European Succession Certificate

assist. prof. dr. Tjaša Ivanc
Faculty of Law
University of Maribor, Slovenia
The deceased was a Slovenian citizen with last habitual residence in Croatia. At the time of his death he owned immovable and movable property in Slovenia and immovable property in Croatia. The deceased had not left a will. Heirs live in different countries.
Introduction

- the Hague Programme (2001)
- Green paper: Succession and wills (2005)
- Proposal for Regulation (2009)
Introduction

- ECS shall enable an heir to prove his position
- mixture of International Civil Procedure, International Private Law and substantive law
- So far - no comparable instrument on the European level
Term "court"

- Broader meaning - to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices.
- Different systems: judicial or non-judicial probate procedures.
Problems identified until today ...

- A German citizen leaves in addition to other assets also immovable property in France to his mother and brother. The heirs wish to sell immovable property. German court issues authentic document - Erbschein, which the heirs submit to the French notary, authorized for selling the property. The French notary drafts notarial deed on the ownership of the property and on the basis of French law determines the shares, which differ from shares determined in German document. This is an example of duplication of certificates issued...

- Submission of a foreign certificate of inheritance to a foreign bank, but the bank does not know the legal status (nature) of the certificate and the competent authority that issued it.
Characteristics of ECS

- to demonstrate throughout the EU the status (capacity) and/or the rights of each heir or each legatee and their respective shares of the estate, powers of administrator or executor of a succession, the attribution of a specific asset or specific assets forming part of the estate to the heir/legatee
- is not an enforceable title and should not be mandatory.
- heirs are free to use the other instruments available (decisions, authentic instruments and court settlements).
- no authority or person presented with a ECS should be entitled to request that a decision, authentic instrument or court settlement be presented instead of the ECS.
- ECS reflects elements established under the applicable law or any other law applicable specific elements, such as substantive validity of disposition of property upon death
- To prove easily on an out-of-court grounds the heir's capacity in the Member State in which the property is located
- ECS does not substantively decide a dispute
presumption that accurately demonstrates elements established by applicable law - the content is authentic

but ECS is not an authentic act

good faith of third parties is protected
Relationship between ESC and national procedures

- Principle of non-replacement
- only one Member State with jurisdiction to issue national or ESC
- ESC is an addition to national procedures and depends on national material succession law
- Free circulation of the proof without the use of intermediate procedure
- rules on rectification, modification or withdrawal of the Certificate (Art. 71)
Recognition of effects/ recognition of ECS

- There is no formality needed for its recognition in another state
- Recognition of judgments (res judicata effects)
- ECS produces effects: without special procedure

  - Presumption
  - Protection of good faith
  - Valid document for the recording
Authorities to issue the ECS

- courts have jurisdiction under Article 4 (habitual residence), Article 7 (Jurisdiction in the event of a choice of law), Article 10 (Subsidiary jurisdiction) or Article 11 (Forum necessitatis):
  - a court as defined in Article 3(2) – definition of term „court“;
  - or
  - another authority which, under national law, has competence to deal with matters of succession.

- By 16 January 2014, the Member States shall communicate to the Commission relevant information regarding the authorities competent to issue the ECS.
The issuing procedure

- application by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate – on the form
- Creditors?
- information necessary in order to enable the issuing authority to certify the elements which the applicant wants certified
Application must be accompanied by relevant documents either in the original or by way of copies:

- details concerning the deceased - …time of death, date and place of death (death certificate, Declaration of Death of a Missing Spouse)
- details concerning the applicant - …relationship to the deceased, if any (birth certificate)
- details of the spouse or partner of the deceased and, if applicable, ex-spouse(s) or ex-partner(s) : marriage registers
- details of other possible beneficiaries under a disposition of property upon death
- the intended purpose of the ESC
- the elements on which the applicant founds, as appropriate, his claimed right to succession property as a beneficiary and/or his right to execute the will of the deceased and/or to administer the estate of the deceased; (ipso iure – only refusal or negative statement/hereditas iacens)
- an indication of whether the deceased had made a disposition of property upon death (will, will, joint will, agreement as to succession - ;
- an indication of whether the deceased had entered into a marriage contract or into a contract regarding a relationship which may have comparable effects to marriage
- an indication of whether any of the beneficiaries has made a declaration concerning acceptance or waiver of the succession;
- any other information which the applicant deems useful for the purposes of the issue of the Certificate.
Examination of the application

- Verification of information, documents, statements provided to establish the authenticity of relevant documents, the issuing authority may decide to accept other forms of evidence.
- Informing beneficiaries and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights.
- Issuing authority may request another Member State to provide information held in the land registers, the civil status registers and registers recording documents and facts of relevance for the succession or for the matrimonial property regime or an equivalent property regime of the deceased.
Issue of the ESC

- without delay
- The issuing authority keeps the original and issues one or more certified copies to the applicant and to any person demonstrating a legitimate interest.
- keeps a list of persons to whom certified copies have been issued
- Content of the ESC (Art. 68)

Limited duration of copies:

- period of six months - expiry date included in certificate
- justified cases, decision of ten authority that the period of validity is to be longer
- a person is able to apply for an extension of the period of validity or request a new certified copy
Will the ESC be a valid title for entering of property rights in land register?

- The issuing authority should have regard to the formalities required for the registration of immovable property in the Member State in which the register is kept (recital 68).

- A valid document for the recording of succession property (Art. 69)

- Does this mean that for a Slovenian court/notary, the ESC issued by Croatian notary, would represent valid document for entry in land register?

  - Authority competent for registration may ask the person applying for registration to provide additional information, or to present such additional documents, as are required under the law of the MS in which the register is kept (payment of revenue, consent or approval of authority – agricultural land).

Adaptation of unknown rights in rem (Art. 31):
- to allow the beneficiaries to enjoy in another MS the rights which have been created or transferred to them by succession, the regulation provides for the adaptation of an unknown right in rem to the closest equivalent right in rem under the law of that other MS.
Entering of the property rights into land register

- Excluded from the scope: the nature of rights in rem; and any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

- The law of the MS in which the register is kept (the lex rei sitae) determines under what legal conditions and how the recording must be carried out and which authorities, such as land registers or notaries, are in charge of checking that all requirements are met and that the documentation presented or established is sufficient or contains the necessary information.

- To avoid duplication of documents, the registration authorities should accept documents drawn up in another MS.

- The law of the MS in which the register is kept determines whether the recording is, for instance, declaratory or constitutive in effect and the moment of acquisition of ownership right.
Conclusion

- The importance of ESC results mainly from its use and meaning, which establishes a presumption regarding the status of heirs, legatees or that the content of the ESC is authentic. Will the ECS represent sufficient basis for entering rights in rem in corresponding register in another MS? It should be remembered that the requirements and effects associated with the entry in registers will be evaluated by the law of the MS in which the register is located.

- ESC will not present authentic instrument, judicial decision and an enforceable title and will not replace national documents or procedures, but will rather present an certificate with probative value which reflects elements identified by the law applicable to the succession.

- Good solution: European electronic register for certificates
Thank You

tjasa.ivanc@um.si