

The Applicability of the Principle of Confidentiality in Relation to the Successors of Bank Account Holders

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Abstract

The issue analysed concerns determining how the right of the successors of a bank account holder to access the confidential information contained therein can be reconciled with the bank's duty to maintain banking secrecy even after the account holder's death. Specifically, it aims to provide a uniform interpretation of the provisions establishing the moment from which heirs can be provided with account statements of their predecessors, within the limits of proving justified reasons. We consider that, insofar as the successors of account holders demonstrate a legitimate interest in being provided with information regarding the deceased's account status for the period prior to their death, their request is admissible, justifying an exception to the limits imposed by banking secrecy.

Keywords: principle of confidentiality, bank account, account holder's heirs, data disclosure, justified reasons.

JEL Classification: K12

DOI: 10.62768/PLPA/2025/14/1/11

Please cite this article as: Gavrilescu, Luiza Cristina, „The Applicability of the Principle of Confidentiality in Relation to the Successors of Bank Account Holders”, <i>Perspectives of Law and Public Administration</i> 14, no. 1 (March 2025): 175-188.	Article History Received: 5 November 2024 Revised: 25 January 2025 Accepted: 14 February 2025
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1. Preliminary arguments

The interest in analysing the current issue was generated by the notification regarding the legal matters that are the subject of the appeal in the interest of the law registered under no. 679/1/2024 of the High Court of Cassation and Justice, for which we have submitted an opinion that will be presented in more detail in this study. By request no. 1803/A/8/19.03.2024, promoted by the Galați Court of Appeal to unify the practice at the level of all judicial courts, the High Court of Cassation and Justice was requested to pronounce an appeal in the interest of the law.

The opinion we formulated in response to the request is in favour of admitting the heirs' request to be provided with information regarding the status of the deceased's accounts prior to the account holder's death, insofar as they demonstrate a legitimate interest that justifies an exception to the limits imposed by banking secrecy.

In support of the expressed opinion, we present the following arguments based

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on the decisions of the courts relevant to the matter:

The object of the cases in which there was inconsistent practice was the obligation of banking institutions to allow the heirs of bank account holders access to the deceased's accounts and to issue bank statements for these accounts, from their opening until the date of the request.

Some of the requests submitted to the court were resolved favourably, while others were denied, with the reasoning that transactions made before the account holder's death are non-patrimonial rights that do not transfer to the heirs and that the bank cannot provide them with information of a confidential nature.

The response to this request involved analysing several aspects relevant to the case:

2. Evaluation of the patrimonial or non-patrimonial nature of the heirs' right to information

In a first approach, a distinction was made between the right to withdraw sums from the account, which is a patrimonial right, and the right to know the value of the sums in the account, which would be a non-patrimonial right. Banks argued that only after the account holder's death do the heirs have the legal right to know the evolution of the estate, including actions on bank accounts, without having the right to scrutinize the actions of the deceased.

It was highlighted that upon a person's death, only the patrimonial rights and obligations of the deceased are transferred to the heirs, while personal non-patrimonial rights, such as the requested information regarding accounts, are non-transferable by inheritance. Specifically, the account holder's right to information regarding the credit or debit balance of the account and the status of banking operations was classified by banking institutions as a non-patrimonial right, which is not subject to inheritance.

In a second approach, the right to information regarding any operation performed on the units constituted in the account managed by the banking institution, regardless of when these operations were performed, falls within the effective exercise of the patrimonial right over this account and can be exercised by the account holder's heirs, not being a right closely linked to the deceased's person.

Moreover, even if the right to request information of a confidential nature is not considered patrimonial, its purpose is to valorise a patrimonial right. Thus, obtaining this information is necessary for exercising patrimonial rights acquired through inheritance.²

² The considerations of the High Court of Cassation and Justice from the decision Appeal in the interest of law no. 32/2008.

