Some aspects regarding seizin under the regulation of the New Civil Code

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Contemporary law professionals identify seizin particularly in connection with inheritance law. [1]

As a matter of fact, according to Şerban Mircioiu [2], the seizin is actually a legal institution in itself, historically acknowledged and having its own development. In the reference mentioned above, the author claims that the seizin should be seen as a central institution of European medieval law, far too less looked into, analyzed and approached in the Romanian law. [3]

Starting from the ancient Germanic law, the author sustains that the seizin has a dominant role in the patrimonial Germanic law, wherefrom it has influenced on the entire medieval law, both European and Occidental. By carrying out an interesting terminological analysis starting from the initial name of "die gewere" [4], the term that used to designate initially the handover or the weight of possession, as a term having evolved from a term meaning a physical possession over a good to a legal notion in itself.

In the Romanian legislation, the Civil Code from 1865 in art. 653 enshrined that "the descendants and ascendants have *as of right* the possession of inheritance from the time of the defunct dies".

Currently, the seizin institution is regulated in the Civil Code, Book IV "About the inheritance and freedoms" title IV, "Transmission and partition of inheritance" 4th Section, title "Seizin" Article 1125 and Article 1126.

Unlike the old Civil Code from 1864, which by Article 653 established the content of the seizin without defining it, the current regulation establishes the notion, the seizin heirs and the modalities to obtain the notification by the unseizin legal heirs. If in the past, under the influence of the French doctrine was defined as "the capacity of the

heirs to be considered, ipso facto mortis, that they own the hereditament assets" [5] , afterwards we can practically find different options related to this institution.

Thus, M.B. Cantacuzino, in his paperwork Elements of Civil Law from 1921 [6], mentions that seizin refers "exclusively to owning the inheritance, meaning the exercise of the rights and actions belonging to the deceased, unlike the opinion that defines the seizin as an "immediate legal assignment with the assets and liabilities of the deceased". [7]

Trying to clarify in an unified and universally accepted interpretation, M. Eliescu proposes a definition that establishes the seizin as a "benefit of the law according to which certain heirs, being exempted of the previous court or notary's control regarding their capacity as heirs, can take possession of the inheritance assets and, at the same time, they can exercise without any other formality the exercise of the rights and actions of the deceased". [8]

Finally adding to the current regulation norm of the seizin the provision newly introduced by Article 1125 Civil Code, determines that "beside the determination of the exercise on the inheritance, the seizin actually confers the seizin heirs the right to prove this deceased estate and exercise the rights and actions of the deceased" following that in Article 1126 Civil Code to establish that "the appointed heirs are the husband/wife that survived the deceased, privileged descendants and ascendants".

We have to mention in this context that the new rule generated different interpretations and naturally, even criticism. In this regard, we mention the criticism brought in the "Revista dreptul", by the author Oana Ispas [9] , criticism that concerns the adoption of new terminologies, thus drafting a text that can generate confusions between:

- seizin – possession as an actual state
- seizin – possession of the inheritance as the "exercise of the rights and actions belonging to the deceased" [10]
- seizin – possession as a heir which allows the possession of the deceased estate without certifying first the capacity as a heir.

Therefore, the seizin may be defined as a benefit, a fiction of law based on which the seizing heirs have, as of right, from the time the succession is open, the right to own

goods from the estate and to manage this patrimony, while exerting the rights and actions of the defunct. Even if it may resemble on some aspects, the seizin must not be mistaken with the possession in common law, which contains the 2 defining elements, the intention, namely the intention to own the goods for oneself (animus) and actual ownership of goods, material and physical (corpus). Practically, the seizin contains only one of the elements mentioned above, namely the *corpus*, the actual physical ownership of the good. One of the most interesting aspects in connection with the seizin, as enshrined in the civil code and that is worth to be looked into, is related to the attributions of the testamentary executor, who in the ancient civil code was different, according to the case in which the testator conferred or not the seizin in accordance with art. 911 of the ancient civil code. In comparison with the ancient regulation, the New Civil Code has a different approach on this matter; it no longer makes any differentiation between testamentary executors' attributions with a seizin and those of the testamentary executor without a seizin. Art 1079 Civil Code [11], in respect thereof, it clearly sets forth that the " testamentary executor has the right to administrate the estate for a period of maximum 2 years as of the date the inheritance is open, even if the testator has not expressly entrusted it with such right. By testament, the administration right can only be restricted to part of the estate or to a briefer period of time. The term of 2 years may be extended by the court of law, on grounded reasons, by granting successive terms of one year".

Another element of novelty imposed by the lawmaker in the New Civil Code with respect to the seizin concerns the fact that the right of administration in the new regulation has a more complex content than in the old regulation; in the old code, the seizin is a mere precarious possession aiming only at the movable assets of the estate, whilst the new regulation sees the seizin as a right of administration, granting the testamentary executor the right to initiate preservation, administration and disposal deeds as per art. 795 of the civil Code. [12]

We must state that, if in the old code the seizin aimed only at the movable assets in the succession mass, the new regulation takes into consideration the entire estate of inheritance, both the movable and the immovable assets. Art 1079 of the civil Code sets

forth, under para. 2 [13] the possibility to restrict the administration right, by means of the testamentary executor, only insofar as part of the estate is concerned.

