FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 10, N°1, 2012, pp. 13 - 23

Original Scientific Paper

LEGAL POSITION OF THE ADMINITRATOR OF THE SUCCESSION ESTATE: *De lege lata and De lege ferenda* [*]

UDC 347.65/.68:347.96

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Abstract. *In this paper, the author explores the legal position of the administrator of the succesion estate in light of the current legislation, legal theory and judicial practice in some contemporary European legal systems, with specific reference to the Serbian legislation. In the author's opinion, in order to promote legal certainty and provide for a more qualitative protection of successors' interests, it is necessary to introduce some changes in the current Serbian legislation on this matter. Thus, the legal provisions concerning the successors' right to designate the administrator of the estate should clearly stipulate whether the successors' joint agreement on the appointment of the administrator should be based on their unanimous or majority decision. In case the administrator is appointed by the decision of a competent court, it is necessary to specify the scope of the administrator's authorities, to precisely designate the types of costs and expenses the administrator is entitled to pay out of the succession estate and to lay down the normative framework on the termination of the administrator's powers and the legal consequences arising thereof. As far as procedural matters are concerned, the author urges that the prospective modifications and amendments to the Serbian Non-litigious Proceedings Act shall more explicitly regulate the procedure for designating the court-appointed administrator of the succession estate.*

Key words: *successors, administrator of succession estate, legal nature of administrator's office, administrator's right and duties, termination of administrator's authority.*

Received October 11, 2012 / Accepted November 12, 2012
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[*] This paper is a result of scientific research within the project "*The Protection of Human and Minority Rights in the European Legal Space*" (no. 179046), supported by the Ministry of Education and Science of the Republic of Serbia.

INTRODUCTION

Due to its legal nature, scope and complexity, the administration of the succession estate (*administratio*) has a significant position in the corpus of intestate succession rights of heirs constituting the hereditary community. This technical term implies a decision-making process governing the use and distribution of the inherited assets, their safe-keeping, maintenance, development, etc (for example, see: Stanković – Orlić, 1996, pp. 151-152).

All the activities concerning the administration of the estate are regulated by the rules of intestate succession, unless the deceased has regulated it otherwise in his testamentary disposition (for example, if the testator has appointed the *executor* of his last will and testament or authorized one of the heirs to administer the succession estate) or if the co-heirs have jointly agreed to depart from the legal rules governing this issue (for example, by vesting the power of administration in one of the co-heirs or consenting to authorize one of them to administer particular assets from the net succession estate (for more on this matter, see; Schrerer, 2007, p. 696).

Therefore, the co-heirs (joint heirs) who constitute the hereditary community may administer the decedent's succession estate either jointly and directly or indirectly through an authorized person called the administrator of the succession estate.

In case the co-heirs may not reach a joint agreement on the administrator of the succession estate, the competent court is eligible to decide on this issue;[1] the content of the judicial decision may include one of the three solutions: 1) the administrator will be appointed by the court; 2) each heir will be allowed to administer a portion of the succession estate, and 3) the court will determine the manner of administering the estate or distributing the inherited property.[2] [3]

The subject matter of this paper is the legal position of the administrator of the succession estate in light of the current legislation, legal theory and judicial practice in some contemporary European legal systems.

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[1] Unlike the property law provisions (contained in Article 67 para. 4 of the Slovenian Act on Basic Property Relations), the Serbian Act on the Basic Property Relations does not stipulate either the court jurisdiction or the form of legal protection which may be applied in resolving this specific issue. Yet, given the fact that the subject matter refers to the administration of the decedent's succession estate, it is presumed that the competent court is a non-litigious court, as contained in Articles 141-144 of the Serbian Non-litigious Procedure Act; (also see in: Dedijer, 1987, p 1421).