3. Determining the derived or own nature of the heirs' right to information

3.1. If considered a derived right, acquired through inheritance, under common law

Regarding the transmission through inheritance, the provisions of Articles 953 and 954 paragraph 910 of the Civil Code were invoked. According to Article 953 of the Civil Code, inheritance is the transmission of the estate of a deceased natural person to one or more living persons, and according to Article 954 of the Civil Code, a person's inheritance opens at the moment of their death. Thus, the heir subrogates into the contractual position of the deceased and benefits from the contractual clause based on which they can request any information from the bank regarding the account, which could also have been requested by the deceased.

Even if we admit that the heirs' right to access information of a confidential nature arises only at the moment of its transmission through inheritance, at the date of the account holder's death, it does not mean that the right is not transmitted in its entirety as held by the deceased. In this case, it is an accessory right to the patrimonial rights of the deceased over the bank account, and the accessory right follows the fate of the principal right.

3.2. If considered an own right, acquired under the provisions of special law

In the case of considering the heirs' right to information as an own right conferred by law, regulated by Article 113 paragraph 2 of Government Emergency Ordinance no. 99/2006, it is still unjustified to limit, in the absence of an express legal provision to this effect, the extent of this right to information regarding operations after the date of the deceased's death, since the law regulating this right does not establish such a limit and does not provide any distinction in relation to the right held by the account holder during their lifetime.

4. Establishing the nature of the heirs' right as principal or accessory

Through inheritance, all patrimonial rights existing at the time of death in the deceased's estate are transmitted to the heirs, along with all their burdens and accessories, if applicable. Consequently, the heirs justify their interest in obtaining the requested information starting from the date of exercising the right of succession option by expressly accepting the inheritance after the deceased and are entitled to receive all information related to any of the assets that make up the estate and which were transmitted to them by the deceased, if this information concerns acts/facts after the deceased's death.

In relation to the banking institution, the heirs exercise rights over the account as the deceased account holder would have been able to do if death had not intervened. It is considered that if the applicants' predecessor were alive, the bank would still have

the obligation to provide them with all information related to the account, for any period during which the account was in existence.³

It has been noted that the non-communication of information directly affects the exercise of patrimonial rights acquired through legal inheritance, rendering the legal text practically ineffective.⁴ Therefore, the right to request account statements reflecting the status of the bank account from the date of opening the succession is an accessory right, and the accessory right follows the fate of the principal right.

As such, from the date of opening the succession, the bank cannot oppose the obligation to protect banking secrecy (whose correlative right is held by the heirs, as new account holders, as previously mentioned) to refuse them information related to the account balance at the date of death or subsequent transactions on the account.

However, banking secrecy can be opposed to the heirs for all information related to the account prior to the death of their predecessor. From this perspective, the analysed texts, indicating the exceptional situations in which the credit institution can provide information protected by banking secrecy to the heirs of the deceased account holder and the conditions under which this process is to be carried out, practically distinguish between information regarding the balance, transactions, and operations on the account prior to death (which remain under the protection of secrecy) and those subsequent (which can be provided to the heirs without restriction). This conclusion prevents the use of the interpretation method reflected in the adage “*ubi lex non distinguit, nec nos distinguere debemus*.”

5. Determining the limits of the credit institution's obligation to ensure banking secrecy

Based on the premise of trust between the parties, the bank account contract establishes, by law, the obligation to maintain banking secrecy, understood as a means of protecting the client and defending the confidentiality of their business. Confidentiality remains the legal principle in this matter, and exceptions (no matter how numerous) are subject to restrictive interpretation⁵.

