

The difference between passing the inheritance with universal title and special titled

GRETA BARDELI

Lecturer

Faculty of Law

“LuigjGurakuqi” University of Shkoder

Albania

Abstract:

The difference between passing universal and the particular title inheritance presents not only theoretical values but also practical values and depending on the type concretely crossing, will also determine the amount of inheritance to be passed to heirs at the time of opening of heritage.

*In the works of Roman lawyers, the provisions of the inheritance law were part of the ways on how the property is acquired¹. The inheritance-legal ways of acquisition, in contrast to other ways of acquiring the property, which act *Inter vivos*, were characterized by ways of acquisition of property *mortis causa*, or in the case of death of the owner: *hereditas nihil aliud est, quam succesoi in universumius quod defunctus haberium*². The importance of heritage as an institution of civil law, results from the fact that this institution of law, not only is foreseen in the Civil Code but it is also regulated in details, in over a hundred Provisions. This shows the great importance that the lawmakers give to this institution of law. Not only that, but the legislator of the Civil Code, given the importance presented by the Institute of Heritage nowadays, in the conditions of market economy and the free movement of goods and capital, to this institute has dedicated a separate section or Part III of the Civil Code, for the same*

¹A.Mandro, “E drejta romake”, Tiranë, 2006, f. 415.

² Gai 2,97-3,87. D 50 ,17, 62.

importance institutions Property. Even the theory of civil law or legal doctrine treats the heritage as part special provisions of civil rights, which indicates that this is a great institution of great importance not only for legislators, but also for the legal doctrine.

Key words: inheritance, *de cuius*, extent of inheritance, universal title, singular title

In the works of Roman lawyers, the provisions of the law of succession, were part of the methods how property is acquired³. Methods for acquiring of inheritance by law, in contrast to other ways of acquiring property, which act *Inter vivos*, were characterized by methods of acquisition of property *mortis causa*, or in the case of death of the owner: *hereditas nihil aliud est, quam succesoi in universumius quod defunctus haberium*⁴. In other words the inheritance law, is a summary of legal provisions which regulate the law to inherit property with universal or singular title (in case of death of the owner)⁵.

The inheritance law, until the emergence of private law, has not been developed, because the fact of death in the clan-tribal period had no property-legal repercussions⁶. Conditions and production instruments at the time were owned by the person that find them, who do not die, and the objects of personal use has been buried with the person who had used them.

When the conditions and instruments of production passed into private property of different *paterfamilias* different and when they enter into multiple property relationships, emerged the hereditary right as summary of legal provisions, which should regulate the resolution of property relationship

³A.Mandro, "E drejta romake", Tiranë, 2006, f. 415.

⁴Gai 2,97-3,87. D 50 ,17, 62.

⁵A. Kalia, "E drejta ndërkombëtare private", Elbasan, f. 256.

⁶I. Puhan, "E drejta romake", botim V ,Prishtinë, 1980, f. 405.

connected as alive and whom shall belong the *familia pecuniaque* after the death of *paterfamilias*.

In our civil legislation, the heritage is known as a derivate of the acquisition of the ownership. Through this, it is realized the transfer of property of a deceased person (testator) to the other persons of his heirs, under the law or under the will of the recent *de cuius*, materialized in the will. The importance of the heritage institution is defined in first by the importance that the private property has in itself⁷. The inheritance, being one of the main ways to acquire ownership, shows the importance that it has in the civil circulation of ownership between persons in a society. It turns out obviously, because the constitution in a special provision, Article 41, second paragraph thereof, has determined heritage as the classical way of acquiring ownership. Thus, Article 41, second paragraph of the Constitution provides:

"Property may be acquired by gift, inheritance, purchase, or any other classical means provided in the Civil Code".

Constitution as the fundamental law of the state provides only a general norm of declarative character, as the way and the legal conditions that property is acquired by inheritance is regulated by the Civil Code, but the constitution by declaring that the property can be acquired by heredity, shows the great importance featuring the heritage institute as part of civil law.