[2] See: Article 815-3, para 1 of the French Civil Code (for the purposes of this paper, hereinafter: FCC); para. 836–838a of the Austrian Civil Code (hereinafter: ABGB); para. 2038, in conjunction with para.745 of the German Civil Code (hereinafter: BGB); Article 1164, in conjunction with Article 247 of the Civil Code of the Russian Federation (hereinafter: CCRF); Article 145 of the Slovenian Inheritance Act (hereinafter: Sl IA); Article 141 of the Croatian Inheritance Act (hereinafter: CrIA), in conjunction with Article 44 of the Croatian Act on Property Ownership and other Real Rights (hereinafter: CrAPO&RR); Article 85 of the Macedonian Act on Property Ownership and other Real Rights (hereinafter: McAPO&RR); Article 143, para. 2 of the Inheritance Act of Montenegro (hereinafter: MnIA); Article 146, para. of the Inheritance Act of Bosnia and Herzegovina (hereinafter: B&H IA; Article 166, para. 2 of the Inheritance Act of Republika Srpska (hereinafter: RS IA); and Article 229, para. 2 of the Serbian Inheritance Act (hereinafter: SrIA).

[3] In the Serbian legal literature, there are opinions that the disagreement among the heirs about the administration of the estate may not be resolved in non-litigious proceedings but only by appointing the administrator of the estate or by distributing the inherited property; (see: Antić-Balinovac, 1996, p. 601; for the opposite opinion, see: Babić, 2005, p 380.)

The primary aim of this paper is to point out to the similarities and differences in the normative framework governing this institute in some contemporary succession legislations as well as to the need to eliminate the inconsistencies and ambiguities contained in the legal provisions on the role of the administrator of the succession estate in the Serbian legislation.

1. The Legal Requirements governing the Administrator's Appointment

The person who may be appointed to act as an administrator of the succession estate is either one of the co-heirs (or a number of heirs) or a third party. Legally speaking, it must be adult person of full business capacity.[4] The power of estate administration may also be vested in a legal entity which assumes the legal position of an administrator.

As a rule, the administrator is appointed by the co-heirs, subject to their joint agreement; (see, for example, Article 813 of French CC). In some succession legislations, their consent is equivalent to the *majority decision* of co-heirs constituting the hereditary community (see, for example, para. 836 of ABGB); in other legislations, it is equivalent to the *unanimous decision* of co-heirs (see, for example, Article 813 of FCC).[5] Apart from having the opportunity to expressly appoint a person to act as an administrator, co-heirs may also give a "tacit" authorization" to one of the co-heirs to administer the estate by acting on their behalf and on their account as their legal representative (proxy). In that case, the undertakings of the co-heir who has been vested with the power to administer the decedent's estate shall be considered legally valid only if his authorization has been subject to a prior consent (without any objections) of all other co-heirs (for more on this matter, see: Maury, 2007, p.114).[6]

In case there is no consent among the co-heirs on the administration of the succession estate, in case one or more/all heirs are inactive or legally incapacitated to administer the estate, or in case of complex circumstances pertaining to the inheritance, each heir is entitled to request from the competent court to appoint an administrator; (see: Article 813-1 of FCC; para. 836 of ABGB; Article 145, para. 2 of Sl IA; Artcicle 44, para. 4 of CrAPO&RR; Article 143, para. 2 of MnIA; Article 146, para. 2 of BhIA; Article 39 of McAPO&RR and Article 229, para. 2 of SrIA). In such a case, the proceeding for designating the court-appointed administrator of the succession estate has the characteristics of an ancillary (adhesive) non-litigious proceeding which is, as a rule, instituted concurrently with the probate proceeding.[7] The administrator may also be appointed by the decision of

[4] It is explicitly regulated in Article 812, para. 2 of the FCC, which also prescribes that the estate administrator may not be banned from administering affairs in cases where the net succession estate includes assets specifically designated for some professional purposes

[5] In the Croatian and Macedonian legislation, the unanimous decision on appointing the administrator of the succession estate is in correlation with the prescribed time limit until the decision on the distribution of the succession estate has become final and effective; (see: Article 141 of CrIA in conjunction with Art. 59, para. 1 of CrAPO&RR, and Article 85, para. 1 of McAPO&RR, in conjunction with Art. 61, para. 1 of that Act.

