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Adapting rights in rem

 Hungary

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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?

1) Ownership

The heir acquires ownership over the estate automatically upon the death of the testator. The estate is the sum of the rights, tangible property, claims and obligations of the deceased at the time of his or her death which do not cease with the death. This is all self-explanatory in Hungarian law; in fact, the provisions of the Civil Code on inheritance law use the concepts of the 'estate of the deceased person' and 'assets' synonymously. An asset is nothing other than a tangible property, a right or a claim (Section 8:1 of the Civil Code). The assets are the sum of all such assets. In the case of specific legacy (*legatum vindicationis*) the legatee acquires ownership (directly from the deceased) over the asset legated.

2) Usufruct

Under Hungarian law, if the deceased has left behind descendants and a surviving spouse (in the case of intestate succession), the surviving spouse is entitled to lifelong usufruct over certain assets belonging to the estate, namely

- the dwelling he or she jointly inhabited with the deceased and
- the furnishings and fittings pertaining to the dwelling (Section 7:58(1)(a) of the Civil Code).

The general rules on usufruct under civil law apply analogously to the substance of the surviving spouse's right to usufruct (the 'widow's right') (Chapter XXX of the Civil Code). Usufruct is one of the so-called limited rights in rem. The usufructuary may possess, use, exploit and collect the proceeds of tangible property owned by another person. The rights of the usufructuary remain intact regardless of any changes in the identity of the owner (Section 5:147(1) and (2) of the Civil Code).

The testator may also establish usufruct over an asset in his or her will.

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?

The rights referred to are listed in the register of immovable property (or other public registers). Entering these rights in a register is compulsory.

If succession results in ownership or usufruct, the notary public conducting the probate proceeding in Hungary

contacts the domestic authority that keeps the register of immovable property or the registries of any other assets in order to have these rights registered. In such cases the notary public sends the grant of probate (after it has become final) to this authority (Section 91(2) of Act XXXVIII of 2010 on probate proceedings (*hagyatéki eljárásról szóló 2010. évi XXXVIII. tv.*). The notary public's grant of probate serves as the basis of registration.

By contrast, the beneficiary (heir, legatee) must take action him- or herself in order to register the right if the probate proceedings were conducted in another Member State. In such cases, he or she should file the application for registration directly with the Hungarian authority that keeps the register in question (for instance the land registry).

The *principal* public registers listing the ownership of specific assets are:

- *the register of immovable property*

kept by: the land registry

object of the register: immovable property

rules: Act CXLI of 1997 on real estate registration (*az ingatlan-nyilvántartásról szóló 1997. évi CXLI törvény*) (see Section 16 of the Act)

- *National Aircraft Register (Magyarország Légijármű Lajstroma)*

kept by: National Transport Authority Aviation Office (*Nemzeti Közlekedési Hatóság Légügyi Hivatal*)

object of the register: civil aircraft

rules:

Section 12 of Act XCVII of 1995 on air transport (*a légit közlekedésről szóló 1995. évi XCVII. törvény*)

Section 5 of Government Decree No 141/1995 of 30 November 1995 implementing Act XCVII of 1995 (*Korm. rendelet a légi közlekedésről szóló 1995. évi XCVII. törvény végrehajtásáról*) on air transport (*a légit közlekedésről szóló 1995. évi XCVII. törvény*)

- *register of floating vessels*

kept by: Ministry of National Development and Metropolitan Government Office of Budapest as shipping authorities

object of the register: floating vessels (floating devices, structures and equipment suited for water transport, work on water and the pursuit of related activities)

rules:

Sections 7 to 15 and in particular Section 11(3) of Act XLII of 2000 on water transport (*a víziközlekedésről szóló 2000. évi XLII. törvény*)

Government Decree No 198/2000 of 29 November 2000 on the registration of floating vessels (*az úszólétesítmények lajstromozásáról szóló 198/2000. Korm. rendelet*)

- *vehicle register*

kept by: Ministry of the Interior (Deputy Ministry of State responsible for registers) as the road traffic registration body

object of the register: road transport vehicles

rules:

Act LXXXIV of 1999 on road transport records (*közúti közlekedési nyilvántartásról szóló 1999. évi LXXXIV.*

törvény), in particular Section 9

- *business register*:

kept by: regional courts as courts of registration

object of the register: businesses (a business is a legal entity which is created for the purpose of carrying out business activities on a commercial basis through registration in the business register (these include in particular companies, cooperative societies, Hungarian branches of foreign enterprises, European Economic Interest Groupings, European Cooperative Societies, sole traders, etc.).

rules: Act V of 2006 on public company information, company registration and winding-up proceedings (*a cégnyilvánosságról, a bírósági cégeljárásról és a végelszámolásról szóló 2006. évi V. törvény*), in particular Sections 24 to 25.

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

1) Registration of ownership

In general, the ownership of immovable property can only be acquired under Hungarian law through registration in the register of immovable property; in other words, registration of ownership in the register of immovable property has a constitutive effect (a right is created) (principle of registration).

However, the law makes an exception in a few cases; one exception is succession. Hungarian law follows the principle of *ipso jure* succession. This means that the heir acquires the estate solely by operation of law upon the opening of the succession, without acceptance or any other legal act (Section 7:87 of the Civil Code). In the case of succession ownership is thus acquired by the heir at the time of the opening of succession, or the death of the deceased. Therefore, the registration of ownership in a register of immovable property acquired by succession only has a *declaratory effect*. The same also applies to the acquisition of property on the basis of specific legacy (*legatum per vindicationem*).

As a result of *ipso jure* succession, the registration of ownership in public registers for other assets has a declaratory effect as well, if the change in the owner occurs by succession.

2) Registration of usufruct

The right of usufruct of the surviving spouse (widow's right) arises by operation of law. In view of this, the registration of usufruct in the register of immovable property (similarly to the registration of ownership acquired by succession) has a declaratory effect; thus the right itself is not created by the registration.

According to Section 5:146(2) of the Civil Code, if a usufruct arising on the basis of legislation is not registered in the register of immovable property, this right can only be enforced against a bad faith acquirer of the property or an acquirer who has not paid any consideration for the property. Therefore, for a usufructuary's right over immovable property to enjoy full protection under civil law, its registration in the register of immovable property is necessary even if this right is created by operation of law (and not by 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?

Yes.

If a beneficiary concerned by a matter of succession (for instance, an heir or a legatee) wishes to enforce in Hungary a right in rem created by succession which is not allowed by Hungarian legislation on the register of immovable property (or other register in the given case), the operation under Article 31 of the Regulation (adaptation of rights in rem) is carried out in a separate proceeding. This is known as the 'adaptation

proceeding', which is regulated by Act LXXI of 2015.

An adaptation proceeding is a non-contentious proceeding falling under the competence of the courts. Since the application of Article 31 of the Regulation requires special expertise, only one court (the Buda Central District Court (*Budai Központi Kerületi Bíróság*) operating in Budapest) acts as a court of first instance for the entire territory of Hungary. This court decides on issues concerning which other right may be registered in place of the foreign right in question (or the closest equivalent to a right known in Hungarian law in terms of its substance and purpose). The decision of the court is binding on the applicant.

The person concerned by the succession (for instance the heir or legatee) does not him- or herself initiate this adaptation proceeding as applicant. The authority that keeps the public register (such as the land registry) before which the registration proceeding is pending (main proceeding) stands before the court as applicant.

In the course of its proceedings, the court examines the foreign legislation with regard to the foreign right in question. The court independently ensures that the nature of the foreign right is ascertained, but may also call upon the person concerned by the succession to attach information and any documents available to him or her on the meaning of the foreign right.

Otherwise, the court takes its decision on the basis of documents only and does not take any other evidence (for instance from witnesses).

Both the applicant (the authority that keeps the register in question) and the person concerned by the matter of succession may appeal the decision of the Buda Central District Court. The appeal must be addressed to the regional court and submitted to the court which took the decision. The Budapest-Capital Regional Court acts in the matter of the appeal.

The costs of these proceedings are borne by the person concerned by the matter of succession, who must pay them in the main proceeding itself (i.e. in the proceeding before the authority that keeps the register).

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