Translation from Romanian

File no. 26030/299/2009 *Stamp:*

ROMANIA
BUCHAREST COURT
THIRD DIVISION – CIVIL

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…
CIVIL DECISION No. 602A
Public hearing of 10 June 2013
Panel composed of:
PRESIDENT – Cristina Vilceleanu
JUDGE – Iulia Craiu
CLERK – Mihaela Popovici

On the docket is the ruling on the appeal initiated by the plaintiff in appeal – plaintiff **Bazgan Angela** and **Bazgan Sorin** against the Civil Decision no. 11501/14.06.2011, ruled by Bucharest District 1 Court in file no. 26030/299/2009 and of the Civil Decision no. 16764.04.1.2011, ruled by Bucharest District 1 Court in the same file, against the respondent-defendant **Basgan Ion** and respondent - plaintiff **Bazgan Constantin,** on "cancelation of act".

The debates and oral presentation of the parties took place on 27 May 2013, being written down in the minute on that date, being part and parcel of this civil decision, when the court, because it needed time to deliberate and to allow the parties to submit written conclusions to file, successively postponed the ruling for 3 June 2013 and today 10 June 2013, respectively, when it decided the following:

THE COURT

Deliberating on the civil appeals mentioned here, acknowledges the following:

By the *summons* registered in the docket of Bucharest District 1 Court on 11.08.2009, under no. 26030/299/2009, the plaintiff Bazgan Sorin requested against Basgan I. Ion: the reinstate in appeal on the inheritance debate after Bazgan Ion; cancelation of the heir certificate no. 1/06.01.21998, issued in file no. 1/1988 by Notary Public Office "Gaspar Gabriela" and of the additional heir certificate no. 9/25.03.2009, issued by Notary Public Office "Nedelcu and Associates" in the file no. 10/2009, acknowledgement of the inheritance capacity of the plaintiff after his father, Bazgan Ion, establishment of the bequest and legal quotas, with legal expenses.

In justification, he said that on 15.12.1980, his father died, with last domicile in Bucharest, 25 Argentina Street, where he lived with his wife and the plaintiff. He mentioned that the building where was mentioned in the inheritance certificate as last domicile, from Bd. Magheru, district 1, had collapsed at the earthquake from 1977.

He said that he had done acts of "express and tacit" acceptance of the inheritance, by the fact that together with his mother and the defendant took care of the funeral, religious services and commemoration services, continued to share the same residence with his mother until 1986, when he left the country for good; he took all movable assets, patents, personal dairies, notepads, photos etc.

He said that until July 2009, he was not aware of the existence of an inheritance certificate related to his father.

As a result of the fact that his father had had 2 more children from a previous marriage, Basgan Ion and Basgan Constantin, he requested them to perform the formalities for the regulation of the inheritance. Because Basgan Ion, who was in the country in all this time, refused to provide the documents required for the succession, he addressed himself to the Chamber of Notaries Public from Bucharest from where he found out, by Notice no. C5995, as of 15.07.2009 that the succession procedure following Bazgan Ion had already been registered.

He stated that neither he, nor his brother, Basgan Constantin, gav up on the inheritance and that the defendant falsely declared that there were no other heirs, though he knew about the existence of the brothers and surviving wife. He emphasized that although he left the country in 1986, he had permanent relations with the family and attended the funerals of his father.

In law, he invoked the article 111 of Code of Civil Procedure, Decree no. 167/1960, republished, art. 88, paragraph 1, first thesis of Law no. 36/1995.

As a justification of the request, he submitted photocopies of the heir certificate no. 1/06.01.1998, issued in file no. 1/1988 by Notary Public Office "Gaspar Gabriela" and of the additional heir certificate no. 9/25.03.2009, issued by Notary Public Office "Nedelcu Crisan Traian", death certificate of Bazgan Ion, birth certificate and passport of Bazgan Sorin.

On 18.11.2009, the defendant initiated a *Statement of Defence* by which he invoked the exception of prescription of the right to request to reinstate the appeal within the term for succession debate, motivated by the fact that such a request can be done within maximum one month from the cessation of the causes which justify the exceeding of the prescription term.
He also said, that because the plaintiff said he had done acts to accept the succession, its reinstatement in appeal is not justified. There are no justified causes which could render impossible the acceptance of the succession by him.

He invoked the exception of the prescription of the right to action on the annulment of the heir certificate no. 1/1998, motivated by the fact that it could be affected, at the most, by relative, prescriptible nullity, in accordance with art. 9, paragraph 2 and the other dispositions of Decree no. 167/1958, within 3 years, which starts within 18 months from the conclusion of the document.

As for the other requests of the plaintiff, he requested that the ancillary characteristic in relation to the first should be taken into consideration.

Using the *counterclaim*, he requested the acknowledgement of the fact that the plaintiff is non party to the inheritance, because he did not accept it expressly or tacitly within 6 months. He said that the plaintiff knew about his father death, attended the funeral and nothing stopped him for 28 years to start the debate of the inheritance. He also based his opinions regarding that the fact that the plaintiff is non party to the inheritance on the statement authenticated under no. 252 as of 23.03.1998, given before the notary public "Gabriela Gaspar".

In law, he invoked art. 115 and the following of the Code of Civil Procedure and Decree no. 167/1958.

On 24.11.2009, the plaintiff *stated his action,* namely for confinement, requesting the acknowledgement of absolute nullity of the heir certificate no. 1/06.01.21998, issued in file no. 1/1988 by Notary Public Office "Gaspar Gabriela" and of the additional heir certificate no. 9/25.03.2009, issued by Notary Public Office "Nedelcu and Associates" and to oblige defendant to legal expenses.

On 20.04.2010, the plaintiff Bazgan Sorin showed that he *did not agree with the explanatory request* submitted on his behalf by lawyer Draghici Cristian Costantin and, on the same date, *he emphasized that he requested:* the acknowledgement of absolute nullity of the heir certificate no. 1/06.01.21998, and of its supplement, the heir certificate no. 9/25.03.2009,

for illicit act, fraud to the law and based upon art. 100 of Law no. 36/1995, it should be acknowledged that Bazgan Sorin is heir of his deceased father, Bazgan Ion, by tacit acceptance of the inheritance, based upon art. 689 of the Civil Code, obliging the defendant Basgan I. Ion to pay all legal expenses.

By conclusion as of 29.06.2010, *file no. 16820/299/2009 was linked to this file.*

In the file no. 26820/299/2009, the plaintiff Basgan Angela requested against the defendants Basgan I. Ion and Basgan Constantin that the ruling should cancel the heir certificate no. 1/06.01.21998, issued by Notary Public Office "Gaspar Gabriela" and the additional heir certificate no. 9, as of 06.01.1998 and to oblige the notary public to issue a new heir certificate, with the observance of the legal provisions.

In the justification, she emphasized: on 15.12.1980, Bazgan Ion died, in accordance with the death certificate series D6, no. 073016, issued by Local Council of District 1, with the last domicile in Bd. Magheru, no. 25, district 1.

On 13.04.1955, she got married to Bazgan Ion, in accordance with the marriage certificate, series CD, no. 587321, and a child was produced, as a result of this marriage, Bazgan Sorin.

Before this marriage, the deceased had been married until 1953, when his wife died; two children were produced in that marriage, Basgan Ion and Basgan Constantin. The she-plaintiff considered that the heir certificates are null and void, because they violate the imperative requirements of summoning before the notary and the devolution of inheritance.

In law, she invoked art. 88, art. 69, art. 77, art. 75 of Law no. 36/1995, art. 654, art. 669, art. 797 of the Civil Code, Law no. 319/1944, art. 112 and art. 274 of the Code of Civil Procedure.

On 23.11.2009, defendant Basgan Ion formulated a *Statement of defense and counterclaim* by which he requested to be acknowledged that the plaintiff Basgan Angela is non party to the inheritance.

On the minute of 30.11.2010 the court rejected the exception of the prescription of the material right to action, for the reasons mentioned in that minute.

In the case, the documentary evidence, mutual examination and testimonial evidence were produced. During the testimonial evidence the following witnesses were heard: Serban Maria Adina (page 425), Codreanu Corneliu (pages 426 - 427), Neamtu Hotensia (pages 428 - 429), Zehner Viviane Simona (page 420), Ban Romulus Georg (page 421).

By the *Civil Decision no. 11501/14 June 2011*, ruled in file no. 26030/299/2009, Bucharest District 1 Court rejected the main action, object of the file no. 26820/299/2009, rejected the main action, object of the file no. 26030/299/2009, admitted the counterclaim and acknowledged that Bazgan Angela is non party to the inheritance of deceased Bazgan Ion.

In order to issue this ruling, the first court acknowledged that in the inheritance file no. 1/1998, investigated by public notary Gabriela Gaspar, it was acknowledged that after the death of Ion Basgan, Basgar Constantin, in capacity of son, gave up the inheritance, and that the sole heir (acceptor) is Basgan Ion, for the bequest represented by the 2/8 quota of the property right upon the building situated in Bucharest, str. Cernica nr. 4, district 2, these aspects being mentioned in the heir certificate no. 1/06.01.1998.

The statement, authenticated under no. 417/24.12.1997 by public notary Gabriela Gaspar, was submitted to this file, according to which Basgan Constantin stated he did not do any act or deed acceptance of the inheritance of his deceased father Basgan Ion, in relation to which he chose to distance himself.

In the inheritance file no. 10/2009, Basgan Ion was considered the sole heir. The inheritance file was concluded by the issuance of the additional heir certificate no. 9 of 25 March 2009.

The first head of claim refers to the nullity of those heir certificates, because the plaintiff-defendants from this file had not been included, in capacity of heirs, with their related quotas.

Regarding Basgan Angela, the court acknowledged she gave a statement, authenticated under no. 252/25 march 1998 by public notary Gabriela Gaspar, charged with receipt no. 413, in which she says: "I declare I had not done any act or deed to accept the inheritance of my late husband Bazgan Ion (…). My son Ion. I. Basgan (…) in capacity of exclusive successor with inheritance certificate for the deceased Bazgan Ion, has the legal capacity and full powers from our side to perform all legal proceedings for the capitalization of the patent no. 2.103.137, issued by the Patent Office of the city of Washington on 23.12.1937."

Angela Basgan gave another statement, again authenticated by public notary Gabriela Gaspar under no. 257/24 March 1998, in which she said: "I declare I had not done any act or deed to accept the inheritance of my late husband Bazgan Ion (…), in relation to which I chose to distance myself. I give this statement to be of use to my son Ion. I. Basgan, exclusive successor with inheritance certificate for my late husband, for the capitalization of the patent (…)." Unlike the statement of 23 March, out of which 2 original copies were issued, on 24 March 3 copies were issued.

In accordance with the certificate no. 1024 of 23.09.2010, issued by Notary Public Office "Nedelcu and Associates", it appeared that the statement of Basgan Angela, authenticated under no. 252/23.03.1998 is registered in the special register for renunciations to inheritances at position no. 11 as of 23.03.1998, as well as in the list of renunciations to inheritance.

The notice invoked by the plaintiff, that, following the verifications in INFONOT System, in accordance with to notice 109747, no statements were found regarding Basgan Angela's successional option is irrelevant, because INFONOT SYSTEMS S.R.L. has the capacity of administrator of National register for computer evidence for some procedures and notarial documents (hereinafter named Registers), provided at art. 56, indicative 1 of the Regulation for application of Law no. 36/1995 of notaries public and notarial activity, approved by Order of Ministry of Justice no. 710/C/1995, with its further amendments and completions. The registers were founded within the National Union of Notaries Public from Romania on 1 January 2007, the main purpose being to grant a higher security to the juristic act, thus supporting the activities of notaries public and citizens.