The banking institutions involved in the cases argued the lack of interest of the requesting heirs, reasoning that only after the opening of the succession do the heirs

³ Sentence no. 1005/2018 of May 3, 2018, Alba Iulia Court, the obligation to do something. See in this regard Dan Velicu, *Contracte bancare*, Universul Juridic, Bucharest, 2022, p. 93, 94; Ilie Urs, *Drept civil. Succesiuni*, 2nd edn, Universul Juridic, Bucharest, 2025, p. 214 et seq.; Dan Chirică, *Tratat de drept civil. Succesiunile si liberalitatile*, Universul Juridic, Bucharest, 2014, p. 280 et seq.; Ion Dogaru, Vasile Stănescu, Maria Marieta Soreată, *Bazele dreptului civil. Volumul V. Succesiuni*, C.H. Beck, Bucharest, 2009, p. 352.

⁴ Alba Court, Second Civil, Litigation, Administrative and Insolvency Section, Decision no. 164 of February 21, 2019, www.rolii.ro.

⁵ Confidentiality also applies to interests, including those paid in the form of earnings, and to any other operations carried out on behalf of depositors, holders or their representatives. See Francisc Deak, *Tratat de Drept civil. Contracte speciale*, 3rd edn., Universul Juridic, Bucharest, 2001, p. 411; Francisc Deak, Stanciu. D. Cărpenu, *Drept civil. Contracte speciale. Dreptul de autor. Dreptul de moștenire*, Editura Universității București, 1983, p. 225.

justify active procedural capacity, and there is no legal provision giving them the right to exercise a civil action to access information regarding bank accounts prior to the opening of the succession.

The banking institution justifies its refusal to provide data on the operations performed on the deceased's accounts by stating that these constitute information of a confidential nature, regardless of whether they were performed before or after the death, the difference being the categories of persons to whom this information can be communicated.

In accordance with the provisions of Article 954 of the Civil Code, the status of "heirs" is recognized from the date of the death of the person whose inheritance is in question, so the exercise of the "heirs'" rights cannot take place before the opening of the succession, as there are no "heirs" until the aforementioned moment.

Therefore, the banks argue that after the death of the account holder, information can only be provided regarding the balance existing at the date of death and subsequent operations. However, information on the operations performed by the account holder during their lifetime cannot be provided. This solution is justified by the idea of defending the memory of the deceased account holder, who had no obligation to account to the "future heirs" during their lifetime. Excessive donations exceeding the available portion and donations subject to collation are proven according to common law.

Operations performed by the account holder during their lifetime cannot be communicated to the heirs, as they are protected information, and disclosing them would violate the confidentiality obligation assumed by the bank at the time the account was opened by the client -this obligation continuing to exist even after the client's death, regarding operations performed during their lifetime⁶.

Thus, banking institutions consider that the heirs do not have the right to know how their former client managed the sums in the accounts during their lifetime⁷. Moreover, it is possible that disclosing banking information that would satisfy the heirs' interests could harm the image or even the dignity of the deceased, in case they made transfers that were not disclosed to those with inheritance rights, presuming that they would not have disclosed them even after their death.

The way the account holder chose to manage the sums until the moment of death is confidential information that cannot be disclosed to the heirs, this being an attribute of the account holder.

In these conditions, the provisions of Article 113 paragraph (2) letter a) of Government Emergency Ordinance no. 99/2006 must be interpreted in relation to those of Article 26 of the Constitution, which enshrines the right to intimate, family, and

⁶ As it follows from art. 112 of the O.U.G. no. 99/2006, the obligation of confidentiality is applicable not only to the bank in its capacity as a legal entity under private law, but also to the members of the board of directors, its directors, employees, as well as to any person who, in one form or another, participates in the administration, the bank's management or activity, including persons who obtain information from reports (for example, audit reports) or other documents of the bank. This obligation continues even after the termination of the activity of these persons at times in connection with that bank.

⁷ Decision no. 164/2019 of 21-Feb-2019, Alba Court, the obligation to do (Litigation with professionals).

private life, and Article 44 of the Constitution, which guarantees the right to private property.

Consequently, banks argue for not providing the respective information, as there is no legal framework allowing the communication of this confidential information and personal data to the heirs prior to the account holder's death.

