritance and to avoid the disputes which could appear between the heirs if a deceased party leaves a will and in the procedures process are involved legal systems belonging to several member states. The new legal procedures could lead to the avoidance of some long and expensive trials and also to the reduction of bureaucracy for inheritors.

According to the new provisions, if a person dies in a member state of the European Union, but which is not his country of origin, the succession will be mainly debated according to the legislation from the country where he had the *usual residence*, by the authorities or by the courts from that country.

The citizen who elaborates his testament will decide with respect to the executor according to the legislation from his country of origin, member state of the European Union.

The legislative provisions won't produce legal effects in case of the persons who remain resident in their countries of origin, these don't amend the national legislation regarding the succession, taxation, property and these don't suppose the need to harmonize the national legislation with the European legislation.

Hence, since August 2015, the Commission will introduce a European Certificate of Succession, which will give the possibility to natural persons to prove the quality of inheritor or administrator of a succession, without needing other procedures on the territory of the European Union.

This legislative approach will represent a considerable approach in regard of the current situation, where natural persons have serious difficulties in exercising their rights. The contemplated result is the acceleration of succession procedures, the reduction of bureaucracy and the reduction of their costs.

Therefore, until August 2015, all member states of the European Union have the obligation to align national legislation to the European rules regarding the successions.

Title II is entitled "Effects of the petition for an inheritance" and it is divided in two chapters.

Chapter I has the title "Effects between the real and apparent inheritors". In respect to the effects produced by the admission of the action in heredity petition, is understandable the fact that the main effect is represented by the recognition of the quality of inheritor and, as a consequence, the commitment of the defendant who holds without a title the goods from the assets of deceased person to return them to the real inheritor. But, in practice, can appear several situations, taking into account if the apparent inheritor was of good faith or of bad faith, if the goods were alienated or not, if they disappeared or not from the holder's fault.

In respect to the restitution of succession goods in nature, this operation cannot bring problems: the good is returned to the real owner, according to the law, in entirety and free of any charges.

The things are complex in case of total destruction or alienation of the good which should be submitted for restitution, situation in which the debtor of the restitution obligation has to pay the value of the good either from the time of the destruction or from the time of the alienation, depending on the lowest of these values. In turn, if the debtor of the restitution obligation was of bad faith or if the restitution obligation comes from his fault, the legislator punishes him by taking into account the highest value of the good.

It's notable the fact that the legislator shows an increased exigency by punishing the debtor of bad faith and presents an indulgence for the debtor of good faith.

Herewith, the Civil Code in force also provides the case in which the good to be returned was accidentally damaged; in this case, the debtor of the restitution obligation will be released from this obligation, but he will have to give to the creditor the compensation collected as a result of the destruction of the good or the right to collect this compensation. In this case too, the legislator makes the distinction between the debtor of good faith and the debtor of bad faith meaning that, the debtor of bad faith is not released from the restitution obligation, except for the case in which he can prove that the good would have been also damaged if delivered to the creditor.

As a legislative novelty element in civil matters (compensation for the insurance of the good), on one hand it adapts the social realities and needs to the national legislation and on the other hand it has a punishable character in the sense that it punishes the holders of goods

not concluding an insurance policy regarding the respective things with the non-payment of that compensation.

If the good to be returned was partially destructed, was deteriorated or suffered a depreciation of value, the debtor of the return obligation will have to give compensation to the creditor, except for the case in which the destruction resulted from the normal use of the good or from a circumstance which isn't imputable to the debtor.

Chapter II presents the "Effects of the petition for an inheritance". The admission of the action in heredity petition also produces, as it was normally, effects to third parties, in the sense that we also meet the distinction between the third party of good faith and the third party of bad faith for the situation in which the succession goods were transferred to him. As a consequence, if a third party acquired a fixed property from the apparent inheritor in good faith, according to a deed of transfer, he acquires the property by usucapio, with the condition to hold the good for 5 years, under the conditions provided by the law.

We can say that the preservation and administration documents concluded by the debtor of the restitution obligation, but from which the real inheritor profits, are kept even if these are concluded by the apparent inheritors of bad faith, while the deeds of settlement by onerous title are kept only if these are concluded by the apparent inheritor with the third party of good faith. The deeds of settlement by gratuitous title, which the debtor of the restitution obligation concluded with a third party (regardless he is of good faith or of bad faith) aren't opposable to the real inheritor, as aren't opposable neither the deeds of settlement by onerous title concluded by the debtor of the restitution obligation with the third party of bad faith.

