

A SHORT HISTORICAL OVERVIEW OF THE INHERITANCE LAWS APPLIED ON THE ROMANIAN TERRITORY (19th-20th CENTURY)

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Abstract: *For a better understanding of the institution of inheritance and the conflict of inheritance laws in time, this short overview attempts, on the one hand, to highlight certain historical moments that defined the institution of inheritance and its present-day configuration in the light of the successive laws applied on the Romanian territory during the past two centuries, and, on the other hand, to examine the advancement or the regression of the surviving spouse's rights in the inheritance left by the deceased spouse.*

Key words: *civil law, succession of laws, inheritance, historical provinces, surviving spouse.*

1. Introduction

" Civil laws viewed in their sense of source of civil law, like every normative act are enacted by the competent authority in order to regulate the commissive and /or omissions conduct of the persons to whom it is intended, in principle, as long as these laws are in force "(Prescure & Matefi, 2012, p. 47).

In terms of law enforcement in time, the two essential moments that are currently relevant are the moment thenceforth a certain law is applied and that until it is applied. Generally speaking, law enforcement is limited, according to the doctrine on three dimensions - time, space and people, our analysis stopping at the first one, namely time.

2. The inheritance legislation applied in Romania's historical provinces

I. Transylvania and Banat. The Austrian Civil Code (A.B.G.B.) was introduced in Banat by the imperial decree of November 29th, 1852; it came into force May 1st, 1853; by the imperial decree of May 29th, 1853 it was established that it would come into force September 1st, 1853 (Corjescu, 1921, p. IV). We must also mention that some parts of Transylvania and Banat continued to enforce Hungarian private law.

According to the Austrian Civil Code, there was no distinction between man and woman in regard to the possibility of inheriting from the surviving spouse; also, no distinction was made in regard to their fortune or if they had lived together for a longer period of time.

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Also, the surviving spouse was not a forced heir. The spouse would inherit along with all other categories of heirs, his side being usable along with that of the children of the deceased (article 757), or in full property of the surviving spouse when the deceased was not survived by any living children (article 758).

II. Bukovina. In Bukovina, the Austrian Civil Code (A.B.G.B.) was introduced by the imperial decree of June 1st, 1811, enforceable since January 1st, 1812. It was applied throughout Bukovina, with all subsequent changes made by the Austrian state.

As opposed to the regulation enforced in Banat and Transylvania, for Bukovina, the Austrian Civil Code was modified by imperial decree to state that the children of the deceased or their descendents would no longer inherit along with the surviving spouse, as the spouse would reclaim full property.

Also, the surviving spouse would inherit all mobile objects which formed the spouses' residence, but only those needed for his own use, if the deceased had living children.

III. The inheritance legislation applied in the United Principalities of Moldavia and Wallachia. After reclaiming the throne in Moldavia, Scarlat Calimach (1812-1819), wishing to form a civil law form all existing written law, created a commission formed of Anania Cuzanos, professor at the Iasi Academy and Christian Flechtenmacher, PhD graduate in law and philosophy from Vienna, a German national born in Brasov.

The Calimach Code resembled the Austrian one whose regulations were Roman or Greek-Roman but phrased more clearly and in modern language. This code applied as the civil law of Moldavia from October 1st, 1817 until December 1st, 1865, when the Civil Code came into force.

However, much like the Caragea Laws, the Callimachus Code with subsequent changes continued to apply for all legal situations occurring before December 1st, 1865, namely for solving litigation regarding acts and facts previous to the date when it was rescinded. The surviving spouse's right to inherit was not dependent on his gender, as the right to inherit was regulated both for men and women. The poor surviving spouse, much like the rich one, who had brought dowry (the woman) or had made an *ante nuptias* donation (the man) would inherit a certain part of the inheritance, alongside the children of the deceased, provided he would not be married. If the deceased had children from previous marriages, the poor surviving spouse, much like the rich one who had brought dowry (the woman) or had made an *ante nuptias* donation (the man) would inherit some part of the inheritance in full property. The situation was similar in case the surviving spouse would inherit along with other relatives except the children of the deceased.

Ion Caragea, lord of the Romanian Country (1812-1818), thought that there was no comprehensive law, so in 1816, he called on Anastase Hristopol, an avid knower of byzantine law and Nestor, a famed lawyer of those times, to devise a code (Palade, I., 1907, p. XXVII).