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Consequently, banks argue for not providing the respective information, as there is no legal framework allowing the communication of this confidential information and personal data to the heirs prior to the account holder's death.

6. Legitimizing the right of heirs to obtain information of a confidential nature

According to Article 111 paragraph 1 of Government Emergency Ordinance no. 99/2006, professional secrecy in the banking sector entails the obligation of the credit institution to maintain confidentiality over all facts, data, and information related to its activity, as well as any fact, data, or information at its disposal concerning the person, property, activity, business, personal or business relationships of clients, or information regarding clients' accounts -balances, transactions, operations conducted -services provided, or contracts concluded with clients.

Thus, established by law for the benefit of the account holder, the obligation to maintain professional secrecy and confidentiality over all facts, data, and information existing in the bank can only be opposed by the banking institution in relation to third parties, to refuse them access to information, but not to the one in whose favour it was recognized. Moreover, the indication of the account holder in the enumeration found in the initial version of Article 113 paragraph (2) letter a) of Government Emergency Ordinance no. 99/2006 has become obsolete and, in practice, inapplicable, due to the unprecedented development of banking relationships and the computerization of related services, especially through the creation of internet banking applications.

The cited regulations respond to needs highlighted over time by the realities faced by jurisprudence, facilitating the proof of the deposit in the relationships between the account holder and third parties.⁸

According to Article 113 paragraph 2 letter a) of Government Emergency

⁸ Mihai Lucian, Romeo Popescu, „Reglementarea juridică a principiului confidențialității în privința depunerilor de sume de bani la instituțiile de credit”, in *Revista Română de Drept Privat* no. 1/2007, available at <https://sintact.ro/>, accessed on 27.10.2024.

Ordinance no. 99/2006, “Information of a confidential nature may be provided, insofar as they are justified by the purpose for which they are requested or provided, in the following situations: a) at the request of the account holder or their heirs, including legal and/or statutory representatives, or with their express consent.”

Therefore, the heirs of the account holder have the right to a certain extent to be informed about the information protected by professional banking secrecy.

It follows that the heirs have the legal right to obtain information from the bank regarding the account balance at the date of death, as well as any operations performed on the account after the date of death (e.g., operations carried out in bad faith by account proxies, etc.).

Information regarding operations performed before the date of death falls into the category of personal data and information, which can only be made available to investigative bodies and/or the court, upon their request.

In this context, it can be highlighted that Article 113 paragraph 2 letter a) of Government Emergency Ordinance no. 99/2006 does not distinguish between information of a confidential nature before the client’s death and those after this date. Therefore, according to the principle “*ubi lex non distinguit, nec nos distinguere debemus*” (where the law does not distinguish, neither should the interpreter), the refusal of the banking institution is unfounded.

The mentioned legal text is sufficiently clear and unambiguous. Given the concrete content of the text, the distinction made by banks and its restrictive interpretation, limiting the heirs’ right to request only information of a confidential nature after the client’s death, is unfounded and lacks legal support.

As long as the law does not distinguish between accounts before and after death, the heirs can consider themselves entitled to know what happened to the deceased’s accounts.

Given that most significant transactions are currently conducted through bank accounts, it is evident that providing account statements is necessary not only to verify the status of deposits made by the deceased, but also other operations conducted by them that could affect the heirs’ rights.

In this regard, the CJEU has ruled that:⁹ Article 53 paragraph (1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, must be interpreted as not precluding the disclosure of confidential information by the competent authorities of the Member States to a person making such a request, in order to bring a civil or commercial action aimed at protecting patrimonial interests that may have been affected by the forced liquidation of a credit institution. However, the disclosure request must refer to information for which the

⁹ In case C 594/16, having as its object a request for a preliminary ruling made on the basis of Article 267 TFEU by the Consiglio di Stato (Council of State, Italy), by decision of 29 September 2016, received by the Court on 23 November 2016, in the procedure *Enzo Buccioni v. Banca d'Italia*, with the participation of: Banca Network Investimenti SpA, in liquidation.

applicant presents precise and consistent indications that plausibly suggest they are relevant to a civil or commercial court action, the object of which must be concretely identified by the applicant, and outside of which the information in question cannot be used. The competent authorities and courts are responsible for balancing the applicant's interest in having the information in question and the interests related to maintaining the confidentiality of information covered by the obligation to maintain professional secrecy before disclosing each of the requested confidential information.