The fact that the plaintiff-defendant's renunciation to inheritance has not been registered in the database, it does not mean it has not been written down in the register, considers the court. Besides, considering that the notary public where the statements were kept, no longer works in this field, becoming magistrate, it is plausible to consider that a part of the archive was not transferred to electronic format and is not in the database searched. System has been working since 2007, thus it is certain that documents before 1 January 2007 will not be found.

During her examination, Bazgan Angela did not recognize she had been to the notarial office, nor that any notary had come to her domicile, did not recognize the signature from the two statements, she said that after the death of her husband she used to sign with letter "Z", because she had done the same in her identity card.

This statement is contradicted by the letter of 31.01.1981, signed with letter "S", though it was after her husband's death. The signature from this letter does not look like the one from the authenticated statements, nor with the one at the end of the examination (the latter one being "shaken", perhaps on the account of the age and circumstances).

But there is a striking resemblance between the signature from the authenticated statements with the plaintiff's signature from the document entitled "statement regarding the discussion from 1981", given in 2009.

Considering the probative value of an authenticated document, in accordance with art. 1171 and art. 1173 of the Civil Code, valid until proven fake, the court considered that the two statements have full force, therefore there can be no simultaneous situation of a tacit acceptance of the inheritance.

Subsidiarily, however, the court acknowledged that: the request for survivor's pension does not represent an acceptance act of the inheritance, because it refers to the exploitation of an own and personal right, directly arisen from the wife's patrimony, the "survivor's" pension right.

The continued use of the household goods does not mean tacit acceptance, because it does not have the characteristic of an act of disposition, it does not have an unequivocal characteristic, also taking into consideration that anyway half of those assets were owned by the plaintiff. The proceedings to obtain the rights due from the use of the patents, even if they existed, represents acts of administration or preservation and can not represents acts of tacit acceptance of the inheritance.

It was also acknowledged that the existence of a "successional pact" could not be proven; a proof to this is the answer of plaintiff – defendant Angela Bazgan at questions 4 and 5 of the examination, which confirms the absence of any agreement regarding the bequest. The plaintiff – defendant said she did not remember of such a pact, nor did she discuss of any inheritance from the husband, because "there was nothing to inherit".

Regarding the plaintiff – defendant Basgan Constantin, it was acknowledged that:

Basgan Constantin gave a statement, authenticated under no. 417/24 December 1997 by public notary Gabriela Gaspar, in which he stated he did not do any act or deed of acceptance of the succession of his deceased father Basgan Ion, in relation to which he chose to distance himself. In the statement there is a mentioning, "I give this statement to be of use to the competent notary for the debate of the inheritance proceedings".

In accordance with the certificate no. 1024 as of 23.09.2010, issued by Public Notary Office Nedelcu and Associates, it shows that Basgan Constantin's statement, authenticated under no. 417/24 December 1997, is registered in the special register for renunciations to inheritances at position no. 6 as of 24.12.1997, as well as in the list of renunciations to inheritance.

The notice invoked by the plaintiff, that following the verification in INFONOT System, in accordance with notification no. 109747, no statements on the inheritance option regarding Basgan Constantin were found, was considered irrelevant for the same reasons mentioned for Basgan Angela.

It was also considered that Basgan Angela's use of some cheques does not signify the tacit acceptance of the inheritance, because it does not have an unequivocal characteristic, being obvious that half of the sums from those cheques belonged to her.

Regarding the plaintiff – defendant Basgan Sorin, it was acknowledged he gave no statement by which he gave up the succession after Basgan Ion.

In the light of the evidence produced, it did not come out either, that he accepted the succession tacitly, as he had said.

Thus, based upon the statement of witness Neamtu Hortensia, it comes out that after the death of Ion Basgan, Sorin Basgan continued to live in the building from str. Argentina no. 25, using all assets from that building.

The acceptance acts of an inheritance must be clear, unequivocal, it should be acts that person would not have done, if he had not considered himself the owner of the goods. The fact that Basgan Sorin continued to live in the same building, of which half belonged to his

mother, does not have an unequivocal nature and does not represent an act of disposition and an inheritance acceptance act.

The same witness declared that Mr. Basgan Sorin had taken a golden watch that had belonged to the deceased. Considering the witness' statement, the court believes it is a wrist-watch, for men.

The witness Zehner Viviane Simona declared, at her turn, that Basgan Sorin took a golden watch, maybe an Omega one, of great value.

On the last hearing, were submitted photos of an alarm clock, American, in an unspecified location.

The court considers the statements of the witnesses can be sincere and it is possible that Sorin Bosgan may have taken a wrist watch that had belonged to his father. It is obvious that first of all, such an object has a sentimental value, irrespective of its intrinsic value. Anyway, they court still has some doubts regarding that watch, namely whether the watch is still under the possession of Sorin Bosgan and if so, why hasn't been it presented to the court.

Considering the statement of witness Neamtu Hortensia, it comes out that until the house from str. Argentina no. 25 was sold, nothing was taken away from that residence, so the court shall reject as unfounded his allegations that he had taken some paintings from the bequest. The witness Zehner Viviane Simona left Romania at the end of August 1981; she declared that Sorin Basgan had takem some paintings, without being able to say exactly how he did that, considering that he continued to live in the same house so, as stated by witness Neamtu Hortensia, all paintings continued to be exposed.

As for the patents, the court acknowledged, first of all, that the real situation must be presented: Basgan Ion remained in the Socialist Republic of Romania and, regardless of his capacity and position, worked in the Minister of Internal Affairs and his mother and brothers went abroad. In such conditions, it is plausible to consider that Basgan Ion was reluctant to possess those patents.

Moreover, it is not clear which patents are original and which are copies, the statements of the parties being contradictory. This is not so relevant, considering that until 2009, the parties got along very well and worked together, trying to exploit them

The court considers that, in the light of the above-mentioned reasons, the possession of patents, either original or copies, does not represent an unequivocal act of acceptance of inheritance. As stated by the statements of all witnesses, it is clear that before and after 1989 and until 2009, the parties collaborated, trying to obtain financial results.

As a result of all these, the court acknowledged that Basgan Ion did not produce evidence on the acceptance of his father's inheritance in a tacit way.

In the light of all these, it come out there was no "fraud to the law" or "illicit cause", which would entail the nullity of the heir certificates.

Considering the probative administered, it resulted that the plaintiff – defendants did not accept the inheritance within the 6-month term. For example, witness Serban Maria Adina said that she knew from Constantin Basgan that the latter gave up the bequest, because he was German citizen, did not have Romanian citizenship anymore and he "was not interested".

As long as the plaintiff – defendants did not prove the acceptance of the inheritance, even if in this case the exception of lack of interest was not invoked, the court acknowledged that no prejudice was caused to them by the creation of the heir certificate, without being summoned all those with successional vocation.

In accordance with art. 105 of the Code of Civil Procedure, in order to cause the nullity of a civil legal act, 3 cumulative requirements must be met: there must exist a violation of the legal provisions, a prejudice must have been caused, the only way to remove the damage is to cancel the act.

In case of express nullities, the damage shall be presumed, relatively, until contrary evidence.

Failure to observe the provisions of art. 75 of Law no. 36/1995, first thesis – "After acknowledging that he is duly notified, the public notary registers the case and summons those entitled to inheritance, and if there is a will, he shall also summon the heirs and the executor of the will", based upon the above-mentioned reasons, the plaintiff – defendants have not been damaged.

For the same reasons, the court admitted the counterclaim and it acknowledged that the plaintiff – defendant Basgan Angela is non party to the inheritance of Bazgan Ion.

Erroneously, the court did not solve the counterclaim whose object was to acknowledge whether the plaintiff – defendant Bazgan Sorin is non party to the inheritance, issue which can be corrected, but not ex officio.

Thus, by the request registered on 20.09.2011 on the docket of Bucharest District 1 Court, the defendant – plaintiff Basgan Ion requested the *completion of the wording of the civil decision no. 11501/14.06.2011* of Bucharest District 1 Court, with ruling on the counterclaims delivered in files no. 26030/299/2009 concerning Bazgan Sorin and no. 29404/299/2009 concerning Basgan Constantin.

As a justification of the request, it was highlighted that by the counterclaim initiated in the file no. 26030/299/2009, he requested against Bazgan Sorin, to be acknowledged that the latter is a non party to the inheritance, considering the failure to tacitly or expressly accept the inheritance within the 6-month term, provided by art. 700, paragraph (1) of the Civil Code, and by the counterclaim initiated in file no. 29404/299/2009, he requested, against Basgan Constantin, to be acknowledged that the latter is a non party to the inheritance, considering the failure to tacitly or expressly accept the inheritance within the 6-month term, provided by art. 700, paragraph (1) of the Civil Code; the court omitted to rule on the two counterclaims, issuing a decision only on the request against the plaintiff – defendant Bazgan Angela.

By law, he invoked article 281, paragraph 1 of the Code of Civil Procedure.

By *Civil Decision no. 16764.04.1.2011*, ruled in file no. 26030/299/2009, Bucharest District 1 Court admitted the completing of the determination of the civil decision no. 11501/14.06.2011, with the insertion of the following paragraphs: "The court also admits the counterclaims initiated against Bazgan Sorin and Basgan Constantin. It acknowledges that the plaintiff - defendants Bazgan Sorin and Basgan Constantin are non party to the inheritance of Bazgan Ion."

In order to come with this decision, the first court acknowledged that in accordance with art. 281^2, paragraph 1 of the Code of Civil Procedure, the party can request the completing of the legal decision, if the court omitted to rule on of the requests which the court was supposed to settle.

The court considers this request is admissible, as long as the determination of the decision is the one that shall be enforced. Since the ruling on the request for completing, a new term begins during which an appeal can be initiated.

On the merits of the case, it was acknowledged that the defendant Basgan Ion requested against Bazgan Sorin, by counterclaim formulated in file no. 26030/299/2009, to notice that Bazgan Sorin is a non party to the inheritance considering the failure to tacitly or expressly accept the inheritance within the 6-month term, provided by art. 700, paragraph (1) of the Civil Code; by the counterclaim initiated in file no. 29404/299/2009, he requested, against Basgan Constantin, to be acknowledged that he is a non party to the inheritance, considering the failure to tacitly or expressly accept the inheritance within the 6-month term, provided by art. 700, paragraph (1) of the Civil Code.

By civil decision no. 11501/14.06.2011, the court admitted only the counterclaim on Bazgan Angela, omitting to rule on the other two counterclaims.

Regarding the plaintiff Basgan Constantin, it is acknowledged that he gave a statement, authenticated under 417/24 December 1997, by notary public Gabriela Gaspar (page 114), by which he declared he did not do any act or deed of acceptance of the inheritance of his deceased father Bazgan Ion and chose to distance himself from the inheritance. In the statement it is mentioned, "I give this statement for the competent notary office for the inheritance proceedings".

In accordance with the certificate no. 1024 as of 23.09.2010, issued by Public Notary Office Nedelcu and Associates, it showed that Basgan Constantin's statement, authenticated under no. 417/24 December 1997 is registered in the special register for renunciations to inheritances at position no. 6 as of 24.12.1997, as well as in the list of renunciations to inheritance.

Following the verifications to INFONOT System, in accordance with notification no. 109747, no statements on the Basgan Angela's successional option were found, but this is not relevant because INFONOT SYSTEMS S.R.L. has the capacity of administrator of National register for computer evidence for some procedures and notarial documents (hereinafter named Registers), provided at art. 56, indicative 1 of the Regulation for application of Law no. 36/1995 of notaries public and notarial activity, approved by Order of Ministry of Justice no. 710/C/1995, with its further amendments and completions. The registers were founded within the National Union of Notaries Public from Romania on 1 January 2007, the main purpose being to grant a higher security to the juristic act, thus supporting the activities of notaries public and citizens. RONOS System has been working since 2007, thus it is certain that documents before 1 January 2007 will not be found.

The fact that the plaintiff - defendant's renunciation to inheritance has not been registered in the database, it does not mean it has not been written down in the register, considers the court.