The importance of heritage as an institute of civil law, results from the fact that this institute of law, not only is foreseen as such in the Civil Code, but it is regulated in details in over a hundred provisions. This shows the great importance that the legislator has given to this institute of law. Not only that, but the legislator in the Civil Code, the importance that heritage institute has nowadays, in the condition of the market economy and the free movement of goods and capital, to this institute has been dedicated a special part of it, part III of the

⁷ A. Nuni, L.Hasneziri, "E drejta civile III, Trashëgimia", Tiranë, 2010, f. 7.

Civil Code, making equal in importance to the institute of ownership. Even the theory of civil law or legal doctrine treats it as part of the special legacy of civil rights, which indicates that this institute represents a great importance not only for the legislator, but also to legal doctrine.

Development

For the successful arranging of universal or singular heritage property when the owner passed away, there must before seen the following:

1. What persons may inherit, or what persons might be heirs of *de cuius*?
2. What constituted the inheritance extent *hereditas*?
3. Which persons were generally capable of universal inheritor's position (*heres*) or the inheritors of some items (singular successor, legatee)?
- 4) What was *vocation heredum*?

The hereditary – legal relation, was realized when the summoned; who was able to accept the inheritance, when it was necessary declared that acknowledged the heritage. When it came to inheritance which had left the capable testator and when it came to things that could be the subject of inheritance, the successor wins all the rights that previously had *de cuius*⁸. The successor right acts against all (*erga omnes*). This right was different from other legal relations with *erga omnes* effect, only that it creates *mortis causa*, or the case of the death of the testator. All the rights of the inheritor were protected by the hereditary claim or *actiones hereditaria*.

⁸Bionbi “instituzione del diritto romano”, IV ed, Milano, 1972, 624

Inheritor of the *de cuius*

The status of being inheritor under certain conditions can be acquired by any person. Before abandoning the Roman law concerning inheritance, it is worth noting that this status could also be acquired by the slaves⁹. To have this status, the person at the time of inheritance (the moment of delegation or the moment of death of *de cuius*), was alive. The only exception to this rule are envisaged for children born after his father's death or descendants of *de cuius*, born after the death of the testator.

For those it worth the Rule: *infans conceptum pro jam nato habetum, quotiens de como dis eiusagitur*¹⁰. When it can not be proved correctly if the successor was really alive in the moment of the death of *de cuius* when it comes to people who had lost their lives at the same time, it was applied the legal presumption that his father had lived after the death of the infant son while the adult son, had lived after the death of father¹¹. In other cases allegedly they died together, so it can not be considered reciprocal successors.

Even the Legal persons may be granted the status of successor¹². Private legal persons can acquire this status under the special privilege, while the state had this right, under the general provisions¹³.

Extent of inheritance

The extent of the inheritance or *hereditas*, was a stockpile (*universitatis iuris*), consisting of all hereditary property rights,

⁹Ulp. 22,5: servus heredes intituereposumus, nostros cum libertate, alienos sine libertate, communes cum libertatevel sine libertate.

¹⁰D 1, 5, 7:

¹¹D 34, 5, 4:

¹² See article 321 of Civil Code

¹³Seearticle 316 ofAlbania Civil Code

which had *de cuius* at the time of death¹⁴. The extent of the inheritance consisted of all of the decedent's property authorizations, as well as all real rights over foreign items, excluding the personal easements extinguished at the time of death of the testator. The extent of inheritance consisted by binding assets, as well as the obligatory debts, excluding *intuitu personae* debts, which vanished at the time of death of the testator (*intuitu* contracts). Real rights and obligatory hereditary constituted the assets of hereditary extent the obligatory hereditary debts constituted its liability. The difference between the asset and liability value, represents just the extent of the inheritance. Personal and family rights of the testator, can not be subject to the extent of inheritance.