Similarly, in another CJEU decision¹⁰ (Fourth Chamber), it was stated that Article 8 paragraph (3) letter e) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as precluding a national provision such as the one in the main proceedings, which authorizes, without limitation and unconditionally, a banking institution to invoke banking secrecy to refuse to provide, under Article 8 paragraph (1) letter c) of this directive, information regarding the name and address of the account holder.

7. Justifying the heirs' interest in receiving account statements for the period prior to the opening of the succession

7.1. If it is automatically realized based on the establishment of the status of heir

The question was raised whether acquiring the status of heir automatically grants the heirs the right to be informed by the bank about the operations performed by the account holder during their lifetime.

According to a more permissive opinion, the heirs' interest in requesting such information is evidently legitimate, as the information is necessary for establishing the estate¹¹.

Even in the hypothesis of a universal transmission, where the heir has acquired the entire estate, it cannot be considered that they would not have an interest in requesting account statements from the date of opening the accounts, as they take over, as the continuator of the deceased's personality, all the rights and obligations of their predecessor (except those of a strictly personal nature), and therefore, they are not required to justify the reason for requesting the statements. The banking institution is obliged to issue the claimant the account statements for the aforementioned accounts, for the period starting from the opening of the accounts¹².

This interpretation is imposed by the rule of the reserved portion. Reserved heirs must have the possibility to obtain data on any banking operations, concretizations

¹⁰ In case C-580/13, concerning a request for a preliminary ruling made pursuant to Article 267 TFEU by the Bundesgerichtshof (Germany), by decision of 17 October 2013, received by the Court on 18 November 2013, in the proceedings *Coty Germany GmbH v. Stadtsparkasse Magdeburg*.

¹¹ Sentence no. 6401/2021 of 22-Dec-2021, Oradea Court, obligation to do (Civil)

¹² Decision no. 925/2021 of September 6, 2021, Cluj Commercial Court.

of gratuitous acts, disguised or not, that affect their right to the legal reserve¹³.

Interpreting the legal provisions in the sense of refusing the heirs access to the deceased's account status deprives them of any possibility to exercise any judicial actions, if necessary, aimed at defending the deceased's estate, with the consequence of retroactively increasing this estate.

Thus, it has been established that in inheritance cases, given the rights recognized by law to heirs over sums deposited in banks, they can obtain information without violating the secrecy of deposits, as obtaining this information is in the interest of the persons who, in this way, become the holders of the sums deposited by the deceased, being obliged to prove their status as heirs based on certification by a notary or judicial courts¹⁴.

7.2. If direct proof of the existence of a legitimate interest in the case is required

According to a more nuanced opinion, the mere status of an accepting heir, thus a successor in rights and obligations of the account holder, is not sufficient to justify a legitimate interest in obtaining information regarding the sums held at the banking institution, both before and after the death of the account holder.

Under the provisions of the special law, account statements can be provided "with the consent of the heirs," under the expressly indicated conditions: "insofar as they are justified by the purpose for which they are requested or provided."

When it comes to providing data and information of a confidential nature, this provision is expressly instituted so that various institutions have access to such data or to resolve specific situations, the opportunity of which will be reflected at that time. Therefore, a justification must exist.