There is no legal foundation which should condition the validity of the inheritance renunciation statement to the registration in the Electronic Register.

Besides, considering that the notary public where the statements were kept, no longer works in this field, becoming magistrate, it is plausible to consider that a part of the archive was not transferred to electronic format and is not in the database searched.

In light of these, it results that the plaintiff-defendant Basgan Constantin is non party to the inheritance of Bazgan Ion.

Regarding the plaintiff-defendant Basgan Sorin, it is acknowledged that he gave no statement on the renunciation to the inheritance of Basgan Ion. Considering the evidence produced in the case, it does not come out either that he accepted the inheritance tacitly, as he said.

Thus, based upon the statement of witness Neamtu Hortensia, it comes out that after the death of Ion Basgan, Sorin Basgan continues to live in the building from str. Argentina no. 25, using all goods from that building.

The acceptance acts of an inheritance must be clear, unequivocal, it should be acts that person would not have done, if he had not considered himself the owner of the goods. The fact that Basgan Sorin continued to live in the same building, of which half belonged to his mother, does not have an unequivocal nature, does not represent, in the opinion of the court, an act of disposition and does not represent an inheritance acceptance act.

The same witness declared that Mr. Basgan Sorin took a golden watch that had belonged to the deceased. Considering the witness' statement, the court believes it is a wrist-watch, for men.

The witness Zehner Viviane Simona declared, at her turn, that Basgan Sorin took a golden watch, maybe an Omega one, of great value.

On the last hearing, were submitted photos of an alarm clock, American, in an unspecified location.

The court considers the statements of the witnesses can be sincere and it is possible that Sorin Bosgan may have taken a wrist watch that had belonged to his father. It is obvious that first of all, such an object has a sentimental value, irrespective of its intrinsic value. Anyway, they court still has some doubts regarding that watch, namely whether the watch is still under the possession of Sorin Bosgan and if so, why hasn't been it presented to the court.

Considering the statement of witness Neamtu Hortensia, it comes out that until the house from str. Argentina no. 25 was sold, nothing was taken away from that residence, so the court shall reject as unfounded his allegations that he had taken some paintings from the bequest. The witness Zehner Viviane Simona left Romania at the end of August 1981; she declared that Sorin Basgan had taken some paintings, without being able to say exactly how he did that, considering that he continued to live in the same house so, as stated by witness Neamtu Hortensia, all paintings continued to be exposed.

As for the patents, the court acknowledges, first of all, that the real situation must be presented: Basgan Ion remained in the Socialist Republic of Romania and, regardless of his capacity and position, worked in the Minister of Internal Affairs and his mother and brothers went abroad. In such conditions, it is plausible to consider that Bazgan Ion was reluctant to possess those patents.

Moreover, it is not clear which patents are original and which are copies, the statements of the parties being contradictory. This is not so relevant, considering that until 2009, the parties got along very well and worked together, trying to exploit them

The court considers that, in the light of the above-mentioned reasons, the possession of patents, either original or copies, does not represent an unequivocal act of acceptance of inheritance. The firs court also acknowledged that based upon the statements of all witnesses, it is clear that before and after 1989 and until 2009, the parties collaborated, trying to obtain financial results.

As a result of all these, the court acknowledged that Basgan Sorin did not produce evidence on the acceptance of his father's inheritance, expressly or tacitly and, consequently, he was non party to the inheritance.

In the light of all these reasons, the court admitted the request and ruled the completion of the civil decision no. 1150/14.06.2011, namely inserting the following paragraphs: "The court also admits the counterclaims initiated against Bazgan Sorin and Bazgan Constantin. It acknowledges that the plaintiff-defendants Bazgan Sorin and Basgan Constantin are non party to the inheritance of Bazgan Ion."

Against this solution, Basgan Constantin, Bazgan Sorin and Bazgan Angela filed an appeal within the legal term (on 29 June 2011, 30 June 2011 and 5 July 2011), their appeal petitions being registered on the docket of Bucharest Court – Third Divisions, Civil, on 7 February 2012 (appeal against the first court) and 13 February 2012 (appeal declared by Bazgan Angela and Bazgan Sorin against the completing decision).

By the appeal petition formulated, **the plaintiff in appeal – plaintiff Bazgan Angela** requested the full modification of the Civil Decision no. 11501/14.06.2011, which she considers illegal and unfounded, the admission of the main request and acknowledgment of the nullity of the heir certificate no. 1 as of 06.01.1998, issued by public notary Gabriela Gaspar from Bucharest and of the heir certificate no. 9, as of 25 march 2009, issued by Notary Public Office "Nedelcu and Associates" - addition to the heir certificate no. 1 as of 06.01.1998 and to oblige the notary public to issue a new heir certificate, observing the legal provisions, as well as the rejection of the counterclaim initiated by the respondent – defendant Basgan I. Ion, acknowledging that Bazgan Angela is the heir of late husband, Bazgan S. Ion, by tacit acceptance of the inheritance, in accordance with art. 689 of the Civil Code.

The first criticism to the solution of the first court is that the court did not observe the provisions of art. 261, point 5 of the Code of Civil Procedure, according to which the court had to show the reasons by right, in fact underlying its decision, as well as the rejection reason of the requests of the parties, their non-observance makes the decision illegal and must be abolished.

It is acknowledged that by the civil decision no. 11501/14.06.2011, the court of first instance repeated the motivation of the main requests, but without presenting the defense and motivation of the defendant from the statement of defence and counterclaim and yet, the court founded its rejection of the main requests fully on the defendant's allegations, but without indicating why it considered those arguments applicable and without indicating the legal grounds applicable and based on which the main requests were rejected and the counterclaim was admitted.

Regarding the evidence produced, it is considered that the court of first instance did not rule upon them, did not show which piece of evidence was taken into consideration for its motivation and which pieces of evidence were dismissed and not taken into consideration and did not rule on them, but the obligation of the judge is to prove in writing the reasons behind his decision, why the documentary evidence of a party were allowed, and the ones of the other party were rejected, for which reason a proof was considered good and the other one insincere, why it applied a standard of law and a certain interpretation was given is an essential obligation, whose violation leads to the abolishment of the decision.

The plaintiff in appeal – plaintiff adds that throughout the progress of the procedural stages on the evidence, she requested that a notice should be sent to the two notarial offices, which issued the heir certificate and the supplement to the heir certificate, but this request was rejected without any reason, but in the legal practice it has been practiced that in order to obtain a sound and legal solution in cases dealing with "absolute nullity of the heir certificates", an essential piece of evidence is the original file from the notary office which issued the heir certificate, and later the file is to be sent back to the notarial office. This right has been violated by the court of first instance, which censored the request of the plaintiff in appeal, as well as other two plaintiffs in appeal.

It is highlighted that the minutes of the hearing as of 29.06.2010 and 12.10.2010 show that all three plaintiffs requested the issuance of a notice to the notarial offices to attach to the file the original copy of the successional debate file (and not a copy or an authenticated copy), as well as of the file related to the additional certificate, showing to the court that this measure is necessary for a comparison between the alleged renunciation statements with the copies submitted by the respondent – defendant Basgan I. Ion, mentioning that I want to indict it as false, and this requires a comparison with the original of the notary file, but the request was rejected without a reason.

The second appeal reason deals with the contradiction and inconsistency between the minute and the determination of the civil decision no. 11501/14.06.2011, the text in the escris system stating: "It rejects the main actions from the two linked files, as unfounded. It admits the counterclaim. With possibility of appeal". And the determination of the hearing is: "It rejects the main action, object of the file no. 26820/299/2009. It rejects the main action as unfounded, regarding the plaintiff BAZGAN SORIN, with domicile in Bucharest, district 5, Bd. Mihail Kogalniceanu nr. 19, et. 2, ap. 3, plaintiff BAZGAN CONSTANTIN, with domicile in, BAZGAN ANGELA, with domicile in district 2, Bucharest, MIHAI EMINESCU, nr. 59, ap. 1 and defendant BAZGAN ION, with residence in Bucharest, district 2, str. Parintele Staniloaie, no. 4, object of the file no. 26039/299/299. It allows the counterclaim. It acknowledges that Bazgan Angela is non party to the inheritance of the late Bazgan Ion. With appeal within 15 days from communication. Ruled in public hearing of 14 June 2011", the contradiction and difference between the minute and the determination being

easy to be noticed, as a result of the fact that the minute contains other provisions, namely it refers only to the rejection of two of the requests (these being the main requests of the plaintiffs Bazgan Sorin and Basgan Constantin, which had been stated, and not of plaintiff Bazgan Angela), without ruling on the main request formulated by plaintiff Bazgan Angela and which was the object of the file no. 26820/299/2009, linked with file no. 26030/299/2009 in which civil decision no. 11501/14.06.2011 was ruled, and the determination contains a completely different ruling, namely it rejects the main action, object of the file no. 26820/299/2009, it rejects the main action, regarding plaintiff Bazgan Sorin, plaintiff Bazgan Constantin and Bazgan Angela and acknowledges that only Bazgan Angela is non party to the inheritance.

Thus, between minute and determination there is a contradiction and in accordance with the provisions of art. 258, paragraph 1, of the Code of Civil Procedure, the minute must be considered the real decision ruled by the court, because it reflects the result of the deliberation and, in accordance with provisions of art. 3 of the same norm it is illegal for the judge to change his opinion, after the decision is mentioned.

It is also stated that after the minute is prepared, when the decision is ruled, the judge can not change his opinion. The minute thus prepared briefly presents the determination of the decision and must be reproduced in the decision and it can not be modified. In such situation, the inconsistency, between the minute prepared on the ruling and the determination of the decision entails, in the plaintiff in appeal's opinion, its nullity.

At the same time, the plaintiff in appeal considers the minute must not comprise erasures or correction, this being a sign the judge changed his mind and this aspect has not observed by the court of first instance, because the minute comprises erasures with white correcting liquid and completions above these erasures.

To this end, it is mentioned that it is quite noticeable that the court of first instance in the minute, paragraph 4 said: "It acknowledges that Basgan Angela is not a non party to the inheritance of the late Basgan Ion", but later this phrase was changed with erasure with white liquid, erasing the adverb "not", therefore the ruling is completely different, as a result of the modifications and erasures done in the minute.

The plaintiff in appeal considers that what she says regarding this phrase in the minute is also supported by the ruling as found in the electronic system ecris, which represents another proof of the fact that the court of first instance issued a ruling on the acceptance of the inheritance following the death of Bazgan S. Ion by the plaintiff in appeal Bazgan Angela, and later it changed its opinion.

It is also added that the minute must be consistent with the electronic system ecris, and that the ruling from the minute must be similar with the one from the electronic system, but this is not the case, as stated by the excerpt of electronic system ecris one day after the date of ruling, namely 15.06.2011, as well as from 05.07.2011, where the ruling which express the opinion of the court is "it rejects the main actions from the two files linked, as unfounded. It allows the counterclaim. With appeal."

Therefore, in the light of these inconsistencies and contradictions, it results that the court of first instance modified its opinion from the moment of ruling, changing the ruling by the means of the determination, thus violating the provisions of art. 258 of the Code of Civil Procedure and performing the disciplinary deviation provided by provisions of art. 99, letter h of Law no. 303/2004, on the statute of judges and prosecutors, amended and republished.

It is also stated that the court of first instance also violated the provisions of art. 109, paragraph 5, which state that the clerk of the court shall mention, under signature, at the bottom of the minute or of the decision typed, as applicable, the date of communication and the parties to whom the determination or the decision was communicated, which has not been found mentioned, as well as the provisions of art. 110, paragraph 3, according to which the

decision typed shall bear the following information on the last page: date of typing, initials of the writer and of the typist and number of copies, regulations provided by the Internal Regulations of the court and which, in relation to provisions of art. 265 of the Code of Civil Procedure, corroborated with art. 258 of the Code of Civil Procedure entail the nullity.

