THE INSTITUTION OF THE SURVIVING SPOUSE IN THE NEW REGULAȚION OF THE CIVIL LEGISLATION OF THE REPUBLIC OF MOLDOVA

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Abstract. *Succession is a specific transmission, it is clearly delimited from all other patrimonial transmissions, which can only be carried out between persons in existence at the time of their occurrence. Thus, in order not to confuse the principle of successional transmission with transmission by acts between the living, it is worth mentioning that only the death of a human being can have the effect of transmitting the inheritance. Although our legislation admits the transmission of the patrimony both by acts between the living and by acts for cause of death, we believe that the only scope of the current patrimony transmission contract is that of the alienation of an inheritance or a portion of it. In this sense, we consider that when an heir sells the inheritance, the contract will have as its object the inheritance right considered in isolation, although this right refers to a universality or an undivided share of it.*
The provisions of the Constitution of the Republic of Moldova stipulate in art.46 paragraph (6) that: "The right to inherit private property is guaranteed", which means that the state is not limited only to the formal recognition of the right to inherit, but also ensures through its institutions the legal protection of this important right.
"Any natural or legal person has the right to have his property respected. No one may be deprived of his property except for reasons of public utility and under the conditions provided for by law and by the general principles of international law", stipulates art.1 of Protocol No. 1 additional to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 04.11.1950), ratified by Decision of the Parliament of the Republic of Moldova No. 1298-XII of 24.07.1997.

Key words: *successional capacity, surviving spouse, deceased, joint property, estate, legal heir, succession, successional indignity, vacancy.*

Succession is one of the ways of acquiring property rights, which includes the transmission of the patrimony of a deceased individual to one or more individuals, legal entities or the state and represents one of the most important institutions of civil legislation.
The notion of inheritance is expressly provided for by the provision of the norm of art. 2162 paragraph. (1) CC of the RM, according to which "Inheritance is the transmission of the patrimony (successory estate) of a deceased individual (deceased, the one who left the inheritance) to one or more persons (heirs)."
Inheritance also means the transmission of patrimony (the totality of patrimonial rights and obligations that can be valued in money, viewed as a sum of active and passive values, closely linked to each other, belonging to certain individuals or legal entities) to of deceased individuals to one or more living persons (individuals, legal entities or the state).
If an inheritance has several co-heirs, each of them holds a share of the inheritance. It is the measure of the inheritance right of each of them. Determining the size of the share of the inheritance is one of the main functions of inheritance law. In turn, the share of the co-heir does not constitute a share of each asset that is part of the inheritance estate. The share of the inheritance can be alienated by the free co-heir (art. 2486 para. (1)) for various reasons (if he sells it, the purpose is to obtain money instantly; if he donates it, it is, as a rule, because he wants it so, for another person to take over his position within the inheritance estate).
As long as it is in undivided estate, the co-heirs cannot sell any share of a specific asset that is part of the estate (art. 2486 para. (2)).
An inheritance can have several "beneficiaries" with distinct rights: it can have one heir (sole heir) or

