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# PRACTICAL ASPECTS OF PATRIMONY FUNCTIONS

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***Abstract:****The institution of civil law functions with notions from which it itself is formed. Among the main notions of civil law that need to be regulated is that of patrimony. Patrimony is a distinct legal institution that represents the totality or universality of patrimonial rights and patrimonial obligations that belong to a person.*
*Heritage is a legal concept that expresses the set of rights and obligations of a person as a universality, as a totality independent of the goods that the heritage includes at a given moment; whether we regard it as an entity closely related to the person of the subject or whether a universality of rights necessarily exists for any subject of law (even when the passive exceeds the active); it can never be alienated but can be transmitted to the death of the subject at the moment when its will, which gives it the character of unity, is extinguished. The patrimony includes tangible and intangible assets, consumable or fungible, movable or immovable, principal and accessory assets, etc. That is, everything that represents the powers, faculties,*
*The patrimony fulfills three functions, essential in their importance: the patrimony constitutes the general pledge of the creditors, realizes the real subrogation with universal title and makes possible the universal and universal transmission of rights and obligations.*

***Keywords:*** *patrimony, pledge, unsecured creditor, subrogation, guarantee, creditor.*

**JEL Classification: K 11, K 15.**

**Introduction**.

Patrimony is also a bridge between its owner and other legal subjects. The patrimonial rights and obligations are included in the content of legal relations born or to be born between the holders of different patrimonies. The functions of the patrimony are the generalized expression of these legal ties that are created between the holders of different patrimony. In the absence of the legal notion of patrimony, universal real subrogation and with universal title, joint guarantee of creditors and universal transmission with universal title would not be possible and would not be explained. Therefore, the functions of patrimony cannot be understood only by referring to a single patrimony, but only from the perspective of interpatrimonial relations (Stoica, 2017).

The functions of the patrimony, in addition to its legal characteristics, are of particular importance for the analysis of the patrimony. Starting from the legal provisions and taking into account the content of the patrimony, we can affirm that the main functions of the patrimony consist in the fact that it: is the general pledge of unsecured creditors; explains and makes possible real subrogation with universal title; makes universal transmission possible and with universal title.

***General pledge of unsecured creditors.*** The one who is obliged is personally liable with all his movable and immovable assets, present and future. They serve as a joint guarantee of his creditors. If the debtor does not fulfill his debts voluntarily when due, the unsecured creditors have the possibility to demand forced execution on the assets of the debtor's patrimony. This possibility was based

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precisely on the idea that the debtor's patrimony constituted the object of the general pledge of the unsecured creditors. These are the creditors whose claims do not enjoy a real guarantee.

According to art. 42 of the Insolvency Law, unsecured creditors are unsecured creditors who have a patrimonial claim against the debtor. They do not have a real guarantee, a pledge to secure their debt. The legislation of the Republic of Moldova does not distinguish between a pledge and a mortgage, stipulating in the Civil Code of the Republic of Moldova that the pledge is of two types: the registered pledge (the pledge without dispossession, which also includes the mortgage) and the pawn shop (the pledge with dispossession). We consider in this context that the pledge and the mortgage are two distinct real rights.

The object of the general lien is the entire patrimony of the debtor and not the concrete, individualized assets that make it up. The changes that take place in the content of the patrimony do not affect the existence of the general pledge. Since unsecured creditors do not have a fixed guarantee on a certain individualized asset, the debtor is free to dispose of his assets, concluding legal documents regarding them, reducing his assets and increasing his liabilities, i.e. acquiring new assets or contracting new debts. The acts of disposition concluded by the debtor are opposable to unsecured creditors, they cannot intervene in the management of the debtor's patrimony.

Thus, the patrimony ensures the unsecured creditors the possibility to satisfy their claims, reached maturity, from the assets of the debtor, existing at this moment, regardless of whether they existed or not at the time of the appearance of the claim. If the debtor damages the interests of the unsecured creditors by concluding fraudulent documents, the latter have at their disposal the Paulian action to defend their rights.

We could conclude that this category of creditors is in a privileged position compared to other categories of creditors. The advantage becomes evident when the asset under pledge disappears or is destroyed, the pledge creditor not acquiring the quality of unsecured at this moment, and the unsecured do not have the respective risk.

