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Some Aspects of the Modern and Contemporary History of Heritage. The Division of the Succession Patrimony of the Monks in the Romanian Law

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ABSTRACT: This paper proposes the historical and legal analysis of a part of the matter of inheritances, namely, the succession patrimony of the monks, from the perspective of Romanian law, in the modern era and the contemporary era. We started in the study of this subject from a problem encountered in practice, which concerned the request of the relatives of a deceased monk to hand over to them the goods he owned during his life, in their capacity as successors. First, I analyzed the legal issue through the prism of civil law, as the first impulse of the legal practitioner. After that, I researched the rules of canon law and the norms in the status of various cults, which regulate the legal status of goods that are acquired by monks during the period in which they function as such within the church. In Romanian law there are few cases of this kind, which would allow outlining a judicial practice in the field, which is why we can analyze the problem from the perspective of the normative acts in force and the doctrine, even if it is quite poor. At the same time, to have a correct representation of the factual and legal situation, but also to understand as correctly as possible the issue of inheritances as it is regulated and perceived in the monastic world, I considered necessary the analysis of modern and contemporary legislation and consulted the statute of several cults, to better understand the legal regulation specific to canon law.

KEYWORDS: inheritance, succession patrimony, church patrimony, potentials successors, successors

Introduction

The field of inheritances or successions has always been fascinating. It concludes, in a way, the series of legal acts and deeds that the individual can do, regardless of whether we are talking about testamentary deeds, concluded during life, but for the cause of death, or by passing his estate to successors, to the date of the opening of the succession, which is the date of death of the one who leaves the inheritance. The transfer of the succession patrimony gave the possibility to the natural persons to choose the way of transmitting their rights and obligations to the successors, regardless of the epoch.

Modern history and, later, contemporary history have known different regulations on succession. A special situation is the transfer of the succession of persons who, at the time of their death, had the quality of monks. Their patrimony will be transmitted in a special way, according to the rules of canon law and depending on their legal or ecclesiastical relationship with the institution he served until the moment of death. The succession quality with which we have become accustomed to civil law, as a common law, knows some exceptions that we will analyze in this material.

Some clarifications regarding the history of the inheritance institution in Romanian law

Starting from the definition given by the doctrine to the notion of "inheritance", this represents the transmission of the patrimony of a deceased natural person to one or more persons in existence, regardless of whether we are talking about natural persons or legal persons, including the state.

The *Romanian Civil Code* of 1864 (Rotaru 2014, 166, 179, 205) was inspired by the French Civil Code, also known as the Napoleonic Code. In relation to this normative act, the doctrinaires differentiated the areas where the old French law based on written law was applied, from the time of Justinian (*Codex Iuris Civilis, Novele,* 118, 127), individualistic system, which recognized the uniqueness of the patrimony and the areas where customary law was applied, inspired by the German custom based on family solidarity, but also on feudal conceptions (Eliescu 1997, 20-21), which regulated the division of the succession patrimony into several hereditary patrimonies.

As for customary law, it knew a few characteristics, including:

- the transmission of the succession was made under the law, and the will had an occasional character, for the elaboration of liberalities / testamentary dispositions.

- own property was divided into movable and immovable property, acquisition by way of inheritance or by other means of acquisition of property; each of which will be transmitted according to its own rules, to a single family member.

- the goods known as *noble goods*, fief and allodium belonged to the eldest son, according to the privilege of age, against his brothers and sisters.

The Romanian civil code of the modern era kept the Napoleonic succession system and completed some legal situations with regulations from the Romanian legislation. In this way, we have as an example the situation of the inheritance right of the widow, poor woman.

Subsequently, following the evolution of the society, the stipulations of the civil code have undergone some additions and changes regarding the successions, such as the family matter: the illegitimate child acquires succession rights (Law no. 445/1943), and the surviving spouse/surviving wife may inherit in competition with the descendants of the deceased (Law no. 319/1944).