The third reason of appeal deals with the misinterpretation of the court of first instance and failure to take into account the evidence produced, on the tacit acceptance of the inheritance by the plaintiff in appeal Bazgan Angela, within 6-month term provided by the provisions of art. 700 Civil Code.

Regarding to this, it is stated, that although submitted to the file, part of the documentary evidence, the documents which certify the fact that the plaintiff in appeal requested and obtained the survivor's pension following the late Bazgan S. Ion, the court of first instance misinterpreted this official acceptance act of the inheritance.

According to the opinion of the plaintiff in appeal, the request and getting of the survivor's pension is a tacit act of inheritance acceptance in the virtue of the indivisibility of the successional option, being an act of disposition with a singular successional asset and it represents the mere acceptance of the entire inheritance. Therefore, the plaintiff in appeal considers, that as long as she filed a request for a survivor's pension, following the death of her late husband, it is obvious that she also accepted and took upon herself the capacity of heir and benefited from the rights resulting from this capacity and that is why it can not be said that she did not do any acceptance act of the inheritance within the 6-month term, provided by art. 700 Civil Code.

The plaintiff in appeal shows that this act of tacit acceptance of the inheritance was accepted and ruled in the practice of the courts, unanimously accepting that the survivor's pension is an act of acceptance of which the surviving husband agreed to benefit from and that is why she accepted the capacity of heir.

Another tacit act of inheritance acceptance which the court chose to ignore and misinterpreted, the plaintiff in appeal considers, is represented by the administration documents of the successional assets left from the deceased person.

To this end, the plaintiff in appeal states that after the death of her husband, together with his son, Bazgan Sorin (and following the discussion and agreement among all four heirs: the plaintiff in appeal, the respondent Basgan I. Ion, the plaintiff in appeal Basgan Constantin and the plaintiff in appeal Bazgan Sorin) also took possession of the household goods, namely furniture, paintings, as well as the patents, in original.

The plaintiff in appeal shows she performed measures to obtain the rights due following the use of the patents, which represents a tacit acceptance act, being a definitive administration act, which implicates the future, as provided by the provisions of art 690 Civil Code, thus the actions for obtaining and colleting some debts from the debtors of the succession represents tacit acceptance acts of the inheritance.

The plaintiff in appeal show that a great deal of the patents is under her and his son's possession, the plaintiff in appeal Bazgan Sorin, namely: patent no. 22789, issued on 18.05.1934 – Ministry of Industry and Commerce – Kingdom of Romania; brevet no. 24533 issued on 25.11.1953 - Ministry of Industry and Commerce – Kingdom of Romania; brevet no. 37743, issued on 16.01.1945 - Ministry of Industry and Commerce – Kingdom of Romania; patent no. 50615, issued on 25.12.1967 – State Office for Inventions – The Socialist Republic of Romania; patent no. 1527495, issued on 22.04.1968 – Service de la Propriete Industriele – Minister de L'Industrie – Republique Francaise and patent no. 796419, issued on 01.12.1967 – Ufficio Centrale Breveti – Ministero de L'Industria del Commercio e del L'Artigianato – Republica Italiana, patents kept in a safe deposit box in Switzerland, in accordance with the value certificate as of 24.02.2011,

The plaintiff in appeal-plaintiff also shows that in 1988, the two American patents she possessed in original were abusively confiscated from her at the baggage control on Otopeni Airport, namely: patent no. 2103137, issued on 21.12.1937 – U.S. Patent Office and patent no. 3507341, issued on 21.04.1970 - U.S. Patent Office, as well as in relation to this situation proven, the court omitted to rule, though this is also an act of tacit acceptance of the inheritance , namely taking over of goods from the bequest.

The plaintiff in appeal underlines the fact that in the field of successional option what it matters is not the act of disposition per se, but the intention of acceptance manifested by the successor by its conclusion. Therefore, even if the act of disposition would not produce effects (it would be terminated, its nullity would be acknowledged, etc.), it would be a tacit acceptance act, because it expressed the obvious will of the successor to this end.

That is why, it is emphasized that the plaintiff in appeal, by all her proceedings performed as soon as her husband passed away within the 6 months, by her attempts to exploit the patents (the attempts to conclude exploitation contracts of the royalties on the scientific works left by the deceased), even if they produced no effects, she performed clear and obvious acceptance acts of the inheritance, these being acts of disposition, dealing with singular successional assets.

The plaintiff in appeal considers that these acts of disposition were proven with all the evidence administered to the court of first instance.

Another criticism of the decision of the court of first instance deals with the opinion of the court on the signatures of the plaintiff in appeal, as long as it is quite clear that the signatures from the renunciation statements are completely different and do not belong to the plaintiff in appeal, the real signature being the one from the examination and from the statement on the discussions from 1981.

At the same time, it is stated that the signature on pages 51 and 52 from the letters which prove the intension and procedures done for concluding conventions for exploiting the patents left from the deceased are not similar with one from the renunciation statements, as the court of first instance wrongly acknowledged.

Regarding the utilization of letter “s” and “z” in the signature, the plaintiff in appeal shows that the letters she knows are dated 31.01.1981 and 03.03.1981, one month after the death of her husband, 15.12.1980, and two months, respectively and it is absolutely normal to sign herself, as accustomed, after a period of time, following her husband’s death.

Another aspect relates to the wrong interpretation of the court on the alleged statements of denunciation and notices from INFORNOT SYSTEMS SRL.

It is stated that in the decision, the court of first instance acknowledged that the plaintiff in appeal would have given two renunciation statements to inheritance and the plaintiff Basgan Constantin would have given a renunciation statement to inheritance, authentic statement (submitted by the respondent Basgan I. Ion in non-authenticated photo-copy, its lawyer refusing to certify these documents, though in accordance with provisions of art. 112, point 5 of the Code of Civil Procedure, this is mandatory) and which are considered as producing of effects, which would mean that the court of first instance erroneously acknowledged that the plaintiff in appeal is non party to the inheritance, admitting the counterclaim which invoked the non-exercise of the successional option right within the 6-month term for all there plaintiffs.

But, according to the plaintiff in appeal, the decision comprises contradictory dispositions, because admitting the counterclaim, the court shared the opinion according to which the inheritance was not accepted within the 6-month term from the opening of the succession, but in the recitals it is shown and acknowledged that the plaintiff in appeal gave two statements of renunciation, therefore the argumentation contradicts the determination.

It is considered that regarding the plaintiff in appeal, it could have been noticed that either she is non party to the inheritance, as an effect of the renunciation statements, either is non party to the inheritance, as effect of the non-exercise of the successional option within the 6-month term, not being possible to acknowledge both defenses of the respondent – defendant.

The plaintiff in appeal states that the court did not allow the successors' possibility to tacitly accept the inheritance, and subsequently to give up to this, because in such conditions the renunciation is not valid.

Reminding the significance of the concepts of renunciation to inheritance and non-exercise of the successional option within the 6-month term, the plaintiff in appeal shows that the alleged statements were authenticated on 19.03.1998/23.03.1998 and 24.03.1998, which is 18 years after the succession was opened after the death of the deceased, though the court established that the same 6-month term of successional prescription is applicable in case of the renunciation statements.

Thus, if the court of first instance acknowledged that the plaintiff in appeal is non party to the inheritance, because she did not exercise the successional option right within the term, admitting the counterclaim, it is considered that the court rejected and did not take into consideration the evidence produced by which it was proven that the inheritance left after the death of the deceased was tacitly accepted within the 6-month term.

It was also added that the court erroneously reject the defense of the plaintiff in appeal, regarding the notice 109747/09.07.2010 and notice no. 132599/17.08.2010, obtained from the INFONOT Serice because, on the one hand, the notice issued by Notary Public Office "Nedelcu and Associates" can not be considered as having probative value, exactly because of the contents and errors it contained, and, on the other side, because the renunciation statements were not registered in INFONOT or RNOS systems

In such conditions, plaintiff in appeal considers that the notice issued by Notary Public Office "Nedelcu and Associates", based upon which the court of first instance acknowledged as valid the alleged renunciation statements, does not reflect the truth and reality, this even more it is not consistent with the information from INFONOT SYSTEMS, which possesses the database from Chambers of Public Notaries from 1995-2006 and from RNOS, starting with 2007 and until 2010, the date when the notices were released, thus the court of first instance giving a wrong interpretation both to these documents and to the applicable laws, as well as to the tasks of the notarial offices, Chamber of Public Notaries and INFONOT SYSTEMS SRL service.

Another criticism to the solution ruled by the court of first instance deals with the erroneous interpretation of the evidence regarding the "successional pact", motivated by the fact the plaintiff in appeal said there was no understanding, when answering questions 4 and 5 from the respondent's examination.

In this regard, it is mentioned that the plaintiff in appeal does not possess the necessary expertise in the field, but the information provided in the summoning are consistent with what was told to her lawyers, that is why it is considered she did not know what a "successional pact" is.

It is also added that based upon the wording of questions 4 and 5 from the respondent's examination, it results he used the expression of "successional pact" and did not asked whether there was an understating between the heirs, as well as the concept of "tacit acceptance", whose concept was unknown to the plaintiff in appeal, and the court did not show an active role, based upon which, it could have reformulated the question, by clearly mentioning what was supposed to be done in capacity of heir, or at least to explain the significance of the terms.

The plaintiff in appeal also criticizes that the court of first instance limited itself to interpret her answers and the two questions, but without taking into consideration the other two pieces of evidence administered, regarding the existence of an agreement among the heirs.

The plaintiff in appeal – plaintiff says that the existence of an agreement among the heirs on the inheritance also comes out from the examination of the respondent addressed to the plaintiff in appeal Bazgan Sorin, by the means of the answer to question no. 2 and 3, as well as from the statement of the plaintiff in appeal Bazgan Sorin, given on 03.12.2009 at Lausanne, as well as from the statement of the she-plaintiff in appeal and the plaintiff in appeal Basgan Constantin, whose content clearly shows the existence of an agreement on inheritance among all heirs.

The appeal was motivated in law

The appeal request was legally stamped with 19 lei, duty stamp and 0.15 lei judicial stamp.

By the appeal declared, ***plaintiff in appeal – plaintiff Bazgan Sorin*** requested the completed modification of the attacked decision, the cancelation of the heir certificate no. 1/06.01.21998, and of the additional heir certificate no. 9/25.03.2009, acknowledgement of the inheritance capacity of the plaintiff after his father, Bazgan S. Ion, by tacit acceptance of the inheritance, based upon art. 689 of the Civil Code, as well as the rejection of the counterclaim formulated by the respondent – defendant Basgan I. Ion.

The first criticism formulated deals with the wrong interpretation of the evidence produced and which the court of first instance chose to reject, admitting only the evidence administered by the respondent, as well as the wrong interpretation it gave on the acts of tacit acceptance of the inheritance, performed in capacity of heir.

Thus, it was alleged that the court of first instance misinterpreted the statements of the witnesses regarding the fact that the plaintiff in appeal took in possession a golden watch which belonged to the deceased. In the opinion of the plaintiff in appeal – plaintiff, as long as his witness (Z.V.S.), as well as the witness of the respondent (N.H.) confirmed the acquiring of a golden watch, which had belonged to the deceased and not the fact that it represented a good with sentimental value, as erroneously interpreted the court, the presentation of the watch before the court was no longer necessary, and provided that the presence of additional evidence was necessary, based upon art. 129, paragraph 5 of the Code of Civil Procedure, the court could have requested clarifications from the plaintiff in appeal, or even the presentation of the good.

It is considered that the court of first instance misinterpreted this piece of evidence, considering that although the watch was of value, it is a good with sentimental value and that is why it does not represent an act of tacit acceptance of the inheritance, but taking over, possessing or utilization of successional goods are material gestures of tacit acceptance of the inheritance and the value of that watch is not doubted by the court, not to be considered an act of tacit acceptance of the inheritance.