As a consequence, the effects of the admission of the action in heredity petition are complex and differ according whether the good is movable or fixed, the debtor of the restitution obligation is of good faith or of bad faith, the good was accidentally damaged or not or if the purchaser third party is of good faith or of bad faith. It's of no use to also mention the fact that, if the action in heredity petition is not admitted, it produces no effect.

Part IV is entitled "The seisin" and it is divided in three titles.

Title I has the name "Notion, regulation, inheritors who have seisin" and it is divided in four chapters.

Chapter I is entitled "Introduction, history and foundations" and analyses the transmission institution of the inheritance, showing that the possession notion gets a special acceptance, the Civil Code regulating in a different way the transmission of the assets and the debts of the inheritance from the transmission of its possession. To this effect, the Civil Code makes the distinction between the heirs who have seisin and the heirs who don't have seisin.

Chapter I presents different opinions expressed in the speciality literature in respect to the purchase of the inheritance possession and it shows that this possession is independent from the constitutive elements of the possession in the common law, the inheritor who has seisin acquiring the inheritance possession even if he doesn't hold the succession goods, these can be possessed at that time by other persons who don't have the quality of inheritor.

The Civil Code regulates three categories of heirs: heirs who have seisin; heirs who don't have seisin; legatees, we gave a particular attention to the notion of seisin starting from the origin and reaching to its effects.

Chapter I presents the origins of the seisin according to the German law, showing that this derives from the German word *sazjan*, which means to put, to establish; French legislator considers that the exercise of the rights and the actions of the deceased person represents a direct effect of the seisin since the inheritors who don't have seisin, who aren't invested with these rights can be forced only subsequent to their vesting order. According to the French law, the heirs who have seisin continue the person of the deceased party and hold all the prerogatives related to the use of the deceased party.

The regulations of the French Civil Code aren't found in the Romanian Civil Code, the last one doesn't attribute the seisin by right to all legal heirs, but only to the surviving spouse, to ancestors and to descendants.

Chapter II is entitled "Notion and legal character". The seisin represents the benefit granted by the law to the forced heirs to hold by right the inheritance, without any procedure on the date of the deaths of their author.

It analyses the legal characters of the seisin, showing that it has a *legal character*, since it results from the law and it comes into being according to the law, an *individual character* resulting from the fact that each co-owner can stay alone in judgement, regardless his due quality, in any action regarding the co-ownership.

Herewith, the seisin has a *successive character* resulting from the fact that this right is transmitted to the next heir, more close in degree and who has succession vocation, but also *perpetual character* resulting from the right of the inheritor who has seisin to administrate the assets of deceased person and to exercise all patrimonial actions of the deceased party starting with the date of his death.

Chapter III is entitled "Inheritors who have seisin". Analysing the heirs who have seisin, the Civil Code states that they are: the surviving spouse, the privileged descendants and ancestors, and that the legislator doesn't make the difference between the descendants

from the marriage, from outside the marriage or from adoption, including in this category all the descendants of the deceased party regardless of the degree.

It is shown that, in contrast with the French law, where all legal heirs are also heirs who have seisin, in Romanian law all those having the possession of right of the inheritance, even before the issuance of the certificate of inheritance, are only the ancestors and the descendants, the Romanian legislator identifying in this way the heirs who have seisin with the forced heirs.

Chapter III analyses the fact that, by virtue of one's capacity of inheritor who has seisin, the surviving spouse can appear to the inheritance only in one's name, without having the possibility to appear through a representative, showing that, in respect to the representation matters, this cannot be applied to the surviving spouse since the representation works only when there are relationships based on kinship, and the admission of the representation in the case of descendants of the surviving spouse will superpose the first class of legal heirs with the descendants of the surviving spouse and this situation, in which they aren't common with those of the deceased party (children of surviving spouse from other marriage), could create an unnatural circumstance to recognize succession rights based on other relationships than the kinship relation or on that resulting from marriage.

Therefore, the descendants of the deceased party appear to the inheritance regardless the kinship degree down the last degree from that class, which meets the conditions required by the law in order to heir. The Civil Code doesn't make the distinction between the child born outside the marriage, but whose affiliation was established by law with reference to the deceased party, and the child from the marriage or those adopted.

In granting this right to the privileged ancestors, the legislator took also into account the kinship relation existing between the deceased party and his parents, on the consideration that they are the closest relatives of the deceased party, in the situation in which he has no direct descendants.