Some courts have found that the banks legally rejected the heirs' request for information regarding operations prior to the deceased's death¹⁵, as these are part of the category of information protected by banking secrecy, in cases where the heirs failed to provide a justification for the request, thus not meeting the conditions of Article 113 paragraph (2) of Government Emergency Ordinance no. 99/2006.

The requirement to justify the purpose is requested for all information related to the account, concerning operations conducted by their predecessor during their lifetime, towards whom they were and remain third parties. However, to communicate the account status at the date of opening the succession, the heirs will not need to indicate any interest, as from that moment they acquire the status of co-owners of the account.

Moreover, data and information protected by banking secrecy fall under the protection guaranteed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and any interference is allowed only insofar as the

¹³ Decision no. RJ 7956/2022 of 14-Feb-2022, Bihor Court, obligation to do (Litigation with professionals).

¹⁴ Mihai Lucian, Romeo Popescu, *op. cit.*

¹⁵ Sentence no. 5567/2019 of July 11, 2019, Cluj Napoca Court, obligation to do (Civil).

cumulative requirements of paragraph 2 of the same article are met: it must be provided by law, have a justified purpose, appear necessary in a democratic society, and not constitute a more restrictive measure than the purpose for which it was instituted.

8. Hypotheses in which the heirs' interest appears justified

Heirs may have an interest in obtaining information regarding operations performed on the bank account prior to the death, for establishing the estate and the possibility of filing any judicial actions to defend the deceased's estate, with the consequence of retroactively increasing it.

The heirs' interest in having account statements disclosed from the date of their opening is based on the consideration of being able to exercise their prerogative to contest acts concluded in fraud of their rights, for example, through actions regarding the reduction of excessive donations.

Successors have the status of successors in title, so they are bound by the previous acts concluded by the account holder, except for those concluded in fraud of their rights: gratuitous acts and onerous acts prejudicially concluded with the bad faith of both parties.

As invoked in some cases, abuses can be hidden under the umbrella of GDPR, so if the applicants have strong indications that something happened with the accounts of the deceased they inherit, they are entitled to know the transaction history.

Another justified reason for the communication of information is invoked by the heir who claims that, although during the succession debate, they obtained information related to the account of the deceased, with the available sums remaining in the indicated accounts, and the available sums were part of the succession, they later requested the account statements for the two bank accounts, having information that the deceased benefited from sums obtained from online platforms, which were returned from those accounts because the account holder had died, and the heir could recover these sums only if they had information about the account transactions¹⁶.

The claimant specified that their interest was related to the fact that the deceased benefited from sums of money on the PayPal platform, which the bank returned, and these movements could be seen in the account statement. Thus, the applicant considered the bank's refusal to communicate the account statements for the period prior to the account holder's death as unjustified, invoking the provisions of Article 113 paragraph 2 letter a) of Government Emergency Ordinance no. 99/2006. The defendant also argued that their interest was evidently legitimate, as the information was necessary for recovering the deceased's sums from online platforms.

In another case, the heirs invoked the right to obtain information on the deceased's accounts opened at the indicated banks, to have access to all operations performed in these accounts. The heirs wanted to know to what extent sums of money were withdrawn from the deceased's account by third parties, sums that need to be

¹⁶ Sentence no. RJ 39e2dged5/2021 of 13-Dec-2021, Targu Jiu Court.

returned to the deceased's estate¹⁷.

For example, the surviving spouse invoked that in the months preceding the death, her husband was ill, bedridden, and unable to go to the bank and withdraw the money in the deposits. He did not need the money and did not communicate his intention to liquidate those deposits. The claimant also stated that she asked the notary where the succession was debated to issue a letter to the bank to communicate the sums in the deposits, and the bank responded that there was no money left in the deceased's account. Suspecting that the money had been withdrawn by another person, the surviving spouse requested the bank to provide copies of the documents that formed the basis for the liquidation and withdrawal of the sums from the deposits in the deceased husband's name.