Regarding the photos submitted at the last hearing, of an American alarm clock, located in an unspecified place, as acknowledged by the court, it is mentioned that it is not a regular alarm clock, but it is a valuable one, possessed by the he - plaintiff in appeal and plaintiff in appeal Bazgan Angela, and, which similarly the plaintiff in appeal took it from the bequest of the deceased, soon after the death, which again is a material act of tacit acceptance of the inheritance.

Therefore, the plaintiff in appeal considers that the appropriation of the two valuable objects implies the acceptance of the inheritance, because in capacity of successor, he behaved as a true owner of the goods, thus performing act, which could be done only in

capacity of heredity and which shows without any doubt his intention to accept the inheritance, as stipulated by provisions of art. 689 of the Civil Code.

At the same time, it is added that the unequivocal intention of the plaintiff in appeal to accept the inheritance, pure and simple, also comes out from the act of disposition he did regarding another good from the bequest, namely the painting Schweitzer – Cumpana, which he sold, soon after the death of his father, as stated by witness Zehner Viviane Simona and which the court of first instance wrongly rejected, based upon the statement of Neamtu Hortensia, which said that nothing was take out of the house from str. Argentina no. 25.

It is also said the sincerity and correctness of witness Neamtu Hortensia can be doubted, when she said that the plaintiff in appeal Bazgan Angela did not have a survivor's pension soon after the death of her husband, when the plaintiff in appeal showed the contrary evidence, presenting the Retirement decision no. 33793/29312.1980.

Another reason of appeal is the violation of the court of first instance of the provisions of art. 261, point 5 of the Code of Civil Procedure, according to which, it was obliged to show the reasons in fact and in law, underlying the certainty of the court, as well as the reasons for which the requests of the parties were rejected.

It is considered that the court decision must comprise the reasons in fact and in law, which formed the conviction of the court, as well as the reasons for which the requests of the parties were rejected, their non-observance making the decision illegal and, consequently, it must abolished.

The plaintiff in appeal also shows that the failure to observe these provisions leads to the nullity of the decision, in accordance with provisions of art. 105, paragraph 2 of the Code of Civil Procedure, adding that the legal argumentation must relate on the one hand to the sustaining and defenses of the parties, and on the other hand to the legal provisions applicable (legal framework), and by legal sentence no. 11501/1406.2011, the court only repeated the motivation of the main requests, without mentioning the defense and motivation of the defendant from the statement of defense and counterclaim, though, it founded the rejection of the main requests fully on the sustaining of the defendant, without indicating for which reason considered those arguments applicable and without indicating the applicable legal reasons, based upon which it rejected the main requests and allowed the counterclaim.

Besides, regarding the evidence produced, it is considered that the court of first instance did not rule on them, did not show why it acknowledges and bases its motivation on a certain piece of evidence and does not acknowledge the other evidence produced and does not rule upon them, and the judge's obligation is to prove in writing, why he chose the solution given, why he admitted the sustaining of a party and rejected the ones of the other parties, for which reason ne considered a piece of evidence sincere and the other one insincere, why it applied a norm of law and gave it a certain interpretation is an essential obligation, whose violation leads to the abolishment of the decision.

The plaintiff in appeal – plaintiff says that during the progress of the procedural stages, during the presentation of the evidence, he requested that a notice should be sent to the two notarial offices which issued the heir certificate and of the supplement to the heir certificate, but this request was rejected without any explanation, but in the legal practice it has been practiced that in order to obtain a sound and legal solution in cases dealing with "absolute nullity of the heir certificates", an essential piece of evidence is the original file from the notary office which issued the heir certificate, and later the file is to be sent back to the notarial office. This right has been violated by the court of first instance, which censored the request of the plaintiff in appeal, as well as other two plaintiffs in appeal.

It is highlighted that the minutes of the hearing as of 29.06.2010 and 12.10.2010 show that all three plaintiffs requested the issuance of a notice to the notarial offices to attach to the file the original copy of the successional debate file (and not a copy or an authenticated copy),

as well as of the file related to the additional certificate, showing to the court that this measure is necessary for a comparison between the alleged renunciation statements with the copies submitted by the respondent – defendant Basgan I. Ion, mentioning that I want to indict it as false, and this requires a comparison with the original of the notary file, but the request was rejected without a reason.

The third reason of appeal deals with the misinterpretation of the court of first instance and failure to take into account the evidence produced, on the tacit acceptance of the inheritance within 6-month term provided by the provisions of art. 700 Civil Code.

It is shown that the second tacit act of inheritance acceptance which the court chose to ignore and misinterpreted is represented by the administration documents of the successional assets left from the deceased person.

The plaintiff in appeal states that after the death of his father, together with the plaintiff in appeal Bazgan Angela, and following the discussion and agreement among all four heirs (Bazgan Sorin, the plaintiff in appeal Bazgan Angela, the respondent Basgan I. Ion, the plaintiff in appeal Basgan Constantin) took possession of the household goods, namely furniture, paintings, as well as the patents, in original. The plaintiff in appeal shows he performed measures to obtain the rights due following the use of the patents, which represents a tacit acceptance act, being a definitive administration act, which implicates the future, as provided by the provisions of art 690 Civil Code.

Thus, the plaintiff in appeal considers that the actions for obtaining and collecting some debts from the debtors of the succession represents tacit acceptance acts of the inheritance.

It is also added that all patents of the author (except for those abusively confiscated by Securitate in 1988, at Otopeni) are possessed in original by the plaintiff in appeal and the plaintiff in appeal Bazgan Angela, namely: patent no. 22789, issued on 18.05.1934 – Ministry of Industry and Commerce – Kingdom of Romania; brevet no. 24533 issued on 25.11.1953 - Ministry of Industry and Commerce – Kingdom of Romania; brevet no. 37743, issued on 16.01.1945 - Ministry of Industry and Commerce – Kingdom of Romania; patent no. 50615, issued on 25.12.1967 – State Office for Inventions – The Socialist Republic of Romania; patent no. 1527495, issued on 22.04.1968 – Service de la Propriete Industriele – Minister de L'Industrie – Republique Francaise and patent no. 796419, issued on 01.12.1967 – Ufficio Centrale Breveti – Ministero de L'Industria del Commercio e del L'Artigianato – Republica Italiana, and in the file of the case there are document which certify that the patents are kept in a safe deposit box in Switzerland, in accordance with the value certificate as of 24.02.2011.

Consequently, the plaintiff in appeal – plaintiff considers that the defendant's answer at question no. 36, does nothing but casts a doubt on his sincerity regarding the possession of the patents.

The plaintiff in appeal underlines the fact that in the field of successional option what it matters is not the act of disposition per se, but the intention of acceptance manifested by the successor by its conclusion. Therefore, even if the act of disposition would not produce effects (it would be terminated, its nullity would be acknowledged, etc.), it would be a tacit acceptance act, because it expressed the obvious will of the successor to this end.

That is why, it is emphasized that the plaintiff in appeal, by all his proceedings performed after the decease of the deceased within the 6 months, by the attempts to exploit the patents (the attempts to conclude contracts in order to recover the royalties on the patent above-mentioned, left by the deceased), even if they produced no effects, represent clear and obvious acceptance acts of the inheritance, these being acts of disposition, dealing with singular successional assets, representing acts of tacit acceptance of the inheritance.

The plaintiff in appeal also considers that the court wrongly did not acknowledge that the patents, in original are in his possession, a proof for this being the certificate as of

24.02.2011, issued by the notary Ioanna Coveris from Laussane, the statement of the witnesses Zehner Viviane Simona and Neamtu Simona, the answer to question no. 28 from the examination of the respondent addressed to the plaintiff in appeal Bazgan Angela, as well as the answers to questions no. 4 and 5 of the examination addressed by the respondent to the plaintiff in appeal.

It is also added that the patents left by the deceased are valuable; they enjoy protection and the observation of the court of first instance, which said the patents do not have any value, because their validity value expired is wrong.

The plaintiff in appeal – plaintiff shows that another act of tacit acceptance of the inheritance was that he continued to live with the plaintiff in appeal Bazgan Angela in the domicile of the deceased, as confirmed by the witness proposed by the respondent, Neamtu Hortensia, this being another material act of tacit acceptance of the inheritance, because in capacity of successor, he acted as an owner.

Regarding to this issue, it is considered that the court of first instance was in confusion and misinterpreted this material act, mentioning it does not represent an act of disposition (the court of first instance not being able to see the difference between an act of disposition, such as a sale, donation, etc.) and a material act (consisting of coming into possession, definitive movement of the successor in the domicile of the deceased, demolition of a construction, works with no urgency etc.).

Another aspect wrongly interpreted by the court of first instance, believes the plaintiff in appeal, was represented by the "successional pact", a legal phrase whose signification was unknown to Bazgan Angela, that is why he requested the court of first instance during the examination to reformulate the questions, using simple words, known by her and besides this, the old age, the circumstances and the psychological tension caused her an emotional condition, which had an adverse impact on her.

It is alleged that the court of first instance interpreted the answer at the examination, without taking into account the other evidence produced, regarding the existence of an agreement among the heirs, this also resulting from the examination of the respondent addressed to the plaintiff in appeal Bazgan Sorin, as well as from the statement of the plaintiff in appeal Bazgan Sorin, on 03.12.2009, given at Lausanne, as well as of the plaintiff in appeal Bazgan Angela and plaintiff in appeal Basgan Constantin.

At the same time, it is purported that the existence of an agreement among the successors on the inheritance of the deceased is confirmed by the witnesses, they saying that all heirs got along very well and were in very good relations, due to the very fact there was an agreement, without existing any doubt that one of them violated it and did something encroaching the rights of the other heirs, yet maintain the appearance of a valid understanding.

The fourth reason of appeal deals with the contradiction and inconsistency between the minute and the determination of the civil decision no. 11501/14.06.2011, the text in the ecris system stating: "It rejects the main actions from the two linked files, as unfounded. It admits the counterclaim. With possibility of appeal". And the determination of the hearing is: "It rejects the main action, object of the file no. 26820/299/2009. It rejects the main action as unfoundedunfounded, regarding the plaintiff BAZGAN SORIN, with domicile in Bucharest, district 5, Bd. Mihail Kogalniceanu nr. 19, et. 2, ap. 3, plaintiff BAZGAN CONSTANTIN, with domicile in, BAZGAN ANGELA, with domicile in district 2, Bucharest, MIHAI EMINESCU, nr. 59, ap. 1 and defendant BAZGAN ION, with residence in Bucharest, district 2, str. Parintele Staniloaie, no. 4, object of the file no. 26039/299/299. It allows the counterclaim. It acknowledges that Bazgan Angela is non party to the inheritance of the late Bazgan Ion. With appeal within 15 days from communication. Ruled in public hearing of 14 June 2011", the contradiction and difference between the minute and the determination being

easy to be noticed, as a result of the fact that the minute contains other provisions, namely it refers only to the rejection of two of the requests (these being the main requests of the plaintiffs Bazgan Sorin and Basgan Constantin, which had been stated, and not of plaintiff Bazgan Angela), without ruling on the main request formulated by plaintiff Bazgan Angela and which was the object of the file no. 26820/299/2009, linked with file no. 26030/299/2009 in which civil decision no. 11501/14.06.2011 was ruled, and the determination contains a completely different ruling, namely it rejects the main action, object of the file no. 26820/299/2009, it rejects the main action, regarding plaintiff Bazgan Sorin, plaintiff Bazgan Constantin and Bazgan Angela and acknowledges that only Bazgan Angela is non party to the inheritance.

Thus, between minute and determination there is a contradiction and in accordance with the provisions of art. 258, paragraph 1, of the Code of Civil Procedure, the minute must be considered the real decision ruled by the court, because it reflects the result of the deliberation and, in accordance with provisions of art. 3 of the same norm it is illegal for the judge to change his opinion, after the decision is mentioned.