several co-heirs, and the other beneficiaries can only be legatees (they do not acquire assets directly from the deceased, but have the right to request a specific asset from the heir).
The classes of heirs and the degrees of kinship are technical-legal means that establish the scope of persons called by law to inherit. However, this scope is quite extensive and the law does not want an excessive fragmentation of successions. Therefore, among the persons with a legal vocation to inherit, the law establishes a certain specific order of calling to inherit.
The new regulation of the Civil Code in the field of legal inheritance has added two more classes of legal heirs, thus, currently, five classes of legal heirs who can inherit are regulated as follows (OCTAVIAN CAZAC, The Legacy, Ed. Animus, 2022, 250 p., ISBN 978-9975-87-989-7).
Conducting a comparative analysis between the provisions of the Civil Code of the Republic of Moldova from 2002 and the amendments made to it starting from March 1, 2019, we can note an important change in the regulation of legal inheritance. In its initial form, the Civil Code recognized a smaller number of classes of legal heirs, which meant that, in the absence of close living relatives, the inheritance of the deceased reverted to the state. This solution could be considered unfavorable for more distant relatives, who, although they had a blood relationship with the deceased, had no inheritance rights. It is worth noting that the surviving spouse, as a legal successor, is not included in any of the five classes of heirs. The surviving spouse competes with any class of legal heirs and collects a fixed share established by the legislator as a priority, as a legal heir.
Through the current regulation, the legislator has introduced two additional classes of legal heirs, which means that there are currently five classes, compared to three as there were previously. This expansion has a significant positive impact on the distribution of the inheritance patrimony, as it allows other, more distant relatives to inherit in the absence of those in the higher classes.
Thus, by including these new classes, the aim is to ensure continuity in the transmission of the patrimony within the family, preserving its connection with the deceased's relatives, even if they are not of close degree. Instead of the assets becoming the property of the state, which would have meant, in many cases, a total alienation from the presumed will of the deceased, the law now offers the chance for these assets to remain within the family, even through more distant relatives – such as cousins, uncles, aunts or their descendants (OCTAVIAN CAZAC, The Legacy, Ed. Animus, 2022, 250 p., ISBN 978-9975-87-989-7).
I believe that this legislative reform represents an important progress in the field of inheritance law, as it reflects a fairer approach and closer to social realities. Distant relatives, who may have had a close relationship with the deceased or contributed to his care, now have a real chance to benefit from the inheritance left. At the same time, the risk of the assets ending up in the possession of the state without solid justification is reduced, especially in cases in which there are relatives who, even if they are not of close degree, can be considered morally and socially entitled to inherit.
The amendments to the Civil Code of 2019 brought more justice and humanity to the regulation of successions, contributing to the consolidation of the principle of preserving the patrimony within the family. Currently, the Civil Code of the Republic of Moldova provides for five classes of legal heirs, which ensures greater flexibility in the transmission of wealth and broader legal protection for the relatives of the deceased, including the surviving spouse who competes with the higher class and collects a fixed share, as a legal heir.
The right to legal inheritance of the surviving spouse of the deceased has its foundation in the presumed desire of the de cuius, but also in the solidarity between the spouses and in the idea of the community of property that they had during the marriage. This right has moral and economic considerations. From a moral point of view, the surviving spouse has a merit in acquiring the deceased's property and accompanying him in life - a moral relationship as close as that of descendants (DEAK FR., POPESCU ROMEO, Succession law treaty. Vol.II, Ed. Bucharest: Universul Juridic, 2014, 347 p., ISBN 978-606-673-308-3.).
The conditions imposed by the legislator for the surviving spouse to inherit are divided into positive

conditions - the capacity for succession, the vocation for succession and negative conditions - that of not being unworthy of the deceased (CHIBAC GHEORGHE, BRUMA SORIN, ROBU OXANA and CHIBAC NATALIA, Civil Law. Contracts and successions, Chisinau, Tipografia Centrală, 2014, 172 p.,). This means that the right of inheritance, recognized to the surviving spouse, is based on a quality that can be lost. Only a marriage concluded at the state civil status bodies gives rise to rights and obligations between spouses. Thus, taking into account several factors, including social realities or Christian traditions of our people in the field of marriage and family relations, the legislation of the Republic of Moldova establishes that a marriage can only be concluded between persons of different sexes, that is, between a man and a woman. This condition is expressly mentioned in art.48 paragraph 2 of the Constitution, art.2 paragraph 3 and art.11 paragraph 1 of the Family Code. At the same time, art.15 paragraph 1 letter h) of the Family Code expressly provides that it is prohibited to conclude marriage between persons of the same sex. Therefore, only the person who was legally married (registered marriage) to the person leaving the inheritance has a succession vocation to his inheritance. However, some exceptions to this rule are also admitted. They refer to persons who lived together but did not register the marriage, since the legislation in force at the time when they founded their family did not require the registration of the marriage and they considered the religious celebration or the recognition of the legal effects of the de facto conjugal relations sufficient. In the specialized literature, it is mentioned that by the Ukaz (decree) of November 28, 1946, the Presidium of the Supreme Soviet of the MSSR ordered that marriages concluded before June 28, 1940 be considered valid in accordance with the laws that were in force on the territory of Bessarabia at that time. However, in this context, a court decision is necessary to recognize the marriage as valid under the conditions described above, in order to produce legal effects including in matters of inheritance.