What has been mentioned here above leads us to extract a new difference between the two legislative provisions of the old and the new civil code, consisting in the fact that in respect of an administration right that usually takes 2 years, in comparison with the seizin, the testamentary execution provided for by the old legislation, it could be performed for maximum one year.

The criticism on the new regulations in the issue of inheritance continues with the issue of determining the beneficiaries of the seizin, considering to introduce the surviving husband in the category of seizin heirs [14], as long as the ordinary ascendants were eliminated among the seizin heirs, does not increase the scope of the possible notified persons in line.

Concluding, even if the seizin, according to some authors [15], has been one of the "most confuse issues in the civil law" [16], we consider the efforts of the law-maker in giving a more exact regulation of this institution and we mention several proposals of *de lege ferenda*, that we can find in the current doctrine:

- extension of the seizin to all categories of heir with legal inheritance capacity;
- replacing the expression "seizin heirs" with "notified persons in line";
- rephrasing the Article 1125 of the Civil Code in line with the following text: "Beside the actual possession of the assets of inheritance, the seizin confers the seizin heirs also the right to administrate the assets of the deceased and to exercise the rights and actions of the inheritance." [17]

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[2] Şerban MIRCIOIU, *Originile şi funcţtiile sezinei,* https://studia.law.ubbcluj.ro.
[3] D. Chirică, *Transmisiunea posesiunii moştenirii sau sezinei*, Hamangiu Publishing House, Bucureşti, 2013, p. 212; I. Popa, *Stăpânirea de fapt asupra moştenrii. Sezina*, Revista Română de Drept Privat nr. 4/2013 p. 151.
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[5] I. MICESCU, Civil Law Course, Succesiunile ab intestat, edition revised by F. CIUTACU, Themis Cart Publishing House, Slatina, 2005, p. 76
[6] M.B. CANTACUZINO, Elementele Dreptului Civil (Elements of Civil Law), All Educational Publishing House, Bucharest 1998 – reprint
[7] G. PLASTARA, *Curs de Drept Civil Român*, vol. III, Part I, Cartea Românească Publishing House, Bucharest 1925, p. 25
[8] M. ELIESCU, *Transmiterea şi împărţeala moştenirii în dreptul Republicii Socialiste România* – Academica Publishing House, Bucharest 1966, p. 60
[9] Oana ISPAS, *Reflecţii critice asupra unor aspecte ale sezinei în reglementarea Codului Civil în vigoare* Revista Dreptul, no. 11/2014, p. 148.
[10] M.B. CANTACUZINO, op. cit., p. 236.
[11] Art. 1079 Administration law (1) the testamentary executor has the right to administrate the estate for a period of more than 2 years starting with the date the inheritance is open, even if the testator has not particularly granted this right to it. (2) By testament, the administration right can be restricted to only part of the estate or to a briefer period. (3) The term of 2 years may be extended by the court of law, on grounded reasons, by granting successive terms of one year.
[12] The person empowered with a mere administration right is liable to carry out all the necessary deeds in order to preserve the goods, as well as the useful deeds for such to be used in accordance with their common destination.
[13] By testament, the administration right can only be restricted to part of the estate or to a briefer period of time
[14] See Article 1126 Civil Code
[15] Oana ISPAS, op. cit.,p. 153.

[16] I. ROSETTI-BĂLĂNESCU, Al. BĂICOIANU, *Tratat de Drept Civil Român,* vol. III, All Beck Publishing House, Bucharest 1998, p. 261.
[17] *Proposals of de lege ferenda are to be found in "Reflecţii critice asupra unor aspecte ale sezinei în reglementarea Codului Civil", dr. Oana Ispas – Revista Dreptul (Law Magazine) no. 11/2014, p.153.*

Present regulations regarding cyberrime within the Romanian and European Union law system

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Abstract:
The number of cybercrimes is increasing and this is due to the fact that more and more people own a computer and internet connection, in order to benefit from real-time information, apply modern ways of work or other various reasons. Such crimes can be practically committed by any person who owns minimum informatics knowledge although it is clear that the level of intelligence of the ones who commit them is above average. Committing such deeds can prejudice a great number of people because, although at the beginning, informatics systems were found in scientific, governmental or military sights, today they are available to the masses as a result of increasing performance and lower costs of such systems. There are several obstacles in from of efficient investigations as far as informatics crimes and prosecution are concerned, on a European level. Among these obstacles we may mention jurisdictional boundaries, insufficient capacities regarding information exchange, technical difficulties regarding locating the origin of the informatics crime authors, lack of personnel qualified for such activity but also the lack of cooperation with other interested parts, responsible for the informatics security.