It is also stated that after the minute is prepared, when the decision is ruled, the judge can not change his opinion. The minute thus prepared briefly presents the determination of the decision and must be reproduced in the decision and it can not be modified. In such situation, the inconsistency, between the minute prepared on the ruling and the determination of the decision entails, in the plaintiff in appeal's opinion, its nullity.

The plaintiff in appeal also considers that the minute must be consistent with the electronic system ecris, and that the ruling from the minute must be similar with the one from the electronic system, but this is not the case, as stated by the excerpt of electronic system ecris one day after the date of ruling, namely 15.06.2011, as well as from 05.07.2011, where the ruling which express the opinion of the court is "it rejects the main actions from the two files linked, as unfounded. It allows the counterclaim. With appeal."

Therefore, in the light of these inconsistencies and contradictions, it results that the court of first instance modified its opinion from the moment of ruling, changing the ruling by the means of the determination, thus violating the provisions of art. 258 of the Code of Civil

It is also stated that the court of first instance also violated the provisions of art. 109, paragraph 5, which state that the clerk of the court shall mention, under signature, at the bottom of the minute or of the decision typed, as applicable, the date of communication and the parties to whom the determination or the decision was communicated, which has not been found mentioned, as well as the provisions of art. 110, paragraph 3, according to which the decision typed shall bear the following information on the last page: date of typing, initials of the writer and of the typist and number of copies, regulations provided by the Internal Regulations of the court and which, in relation to provisions of art. 265 of the Code of Civil Procedure, corroborated with art. 258 of the Code of Civil Procedure entail the nullity.

The appeal was motivated in law

The appeal request was legally stamped with 19 lei, duty stamp and 0.15 lei judicial stamp.

The appeal declared by ***plaintiff in appeal – plaintiff Basgan Sorin*** had no matters of the fact, in law being invoked the provision of art. 282 and the following of the Code of Civil Procedure.

By the appeal declared against the legal decision no. 16764/04.10.2011, ***the plaintiff in appeal – plaintiffs Basgan Angela and Basgan Sorin*** showed they understand to use the appeal reasons formulated against the civil decision no. 11501/14.06.2011, because the completing decision comprises a motivation identical with the motivation of the court of first instance.

On 14 December 2012, by Registry Office was submitted the *written statement of defense*, formulated by the respondent – defendant Basgan Ion towards the appeal declared by Basgan Sorin, which he requested the rejection of the appeal as unfounded.

In his defense, the respondent – defendant showed the court of first instance gave a correct interpretation of the evidence produced in the case, when it was acknowledged that the acts done by Basgan Sorin are not acts of disposition, which could lead to the tacit acceptance of the inheritance.

Regarding the taking over of the wrist watch, the respondent shows that this act is not a disposition one, that the good, irrespective of its sentimental value, as well as the fact that the extremely high value of the good taken over has not been proven, nor its existence. It is also added that the existence of any wall clock, taken over by the plaintiff in appeal has not been proven, nor has it been proven the existence, taken over and capitalization of the painting Scheweitzer – Cumpana.

Regarding the absence of the motivation for the decision, the respondent – defendant considers that the decision attacked was given with the observance of provisions of art. 261, point 5 of the Code of Civil Procedure, comprising in a detailed way the matters of fact and of law underlying the conviction of the court that the action of the plaintiff in appeal – plaintiffs was grounded.

It is also added that the court of first instance soundly ruled upon all evidence brought to the case and motivated its decision based upon them, as well as the fact that the request of the plaintiffs to attach the notarial file in original was justly rejected, as long as copies not contested by the parties were submitted to the file.

According to the respondent – defendant, there is no act of tacit acceptance of the inheritance to take over the goods, such as furniture, paintings and other household items, which continued to be used by the wife of the deceased, not in capacity of heir, but of co-owner, fact which excludes the idea of acts of tacit acceptance of the inheritance.

The respondent considers the movable assets left over by the deceased did not have a high value and were taken over by Bazgan Angela in capacity of co-owner and not by the plaintiff in appeal Bazgan Sorin and the fact that the plaintiff lived together with his mother in the building does not represent an act of acceptance of the inheritance, because the building was not part of the bequest.

Regarding the patents, it is said that their mere existence in the domicile of the deceased does not represent an act of tacit acceptance of the inheritance, and the efforts for exploitation of the patents could not have been done by the plaintiff in appeal, because he did not possess the financial means to launch such actions and did not have the expertise and necessary knowledge, at the time being a student.

The respondent underlines that the existence of acts of disposition or of definitive administration of the patents, within the 6-month term from the decease of the author has not been proven.

The respondent says the real reason of this legal procedure does not represent the non-summoning of the heirs at the debate of the inheritance, but the enactment of the Law no. 214/2007, when the capitalization of the author's patents is again of actuality, adding that nothing has prevented the plaintiffs all these years to approach a notary office with a simple statement of acceptance of the inheritance or with a request on its debate.

The respondent considers he was the only heir who accepted the inheritance in express manner, within the legal term, and there was no tacit or express acceptance acts of the inheritance from the plaintiff in appeal – plaintiff.

In law, the provisions of art. 115, of the Code of Civil Procedure were invoked.

On 22 January 2013, by Registry Office was submitted the w*ritten statement of defense*, formulated by the respondent – defendant Basgan Ion towards the appeal declared by

plaintiff in appeal – plaintiff Basgan Angela, by which he requested the rejection of the appeal as unfounded.

In his defense, the respondent – defendant showed the court of first instance gave a correct interpretation of the evidence produced in the case, considering that Bazgan Angela did not accept the inheritance left over by the late Basgan I. Ion.

It is stated that the failure to accept within the prescription term, mentioned by art.700 of the Civil Code is clearly mentioned also in the contents of "Statement on the successional pact", within which the plaintiff in appeal mentions in the final part of the last paragraph (...) "I have not done any action to debate the inheritance until I found out that Ginel Basgan unilaterally broke the successional pact and without informing us", the plaintiff's statements being a veritable confession done before the court.

The respondent said that a successional pact has never been concluded among the heirs, the most important proof for the support of this statement being the plaintiff in appeal's answer at questions no. 4 and 5 of the examination, which confirms the absence of an agreement on the bequest left after the deceased Bazgan Ion.

The respondent considers that the sustaining of the plaintiff in appeal regarding the confiscation of the assets by the Romanian state can not be accepted because: the patents had no value then, due to their prescription; the bequest comprised only a very small quota of the property right upon the property from str. Cernica; there no legal regulations enabling the confiscation of the property by the Romanian state, as long as this was the object of an inheritance and there was no hindrance to debate the inheritance after 1990, after the abolition of the former regime.

It is also added that, the request for a survivor's pension does not represent an act of disposition or of definitive administration of the deceased's patrimony, and regarding the entering into possession and usage of the successional assets, two aspects must be considered: the absence of valuable goods, which by their nature, number and value should exclude the concept of or family memorabilia and the performance of these acts in capacity of heredity or as joint co-owner, in relation to provisions of art. 689, second thesis of the Civil Code.

The respondent – defendant considers it is hard to believe that a heir interested on the bequest remains passive for 30 years, after which he files a sue, stating that he had never known about the debate of the inheritance and could not do any act of express acceptance of it, because of an oral successional pact, by which the heir tried to save the successional goods from confiscation by the Romanian state.

The respondent considers that the real reason of this legal action is the enactment of Law no. 214/2007, which came into force in 2008, since the author's invention patents may be exploited.

The respondent highlights he was the only successor who expressly accepted the inheritance within the 6-month term, as stated in the statement authenticated under no. 2190/14.04.1981 by the State Notary Office of Bucharest Municipality and was the only successor who took in possession the bequest and took care of them and from the plaintiff in appeal – plaintiff there has been no acts of tacit or express acceptance of the inheritance.

As for the patents, it is stated that their original was lost in the earthquake of 1977, the only things the parties can have now are photocopies or duplicates from the National Archives. Even if the original copies of these patents were possessed by the plaintiff in appeal, this would not represent an act of tacit acceptance of the inheritance, because they remained in the last domicile of the deceased.

The respondent considers there has been no proof on the existence of disposition acts or of definitive administration of these patents, which could represent genuine acts of tacit acceptance of the inheritance, the witnesses in the case only made some generic references on the existence of some steps on the exploitation of the patents.

It is also added that the steps for the exploitation of the patents could not have been done by Angela Bazgan, also because she did not possess the financial means to initiate such actions.

Regarding the failure to state reasons on the decision, the respondent – defendant considers that the decision attacked was issued with the observance of provisions of art. 261, point 5 of the Code of Civil Procedure, comprising in a detailed way the matters of fact and of law underlying the conviction of the court that the action of the plaintiff in appeal – plaintiffs was unfounded.

It is also added that the court of first instance soundly ruled upon all evidence brought to the case and motivated its decision based upon them, as well as the fact that the request of the plaintiffs to attach the notarial file in original was justly rejected, as long as copies not contested by the parties were submitted to the file.

In law were invoked the dispositions of art. 115 and following of the Code of Civil Procedure.

On 1 April 2013, in public hearing, *an application for a joiner with a personal interest* and subsidiarily, *an application for a joinder in the interests of the plaintiff in appeal – plaintiffs* were submitted in the file of the case by Brigitte Magdalene Liselotte Stenzel, Marie Jeanne Violette Thibaudet, Jean Marie Thibaudet, Madeleine Marie Thibaudet, requesting the admission of the appeals and on the merits of the case the cancelation of the heir certificate no. 1/06.01.21998, issued by Notary Public Office "Gaspar Gabriela" and of the additional heir certificate no. 9/25.03.2009, issued by Notary Public Office "Nedelcu and Associates".

In fact the interveners say they are the heirs of Jean – Philibert Thibaudet, to whom the late Ion Bazgan assigned in 22 April 1940 all rights and obligations he had upon the patent no. 2103137, granted by Washing Office of Brevets, on 21 December 1937, with the title – Rotational Machine for Wells.

In law were invoked the provisions of art. 49, paragraph 1, paragraph 2 and paragraph 3 of the Code of Civil Procedure.

Acknowledging that the appeal declared by Basgan Constantin was not stamped properly, though the plaintiff in appeal – plaintiff was notified to this effect, by the hearing minute as of 17 December 2012, the court *cancelled the appeal* he declared as unstamped, and the same solution shall be mentioned in the determination of this decision.

The applications for a joinder with a personal interest in the interests of the plaintiff in appeal – plaintiffs, initiated by Brigitte Magdalene Liselotte Stenzel, Marie Jeanne Violette Thibaudet, Jean Marie Thibaudet, Madeleine Marie Thibaudet were rejected in accordance with hearing minute as of 27 May 2013.

Analyzing the acts and proceedings regarding the appeals declared by the plaintiff in appeal – plaintiffs Bazgan Angela and Bazgan Sorin, the court acknowledges the following:

First, it must be said the court shall analyze the two appeals together, considering the similar criticisms formulated by the plaintiff in appeal – plaintiffs.

1. The appeal reason regarding *the failure to state reasons* by the court of first instance is not grounded.

In accordance with provisions of art. 261, point 5 of the Code of Civil Procedure, "the decision shall be ruled on behalf of the law and shall comprise… the fact and the law reasons underlying the conviction of the court, as well as those for which the requests of the parties were rejected."

Thus, the obligation of the judge to prove in writing sufficed with the solution given, why he admitted the sustaining of a party and rejected those of the other parties, which he considered a piece of evidence sincere and another one insincere, why he applied a certain

law norm or gave it a certain interpretation is an essential obligation, whose violating leads to the abolishment of the decision.

Nevertheless, in order to motivate a decision, the judge does not have to answer especially to all arguments invoked by the parties, being enough that based on the decision it should result he implicitly answered to all arguments.

Analyzing both the civil decision no. 11501/14 June 2011, as well as decision completing this decision, it is noticed that the court of first instance motivated, with the observance of the legal provisions, the rejection solution of the requests linked and the admission of the counterclaim formulated by the respondent – defendant Basgan I. Ion.