The surviving spouse is called to the succession of his or her predeceased spouse regardless of gender, duration of marriage with the deceased, financial status, whether or not children resulted from the marriage, or whether the spouses were living together at the date of opening the inheritance or, on the contrary, were actually separated.

The status of spouse can be lost through divorce and with the divorce the presumed affection of the deceased, which legitimizes the right of inheritance of the surviving spouse, also disappears.

In case of divorce, the marriage is dissolved from the moment of filing such a request. Since the divorce produces effects only for the future, not for the past, the status of spouse is preserved, until the date of admission of the request for the dissolution of the marriage in the procedure, in accordance with art.168 of the Civil Procedure Code.

The status of spouse can also be lost due to the dissolution of the marriage by a court decision establishing the nullity of the marriage or the court pronounces the annulment of the marriage. In the case of nullity, the marriage is dissolved with retroactive effect, so that from a legal point of view, the spouses are considered to have never been married to each other and, therefore, the issue of inheritance rights no longer arises, the status of spouse that the surviving spouse had at the date of opening the succession being dissolved with retroactive effect.

The surviving spouse is not part of any class of heirs, it is a separate category of legal heir, which competes with any class of legal heirs.

The estate of the deceased spouse is made up of the personal assets of the person leaving the inheritance and the assets remaining after deducting the share due to the surviving spouse from the common assets. The surviving spouse is entitled to a share of the common assets due to him as a co-inheritor plus a share equal to that of the children and parents in the estate.

The estate of the deceased spouse, to which the surviving spouse is called, is made up as follows:

- of the personal assets of the person leaving the inheritance, which according to Article 22 of the Family Code are: assets acquired before the conclusion of the marriage; assets received as a gift or based on other gratuitous agreements; goods acquired by inheritance; goods for personal use, with the exception of expensive jewelry and other luxury items, regardless of the time and manner of acquisition. At the same time, the category of personal goods, according to Article 20 of the Family Code, also includes prizes, allowances and other payments that have a compensatory character (material assistance, compensation for health damage, etc.)

- from the goods remaining after deducting the share due to the surviving spouse from the common goods. Goods acquired by spouses during marriage are, according to Article 20 of the Family Code, common goods. Their division is made in the event of the death of one of the spouses by mutual agreement between the surviving spouse and the other successors of the person leaving the inheritance, and in case of disagreement, by court order.

The surviving spouse inherits in his own name and not by representation, he is a reserved heir, if he meets the additional conditions imposed by the legislator.

From the legal texts cited above, we can deduce that only by exercising the fundamental right to marriage can a man and a woman acquire the quality of "husbands", and the conclusion of marriage, as its main effect, leads to the founding of a family. Being considered the "natural and fundamental element of society", the family cannot be born through a marriage concluded between persons of the same sex. As some authors argue, marriage between persons of the same sex, being against nature, does not give rise to the family as a natural and fundamental element of society, such a marriage cannot determine the emergence of a natural family.