Similarly, in another case, the poor health condition of the deceased prior to the date of death was invoked, and the fact that there were some suspicions regarding the debiting of the account through ATM, financial operations of transferring sums of money existing in the accounts, for which reason, through notification, the defendant was requested to release a complete account statement regarding the bank accounts opened by the deceased father of the applicant¹⁸.

In another case, the surviving spouse's entitlement to obtain data related to the deceased husband's bank accounts is justified by the common property nature of the sums in those deposits, the savings of the spouses, as well as her status as the heir of the account holder. The court's assessment that the requested information is "personal non-patrimonial" information that is "non-transferable by inheritance" is erroneous, as that information is closely related to the assets that are part of the succession.

Initially, the verification of the justified nature of the requests made by the heirs falls on the bank, which has the obligation to examine, for each category of holders of this right, the purpose of the request and to determine, based on this, the extent of the information provided. To the extent that such initiatives arise during judicial or notarial procedures, the filter of analyzing the opportunity of providing information protected by banking secrecy by the banking institution will be made by the judge or the notary.

9. Conclusions

The case analyzes the legitimacy of requests by heirs for the bank to issue statements for accounts opened in the name of the deceased, as well as documents justifying the liquidation of deposits and the withdrawal/transfer of sums existing in the accounts for the period prior to the opening of the succession.

If the requested information is necessary for establishing the estate, this information can be provided at the request of the notary, within the notarial succession procedure, according to the provisions of Article 113 paragraph 2, letter g), of Government Emergency Ordinance no. 99/2006. If the succession debate is not conducted before a notary but through judicial means, the respective information can

¹⁷ Sentence no. 6401/2021 of 22-Dec-2021, Oradea Court, obligation to do (Civil).

¹⁸ Decision no. 890/2021 of June 23, 2021, Marghita Court, obligation to do (Civil).

be provided at the request of the court, for the purpose of resolving the case brought before it, according to the provisions of Article 113, paragraph 2, letter e) of Government Emergency Ordinance no. 99/2006.

It can be observed that by using the conjunction “or” in the text of the law under interpretation, the legislator placed the heirs in the same position as the account holder. This aspect denotes the legislator’s intention to grant the heirs a right to information with the same extent as their predecessor’s right to information of a confidential nature.

In the absence of any exceptional provision in the mentioned legal text that would justify its restrictive interpretation, the right to benefit from the communication of information of a confidential nature is regulated for both the account holder and their heirs, without distinction regarding the content or extent of this right. The interpretation that the heirs’ right would only concern information after the account holder’s death appears to lack legal basis. Additionally, such an interpretation could not be justified in relation to the provisions of Article 954 of the Civil Code, according to which the inheritance opens at the moment of death.

From the interpretation of the legal provisions that establish the situations in which exceeding the limits of the confidentiality obligation binding the banking institutions is admitted, it results that these involve meeting two cumulative conditions, which the persons requesting such data must prove:

- the applicants hold the status provided by law in relation to the deceased account holder;
- the successors justify a personal interest in the provision of classified information.

Thus, according to these legal provisions, to provide information of a confidential nature, the applicant must prove their status as an entitled person and that the information is justified by the purpose for which it is requested or provided.

Article 1133 of the Civil Code states that the certificate of inheritance proves the status of heir and the property rights of the accepting heirs over the assets in the estate.

As an accepting heir of the deceased, the applicant is a successor in rights and obligations, and based on this status, they can justify an interest in obtaining the information requested from the bank regarding the deceased’s account status.

If the applicant does not prove the fulfillment of the second condition provided by law for such information to be provided, namely that the information is justified by the purpose for which it is requested or provided, the bank’s conduct cannot be considered abusive if it does not provide the requested information¹⁹.

Although the deceased’s estate includes the sums existing in the accounts opened by their predecessor, as long as the heir is not prevented from managing these sums, the bank’s refusal to provide information regarding the account status prior to the account holder’s death cannot be considered unjustified.