[6] The French legislator explicitly prohibits an administrator thus appointed to distribute the inherited assets, to enter into rental agreements (leases) or to renew such agreements; (see: Art. 815-3, para.4 of FCC).

[7] For more information on the non-litigious proceeding, see: Stanković- Janevski, 2004, p. 59-61

the competent court after the termination of the probate hearing on regardless of whether the civil action for distribution (partition) of the succession estate is underway or not).[8]

Moreover, in the French legislation, each heir who has accepted a succession under the privilege of an inventory may at any time, starting from the moment of opening a succession, request from the judge of the competent court to appoint a qualified person (curator) who will act on his behalf and on his account as his "substitute" (proxy) in the administration of the succession estate (see: Art. 814-1 of FCC).

Pursuant to the amendments and modifications introduced in the 2006 French Civil Code, the administrator may be designated by the express will of the deceased, articulated during the decedent's lifetime. In order to make the appointment of the administrator legally valid and effective, the decedent is required to justify the power of administration vested in a certain person (by specifying a legal and some other vital interest concerning either the personality of a particular heir or some specific features of the succession estate) and to provide the rationale for such a decision. He is also required to designate the heirs_(beneficiaries) whose interests will be protected by the appointed administrator. Moreover, before opening the decedent's succession estate, the administrator is also required to make a statement which includes his acceptance to perform the activities of the estate administrator (see: Article 812 and Art. 812-1 of the FCC). However, the legislation does not envisage the control mechanism which would ensure that the specified requirements have been met; (for more on this matter, see: Maury, 2007, стр. 117).

There is a statutory limitation on the estate administration power vested by the decedent in another person (heir). The time limit shall not exceed two years but the period may be subsequently extended at the request of one of the co-heirs or the administrator of the estate. This authority may also be given for a period of five years (including a subsequent renewal) if one of the heirs (or a number of them) is legally incapacitated to administer the inherited property designated for professional purposes (see: Art. 812-1, para. 2 of FCC).

Unlike the French legislation, other legislations do not prescribe such an option but they make allowances for the testator/ to appoint the executor, thus *(inter alia*) vesting him with the authority to administer the succession estate (see: Art. 95 of Sl IA; Article 60 of CrIA; Article 113 of McIA; Article 113 of MnIA; Article 99 of B&H IA; Article 118 of RS IA and Article 172 of SrIA).

2. The Legal Nature of the Administrator's Office

The administrator of the succession estate who is appointed by the co-heirs has the authority to act as their legal representative (proxy) and to administer the succession estate (see in: Kreč – Pavić, 1964, p. 525). However, what is the legal nature of the estate administrator appointed by the competent court? The legal theory has given different an-

[8] In case the civil action for the distribution (partition) of the succession estate has already been initiated, the proceeding for designating the court-appointed administrator is conducted as an ancillary (adhesive) proceeding. If the distribution proceeding has not been initiated, the proceeding for designating the court-appointed administrator is conducted as a separate non-litigious proceeding. For more information on this matter, see: Stanković, 1998, pp.13-14.

swers to this question. There are opinions that the administrator in intestate succession has the same powers as the executor in testate succession by the moment when the probate hearing has been terminated. Only after this period is the administrator is considered to be the heirs' proxy, notwithstanding the fact that he has been appointed by the competent court (see: Kreč – Pavić, 1964, p. 515; Đorđević, 1997, p. 331). According to a similar opinion, the position of the administrator (in terms of its legal scope) corresponds to the position of the executor of the testamentary disposition (see: Vizner, 1967, p. 151; Babić, 2005, p. 382). In addition, there is an opinion that the administrator is the heirs' legal representative (proxy), irrespective of whether he has been appointed by the court or by heirs (Finžgar, 1978, p. 366).[9]