The *Romanian Civil Code* of 1864, which we now call, in the current language "the old civil code", regulated the matter of successions distinctly, starting with the stipulations of the art. 650. The modern legislator said that *succession is deferred either by law, or according to the will of man, by will*. Also, the same legislator said that *the successions open through death*, making indisputable reference to the matter of inheritances.

We make this clarification because, in the legal language, the wording "successor in rights" is also used, referring, for example, to the buyer who becomes the owner of the purchased good, instead of the seller of that good. Therefore, the notion of succession or *successor in rights* also operates for legal acts between the living (*inter vivos*), not only for the cause of death (*mortis causa*). But our analysis in this study refers only to the matter of successions for the cause of death and thus we will develop the subject we have proposed.

The Romanian Civil Code of 2009 entered into force in October 2011 and is still known as the "new civil code", especially in situations where we talk about law enforcement over time and get to the analysis of the competition of laws, where we also meet the legislation prior to 2011.

The succession vocation and the quality of heir in the contemporary era

Succession vocation, also known as *inheritance vocation*, refers to the right of a person (whether it is a natural or legal person) to receive or collect, in whole or in part, the inheritance left by the deceased. It is not enough for that natural or legal person to have succession capacity, but it must also have a succession vocation, to have a call to inheritance (Stoica, Fălcușan, Dragu 2004, 161).

For a person to become an heir/successor, he must meet three cumulative conditions, namely:

- the person to have a call to inheritance or a succession vocation based on kinship relations (Botină 2015, 43) or of a civil legal act (will).

- the same person to have the capacity to succeed (Erimia 2016, 49-62).

- the person we talked about before to accept the respective succession.

Romanian law has known over time some changes in the type of heir, so nowadays it has reached the different qualification of these categories of heirs, as follows:

- *the heir* or *legal successor* that the law defines according to the rules shown above.

- *the testamentary heir*, the one who benefits from the inheritance under a unilateral civil legal act called "will".

- *the apparent heir*, defined as a person who owns all or part of the estate, as a legal or testamentary heir, without having this right and who can be sued by the real heir, under an action called "petition in heredity".

- *the sessional heir*, being that successor who has the possibility to enter into possession of the succession assets and to exercise his rights, without prior attestation; he may be held liable for a debt of the deceased, under current civil law, even if he does not yet hold a certificate of heir; but he can remove the liability by presenting in court an authenticated statement to the notary public, according to which he renounced that inheritance.

Because the theme of our work concerns a particular case in the whole matter of successions, namely, the succession patrimony of the monks, we bring into question the quality of heir of the church or cult on which the deceased served. It is real that the civil law, respectively, the civil code, which is the common law in the matter, speaks about the rights of the heirs and protects the observance of the right to inheritance, especially to those successors who have the quality of reserve or sessile heir. However, the rights governed by common law know some exceptions that also affect human rights (Erimia et al. 2016, 129-136; Rotaru 2019, 270-271).

Special cases provided by the church legal norms in the field of succession debate

In the sense of the above, we see the regulation in the statute of the Romanian Orthodox Church, over time, has regulated and maintained a relatively identical opinion, in the sense that *dioceses have a vocation on all the successor assets of their hierarchs* [art. 192]; *the goods of the monks brought with them or donated to the monastery at the entrance to monasticism, as well as those acquired in any way during the life in the monastery remain entirely to the monastery to which they belong and cannot be the object of subsequent claims* [art. 193]. This presupposes that none of the members of the deceased's family can touch the assets in the estate (Jurcă et al. 2014).

According to the statute of the Romanian Orthodox Church, *the dioceses have a vocation on the entire succession fortune of their hierarchs and are considered as reserve successors of 1/2 of this fortune in case they come in competition with the sessional or testamentary successors. The rights of the sessional or testamentary successors will be reported only on the half not reserved for the dioceses and are regulated according to the provisions of the Civil Code* [Statute no. 4593/1949, art. 194]. *The wealth of monks and nuns brought with them to monasteries, as well as that acquired in any way during monasticism, remains the whole of the monastery to which it belongs* [art. 196].