Before the byzantine law, it served as the main law for lawyers; however the variety of controversies along with the degree of variability of customary law led to the "transposition of law". The commission finished the works within a year; the code was printed and approved by Caragea on August 9th, 1818 and came into force September 1st, 1818.

The Caragea Code is the short version of the Armenopol Manual, which served to clarify legal doctrine in the Romanian Country and had power of law even after the Caragea law had been passed, thus adding the custom of the land, namely customary law, as a source of law, and the quote of Justinian's Institutes attributed to Teofil. The

surviving spouse's right to inherit was not dependent upon his being poor or not, nor if it was a man or a woman, but on whether he had children or not (and especially the duration of the child's life); if there were no children, the duration of the marriage was taken into account. Considering all these variables, the share of the surviving spouse could be used along with that of other heirs or it could be in the sole property of the spouse.

In 1864, Alexandru Ioan I, lord of the United Romanian Principates, requested his state council to elaborate a civil code. Significant contributors are Constantin Bosianu and Vasile Boerescu. The Civil Code was finalized November 26th, 1864, passed December 4th, 1864 and came into force July 1st, 1864 (article 1912); however, a July 2nd, 1865 decree by Cuza postponed the enforcement until December 1st, 1865. Most of the provisions of this code were borrowed from the Napoleon Code, but it was also inspired by the Italian Civil Code, Belgian civil law and Roman law.

Radu Vernescu, the author of the succession part, took *ad literam* the entire French law in this matter (Bob, 2012, p. 31) according to which the surviving spouse would inherit only after 12th degree relatives. However, previous laws, namely the Callimachus Code (articles 957-961) and the Caragea laws (chapter III, articles 17,18 and 23) maintained the poor widow's right to inherit (article 684 of the Civil Code) (Nacu,C.,1914, p. 311). Once Nicolae Titulescu's *Law on the progressive inheritance tax* (1921) was passed, the *ab intestat* right to inherit from the fourth degree was abolished, as the surviving spouse would legally inherit in lack of any fourth degree relatives (Nicolae,I., 2016, p. 175).

3. The unification of inheritance laws during the inter-war period in the Kingdom of Romania

The unification of civil law in the matter of succession was not achieved by passing new laws, but by extending the existing laws in the Old Kingdom, namely enforcing the 1864 Civil Code in other historical provinces of Romania.

I. Bessarabia. The first extended law was the *Law for the expansion in Bessarabia of some provisions from the legislation of the Old Kingdom, enacted by the Royal Decree no. 876 from 29th of March 1928*, which came into force June 1st, 1928. This law stated that, along with the previously introduced provisions in Bessarabia, the 1864 Civil Code is extended throughout the entire territory of this province in order to unify the enforcement of law. Since the Civil Code and all other laws had already been modified, the extended law stated that these provisions would be entirely applied in the form which was in force in the Old Kingdom June 1st, 1928.

However, as the Romanian Civil Code contained some provisions which were no longer accurate given the realities of those times, some exception from the general rule of applying the Civil Code in Bessarabia were regulated. Thus, in the matter of succession, since Bessarabia law provided more advantages for the surviving spouse as his rights were more clearly stated and with a better regulation as opposed to the Romanian Civil Code, maintaining the Byzantine local law was preferred (Radulesco, 1934, p. 111).

In regard to enforcing laws timewise, we must state that the south of Bessarabia (the entire Ismail County, a part of Cetatea-Alba county and a few villages of Lapusna country) had different conditions. This part of Bessarabia was under Moldavian sovereignty since 1856; however, in 1878 it was again taken over by Russia. So, legal practice solved the matter of which law would apply depending on the time the legal

relation occurred (Boldur, 1932, p. 11). If the legal relations occurred during Romanian sovereignty, the Romanian Civil Code would apply, if it occurred under Russian sovereignty, Russian law would apply, but in accordance with Romanian law for the legal relations which occurred under Romanian sovereignty.

II. Bukovina. The second extension law was *Decree-law no. 478/1938 for the expansion in Bukovina of the Old Kingdom's legislation*. Article 1 of this law stated that: "Along with the provisions which were introduced until then, starting October 15th, 1938, the Romanian Civil Code of December 4th, 1864 with all subsequent changes, is extended throughout the entire Bukovina; [...] *without any exception*. Thus, unlike the Law for the expansion in Bessarabia of some provisions from the legislation of the Old Kingdom, the law which extended the enforcement of the Romanian Civil Code in Bukovina contained no mention regarding maintaining local laws in regard to the surviving spouse.