Chapter IV presents the "Effects of the seisin". Analysing the effects of the seisin, it is showed that its main effect is given by the fact that the heirs who have seisin have the right to administrate the assets of the deceased party and to exercise all the patrimonial actions of the deceased party, without needing the fulfilment of any procedure.

The first effect of the seisin is that the inheritor who has seisin takes possession of, de facto, and has the right to manage all succession goods acquired from the deceased party, all the rights on the fruits of the goods, without needing the fulfilment of any previous procedure, before the procurement of the certificate of inheritance.

If there are several heirs who have seisin, any of them can exercise the possession of right on the entire assets of deceased person.

Analysing the provisions of the Law 36/1995, it is shown that there are certain exceptions according to which the heirs who have seisin cannot manage the succession assets, thus, according to the article 72 from the Law, if there is a danger of alienation, loss, replacement or destruction of goods, the notary public can seal the assets or he can give them to a executor.

If there are assets of the succession in the possession of a third party who doesn't hold the quality of inheritor, the heirs who have seisin can enter into the possession of these assets by means of the action for property recovery or by means of the possession action.

Heirs who have seisin can follow the debtors of the succession and the holders of succession goods and they can exercise possession actions in respect to the succession goods and any other actions with patrimonial character regarding the goods which belonged to the one who leaves the inheritance.

The effects of the seisin are produced until the heirs who have seisin or the heirs who don't have seisin become the exclusive owner of the good.

Title II is entitled "Acquiring seisin (by the heirs who don't have seisin, legatees)" and presents one chapter entitled "Transmission of the deceased party's estate in the possession of the legal inheritors who don't have seisin".

If the Civil Code expressly regulates the heirs who have seisin, in respect to the heirs who don't have seisin the legislator doesn't expressly mention something, resulting that *per a contrario* enters in the category of the heirs who don't have a seisin, the other classes of heirs who don't have a seisin.

Therefore, the heirs who don't have a seisin are all the other legal heirs of the deceased party who have vocation to the inheritance, meaning the ordinary, collateral privileged, collateral ordinary ancestors and legatees.

In respect to the possession of legal heirs who don't have a seisin, the Civil Code gave up to the expression "vesting order", at present using the expression "possession *de facto* of the inheritance" with the idea to give more stability in avoiding confusions between seisin and possession in right.

In order to enter into the possession *de facto* of the inheritance, legal heirs who don't have a seisin have the obligation to meet certain procedures for the issuance of the certificate of inheritance, but until then they cannot be followed for the debts of the deceased party. However, they can benefit from the fruits and from the goods which entered in the patrimony

of the deceased party after the opening of the inheritance, but before the issuance of the certificate of inheritance. As a consequence, the legislator confers certain rights to the inheritor who doesn't have a seisin even before conferring obligations.

The vesting order takes place only at the request of legal heirs who don't have a seisin and is performed by the notary public within the notary succession procedure.

In order to fulfil this procedure, the legal heirs who don't have a seisin must prove they have succession vocation and the extension of their rights.

According to the article 1139 of the Civil Code, the township, the town, the municipality enters into the possession *de facto* of the inheritance as soon as all known heirs waive the inheritance or if at the fulfilment of the term of successional option no inheritor was known.

The inheritance is retroactively acquired as of the legacy opening date. As a result, the state acquires the void succession without having the obligation to ask the vesting order, exercising the rights and the obligations before the issuance of the certificate of succession holiday. Thus, it appears the question: has the state the quality of inheritor who has a seisin or who doesn't have a seisin?

One can say that the state is an inheritor who doesn't have a seisin since it retroactively acquires the inheritance from the date of its opening, but it can also be considered an inheritor who has a seisin since it acquires the possession de facto of the inheritance **immediately** with the condition to not exist known heirs or heirs who renounced to the succession. In our opinion, the state can also have the quality of inheritor who has a seisin or the quality of inheritor who doesn't have a seisin.

The effects of the vesting order in the case of heirs who don't have a seisin are those provided for seisin in general, they being considered that retroactively acquired the possession de facto of the succession from the date of its opening.

At present, the legislator doesn't clearly stipulate if the legal inheritor who has a seisin disposes of all the means provided by the law in order to protect his patrimony against illicit actions of third parties.

Herewith, the legislator rules that the generosities given to physicians, pharmacists, medical staff during the period when they granted speciality care to the testator for the disease which produced the death are voidable.

Title III is entitled “The legacy and filing of a legacy” and it is divided in two chapters.