The assertion that the legal postion of the administrator in intestate succession should be equalled with the position of the executor in testate succession may be accepted only with some reservations. Namely, unless otherwise designated by the testator, the executor of the tesatmentary disposition is legally entitled to collect, preserve and manage the succession estate, to settle debts/claims and legacies, and, generally, to ensure that the testator's last will has been executed according to the testator's express wishes (for examplee, see: Article 96, para. 1 of Sl.IA; Article 61, para. 1 of CrIA; Article 114, para. 1 of McIA; and Article 173, para. 1 of SrIA). The legal term "administrator" clearly denotes a person who administers the sucession estate, which further implies that it is the person who is authorized to act only within the scope of administration activities. Therefore, we may conclude that the scope of the administrator's activities is much more narrow than the scope of the executor's activities, and that the only common point of reference in their activities is the "*administration*" of the succesion estate. Yet, the administrator may exercise his administration powers only if he is authorized to do so.

Although the administrator administers the property which is jointly inherited by a number of co-heirs and acts on their behalf, he still does not have the authority to act as their legal representative (proxy) simply because he is not appointed by the heirs but by the competent court, providing that he has met the legal requirements for a court-appointed administrator (see in: Stanković – Janevksi, 2004, p. 63). Moreover, taking into account that the scope of the administrator's activities is regulated by the law, there is some justification for the assertion that the administrator is a legal and judicial representative of the co-heirs (considering the legal nature of this position).[10] However, the very fact that the court is entitled to appoint the administrator only if it is requested *in concreto* by some of the heirs (which makes his legal position fairly similar to the position of a proxy) proves that the administrator is a legal and judicial repersentative *sui generis* (see a similar remark in: Stanković – Janevski, 2004, p. 61).

[9] The provision contained in para. 837 of ABGB may be subject to a similar interpretation.

[10] For more information on the types of legal representation, see: Stanković – Vodinelić, 1996, pp. 203-208, and Popov, 1997, pp.137-138.

3. Rights and Duties of the Administrator of the Succession Estate

In case the co-heirs agree on the appointment of the administrator and determine the scope of his activities, by accepting this position the appointed administrator assumes the role of "executing" of the heirs' decisions.

Yet, what are the duties of the court-appointed administrator?

The analysis of the legal solutions contained in a number of European legislations has shown that the administrator has the authority to administer legal affairs related to succession (for example, see: para. 837 of ABGB; Article 145, para. 2 of Sl.IA; Article 141 of CrIA, in conjunction with Article 44, para. 1 of CrAPO&RR; Article 85, para. 2 of McAPO&RR; Article 143, para. 2 of MnIA; Article 146, para. 2 of BH IA; Article 166, para. 2 of RS IA ; and Article 229, para. 2 of SrIA) but that he may also undertake some legal affairs which essentially include property disposition. Thus, the French legislator provides that the court may authorize the administrator to dispose of some property in case "it is necessary for a good administration of the succession estate" and to determine the costs and conditions thereof (see: Article 814, para. 2 of FCC). The legislators in Slovenia, Macedonia, Montenegro, Bosnia and Herzegovina and Republika Srpska provide a wider legal construction by entitling the administrator (subject to obtaining a prior decision of a competent court) to dispose of the inherited property only if he has been vested with this authority by the deceased (in his last will and testament) and in case he is required to pay some costs/expenses or compensation for some damage (see: Article 145, para. 4 of Sl.IA; Article 85, para. 4 of McAPO&RR; Article 143, para. 4 of MnIA; Article 146, para. 4 of /BH IA; and Article 166, para. 4 of RS IA).

