

Notarial Act as the Main Form of Inheritance by Contract Institutions: Problematic Issues

Edvard Pilipson

Rīga Stradiņš University, Doctoral Studies Programme "Law", Latvia

Introduction and material. Inheritance by contract institutions conclusion procedure require notarial act (hereinafter – notarial act form) as an obligatory provision. Inheritance contract, which concludes under provisions of the Civil Law of the Republic of Latvia, demands for a notarial act form; the same procedure is provided for contract of succession, implemented in Swiss Civil Code and for the agreement, fixed in Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch). It is necessary to report that all these documents subjected to notarize by sworn notaries, which belong to the system of the Civil Law. However, there exists a system of notaries which executes their practice in Common Law legal system. It is important to notify that in England and Wales there are several classes of notaries. English notaries, like solicitors, barristers, legal executives, licensed conveyancers and commissioners for oaths, also acquire the same powers as Civil Law notaries and other law practitioners, have the authority to notarize agreements and contracts and put notarized acts before the courts and other law enforcement institutions. Only Scottish colleagues, also named solicitors, typically do not perform notarizing services. The community organizes its practice according with the provisions of Courts and Legal Services Act 1990 and Solicitors Act 1974.

Aim. The objective of this work is to research inheritance by contract institutions notarial form problematic issues in the case of transborder (international) succession situation.

Methods. To conduct the research, legal act interpretation method was used.

Results.

1. Term “notary act” and, accordingly term “notarial act form” under understanding in regard to the different legal systems, has a different legal content. Because of this fact the document, which contains inheritance by contract institution essential parts complied by notary, which realizes his own practice in country with Civil Law legal system, compared with the same document, complied by the persons from the list, mentioned above possesses the legal force of higher degree.
2. Due to the circumstances mentioned above, inheritance law and law of obligations establishing document, which assume in appearance of notarial act, should not exist as a notarial act in this definition and understanding, under which this term is used in the countries with Civil Law system.
3. Presently neither the Republic of Latvia, nor the United Kingdom have completely gained the access to the Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons. Complete joining to this Convention provides for a country an opportunity to unify notarial act legal definition.

Conclusion.

1. To establish legal determination to the term “notarial act form” in regard to exequatur granting and put it in order, it is necessary to unify the term “notarial act form” between Civil Law and Common Law countries.
2. To provide judicial institutions judgments and statements equal enforcement according to the legal documents, which are named with the term “notary act” within the territories of Civil Law and Common Law countries it is necessary to accept treaty, containing phrase “foreign decisions, measures, and instruments concerning or establishing an estate or...shall be recognized and enforced within the territory of the states – parties of this treaty (or, depend on situation, agreement, convention).