Chapter I is entitled "The legacy". The legacies represent the main object of the will. The Civil Code, in the article 987, defines the legacy as being the testamentary provision by means of which the testator stipulates that, at his death, one or several legacies acquire his entire patrimony, a part of it or a series of determined goods.

In our opinion, the legacy represents the most important testamentary provision by means of which the testator appoints that, after his death, one or several persons acquire either the entire patrimony or a part of it or certain individually determined goods.

The Civil Code, in Article 989 par. (1) stipulates that, under the sanction of the absolute nullity, the trustee shall determine the beneficiary of the liberality or, at least, shall anticipate the criteria according to which this beneficiary can be determined at the date when the liberality produces legal effects.

The person who didn't exist at the date the liberality was executed can benefit from a liberality if this is done in the favour of a capable person, with the task, for this last one, to transfer the object of the liberality to the beneficiary as soon as possible.

The legatees are the parties personally appointed by the testator in the content of the will, who meet the conditions to receive legacies with gratuitous title. These conditions are: to exist and to have the capacity to receive.

Chapter II is entitled "Delivery of legacies". In respect to the delivery of legacies, the legislator stipulates that this is realized depending on the legacy typology and it can be universal, with universal title or with particular title. But, regardless of the typology, the delivery of legacies consists in the material remission of the possession of goods which form the object of the legacy or in the leave of their occupancy.

The transfer of the property right on the good which forms the object of the legacy is different from that of transfer of possession and independent from the institution of succession acceptance or succession relinquishment, because the property right on the good is transferred to the legacy on the date of the death of the testator.

The universal legatee can ask to get the possession *de facto* of the succession even from the forced heirs and if this category of heirs doesn't exist or if they refuse, the legatee can get, as shown, the possession of the succession through the issuance of the certificate of inheritance.

If the universal legatee was instituted through an authentic will, the notary public has the obligation to also summon the forced heirs and, in the case of the handwritten testament, will be summoned all legal heirs and the executor, if he was appointed through the will.

Therefore, we can say that the universal legatee entering into the possession de facto of the succession can be performed either when the forced heirs voluntarily agree upon it or when, in the absence of forced heirs or when they refuse, the legatee gets the possession of the succession as a result of the procurement of the certificate of inheritance.

The legislator dedicates Article 1055 of Civil Code to the institution of the legatee with universal title, which provides that the legatee with universal title is the inheritor to whom, through a testamentary provision, is granted vocation to a part from the succession.

The legatee with universal title can ask to get the possession de facto of the succession, either from the forced heirs, if they exist, or from the universal legatee who got the possession de facto of the succession or from the legal non-forced heirs, but he also can get the possession of right of the succession through the issuance of the certificate of inheritance in the same conditions as the legatee with universal title.

As a conclusion, as in the case of the universal legatee, the legatee with universal title can also get the possession de facto of the succession through the issuance of the certificate of inheritance or, as the case may be, through the pronunciation of the decision by the court.

The delivery of the legacy with particular title is realized by legal heirs, by universal legatees or by the legatees with universal title and it can be required from the opening date of the succession, without expecting the division of the succession.

Final conclusions and recommendations according to the intended law

The institution of successional transmission represented and shall continue to represent the object of some ample approaches in the speciality doctrine from our country.

In the first part of our scientific approach, analysing the institution of succession option, we showed that the legislation in force doesn't give an express definition to the right of successional option, being limited only to rule that no one can be forced to accept a succession to which one is entitled. The right of successional option is the right born in the person of inheritors as of the date of the death of the party who leaves the succession and implies their choice to accept the succession or to waive it.

Therefore, the heirs of the deceased party or the legatees exclusively have the right of successional option. As a consequence, we consider that *the option cannot be exercised by the personal creditors of the heirs, being a right with a deep personal character*. ***Per a contrario***, if we would admit the right of successional option of the personal creditors of the heirs, this would mean to violate the principle of freedom of the right of succession option.

The Civil Code, in Article 1113, par. (2) rules that *the inheritor who doesn't opt within the term established by the court is considered to have waived the succession.* The interpretation *ad literam* of this legal provision leads to the conclusion that the inheritor who doesn't express his successional option within the term established by the court waived the succession.

On the other hand, according to the provisions of Article 1104 par. (1) of the Civil Code, *if the inheritor asked the elaboration of the inventory before the exercise of the right of successional option, the option term won't end sooner than two months as of the date the inventory report is communicated*. Therefore, this represents the sole situation in which the term of successional option can be extended. As a consequence, the extension of the term of successional option can intervene only if an inventory request of succession goods was formulated, but only in one year.