The Serbian legislator has a similar solution which, however, does not include the provision that the administrator may dispose of the inherited property pursuant to the express decedent's will (See: Article 230 of SrIA). Such a provision used to be part of the former Serbian Inheritance Act (see: Article 143, para 4 of the former SrIA); the exclusion of this provision from the current Serbian legislation may be explained by the need to limit the decedent's freedom of choice to indirectly and *post mortem* dispose of his property *via* an administrator; yet, such an exclusion is certainly neither justifiable nor legally grounded either in the existing regulatory framework or in the public order. The necessary consent for undertaking the disposition activities may also be obtained from the co-heirs, subject to obtaining their prior consent on this matter; (for more information, see: Stanković – Janevski, 2004, p. 63).

Concerning the scope of the administrator's activities, most legal texts dealing with this subject matter contain the legal provision that the administrator administers the succession estate, which may be interpreted in two ways: 1) that he has the authority to perform only the regular administration activities, or 2) that he may also be authorized to manage the legal affairs exceeding the scope of the regular estate administration. This ambiguity is also part of the Serbian legislation, which further implies an unequal treatment of co-heirs in cases involving the administration of the succession estate. Given the fact that the legal affairs which exceed the scope of safekeeping, maintaining and preserving the inherited property are fairly similar to the disposition activities (in their substance and importance for protecting the heirs' interests), we consider that *de lege ferenda* the Serbian legislator should explicitly provide that the estate administrator shall have the authority to independently perform the legal activities within the regular scope of estate

administration whereas he may also be entrusted to perform the activities exceeding the scope of regular estate administration only after obtaining the approval of the competent court; (for a similar remark, see: Antić – Balinovac, 2006, p. 603; Babić, 2005. p. 381-382). In the UK common law system, the power of administration of the succession estate is vested in the personal representative of the deceased.

Within the scope of administration activities, the personal representative (administrator) is authorized to collect all the property of the deceased person in the course of the so-called "executor's" year.[11] The legal term "*collection of the estate*" clearly implies that the personal representative of the deceased is authorized to request from the decedent's debtors to pay all the unsecured claims and, if necessary, to initiate a legal proceeding to enforce their payment; (see: s. 25 of the Administration of Estates Act, 1925, amended and modified by s. 9 of the Administration of Estates Act, 1971).[12] As for the claims secured by a right of lien (pledge) on land, the personal representative is not authorized to request the settlement of these claims unless the funds (monetary claims) are needed for covering the funeral expenses, performing/exercising the decedent's last will or paying the decedent's debts and monetary grants (legacies).[13]

The personal representative of the deceased is entitled to set the time limit for the settlement of claims, to accept securities, to effect/enforce a settlement of respective claims, to abandon some claims of the deceased (which obviously cannot be recovered – *author's note)*. In spite of being vested with such broad authorities, (as a rule) the personal representative is not accountable to the beneficiaries for their possible losses, unless he has failed to demonstrate the required standard of fiduciary care and caution; (see: s. 1 (1) Trustee Act, 2000).

The personal representative is authorized to secure the decedent's succession estate from foreseeable risks. In the earlier Administration of Estates Act, this right was limited by explicit statutory provisions (see: s. §19 AEA, 1925) but there was a possibility to impose additional restrictions on the exercise of this right in the decedent's last will (for more on this matter, see: Sawyer, 1995, p. 287). In contrast, under the 2000 Trustee Act, the personal representative he has the power to secure any inherited property (constituting the decedent's succession estate) against any event which is likely to cause its loss or damage, whereby there is no restriction on the resources out of which the personal representative may pay the premium (see: s. 34 of Trustee Act).[14]

Bearing in mind that the personal representative of the deceased has the authority to safe-keep all the property assets that constitute the succession estate, he may allow the offspring of the deceased to use the decedent's personal belongings (which are part of the trust)[15] providing that these items are not taken by the surviving spouse of the deceased;

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[11] The "executor's" year is the first subsequent year after the decedent's succession estate has been opened.

[12] Cited after: Parry and Clark, 2002, p. 475. Hereinafter: AEA.

[13] See: Re: *Chapman* (1896) 2 Ch 763, pp. 773–778. Cited after: Parry and Clark, 2002, p. 475.

