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Adapting rights in rem

 Bulgaria

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European Judicial Network
(in civil and commercial
matters)

1 Which are the rights in rem that could arise from a succession under the law of this Member State?

All rights *in rem* could arise from a succession under the Bulgarian legislation in force. There is no special provision restricting or excluding any of these rights from the estate that devolves to the decedent's heirs after his or her death.

2 Are these rights in rem recorded in a register of rights in immovable or movable property and, if so, is such recording compulsory? In which register(s) are they recorded and what are the registration requirements and procedure?

Under Article 112 of the Ownership Act (*Zakon za sobstvenostta*) (ZS), compulsory registration applies to:

- (1) all instruments transferring a right of ownership or establishing, transferring, modifying or ending another right *in rem* in immovable properties, and instruments recognising such rights;
- (2) the contracts transferring a decedent's estate incorporating immovable properties;
- (3) the instruments renouncing rights *in rem* in immovable properties;
- (4) the agreements on the sharing-out of immovable properties and the records of distribution by court in respect of such properties;
- (5) the requests by the decedent's or the legatees' creditors for segregation of the decedent's immovable property;
- (6) the settlements on disputes regarding instruments that are subject to registration and the legally valid court decisions substituting the instruments referred to in point 1, and the decisions ascertaining the existence of instruments under the foregoing points that are subject to registration;
- (7) true copies of published wills having as their subject immovable property and rights in immovable property;
- (8) the requests for quashing court decisions that are subject to registration.

The recording of the instruments listed above is compulsory.

In principle, such recording has the effect of making the instruments publicly available which, under Article 1 of the Rules on Registration (*Pravilnik za vpisvaniyata*), consists in giving visibility to the instruments subject to registration.

Such recording also has a protective effect which, however, is limited to particular cases referred to in Article 114 of the ZS, where applications expressly specified in that rule are registered in order to ensure that the claimant's rights can be relied on against all rights acquired by third parties after the recording.

Recording is effected by order of the registration judge of the registry office with jurisdiction over the location of the immovable property by filing the instruments subject to registration in registers accessible to the general public, which are formed:

- (1) by filing the notarised instruments referred to in Article 4(a) and
- (2) by filing all other instruments referred to in Article 4.

The notarised instruments referred to in Article 4(a) of the Rules on Registration (all instruments transferring a right of ownership (sale, donation, exchange, giving in payment, alienation against an obligation to provide care and sustenance, etc.) or establishing, transferring; modifying or ending another right *in rem* (a right of use, ownership of a building, etc.) in immovable properties, and instruments recognising such rights (notarised instruments of ascertainment, State ownership instruments, municipal ownership instruments and other instruments expressly provided for in law) are recorded at the written request of the notary who executed these instruments, and all other instruments under Article 4 or their true copies are recorded at the written request of the parties, of a notary or of any party interested in the recording.

Notarised instruments executed by a registration judge and true copies of wills published by a registration judge are recorded on that judge's own initiative.

Two identical originals of the notarised instruments referred to in Article 4(a) must be submitted for their recording.

The original of any other instrument referred to in Article 4 and an officially certified true copy of that original or two such copies must be produced in order to have such an instrument recorded, and if it is impossible to produce the original, two notarised true copies of the published wills having as their subject immovable property and rights in immovable property must be produced accordingly. Where the recording is effected at the request of a notary, three identical originals and, respectively, three true copies, must be produced.

It is also admissible to register officially certified extracts, which must state the essential terms and conditions of the instrument that is being recorded.

Recording is effected by order of the registration judge immediately after the instrument is entered in the appropriate incoming register and, to this end, the number under which the instrument is entered in the register, the date and the volume and page of the book of records in which the entry is made are written on the instrument itself.

At the registry offices which use software to keep auxiliary records on immovable properties, the number of the record, too, is entered in the instrument subject to registration.

The instrument is inserted in the appropriate book, and the second original of the instrument as recorded is returned to the applicant within three days.

If recording is effected at the request of a notary, the third and any further originals of the instrument as recorded are returned with the particulars under paragraph 1 written on each of these originals.

An instrument executed by a registration judge is recorded immediately after the execution of the instrument itself. The registration judge may not, on pain of liability, order the performance of any acts whatsoever once the instruments subject to registration have been executed by that judge and before these instruments have been recorded.

When marriage contracts, instruments on the sharing-out, on settlement and on exchange of immovable properties located in different districts are recorded, at least two true copies for each of the districts must be produced, enclosing the requisite costs.

Once registration has been duly effected, the originals applicable to other districts are sent immediately for

registration at the location of the properties, indicating that the fees due have been collected. Such instruments are recorded by order of the registration judge of each district in which registration has been requested.

3 Which effects are linked to the registration of the rights in rem?

Registration applies to any instruments transferring a right of ownership or establishing, transferring, modifying or ending another right *in rem* in an immovable property and any instruments recognising such rights except in the situations referred to in Article 5 of the Rules on Registration (when they are not subject to registration). All these instruments come under Article 113 of the Ownership Act, which provides that they may not be relied on against third parties until they are recorded if these third parties have acquired earlier rights *in rem* in the immovable property from the same owner and have registered these rights.

In this sense, the law makes the effect of reliance contingent on the fact of registration in respect of all instruments disposing of rights in rem in immovable property if such registration is provided for such instruments because the purpose of recording these instruments is to make the holding of rights in rem in immovable properties clear, certain and stable and to reconcile the competition of instruments invoked by different persons as fountains of rights in one and the same property from one and the same predecessor, i.e. the registration of such instruments has the effect of making them publicly available and a protective effect.

As already mentioned in point 2, registration has such effect in respect of all instruments indicated in Article 112 of the Ownership Act and in Article 4 of the Rules on Registration, and when two such instruments come into competition, resolving the dispute as to which instrument has precedence depends precisely on the moment of registration.

4 Are there specific rules and procedures in place for the adaptation of a right in rem to which a person is entitled under the law applicable to the successions in case the law of the Member State in which the right is invoked does not know such right in rem?

Bulgarian legislation does not lay down any specific rules or procedures for the adaptation of unknown rights *in rem*.

■ Last update: 04/06/2020

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