Another opinion is addressed by the Romanian authors IR Urs, PE Ispas "Although in appearance, unsecured creditors appear to be advantaged (the debtor is responsible for paying the debt with all present and future assets), in reality they have an inferior situation compared to creditors with real guarantees ( pledge, mortgagee, privileged creditors), their general pledge on the debtor's patrimony being more of a hope of guarantee." Unsecured creditors, after satisfying the creditors with real guarantees, come into competition with other unsecured creditors, with the possibility of not realizing their claim.

We mention the fact that unsecured creditors are all equal to each other. This position is definitive regardless of when the claim of one or another creditor was born. Determinant in this sense is the quality of the unsecured and by no means the moment of the appearance of the claim and the birth of the right to claim.

Romanian legislation, in art. 2324 of the Civil Code, provides for the joint guarantee of creditors,and not the general pledge of unsecured creditors. The legislator's preference for terminology is justified from two points of view.

First, the term pledge could be misleading. He refers to a real guarantee, the general pledge of unsecured creditors is not really a guarantee, much less a real guarantee. The term pledge is used in

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a metaphorical sense, to evoke the power of the unsecured creditor over the debtor's patrimony. Therefore, not only the power of its owner is exercised over the patrimony, but also the power of unsecured creditors in the form of a general pledge. It is highlighted, once again, the idea that patrimony expresses not only the indissoluble connection with the person who is its holder, but also the connection with other legal subjects, both in the form of particular legal relationships, and in a more general form: the general pledge of unsecured creditors. To clear up any confusion, the legislator preferred the phrase joint guarantee, instead of the phrase general pledge. (Stoica, 2017).

Secondly, the patrimony is a common guarantee not only for unsecured creditors, but for all creditors, including privileged ones and those who have real guarantees. Indeed, the patrimony is a common guarantee for privileged creditors and for those who have real guarantees. It is true that in the case of the latter, as in the case of those who have special privileges, the goods are pursued not by virtue of their belonging to a certain patrimony, but based on the connection they have with a certain debt and with a certain right of debt. But, if they cannot satisfy their claim by pursuing the property that forms the object of the real guarantee or the special privilege, these creditors have the right to pursue the entire patrimony of the debtor precisely because it is also their common guarantee. In a complementary way,

To understand this idea, further explanation is necessary. Although there are several creditors, the concept that designates this function of the patrimony is expressed by a term used in the singular: the joint guarantee of creditors. In other words, there are not as many joint guarantee rights as there are creditors. On the contrary, the right of joint guarantee expresses the joint power that the creditors have over the debtor's patrimony. Such a common power could not exist if the debts did not form a unit in the debtor's patrimony, namely the patrimonial liability, and if this liability were not inextricably linked to the asset within the universality that is patrimony as an attribute of personality.

Intangible goods come out of the scope of the general pledge of unsecured creditors, with the specification that if the intangibility is the consequence of a voluntary clause of inalienability, the legal formalities of publicity must be respected, according to the legal norms.

In conclusion, the option of the Romanian legislator in the sense that the patrimony is the common guarantee of all creditors, and not only of unsecured ones, is justified. It is important, however, that, in the absence of the legal notion of patrimony, the notion of joint guarantee of creditors would not be conceivable either.

***Real subrogation with universal title.*** According to the universal dictionary of the Romanian language, to subrogate means to replace someone in the exercise of certain rights or obligations, with the result that the rights and obligations of the replaced person fall to the surrogate. Subrogation is a legal operation under which a person takes the place of another in a legal relationship or an asset takes the place, therefore, of the legal regime of another asset, within an estate or another legal universality.

Subrogation can be: personal, when one person is replaced by another as the holder of a right. For example, if a person pays the entire debt that a debtor had to his creditor, he substitutes himself, "subrogates" himself in the rights of the paid creditor, being able to pursue the debtor for the debt owed to him; real, when a good is replaced by another good or a value by another value. For example, if an asset owned by one of the spouses is sold, the price received for the asset is

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included in the category of own assets, and if a common asset is sold, its replacement value is part of the mass of common assets.

The legal nature of the patrimony requires us to study real subrogation. In the specialized literature, it is revealed that real subrogation can be universal, with universal title or with private title. Universal, when it concerns the entire heritage; with a universal title, when looking at a patrimonial mass, a division, a fraction of patrimony, disregarding the individuality of each good that leaves and of the one that enters its place; with particular title, when the replacement of an individual asset, viewed in isolation (*ut singuli*) takes place with another determined individual asset (Urs, 2015).