The status of a married person brings a complex of rights and duties, both of a personal and patrimonial nature, for the benefit, respectively, of each of the spouses. These rights and duties will accompany the marriage throughout its duration. Personal relationships constitute the main content of the relations between spouses, so that all family patrimonial relations are, as some authors claim, "subordinate to the purpose of personal relationships and the main tasks of the family". These relations concern: the name and domicile of the spouses, the obligation of moral support, the obligation of conjugal fidelity, their citizenship and the capacity to exercise the right of the person who marries before reaching the age of 18 (GHEORGHE CHEBAC; A. BOYS; ALEXANDRU ROTARI; OLEG EFRIM, Civil law. Special contracts. Chisinau, Cartier Publishing House, 2005).

In addition to granting the surviving spouse the status of legal heir and, consequently, the assignment of an inheritance share, the inheritance law additionally grants him the right to furniture and household movable objects, in accordance with art. 2186 of the Civil Code of the Republic of Moldova.

In order to make it possible for the surviving spouse to inherit together with different classes of relatives, according to the tradition of continental European inheritance law, the spouse is not part of any class of heirs.

The new regulation in art. 2185 CC RM grants the surviving spouse the right to ¼ of the inheritance in case he comes to the inheritance in competition with the first class of heirs; 1/2 when he comes to the inheritance in competition with the second class of heirs, and in the absence of the first and second class heirs or if they are renouncers or unworthy, the surviving spouse collects the entire inheritance.

Art. 2187 regulates an exceptional situation in inheritance law, namely the case when the surviving spouse is excluded from the legal heirs. This article establishes the conditions under which the surviving spouse no longer has the right to inherit from the deceased spouse, even if, normally, he would have had such a right under the law (OCTAVIAN CAZAC, The Legacy, Ed. Animus, 2022, 250 p., ISBN 978-9975-87-989-7).

According to par. (1) of art. mentioned, the loss of the right to inherit can occur in two main cases:

a) The first case concerns situations in which, at the date of opening the inheritance (i.e. the moment of death), the divorce procedure had already been initiated. More precisely, if the deceased

filed a divorce action, acknowledged the action filed by the other spouse or filed a divorce application according to the law, the surviving spouse loses the right to inherit. This provision reflects the idea that, although the marriage was not formally dissolved by a final decision, the clear intention to break the marital bond was already expressed, and the emotional and family bond was seriously damaged.

b) The second case concerns the nullity of the marriage. If, at the time of death, the marriage was declared null and void by a court decision or there were grounds for declaring nullity and an action had been brought in this regard, then the surviving spouse is also deprived of the right to inheritance. In such cases, it is considered that there was no real legally valid marriage between the spouses, which is why there can be no right to inheritance either.

Paragraph (2) adds an important clarification and introduces a humanitarian exception: although the surviving spouse may be excluded from the inheritance, his right to maintenance remains unaffected. This means that, regardless of the circumstances leading to the deprivation of the right to inherit, the spouse may still benefit from material support under certain conditions, in accordance with the provisions of the law.

This regulation plays an important role in protecting the principle of fairness and good faith in inheritance law. It prevents a person who was in open conflict with the deceased or had a legally non-existent marriage from benefiting from his or her assets after death. At the same time, the legislator ensures a minimum of social protection for the surviving spouse, by maintaining the right to maintenance.

In conclusion, the new regulation, by expanding to five classes of legal heirs and excluding the surviving spouse from the classes of legal heirs, granting him or her a special status, ensures a broader coverage of possible succession situations, offering clear solutions in cases where close relatives are no longer alive. Thus, the rules regarding the inheritance of the surviving spouse represent an essential legal mechanism that structures the hierarchy of legal heirs and guarantees a rational, coherent and fair distribution of the deceased's patrimony within the family.

In order to improve the legal framework, namely the way in which the surviving spouse collects the estate, based on the special status granted by the legislator, the deceased's affection for him, we would propose that the surviving spouse compete only with class I of legal heirs and with the deceased's parents, as part of class II of legal heirs. In competition with the descendants of the parents class II, with class III, with class IV and class V, the surviving spouse, if he meets the conditions to be able to inherit, should collect the entire estate, excluding the aforementioned successors from the inheritance.

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