Practically, the inheritor can ask the performance of the inventory within the term of successional option (one year), after which passes the term needed for the inventory take effectively place and then will pass the term of 2 months from the communication of the inventory report. The term cannot be excessively extended because, in a reasonable way, the performance of an inventory doesn't imply a longer interval.

According to Article 1104 par. (2) of the Civil Code, *during the elaboration of the inventory, the successor cannot be considered inheritor, except for the case in which he accepts the succession.*

Although appears the question: if the legislator granted to the inheritor the possibility to accept the succession before the communication of the inventory report, what is the purpose of extending the term of successional option if the inheritor planned anyway to accept the succession?

Another mention is related to the situation in which, in the case of the commitment of a fact in the fraud of the heirs, the faulty inheritor cannot benefit any more from the goods of the succession that he embezzled or hid and he will be forced to pay the debts and the duties of the succession in proportion to the share to which he would be entitled, paying even with the own goods.

We considered that it would have be sufficient for the inheritor to pay the debts and the duties of the succession proportional to his share from the succession, excluding the sanction by means of which are taken into account his own goods.

Therefore, we hereby recommend, according to the intended law, the amendment of Article 1119 of the Civil Code in the sense: (1) The inheritor who, in bad faith, has embezzled

or hidden goods from the patrimony of the succession or hid a donation submitted to the report or to the reduction, is considered to have accepted the succession, even if previously he waived it. In this case, the inheritor shall have any right on the embezzled or hidden goods and, as the case may be, shall be forced to report or to reduce the hidden donation, without taking part to the distribution of the goods donated.

(2) *The inheritor who is in the situation provided by par. (1) has to pay the debts and the duties of the succession proportional to his share of the succession.*

In the second part, we have analysed a series of aspects regarding the transmission of the asset and liability of the succession starting from the premise that there are essential distinctions in relation to the methods of transmission of this right.

The institution of the asset of the succession needs a detailed approach because it is important since it establishes the limits in which the inheritors benefit from the rights they are entitled to according to their vocation.

Up to this moment, the concept of asset of the succession was not elaborated in a special study, and although the doctrine mentions this term, it was not analysed in detail, therefore we appreciate as being adequate to give a special attention to this concept.

At origins, this concept was found for the first time in Article 1067 par. (2) of the Civil Code, which provided that *if the legacies with particular title exceed the net asset of the inheritance, these will be reduced to the extent of the excess*.

By analysing this concept in its depth, we have illustrated the fact that the asset of the succession can be considered that particular positive element of the succession formed by the rights of the deceased party with patrimonial character and which will be transmitted to his inheritors through the legal means one disposes of. The purpose of the analysis made on the institution of the successional asset mainly follows to ensure the observance of the transmission of the patrimony of the deceased party, being known the fact that, for the greater part, the asset of succession exceeds the liability.

In relation to these aspects and knowing the fact that the legislation and the doctrine are not embracing a coherent and complete definition of the concept of successional asset, we propose the introduction of this concept within the provisions of the Civil Code, thus: *The assets of succession represent that particular positive element of the succession formed by the rights of the deceased party which have patrimonial effect and which shall be transmitted to one's inheritors through the means made available by the law.*

In respect to the legal provisions by means of which the executor can propose to the heirs, for approval, a project of inheritance partition, we considered that this division is not

needed any more in the situation in which, even the deceased party, through the will, left provisions regarding the way in which the succession goods shall be divided between his heirs and in respect to the person of the executor who will fulfil these provisions. The inheritance partition would be forced only if the deceased party, through the will, didn't make exact specifications regarding the distribution of his goods, letting these aspects at the free inspiration of the executor.

In practice, the testamentary succession represents the exception and the legal inheritance represents the rule. As a consequence, in the slightly rare cases in which the testamentary succession is chosen, in most cases the deceased party disposes in respect to the way in which his goods shall be divided between the heirs and rarely inserts in the will provisions regarding the person who shall preserve and administer the patrimony until it will be presented to the heirs. This is why we recommend according to the intended law that the legislator takes into account *the insertion, along with the attributions of the executor, of those provided for the exercise of the rights specific to a simple administration or preservation of a good or its encumbrance with a real guarantee, all these legal actions having the purpose to increase or to protect the value of the succession asset*.