The justification imposed by the provision of Article 113 paragraph 2 letter a) of Government Emergency Ordinance no. 99/2006 must therefore be both declared and

¹⁹Sentence no. 2372/2021 of May 17, 2021, Braila Court.

proven; otherwise, it would result in the circumvention of the law and the deprivation of the content of banking secrecy.

The assertion that the provisions of Article 113 paragraph 2 letter a) of Government Emergency Ordinance no. 99/2006 do not limit the heir's right to obtain information of a confidential nature regarding operations performed after the death is well-founded. However, the law conditions the provision of all these types of information on the justification of the purpose for which they are requested, a justification that must be proven in the request submitted by the applicant²⁰.

Regarding the justification and presentation of the reason for which the complete account statements are necessary, the applicant must present a legitimate, personal, current interest. Specifically, they must be the holder of a personal right by virtue of which they can request information about the entire financial activity of the deceased, as the bank has the obligation to maintain professional secrecy and the obligation not to disclose personal data without express consent or legal basis.

In these conditions, providing the heirs with the deceased's account status cannot be considered a violation of banking secrecy, as long as the successor takes over the rights that their predecessor could have exercised if they were alive, including regarding information about the accounts.²¹

It is essential to determine the extent to which the heir justifies their interest in establishing the data they will have access to, so that their intrusion into their predecessor's transactions is not abusive, potentially infringing on the right to data confidentiality preserved by banking secrecy.

In this sense, it must be assumed that not all rights held by the deceased, which they exercised through concluded acts and which are reflected in the banking transactions performed, will enter the estate.

Thus, even in the case of a universal successor, it is possible that they will only receive the reserved portion, and the part that their predecessor could freely dispose of will not be deferred to them. Specifically, regarding the rights within the available portion, the deceased could have disposed of them during their lifetime in favor of third parties, unrelated to the succession, and these operations should not be affected even after their death, unless there is evidence of fraud. For this reason, the heirs' access to such data is not only unjustified but can be considered a serious intrusion into their rights. This is why the bank is responsible for maintaining secrecy not only while the account holder is alive but also after their death.

For this reason, we believe that the legal text should be interpreted appropriately to the circumstances of the case, neither fully limiting the heirs' right to receive information about the account status for the period prior to the opening of the succession nor recognizing a discretionary right of access to all transactions conducted during the active period of the account from its opening date²².

²⁰ Decision no. 388/2020 of 24-Feb-2020, Cluj Commercial Court, the obligation to do (Litigation with professionals).

²¹ Civil sentence no. 2275/2020 of September 9, 2020, Bucharest Court.

²² Ioan Leș, *Codul de procedură civilă. Comentariu pe articole*, 3rd edn., C.H. Beck, Bucharest, 2007, pp. 1316-1322; Titus Prescure, „Despre condițiile în care poate fi inserată o clauză testamentară într-un contract

The viewpoint expressed in the response submitted to the request of the High Court of Cassation and Justice was adopted in the reasoning of the decision pronounced in the case that generated the formulation of the opinion.²³ Thus, it was decided that the interpretation and uniform application of the provisions of Article 113 paragraph (2) letter a) of Government Emergency Ordinance no. 99/2006 regarding credit institutions and capital adequacy, approved with amendments and completions by Law no. 227/2007, with subsequent amendments and completions, leads to the previously argued solution. Therefore, the heirs of the deceased account holder have the right to obtain the provision of information protected by banking secrecy from the banking institutions for the period prior to the account holder's death only to the extent that it justifies the purpose for which they are claimed.

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²³ The decision of the High Court of Cassation and Justice no. 9 /20.05.2024 orders: admits the appeal in the interest of the law promoted by the Governing Board of the Galati Court of Appeal. Mandatory, according to the provisions of art. 517 para. (4) of the Civil Procedure Code, published in the Official Gazette, Part I no. 637 of July 4, 2024.