A similar regulation is found in other cults, such as:

- the status of the Baptist cult (2008), which provides in art. 46 that *the church is the exclusive owner of all movable and immovable property, of material and monetary values in its patrimony and acquired or obtained by any means or lawful means; also, that the material and monetary values, the movable and immovable goods that are the object of contributions of any kind - contributions, donations, successions, and others -, entered in the patrimony of the church, cannot be the object of the subsequent claims, these remaining in the exclusively cultic patrimony.*

- the statute of the Pentecostal cult (2008), provides in the content of art. 27: *membership in the church ceases by withdrawal, transfer, exclusion, or death. Withdrawal as a member must be communicated to the church leadership in writing. Persons who lose their*

membership have no right to the goods and values brought under any title in the patrimony of the church or their descendants.

Moreover, in the doctrine, it is spoken about the legal situation and the owner of the goods that enter the patrimony of the cults/churches (contributions, donations, successions) and that cannot be object of the claim of any person, not even of the one who would have acquired them or who, at some point, leaves that cult (Secretariat of State for Cults, 2018, 180).

We can say that the situation described above can be viewed or assimilated to *conventional inheritance* (Stoica, Fălcușan, Dragu 2004, 74), which is defined as a form of donation of future goods through which one of the contracting parties promises to leave at his death to the contractual partner all the inheritance, part of his own inheritance or some individually determined goods belonging to the patrimony of the promiser.

Conclusions

Following the reason given by the legislator, according to the historical and legal sources we referred to during this paper, we conclude that the diocese and the monastery have a universal succession vocation, regardless of the form of inheritance in question (inheritance legal or testamentary inheritance). In this context, we find a limitation of the right to leave the inheritance by a monk, if he tends to leave property from his patrimony to a third party, outside the church. The third party could benefit from the assets left by the deceased only if there is a will in this respect and if the church renounces / renounces the assets mentioned in the will.

Consequently, even the persons who would have the quality of legal heirs of the deceased monk will not receive any good or right from the succession patrimony, which will enter entirely in the patrimony of the monastery. The legal heirs, even if they have the quality of sessional and / or reserve heirs, have at hand the possibility to contest the succession quality of the monastery, but only by virtue of respecting the free access to justice, not necessarily because they could win the case.

References

Botină, Mădălina. 2015. *Dreptul familiei în Noul Cod Civil. Curs universitar (Family law in the New Civil Code. University Course).* Bucharest: Pro Universitaria Publishing House.

Code of canon law: the official text and the translation into Romanian. 2004. Iași: Sapientia Publishing House.

Codul civil român (Romanian Civil Code).1864.

Decretul nr. 73/1954 privind modificarea art. 680 şi 700 din Codul civil (*Buletinul Oficial* nr. 14 din 19.03.1954), [*Decree no. 73/1954 regarding the modification of art. 680 and 700 of the Civil Code* (*Official Gazette* no. 14 of 19.03.1954)]

Decretul nr. 591 din 1 iunie 1949 (*Decree no. 591 of June 1, 1949*).

Eliescu, Mihail. 1997. *Curs de succesiuni (Succession course).* Bucharest: Editura Humanitas.

Erimia, Cristina-Luiza. 2016. "Ethical and legislative aspects on the legalization of euthanasia from the patient rights perspective". *Journal of Law and Administrative Sciences* 5: 49-62. http://jolas.ro/wp-content/uploads/2016/05/jolas5a7.pdf

Erimia, Cristina-Luiza; Sîrbu, Rodica; Cadar, Emin; Tomescu, Aneta; Paris, Stelian. 2016. "The Reflection of Human Rights in the Health System from the Angle of Patients' Rights." *European Journal of Interdisciplinary Studies (EJIS),* Jan-Apr. Vol. 2, No. 1: 129-136. http://journals.euser.org/index.php/ejis/article/view/1030.