[14] Cited after: Parry and Clark, 2002, p. 478.

[15] *Trust* is a classical institute in the Anglo-American law which implies the legal relation between the *settlor* (a person who establishes the trust), the *trustee* (a person whom the trust settlor has entrusted with the power to administer the entire estate) and the *beneficiaries* (persons on whose behalf the estate is administered and distributed). Therefore, the trustee is the one who holds, administers and distrubutes the settlor's estate by acting in good faith as its statutory owner in relation to third parties. However, in essence, all the benefits from the settlor's estate go to the beneficaries. For more details on this matter, see in: G. Miller, *International*

yet, the personal representative does not have the power to allow the co-heirs to reside in any house or premises which are part of the succession estate (see: s. 47 (1) (IV) AEA, 1925).[16]

Subject to a motion filed by interested parties, the court may ask the personal representative to make (under oath) an inventory of the entire decedent's estate and to submit a report (a written account) on the administration of the estate (see: s. 25 AEA, 1925, amended and modified by s. 9 AEA, 1971).

The personal representative is obliged to exercise due reasonable care in safekeeping the decedent's succession estate.[17] Yet, in line with the letter of law (see: s. 18 Trustee Act, 2000), he is also obliged to deposit all the securities entitled to the bearer (holder) for safekeeping with an authorized person (entity).

As a rule, the personal representative of the deceased does not have the authority to continue managing the legal affairs of the deceased,[18] unless he is explicitly authorized to do so by the deceased in his testamentary disposition (Parry and Clark, 2002, p. 485). The personal representative's activities involving the management of the legal affairs of the deceased may be valid even without the decedent's approval, providing that these activities are aimed at ensuring a more efficient sale of assets.[19]

4. Termination of the Administrator's Authority

Given the fact that the authority of the administrator of the inherited property is closely related to the time-span of the hereditary community, the administrator's role becomes redundant in case the heirs renounce their succession portions in favour of one heir or a third party, or in case the heirs have agreed on the distribution (partition) of the succession estate.

Generally speaking, the administrators' duty is terminated in case of his death or in case he is fully or partially deprived of his business capacity. The administrator's authority also ceases to exist in case of death or lack of business capacity of the co-heirs who have authorized the administrator to act on their behalf. [20]

The competent court is obliged to discharge the administrator of his duty, at the request (petition) filed by all co-heirs or a single heir, if it is established that there is no longer "a vital and legitimate interest" in his administrative activities or if the administrator has failed to perform or gravely disregarded his administrative duties.

In case the co-heirs have jointly designated the estate administrator and the scope of his duties without any intervention of the competent court, they are entitled to dismiss the administrator, for or without cause. In that case, shall the heirs reach a unanimous or a majority decision on this issue? Although this activity is within the scope of the extrajudicial administration of the succession estate, most succession legislations have regulated

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Aspects of Succession, Aldershot, 2000, p. 236–240.

[16] For more details, see: Mellows, 1993, p. 185

[17] See: *Job v. Job* (1877) 6 Ch. D. 562; *Re: Gunning* (1918) 1 Ir. R. 221. Cited after: Parry and Clark, 2002, p. 477, footnote 80.

[18] See: *Barker v. Parker* (1786) 1 T. R. 287, 295; *Kirkman v. Booth* (1848) 11 Beav. 273. Cited after: Parry and Clark, 2002, p. 484, footnote 37

[19] See: *Dowse v. Gorton* (1981) A. C. 190, 199; *Corrett v. Noble* (1834) G Sim. 504. Cited after: Parry and Clark, 2002, p. 485, footnote 42.

[20] Pursuant to Article 94, para. 3 of the Serbian Obligation Relations Act (hereinafter: ORA)

this matter by accepting the concept of a majority decision (for example, see: Article 45, para. 3 of /CrAPO&RR; Article 47, para. 3 of McAPO&RR).