It is true that the court of first instance did not answer punctually to all statements of the plaintiff in appeal – plaintiffs, but it analyzed the essential sustaining on the absence of legality of the heir certificated contested and the acts of tacit acceptance of the inheritance, analyzed the evidence brought to the case and corroborated them, justly rejecting certain statements and acknowledging others.

In such conditions, it is obviously unfounded the criticism formulated by both plaintiffs in appeal, according to whom the motivation of the court is fully based upon the opinion of the defendant and that the court of first instance had no personal opinion or conviction on any issue.

As long as the court analyzed the written evidence submitted to the file, statements of the witnesses and the answers provided by the parties during the examination, it can not be said that the motivation of the court exclusively relied on the defenses formulated by the defendant, even if it found the defenses of the defendant and the sustaining from the counterclaim well-founded.

At the same time it can not be considered as element of nullity for the decision the absence of the defense and motivation of the defendant from the statement of defense and counterclaim, these petitions being present in the file of the case and could have been analyzed both by the court of first instance, as well as by the legal control bodies.

Consequently, the court acknowledges that both the decision of the court of first instance and the decision on the completing request were motivated with the observance of the provisions of art. 261 of the Code of Civil Procedure and for this reason it shall reject the criticisms formulated by the plaintiffs in appeal on the failure to state reasons underlying the decisions.

2. The appeal reason on the *procedural aspects on the preparation, publication of the minute (solution) ruled in the file*, is not founded, too.

In accordance the with provisions of art. 258, “after a majority is reached, the determination of the decision shall be prepared right away, which shall be signed, under the penalty of nullity, by judges and which must state, when applicable, the separate opinion of the minority judges”.

In accordance with the provisions of art. 105 of the internal regulation of the courts, approved by Decision of the Superior Council of the Magistracy no. 387/2005, “the result of the deliberation shall be written down in a minute, which shall be written in the summons, on the appeal or second appeal petition or on the last conclusion. The transcription of the minute, fully or an excerpt, in the registers of the court rooms on paper support shall be done by the president of the panel or by another judge, member of it, whereas the meeting clerk shall fill in the computer system”.

Thus, from the corroborate interpretation of the two laws, it results that the determination mentioned in art. 258 Code of Civil Procedure is actually the minute, namely the solution, in brief, reached by the judge, following deliberation. Moreover, it is acknowledged that the solution representing the result of the deliberation is the one found in the file of the case, signed by the judge, and considering the court clerk must fill in the

computer system, it is he who has the responsibility for the conformity of the solution published in this method.

The lack of consistency between the solution in the file and the one published in the ecris system can entail disciplinary sanctions, as stated by the plaintiff in appeal – plaintiffs, issues not covered by the appeal court, neither does it entail the nullity of the decision, nor can it represent a reason to consider that the judge changed the solution after ruling.

As for the consistency between the minute and determination, it is acknowledged first of all that the minute represents the solution in brief, and the determination must comprise the solution in its entirety, together with the names and domiciles of the parties, these differences can not represent inconsistencies between the minute and determination, likely to lead to the nullity of the decision.

In this case, it can be noticed that the minute was hand-written, on the reverse of page 424 of second volume of the file no. 26030/299/2009, and between this minute and the solution found in the determination of the decision no. 11501/14 of June 2011 there is no difference, in both places the rejection of the main action of file no. 26820/299/2009 is mentioned, and that the main action, object of file no. 26030/299/2009 is rejected as not founded, the counterclaim is allowed and it is acknowledged that Bazgan Angela is non party to the inheritance of the late Basgan Ion.

Once the judge clearly mentioned the files in which he rejected the main actions, namely file no. 26820/299/2009, whose plaintiff is Bazgan Angela and file no. 26030/299/2009, whose plaintiff is Bazgan Sorin, one can not say that, actually, the way the court of first instance solve the case, left not settled the action filed by plaintiff in appeal – plaintiff Bazgan Angela.

It is quite clear that by the solution written on one of the pages of the file, in accordance with legal provisions, the court of first instance ruled on the petition formulated by plaintiff in appeal Bazgan Angela, whereas the mentions in ecris can not represent a reason for appeal, as shown above.

Regarding the modification of the minute, namely changing the solution ruled by the civil decision no. 11501 on the counterclaim, criticism formulated by the plaintiff in appeal – plaintiff Bazgan Angela, it is acknowledged that in accordance with provisions of art. 258, paragraph 3 Code of Civil Procedure, “after ruling the decision, no change can modify his opinion”, whereas, before ruling the decision, the judges can change their opinion.

Despite all these, in this case it could not be proven in any way that the court of first instance modified the solution ruled on the counterclaim initiated against Bazgan Angela.

The allegations of the plaintiff in appeal – plaintiff that under the correcting liquid word “no” could be there, which would have led to the conclusion that the plaintiff in appeal isn’t a non party to the inheritance, and her action would have been admitted, as long as the word or letters covered can not be noticed.

Moreover, it would have been illogical to be admitted that the word “no” could have been found on the minute, as long as above that row, one can found the unchanged solution, which admits the counterclaim by which it was required to be acknowledged that all plaintiffs are non party to the inheritance.

Consequently, in the absence of concrete proof that the solution written in the file was changed after the ruling, the criticisms mentioned by the plaintiff in appeal – plaintiffs, according to which the court of first instance changed the solution shall not be accepted.

As for the violation of provisions art 109, paragraph 5 of the internal regulation, one can notice that in accordance with this law “the clerk of the court shall mention, under signature, on the bottom of the minute or of the solution prepared, as the case may be, the date of communication and the parties to whom the determination or the decision was communicated”. The text requiring the communication of the determination refers to penal

cases and not civil ones, and judging from the handwritten mentions on the last page of the decision criticized, it results that the court clerk mentioned the date when the communications were made and their number, therefore this criticism lacks any foundation.

As for the violation of provisions of art. 110, paragraph 3 from the Regulations, which provide that "the decisions typed shall bear the following information on the last page: date of typing, initials of the writer and of the typist and number of copies and in case of the judiciary control bodies, the name of the judges which ruled the decisions submitted to control shall be written down", it must be acknowledged that the lack of these mentions shall, under no circumstances, entail the nullity of the decision, in the absence of a proof of damage, but these are aspects on the evidence of the decisions.

In accordance with the law, the judiciary control aims the decisions of the courts of first instance and the way they are motivated, but the administrative aspects regarding the evidence of the decisions, date of preparation or communication, thus such criticisms of the plaintiff in appeal – plaintiffs are in the field of abusive exercise of rights.

3. The appeal reason regarding the *wrongful rejection of the petition formulated by the plaintiffs to attach the original of the notarial file,* is not founded.

Regarding this, it must be acknowledged that on 29 June 2010 authenticated copies of the successional files judged by the court were requested from public notary Gabriela Gaspar and Notary Public Office "Nedelcu and Associates", which were submitted to the file – pages 151-206, in authenticated copy. The conformity of the documents submitted with the original located in the notarial archive has not been contested by the parties; no accusation of forgery on the documents submitted has been filed.

In such conditions, the criticism regarding of the absence of the successional files in original in the file of the case can not be accepted. As long as the plaintiff in appeal – plaintiffs would have formulated an express request to indict the documents as false, the attachment of the original copies could have been considered; in the absence of such a request, the certified copies are relevant in the case. Moreover, as long as they knew they did not sign contested notarial statements, the plaintiffs' request to confront the copy with the original seems illogical, in order to decide whether to follow the procedure provided by art. 180-184 of the Code of Civil Procedure.

Consequently, thus criticism formulated by the plaintiff in appeal – plaintiff Basgan Angela is not founded.

4. The appeal reason on the *wrong interpretation of the evidence produced on the tacit acceptance of the inheritance by the plaintiff in appeal – plaintiffs* can not be accepted.

On this aspect, the court acknowledges that the juridical act of successional option is the one by which the holder of the successional option right has the possibility to choose between accepting the inheritance pure and simple, to accept the inheritance under inventory benefit or to give up the inheritance.

In accordance with provisions of art. 700 of the civil Code, "the right to accept the inheritance shall be prescribed after a 6-month term, calculated from the date the inheritance is opened", thus the holder of the successional option right can exercise this right within 6 months from the death of the author.

In this case, judging the documents of the file, it can not be contested the fact that only the respondent – defendant Basgan I. Ion accepted the inheritance of the late Basgan S. Ion, expressly, by the statement authenticated under no. 2190/14.04.1981 by the State Notary Office of Bucharest Municipality.

As for the plaintiff in appeal – plaintiffs Basgan Angela and Bazgan Sorin, they did not give statements of tacit acceptance of the inheritance, that's why the incidence of provisions of art. 689 of the Civil Code must be checked in their case, which states: "the

acceptance (…) is tacit and the heir does an act, which could have been done only under his capacity of heir, and which definitely entail his intention of acceptation".

Starting from this law, corroborated with the provisions of art. 690 and 691 of the Civil Code, it can be acknowledged that the essence of tacit acceptance is the manifestation of the undoubted intention to accept the inheritance, so that two conditions must be met, in order to qualify certain acts performed by the heir as acts of tacit acceptance, namely: the act may be done only in capacity of heir and the heir must entail the mandatory intention of accepting the inheritance.

Consequently, as long as a certain act performed by the heir has an equivocal character, it can no longer be qualified as an act of tacit acceptance of the inheritance.

Analyzing the sustaining of the plaintiff in appeal – plaintiffs Bazgan Angela and Bazgan Sorin regarding the acts performed after the death of the late Basgan S. Ion, in the light of those mentioned above, the court acknowledges that the court of first instance correctly acknowledged that they did not do acts of tacit acceptance of the inheritance and are non party to the inheritance of the deceased.

Thus, in regard to the statements of the both plaintiffs in appeal, that after the death of Basgan S. Ion, they continued to live in the building from str. Argentina no. 25, district 1 and came into possession and administration of the successional goods, it shall be acknowledged that in this case, the use of the building and of the household goods does not signify an act of tacit acceptance of the inheritance.

Analyzing the documents submitted to the file of the case (Sale-Purchase Contract no. N91/11/11/1996 concluded between C.G.M.B. – A.F.I. and the plaintiff in appeal – plaintiff Bazgan Angela), as well as from the answers from the examination of the plaintiffs in appeal (questions 6-8 from the examination of the she-plaintiff in appeal and questions 10-11 from the examination of the he-plaintiff in appeal), it comes out that the building from str. Argentina no. 25 was not in the patrimony of Basgan S. I at the date of death of his death, so it was not part of the bequest, that is why the subsequent usage of the building by the plaintiffs in appeal was not done in capacity of heirs, but in capacity of tenants, with their own locative rights.

If the building was not part of the bequest, one can not talk about the use of administration of a successional good which could signify a tacit acceptance of the inheritance.

As for the household goods, both plaintiffs in appeal admitted that after the earthquake from 1977, the goods from the building in bd. Magheru were lost (answer at question no. 9 from the examination of the she-plaintiff in appeal), therefore for the movable goods obtained after this date, as a result of the fact they have been obtained during the marriage between the deceased and the plaintiff in appeal, they shall be considered joint assets and that is why the defense of the respondent is right when he said that the she-plaintiff in appeal – plaintiff continued to use the household goods after the death of her husband in capacity of co-owner.

At the death of one of the spouses, the joint ownership upon the joint goods ceases, and as long as it can not be proven that the goods of the surviving wife were separated from the ones which belonged to the husband, the use of the goods by the plaintiff in appeal does not represent an act of tacit acceptance of the inheritance.

Similarly, the plaintiff in appeal – plaintiff Bazgan Sorin, who continued to live in the building following the rental contract concluded by his parents, and used the household goods, owned in co-ownership by his mother.