The extension of law without any exception was motivated by the minister of justice Victor Iamandi in his address to the Council of Ministers accompanying *Law no. 3406/1938 for the expansion in Bukovina of the Old Kingdom's legislation* by the fact that it was abnormal to maintain laws which were no longer in force in their country of origin and which can't be modified. Also, several other reasons were listed, some of which prevented a good administration of justice given the new administrative division of the country. Thus, through this new administrative division, Suceava County along with Bukovina, Dorohoi and Hotin County still had the Old Kingdom laws in force; on the other hand, the Appeal Court in Cernauti had the Dorohoi Courtouses of the Old Kingdom, along with Hotin and Bessarabia.

III. Southern Transylvania. The third extension law was *Law no. 389/1943 on the expansion of the civil and commercial legislation in the Trans-Carpathian Romania*, a law enacted September 15th, 1943. According to article 1: "Civil and commercial law of the Old Kingdom is extended on the territories over the Carpathian Mountains, as follows: 1. The December 4th 1864 Civil Code [...]". Still, the second chapter of this law regards "provisions of local laws which are still in force", thus according to article 3, until the Romanian Codes would be revised, several provisions of local law were to be maintained, including provisions regarding the right to inherit of the surviving spouse.

In regard to the enforcement of this law timewise, the law stated the following: a) succession procedures started before the law came into force or ruled by the laws which were in force at the time succession procedures began (article 23); b) accepting or giving up an inheritance, if the procedure began before the law came into force, when the heir did not exercise his right to choose, will be ruled by the extended law, namely the Romanian Civil Code (article 24); c) disownment based on previous local laws will still be in effect in succession procedures started after the law came into force. Also, the legal act between the living or those with death clause, previous to the coming into force of *Law no. 389/1943 on the expansion of the civil and commercial legislation in the Trans-Carpathian Romania*, were still subject to the laws which were in force at the time they occurred in regard to their validity and effects. Those which occurred after the extension law came into force were subject to public order provisions from extended laws (article 27). Proof that acts were concluded before the extension law came into force was made by any legal means available. In regard to succession and testamentary provisions drafted based on local laws, the extension law stated that they were bound to produce effects in

succession procedures which began after the law came into force, as they could be revoked or annulled according to the provision of the law which was in force before this date (article 28), namely according to local law, not extended law.

IV. Northern Transylvania. The final extension stage was achieved by *Law no. 260/1945 on the applicable legislation in Northern Transylvania, and the rights acquired in this territory during the Hungarian occupation*, once Northern Transylvania was released from Hungarian occupation imposed by the Vienna dictate of August 30th, 1940. By this law, Romanian law, of any nature, with exceptions which were still in force in Transylvania, extended throughout the entire Northern Transylvania territory (article 1), as all acts and rights acquired in Northern Transylvania between August 30th, 1940 and October 25th, 1994, according to laws of the occupying power were to be respected, unless they were contrary to Romanian public order.

3.2. The unification of the surviving spouse's rights in the inheritance left by the deceased spouse

Unifying the right to inherit of the surviving spouse throughout the entire Romanian territory was achieved not by revising the Civil Code, but by special law: *Decree-law no. 319/1944 for the inheritance right of the surviving spouse*. Although the Romanian Code was revised, The Carol II Civil Code never came into force, as it was abolished only when Law no. 287/2009 regarding the Civil Code (Law no. 71/2011 for the implementation of the new Civil Code) came into force. Thus, article 7 of the Law for the inheritance right of the surviving spouse clearly states the all provisions regarding the inheritance right of the surviving spouse from Transylvania and Banat, much like any provisions which are contrary to the decree-law, except more favorable provisions stated in Law no 609 of July 1st, 1941 regarding war widows are and will remain abolished and article 6 restates that the provisions of article 676 of the Civil Code as modified by article 4 of the Law on the progressive inheritance tax of July 28th, 1921 whereby the succession order until the fourth degree was restricted are and will remain in force.

4. Conclusions

This paper presented an overview of the inheritance laws applied on the Romanian territory in the 19th and the 20th centuries, from a historical point of view. The first part of our work deals with the inheritance legislation in Romania's historical Provinces, presenting the main features of this specific legislation in Transylvania, Banat, Bukovina and the United Principalities of Moldavia and Wallachia. The second part contains a short presentation of the unification of inheritance laws during the inter-war period in Bessarabia, Bukovina, Southern Transylvania and Northern Transylvania.

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