Iustinian, *Codex Iuris Civilis*

Jurcă, G.C., Botină, M. (Stan), Condurache, G., Guérard, S. 2014. *Droit comparé. Législation comparée: Roumanie – Droit de la famille* (*Comparative Law. Comparative legislation: Romania - Family law*. LexisNexis SA Publishing House, fasc. 20.

Legea nr. 319/1944 privind dreptul la moștenire al soțului supraviețuitor (Monitorul Oficial nr. 133 din 10.06.1944) [*Law no. 319/1944 on the right to inheritance of the surviving spouse* (*Official Gazette* no. 133 of 10.06.1944).

Legea nr. 445/1943 privind filiațiunea naturală (*Law no. 445/1943 on natural parentage*).

Marga, Irimie. 2009. *Drept Canonic. Manual pentru uzul studenților la forma de învățământ la distanță* (*Canonical Law. Handbook for the use of students in the form of distance education*). Sibiu: Lucian Blaga University Publishing House.

Rotaru, Ioan-Gheorghe. 2014. *Drept bisericesc (Chuch Law).* Cluj-Napoca: Risoprint Publishing House.

Rotaru, Ioan-Gheorghe. 2019. *Om-Demnitate-Libertate. Adoptarea pentru prima dată pe pământ românesc, în Principatul Transilvaniei, a Principiului Libertății Religioase și evoluția acestuia într-un timp relativ scurt de 25 de ani (1543-1568) [Man-Dignity-Liberty. The Adopting for the First Time on Romanian Soil, in the Principality of Transylvania, of the Religious Freedom Principle and its Evolution in a relatively short time of 25 years (1543-1568)].* Cluj-Napoca: Risoprint Publishing House.

Site-ul oficial al Patriarhiei Române (The official website of the Romanian Patriarchate) http://patriarhia.ro/iv-biserica-ortodoxa-romana-intre-anii-1821-1919-perioada-moderna--152.html

Secretariatul de stat pentru culte (State Secretariat for Religions). 2018. *Statul și cultele religioase (State and Religious Cults)*, 2nd edition revised and added. Bucharest: Litera Publishing House.

Secretariatul de Stat pentru Culte (State Secretariat for Religions) 2021. *Biserica Română Unită cu Roma, greco-catolică (Romanian Church United with Rome, Greek Catholic)*. http://culte.gov.ro/?page_id=700.

Statutul Cultului Creștin Penticostal - Biserica lui Dumnezeu Apostolică din România din 20.02.2008 (*The Statute of the Pentecostal Christian Cult - The Apostolic Church of God in Romania* since 20.02.2008) https://lege5.ro/Gratuit/gezdamrqg4/statutul-cultului-crestin-penticostal-biserica-lui-dumnezeu-apostolica-din-romania-din-20022008

Statutul de organizare și funcționare a Cultului Creștin Baptist - Uniunea Bisericilor Creștine Baptiste din România din 16.01.2008 (*Statute of Organization and Functioning of the Christian Baptist Cult - Union of Christian Baptist Churches in Romania* since 16.01.2008) https://lege5.ro/gratuit/gezdamrrgm/statutul-de-organizare-si-functionare-a-cultului-crestin-baptist-uniunea-bisericilor-crestine-baptiste-din-romania-din-16012008

Statutul nr. 4593/1949 pentru organizarea și funcționarea Bisericii Ortodoxe Române (Statute no. 4593/1949 for the organization and functioning of the Romanian Orthodox Church).

Statutul pentru organizarea și funcționarea Bisericii Ortodoxe Române (Monitorul Oficial, Partea I, nr. 97/10.02.2020) [*Statute for the organization and functioning of the Romanian Orthodox Church* (Official Gazette, Part I, no. 97 / 10.02.2020)]

Stoica, V., Fălcușan, C., Dragu, L. 2004. *Dicționar de drept succesoral (Dictionary of succession law).* Bucharest: Editas Publishing House.