Vocatio heredum

After the death of the testator, the extent of inheritance did not belong to any person with hereditary capacity, belonged only to those persons with hereditary capacity, which regularly were called to take the extent of inheritance left by *de cuius*. The call of the successor was left mainly will of *de cuius*, but when *de cuius* had not done this, and when passed the authorization that had by law, it was regulated legally.

In the first case it comes to testamentary inheritance, and in the second it is legal inheritance call. The legal inheritance call is divided in legal provision succession or interstater and imperative inherit or necessary under law. All the mentioned ways served far the call of the universal heirs (*hers*). When it comes to singular inheritance, *de cuius* has appointed by will or by law or Roman codicil or informal expression of the desire of the last (*fideikomis*). If the testamentary heir has a particular title, he is entitled only to the specific property specified in his will in favor and no right

¹⁴N.Biçoku “E drejta e trashëgimisë në Republikën e Shqipërisë”, Tiranë,1997, f. 58.

over the rest of the hereditary of testament. If at the time of opening of the will¹⁵, the concrete wealth, which is disposed in favor of testamentary heir with particular entitled, for various reasons, it is not owned by the testator or absent, the particulars heir can not ask anything else of the inheritance, and is considered that the will for this part does not exist.

Such an attitude is held by the United Chambers of the Supreme Court decision unifying No. 1, dated 24.03.2005, which with the above decision unify the judicial practice in this way:

... Based on the foregoing the United Chambers arrive in the unifying conclusion that only universal heirs or universal titled are eligible to take advantage of the material elements, which *de cuius* has not explicitly provided in the will. Only they can benefit rights (items) that are obtained after the drafting of a will that exist in the testator at the time of opening of succession and on the other hand, also have an obligation to meet *intra vires hereditatis* in the limits of the inheritance, the obligations encumbering the inheritance. As above, to bring logical conclusion that only in the case of universal heritage, includes those legal relations, the existence of which was not known by the testator.

In contrast heir entitled to special title (legatee) has a limited right that relates to items or rights stipulated in the *testament singuli*, and therefore changes in the hereditary ascertained at the time of opening of the inheritance are not reflected in their title ...¹⁶. Given the unifying attitude held by the United Chambers of the Supreme Court shows that a person, will be considered as a legatee, not only when we are faced with legacy provided for in Article 384 of the Civil Code, on the basis of

¹⁵Article 318 Civil Code of Republic of Albania

¹⁶Vendim Unifikues të Kolegjeve të Bashkuara së Gjykatës së Lartë, nr.1 dt.24.3.2005.

which the testator assigns one or several heirs testamentary to give one or several legal heirs and when the testator has no heirs of three innings, to give every person a pecuniary gain by inheritance, without making the latter, heirs, but when the testator has disposed in favor of one or several persons certain inherited tangible and individualized assets.

Conclusion

As we explained above, it turns out that our legislation has accepted the institute of heritage, as a way of gaining derived property, the meaning of which is given in Article 316 of the Civil Code:

Inheritance is a transfer by law or by will of property (inheritance) of a deceased person to one or more persons (heirs), according to the rules set out in this code.

By the understanding that gives this provision to Heritage it shows that by inheritance is made the universally transition or transfer of a property rights of *de cuius*, to one or more persons in two ways, according to legal provisions we are before the case of inheritance law and the will, and the case of testamentary inheritance. The determination above shows that inheritance, be it legal or testamentary, the transfer of wealth is done with universal title and particular title. The difference between transfer with universal title and particular of the hereditary property, represents not only the theoretical value but also practical value and depending on the particular type of transition, will determine the amount of inheritance, which will "was passed to heirs in time of the opening of the inheritance.

If the heir has been acquired with particular title the inheritance, by determining that he will receive only one or a few items or specific rights of the inheritance, he has the right to ask only those items or rights, at the time of opening inheritance opening not objects or other rights that may exist in

the testator's estate after his death. On the contrary, if the heir has benefited with universal title the inheritance, he is entitled in accordance with his part, to require every item of the hereditary property, which exists at the time of opening of the inheritance, regardless if that this property did not exist at the time of drafting of the will and is not even mentioned in the will.

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