Real universal subrogation and real subrogation with universal title constitute a function of the patrimony, because only in the case of these hypotheses is the subrogation considered within a universality, either at the level of the entire patrimony or at the level of a patrimonial mass (Bîrsan, 2015).

Real subrogation with private title will operate only in the cases expressly provided by law. For example, a legal provision from which real subrogation with a private title arises is found in art. 613 CC of the Republic of Moldova, which establishes that "if the usufruct also includes consumable goods, the usufructuary has the right to dispose of them, but with the obligation to return goods of the same quality, quantity and value or, if it is impossible, to return their value to the date of termination of the usufruct".

There is a close correlation between the notions of patrimony, real subrogation, general pledge of unsecured creditors: patrimony explains and allows the realization of real subrogation, and real subrogation grounds the general pledge of creditors (Boroi, 2013). We would also add here the notion of patrimonial liability, since real subrogation allows the institution of legal patrimonial liability to ensure or restore the integrity of the patrimony. In other words, patrimonial liability is a way of defending the patrimony and it is achieved due to the existence of the institution of real subrogation.

The criteria for distinguishing between general real subrogation (universal or with universal title) and real subrogation with private title result from the above.

First, in terms of the framework in which it operates, general real subrogation occurs in the context of the universality that is patrimony or within a certain patrimonial mass. The real subrogation with private title has as its object patrimonial elements considered *ut singuli*.

Then, under the aspect of the effects, universal real subrogation transfers the quality of the pecuniary elements that come out of the patrimony to be integrated in a universality on the pecuniary elements that enter the patrimony. When it is also a real subrogation with universal title, the pecuniary elements that enter the patrimony also acquire the common legal regime for a certain patrimonial mass. The real subrogation with private title transfers, in addition to this general legal regime, also the special legal regime of the asset that has left the patrimony on the one that enters the patrimony.

Thirdly, in terms of how it operates, general real subrogation occurs automatically, without the need for a provision of the law. Real subrogation with private title operates only if it is expressly provided by law and only to the extent that the law provides for it. As a result, among the features that form the particular legal regime of the property that has left the heritage, only

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those that are expressly provided for in the legal provisions that establish, for the respective case, real subrogation with private title are transferred to the property that enters the heritage.

Always when the law provides for a case of real subrogation with a particular title, the replacement of patrimonial elements has, at the same time, the meaning of a general real subrogation. The consequence is that the pecuniary element that enters the patrimony receives not only the particular legal regime, proper to the pecuniary element that came out of the patrimony, but also becomes an element of the universality that is the patrimony and, if necessary, an element of a determined patrimonial mass, acquiring its legal regime.

Therefore, it can be said that the real subrogation with private title always also implies a general real subrogation. However, the reciprocal is not verified: not every general real subrogation also implies a real subrogation with a particular title (Stoica, 2017).

In the legal literature, it is specified that the real subrogation with universal title allows and explains both the possibility of restitution of a patrimony and the possibility of dividing the successional patrimony (Bîrsan, 2015). In reality, there are only two particular cases in which the real subrogation operates with the universal title as a result of the division of the patrimony. In the two hypotheses, it is not about the restitution or sharing of a patrimony, but of a patrimonial mass.

Thus, as a result of the annulment of the judicial decision declaring death, the issue of the so-called restitution of the patrimony of the one considered, erroneously, as deceased was raised. As we have seen, the succession table is not a separate patrimony, but a patrimonial table in the successor's patrimony. The annulment of the judicial decision declaring death has the effect of reviving the legal unit of the estate in the heir's patrimony. The integrity of this patrimonial mass is preserved, in cases where acts of alienation have been concluded with onerous title to third parties in good faith (Duțu, 2018), precisely through real subrogation with universal title. What is being returned is precisely this patrimonial mass. But, once it has been returned to the author, it melts into the universality of his heritage.

Real subrogation with universal title works in a similar way when it comes to the inheritance petition, which has as its object the restitution of a patrimonial mass, and not of a patrimony (Deak, 2002).

We have also seen that indivision is not only a legal way of patrimony, but also a hypothesis for dividing the patrimony of the successors. That is why, in this case too, we are in the presence of a simple particular application of the more general idea according to which real subrogation with universal title operates, distinctly, within each patrimonial mass. On this basis, if the division in kind is not possible or advantageous for co-divisions, the tangible goods can be sold or exchanged, and the sums of money or other goods that thus enter the inheritance table are divided according to the inheritance quotas (Stoica, 2017).