We submitted to the analysis of our scientific approach the effect produced by the succession holiday on the asset of the succession showing that the certificate of succession holiday is a document which finds rights, not a document which makes rights, the state, as void inheritor, acquires the same rights which the deceased party had at the time of the death. Summarizing those previously showed, we can say that the main effect which the succession holiday has on the succession asset is that of the enrichment of the patrimony, of the increase of the succession asset of the one who received the succession.

We mentioned that, in order to recognize to the state a due passive legitimation in disputes having as an object claims on the quality of sole inheritor, is needed the issuance of a certificate of succession holiday, either in respect of the entire patrimony of the deceased party or for a part of it, when the deceased party, although he leaves inheritors, they don't have vocation to the entire succession, but only to a part of it, the rest falling on the state with the title of void inheritance.

As a result of the tests made, we found out that the doctrine and the legislation in force don't dispose in respect to the cases in which the elements existing in the succession asset aren't enough in order to cover the charges and the debts of the succession.

From here, we can conclude that, in this situation, without the existence of sufficient goods in succession in order to satisfy the receivables of the succession, the inheritance creditors are themselves damaged.

We can also meet some cases in which the receivables belonging to the state cannot be satisfied from the goods belonging to the void succession since these are insufficient. Frequently, we reach the unfortunate situation that the company bears the debts existing in the patrimony of a natural person.

For this, it proposes according to the intended law the existence of a legal framework which expressly stipulates *the situation of the excess of succession liability remaining after the void succession and which cannot be covered from the asset of the succession*.

Within our scientific approach, we have also analysed the institution of the transmission of the successional liability especially in order to establish to which extent the patrimony of the inheritors is affected by this transmission.

As a result of the research made and taking into account that in the legislation and in the doctrine it wasn't illustrated a coherent definition of the notion of successional liability, we propose the insertion of some legal provisions in succession matters which anticipate, in an explicit way and in round terms, the content of the concept of liability of the succession.

To this effect, we propose a form which stays opened for suggestions which express the concept of succession liability, thus: *the liability of the succession represents that particular negative element of the succession formed by the debts and the charges of the deceased party which can have a patrimonial effect and which shall be transmitted to its inheritors through the means provided by the law*.

This legislative and doctrinaire approach could seem opportune taking into consideration that the collocation *liability* of the *succession* doesn’t have the meaning we find in current language.

Starting from the research of liability of the succession, we considered absolutely necessary to delimit this concept from the notion of asset of the succession, mandatory in order to apply the rules of successional right. Within this approach, we illustrated that the establishment of the successional liability is mandatory since it takes into account not only the persons who have the obligation to pay, but also the rules regarding the settlement of the debts and also the legal operations which are binding for the settlement of any succession.

Within our scientific approach, we analysed the novelty appearing in the international private law in succession matters with the insertion of a legal document with the value and with the competences of a certificate of inheritance.

Thus, the European Union (EU) created the Regulation no. 650/2012 of European Parliament and Council from 4th of July 2012 regarding the competence, the applicable law, the recognition and the execution of court decisions and the acceptance and the execution of authentic documents in succession matters and regarding the creation of a European Certificate of Inheritance.

We considered as being opportune the creation of this European Certificate of Inheritance which will become applicable through the Regulation no. 650/2012 on 17th of August 2015.

As a result of the analyse of this Regulation, we concluded that through the rules to be imposed at European level, the procedures for the establishment of the inheritance will be simplified and we can avoid the disputes which could appear between the heirs if a deceased person leaves a will and in the process of the procedures are involved legal systems belonging to several member states.

Thus, the purpose of introducing this Regulation is that by means of which it shall be given the possibility to the natural persons to prove the quality of inheritors or administrators of a succession, without needing further formalities on the territory of the European Union.

By investigating these rules, we considered that we shall apply to this Regulation a series of amendments. Thus, we consider that it has a particular importance the amendment of the validity term of the copies of the certificates issued to the applicant, because according to the Romanian national legislation, the certificate of inheritance doesn't need a "review" of extension of the validity, this being **final**. The copies of the European Certificate of Inheritance issued by the issuing authority are valid for a limited period of six months, period which will be indicated in the copy certified under the form of an expiry date and, in certain situations considered exceptional and justificatory, the issuing authority can take the decision, by derogation, that the validity period be extended. We recommend, according to the intended law, the insertion of validity for an indefinite period of the European Certificate of Inheritance, in order to avoid many of the bureaucratic procedures, as a matter of fact met both in Romania and on international level.

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