Consequently, the court of first instance was right when it considered that the continued use of the apartment from str. Argentina no. 25 does not signify acts of tacit acceptance of the inheritance, because their nature is equivocal.

Regarding the existence of a successional pact concluded among the heirs of the deceased Basgan S. Ion, which could signify an acceptance act and mutual recognition of the capacity of heir, it can be acknowledged that its existence could not be proven

Thus, the existence of the successional pact (convention agreed among the heirs) was invoked by the plaintiff in appeal – plaintiff Bazgan Angela by the written statement of defense to the counterclaim formulated by the respondent – defendant Basgan I. Ion and later, even the plaintiff in appeal doubted during the examination on the existence of this convention (answer to question no. 4).

On this issue, the court shall not accept the criticisms formulated by the plaintiff in appeal – plaintiff, namely, it did not understand the concept from the question, the concept of "pact", synonymous with understanding, convention, because it is not a legal form, so that to need a special expertise in order to understand it.

At the same time, considering that the plaintiff in appeal – plaintiff initiated a trial, she should have read the summoning, as well as the written statement of defense written by the lawyer and to request explanations, if she did not understand certain terms, and she had not possibility to invoke her own guilt in the appeal (of not having read the petitions), while trying to eliminate answers contrary to her interests.

The active role of the judge, regulated by provisions of art. 129, paragraph 5, Code of Civil Procedure, does not entail the rephrasing of the questions from the examination by the other party, because, on the one hand, such an action could disadvantage one of the parties, and on the other hand, the purpose of the examination is exactly to surprise, to try to obtain a confession from the questioned part.

As for the corroboration of the evidence when proving the successional pact, the court of first instance correctly did not remove the answer of the she-plaintiff in appeal in relation with the answer of the plaintiff in appeal – Bazgan Sorin, as long as they had the same interests in the case. On the other hand, analyzing the statements of the witnesses, contrary to what the plaintiff in appeal – plaintiff believes, the existence of an successional pact is not shown, but only the normal family relations, the good understanding among the members of a family can not have the significance of a successional pact.

Consequently, it can not be accepted the criticism on the wrong interpretation of the evidence on the existence of the successional pact, criticism formulated by both plaintiffs in appeal.

As for the steps made in order to exploit the patents obtained by the late Basgan S. Ion, invoked by both plaintiff in appeal – plaintiffs, in order to prove the tacit acceptance of the inheritance, it can be acknowledged, first of all, that the mere possession of these patents is not enough to have the value of tacit acceptance of the inheritance.

Regarding these patents, the court acknowledges that, although this case does not tackle the issue of the validity of the patents before or after the enactment of Law no. 214/2007, one can not ignore the answer to question 13 from the examination of the she-plaintiff in appeal – plaintiff, who said there was no discussion on the inheritance of her husband, because there was nothing to inherit. So, if there was no inheritance, and the patents belonged to the Romanian state, as well, the statements on the activities done by both plaintiffs in appeal in order to exploit those patents have no justification.

Even so, analyzing the documents submitted by the plaintiffs in appeal (correspondence between the plaintiff in appeal – plaintiff Bazgan Angela and a person named Mavromatis) does not clearly show that the plaintiffs in appeal did approaches in order to exploit the patents. Thus, in a letter dated 31.01.1981, there is a reference to a collaboration intention on a mandate signed on 05.12.1980 and on a later document signed on 03.03.1981, a collaboration convention is mentioned, on the recovery of the rights arising from "Basgan

Case", on the patents from USA and other countries, without proving concrete approaches in order to exploit those patents.

At the same time, one can not ignore the fact that those documents originate only from one of the parties of this case (Bazgan Angela), and the participation of the plaintiff in appeal Basgan Sorin to possible negotiations does not come out of them.

Judging the document named "Act of Incorporation of a Foundation", document prepared much later after the term for exercising the successional option right, but submitted as an attempt to prove that the plaintiffs in appeal disposed of successional goods, it result that Angela and Sorin Bazgan created the "Ion Basgan Foundation" and assigned to the foundation their rights from the patent US no. 2103137, issued in 1937, patent which had been assigned by the late Basgan S. Ion as early as 1940.

Regarding to the same patent, no. 2103137, it is stated in the appeal petition initiated by Bazgan Angela, that it had been confiscated in 1988 on Otopeni airport by the Romanian authorities, but as stated on the document on page 78, this patent was assigned in 1940, therefore no longer part of the bequest and hard to believe that still existed in original in the possession of the family.

Consequently, the court acknowledges that analyzing the documents submitted by the plaintiffs in appeal, there is no clear indication that within the 6-month term when they could accept the inheritance, they disposed in one way or another on the patents that belonged to the deceased or that they did something firm in order to exploit them, actions which could have value of acts of tacit acceptance of the inheritance.

Regarding the sustaining of the plaintiff in appeal – plaintiff Bazgan Sorin, on the appropriation of some valuable goods from the bequest (golden wrist watch, valuable alarm clock and a painting Schweitzer - Cumpana), it can be acknowledged first of all, that the appropriation of these goods was claimed neither by the initial summoning, nor by the explanatory request, petitions by which the plaintiff in appeal – plaintiff generically indicated the fact that he had taken over the goods from the building from str. Argentina no. 25, where he continued to live.

The appropriation of these goods was invoked only towards the end of the trial, first by the witness Zehner Viviane Simona, proposed by the plaintiff in appeal – plaintiff, and who referred to the fact the latter took a watch (possible Omega), which had belonged to his late father, as well as some paintings. The statement of the witness on the appropriation of the watch can be associated with the one of witness Neamtu Hortensia, but as the court of first instance correctly acknowledged, the witness referred to a wrist watch, whose appropriation can have the significance of a family remembrance, and in such a case we do not have an act of tacit acceptance of the inheritance.

On the other hand, the appropriation of the valuable alarm clock, highlighted in the appeal petition was not proven in any way, the presentation of some photos in which an alarm clock is present does not signify the appropriation of the good. Moreover, the court acknowledges that the respondent – defendant correctly highlighted the inconsistency between the appeal petition of plaintiff in appeal Bazgan Sorin, namely that the very clock is still under the possession of both plaintiff in appeal – plaintiffs, considering that they have different domiciles (the plaintiff in appeal Bazgan has not lived in the country since 1986, as he stated in the summons, and the she-plaintiff in appeal – plaintiff continues to live in Romania).

As for the appropriation of the painting Schweitzer – Cumpana, the statements of the witnesses Zehner and Neamtu are contradictory, so additional evidence is required in order to accept one of the statements. The court considers that once the plaintiff in appeal – plaintiff said it alienated that painting, he could have submitted the sale document, being known that the selling of a valuable painting requires some formalities.

In such conditions, it is acknowledged that the court of first instance correctly appreciated that the plaintiff in appeal – plaintiff Bazgan Sorin did not perform unequivocal acts, which could show his obvious intention to accept the inheritance after the late Basgan S. Ion, that is why it rejected his action and allowed the counterclaim of the respondent – defendant.

As for the plaintiff in appeal – plaintiff Bazgan Angela it can be acknowledged that obtaining a survivor's pension after the late Basgan S. Ion can not be qualified as act acceptance of the inheritance.

Based upon Decision no. 33793/29.12.1980 and no. 33793/17.08.1991, the plaintiff in appeal – plaintiff Bazgan Angela benefited from survivor's pension following her husband Basgan S. Ion, in accordance with Law no. 3/1977.

In in accordance with Law no. 3/1997, on state pensions and social assistance, the survivor's pension was granted in certain conditions to the wife and children, the wife being entitled to survivor's pension for all her life after she turned 55, if there had been at least 15 years of marriage. If the duration of the marriage was shorter, but at least of 1o years, the pension was granted indirect ratio with the years of marriage (art. 39 and art. 41 of the Law).

Moreover, judging from the correlative interpretation of the provisions of art. 39 – 44 of the Law, it results that in order for the plaintiff in appeal – plaintiff to benefit from the law, she had to have the capacity of wife of the deceased, beneficiary of a public pension and the law did not require the capacity of heir, additionally.

Consequently, the court of first instance correctly acknowledged that the survivor's pension is an own and personal good of the surviving spouse, directly arising from her patrimony and the request for survivor's pension does not represent an act of tacit acceptance of the inheritance.

Moreover, regarding the plaintiff in appeal – plaintiff Bazgan Angela, it can be noticed that she noticed by the statement authenticated under no. 252/23 March 1998 at public notary Gabriela Gaspar that she had not done any acts or deeds to accept the inheritance after her deceased husband Basgan S. Ion.

Regarding the authenticated statements, by which the she-plaintiff in appeal admitted she had not done any acts to accept the inheritance, it shall be acknowledged from the analysis of the court of first instance that this court did not consider them acts of renunciation to inheritance (contrary to the she-plaintiff in appeal's opinion), but only a reference of the probative force of a genuine document was done.

In this respect, in accordance with to art. 1171 and art. 1173 of the Civil Code, the genuine document has the full faith regarding a person, about the conventions and dispositions mentioned, so in the extent the person chose not to recognize its signature from those documents, the plaintiff in appeal could have indicted the statement as false, which she did not do, and that is why those documents shall be considered genuine. At the same time, the plaintiff in appeal's admission that she had not done acts to accept the inheritance can be associated with her answer at the examination, when she could not indicate which acts of acceptance of the inheritance within the 6-month term, provide by art. 700 of the Civil Code (the criticisms regarding the inability to understand the concept of inheritance acceptance shall not be accepted, as shown above, when the existence of the successional pact was analyzed).

Consequently, acknowledging that the plaintiff in appeal admitted by genuine documents that she had not done acts to accept the inheritance, the court notices that it was correct when it was considered that the plaintiff in appeal – plaintiff is non party to the inheritance of her late husband, Basgan S. Ion.

Considering the reasons of matter and law mentioned above, based upon art. 689, 690, art. 700 and art. 1173 of the Civil Code, the court notices that the decisions ruled by the court

of first instance are founded and legal, this is why, observing the provisions of art. 296 of the Code of Civil Procedure, the court is to reject the appeals filed by the plaintiff in appeal – plaintiffs Bazgan Angela and Bazgan Sorin as being unfounded.

FOR THESE REASONS,
IN THE NAME OF THE LAW,
THE COURT RULES

It cancels as unstamped the appeal declared by **Basgan Constantin.**

It rejects as unfounded the appeals filed by the plaintiff in appeal – plaintiffs **Bazgan Angela** and **Bazgan Sorin,** with chosen domicile at lawyer Zodila Elena Petruta, from Bucharest, district 6, Bd. General Vasile Milea no. 7, bl. B1, sc. 1, et. 4, ap. 18, against Civil Decision no. 11501/14.06.2011, ruled by Bucharest District 1 Court in file no. 26030/299/2009 and of the Civil Decision no. 16764.04.1.2011, ruled by Bucharest District 1 Court in the same file against the respondent – defendant **Basgan Ion,** with residence in Bucharest, district 2, str. Parintele Staniloaie, no. 4, and respondent - plaintiff **Bazgan Constantin,** with chosen domicile in Layer's Office "Draghici Cristian Constantin", Bucharest, district 5, Bd. Mihail Kogalniceanu nr. 19, et. 2, ap. 3.

With second appeal within 15 days from communication

Ruled in public hearing, today, 10 June 2013.

President	**Judge**	**Court clerk**
Cristina Vilceleanu	**Iulia Craiu**	**Mihaela Popovici**

Drafted at: Jud I.C. / Tehnored A.M.
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Bucharest District 1 Court
Judge of the court of first instance – Cristina Nicoleta Ghita

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"The undersigned, **Tudorel Ilie,** authorized interpreter and translator for English language, on the grounds of authorization no. 22603 of 17 July 2008, issued by the Ministry of Justice from Romania, I certify the exactness of the translation made from Romanian into English, that the text presented has been translated completely, without omissions and that during the translation the contents and meaning of the document have not been modified."

TRANSLATOR