***Universal transmission and with universal title.*** The transmission takes place in case of the death of the natural person and the reorganization of the legal person (absorption, merger, division) according to art. 207, 207 CC of the Republic of Moldova. Heritage, as legal universality, explains and allows universal transmission and transmission with universal title.

Transmission is: universal, when the entire patrimony is transmitted; with universal title, when fractions of the patrimony (active and passive) are transferred; with private title, when one or more individualized goods are the subject of the transmission (Dogaru, 2003).

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Universal transmission intervenes: in the case of a person's death when the entire estate is collected by the sole legal heir or by a single testamentary heir; in the case of the reorganization of the legal entity through absorption and merger when the patrimony of the absorbed legal entity is taken over by the absorbing legal entity, respectively the patrimony of the merging legal entities are transferred to the thus established legal entity.

Universal title transmission takes place: in case of death of a natural person, when the deceased's patrimony is divided between two or more legal or testamentary heirs; in the case of reorganization of a legal entity through total or partial division.

The transmission with a private title concerns a specific, determined good, or several goods, but each one individualized by its attributes, a transmission that can be explained without resorting to the concept of heritage (Stahi, 2016).

Although we talk about the transmission of the heritage or the transmission of a fraction of the patrimony, in reality it is the transmission of the universality or a fraction of the universality of the elements that are found in the patrimony of the natural person at the time of death or in the patrimony of the legal person at the time of reorganization or termination.

The distinction is not just one of nuance. If the patrimony is an attribute of the personality, it lasts only as long as the natural or legal person lasts. What is transmitted is the content of the heritage, but also as universality or as a fraction of universality. The legal unity of these patrimonial elements is no longer given by the person of the author, but by the person of the successor in the patrimony to whom these elements are transmitted. In cases where these patrimonial elements form a distinct mass in the successor's patrimony, their legal unity will also be determined by the affectation and legal regime of that patrimonial mass (Stoica, 2017).

The transmission of the heritage and the transmission of the universality of the elements of the heritage mean the same thing. In reality, the first wording leads to the idea that the successor has two or more estates, which is inadmissible. On the contrary, the second formulation results from the idea of the uniqueness of the successor's patrimony with the idea of transmitting the universality or a fraction of the universality of the elements of the author's patrimony. What exists in the patrimony of the natural person at the time of death or in the patrimony of the legal person at the time of reorganization or termination represents only a sequence, a stop-frame from the film of the existence of the patrimony.

Even if one accepts the idea that the person of the successor continues the person of the author, this idea only has the function of justifying the transmission of the universality or a fraction of the universality of the elements of the author's heritage. Continuity is symbolic, not strictly legal. It is the reason why the rights and obligations born from *iniuitu personae* contracts are not transmitted from the author to the successor in a universal transmission or with universal title. From a legal point of view, however, there is no identity between the person of the successor and the person of the author, nor between the patrimony of the successor and the patrimony of the author. This is the reason why it is preferable, from a strictly legal point of view, to affirm the continuity of rights and obligations that do not have an *intuitu personae* character, and not the continuity of the author or the author's estate beyond his death. This last continuity can only be considered from a symbolic point of view. Therefore, universal transmission or with universal title implies the idea of universality only in its spatial dimension, in the sense that it covers all the

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rights and obligations existing at a given moment in a person's patrimony or a fraction thereof, but not in its temporal dimension, of permanence and continuity, since the patrimony ceases to exist with the person.

It is important, however, that between the universal transmission and the transmission with universal title there is no qualitative difference, but only a quantitative one. In both cases, both assets and liabilities are transmitted. Whether it is universality or a fraction of universality, the proportion between active and passive is preserved. The quantitative difference consists precisely in the fact that, in the case of universal transmission, the successor acquires the entire asset and liability from the author's patrimony, and in the case of transmission with universal title, the successor acquires the same fraction of both the asset and the patrimonial liability (Stoica, 2017) .

Therefore, we could mention that the practical importance of the content and functions of patrimony consists in the fact that it allows and explains the production of some legal consequences imposed by economic and legal life.

In concusion, we state that heritage is one of the most important specific concepts in the field of property law, with the widest applicability. Thus, imposing itself since the "beginnings of law", more precisely during the period when, within the ancient Roman state, legal relations were considered to have a sacred nature, the concept of heritage crossed history to be placed at the foundation of the system modern private legal. In its modern form, heritage finds its basis in the legislation of all states, which was the source of inspiration for the vast majority of normative acts of this kind in the states of the continental law system.

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