In order to overcome the obstacles in the administration of the succession estate, the administrator is also entitled to relinquish the administration (notwithstanding who he has been appointed by); yet, he shall give the heirs due notification and his decision shall not be untimely and detrimental to the co-heirs' interests.[21] In some legislations, there are legal provisions on the time limit for giving a due notice of resignation which the administrator is obliged to observe in the process of relinquishing the administration of the estate.[22]

If there is a statutory time limit governing the appointment of the administrator, his authority is terminated upon the expiry of the prescribed/time limit.

The Serbian Inheritance Act unfortunately does not regulate when and under what circumstances the rights and duties of the administrator are terminated. Such legal solutions are particularly valuable if co-heirs do not want exercise the partition of property for quite a long period of time and if there is a disagreement among them on the manner of administering the estate. For this practical reason, we consider that it is useful to regulate this segment of administration in the best interest of the co-heirs as well as the estate administrator. As a signpost for exploring some options in respect of dissolving the legal relations between the co-heirs and the estate administrator, the Serbian legislator may look into the relevant provisions contained in the Serbian Obligation Relations Act (see: Article 765-770 of ORA) as well as in the legal solutions contained in the French, Croatian and Macedonian legislation on this issue (see: Article 812-4, Article 812-7, Article 813-7 of FCC; Article 45 of CrAPO&RR and Articles 46–48 of McAPO&RR).

CONCLUSION

The legal provisions on the role of the administrator of the succession estate in the Serbian legislation have been observed and analyzed in light of the respective legal solutions contained in other legislations. Upon this analysis, we may conclude that the normative framework of this institute contains imprecise and insubstantial rules whose contents do not sufficiently observe the last will of the deceased.

In order to ensure legal certainty and qualitative protection of the heirs' interests, it is necessary to address the following issues: to specify whether the co-heirs' joint agreement on the appointment of the estate administrator should be based on their unanimous or majority decision; to precisely define the scope of legal affairs which may be performed by the court-appointed administrator and stipulate the kind of costs and expenses which the administrator may pay out of the succession estate; and to lay down the normative framework governing the termination of the administrator's authority and the legal consequences arising thereof.

As far as procedural matters are concerned, the procedure for designating the court-appointed administrator must be regulated more explicitly within the prospective changes and amendments to the Non-litigious Procedings Act.

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[21] It is in analogy with the due notification in contracts (*modus)*; for example, see: Art. 766 of ORA

[22] The prescribed time limit of 3 months starts on the first day of the month following the administrator's resignation.

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O PRAVNOM POLOŽAJU UPRAVITELJA NASLEDSTVA
De lege lata i de lege ferenda

Nataša Stojanović

U radu autor sagledava pravni položaj upravitelja nasledstva kroz prizmu zakonskih rešenja, teorije i sudske prakse pojedinih savremenih evropskih pravnih sistema, sa naročitim osvrtom na srpsko pravo. Po mišljenju autora, interes pravne sigurnosti i kvalitetna zaštita interesa naslednika nalažu, kao neophodnost: pojašnjenje, u zakonskom tekstu, da li je za određivanje upravitelja nasledstva, voljom samih naslednika, potrebna saglasnost svih njih ili većine naslednika, preciziranje poslova koje može obavljati upravitelj nasledstva, određen odlukom suda, bliže određivanje vrste troškova, koje on može isplatiti iz zaostavštine i normiranje prestanka ovlašćenja upravitelja nasledstva, kao i pravnih posledica koje otuda proističu. Sa procesnog aspekta posmatrano, autor se zalaže za to da buduće izmene i dopune srpskog Zakona o vanparničnoj proceduri moraju bliže da urede sam postupak za određivanje upravitelja nasledstva, odlukom suda.

Ključne reči: *naslednici, upravitelj nasledstva, pravna priroda upravitelja nasledstva, prava i obaveze upravitelja nasledstva, prestanak ovlašćenja upravitelja nasledstva.*

Translated by: Gordana Ignjatović