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THE EFFECTS OF INHERITANCE ON THE FINANCIAL– SECURITY OF PEOPLE IN CHINA AND ROMANIA

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Abstract

Mircea Eliade said that "We are all immortal, but we must die first". Man is a transitory being that perishes through death. From a legal point of view, the passing away of every man is equal to his disappearance as a subject of law. Only his heritage remains.

As M. Grimaldi also pointed out "under penalty of anarchy and immobility, it could not be said of a dead person, as of a void act, that he is considered to have never existed: his acquisitions, his obligations cannot be made tabula rasa".

Succession is a way by which an individual can ensure, after his death, the well-being of the family and beyond, thus improving the financial situation of those who are at the succession table.

Key words: *inheritance, financial security, economy, China, Romania, succession law, patrimony.*

INTRODUCTION

The source of succession law is of religious origin. The legal connotations of the transmission of goods appeared after the development of property, at first of family property, and then of individual property.

It is about the moment when the families that belonged to the same clan or tribe, start to have a heritage distinct from the heritage of other families. In fact, the principle of the unity of the family patrimony is what has animated the right of succession throughout history¹ (*Decugis, 1942, p.223*). We cannot talk about any

¹<https://gallica.bnf.fr/ark:/12148/bpt6k3411927w.image>

form of human association that can function without a necessary minimum of rules (*Popoviciu, 2014, p.26*).

In current speech, heritage² means a person's fortune or wealth. The notion of patrimony was defined for the first time in the 19th century by two professors from the Faculty of Law in Strasbourg, C. Aubry and C. Rau, in the work "Civil law theory according to Zachariae's method"³. The theory of the two authors is considered to be the most famous theory of French law. This is the result of a productive mixture of French legislative art and German legal science and was inspired by the succession law regulated in the code.

Our legal literature includes several definitions of patrimony. The most well-known is the one that defines patrimony as "the totality of rights and obligations that have economic value, belonging to a person", specifying that goods are not included in the definition because in the Civil Code patrimonial rights are considered assets. In the current legislation, assets are regulated in Chapter I "About assets in general" of Title I of Book III, entitled "About goods". Art. 535 of the Civil Code states that: "...goods are tangible or intangible things, which constitute the object of a patrimonial right". "The text of the law thus defines the notion of property through the prism of the order as created by way of perception, thus moving away from the classification of the old Civil Code which gave priority to the classification of goods into movable and immovable".

I. THE RIGHT OF SUCCESSION IN ROMANIAN LEGISLATION

Regarding inheritance, the Civil Code defines it in art. 953 as "the transfer of the patrimony of a deceased person to one or more living persons". Although, art. 953 Civil Code "refers only to the meaning of the inheritance of the transmission of a patrimony, there is also another meaning, that of transmitted patrimony" (*Pătrașcu, Genoiu, 2018, p. 67*). Regarding the meanings of the notion of inheritance, a third meaning of it was brought into discussion, namely that of matter of civil law (*Ulieșcu, p. 568-572*). Although the definition in Article 953 of the Civil Code does not contain this meaning, the legislator takes it into account in the regulation of other legal institutions, such as: the available quota, the forced share or *sesin*.

After an analysis of the current legislation, it can be found that the right of succession is a right of constant application with a strong technical character. The constant application results from the fact that whatever the ideological changes

²The term patrimony is of Latin origin, *patrimonium*, which in turn derives from the *pater familias*, who owned the entire family fortune. Also, the notion of patrimony had a real character, because it denoted family assets, assets that were passed down from father to son.

³Zachariae was a prominent German jurist who studied philosophy, history, mathematics and jurisprudence at the University of Leipzig. Throughout his career, he published a succession of works covering the entire field of jurisprudence, they are philosophical, historical and practical. These refer to Roman, German, Canon, English and French law.

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over time, the usefulness and application of the rules governing succession law have not been affected. The technical nature emerges from the pecuniary legal relations in which the family has a vested interest. Regarding liberties, the question that arises is: To what extent is it permissible for a person to deprive his family members of possessions? These rights are found stuck at the border between patrimony law and family law, a fact that emerges from the influence exerted by the rules governing the family regarding inheritance and liberties. In the decisions of the ECHR, it is shown that the regulations regarding succession and liberties between close relatives interfere to a great extent in family life (*Judgment of June 13, 1979, (series A no. 31), p. 23 – 24*).

It is evident that the law of succession lies at the crossroads between real rights and family law, just as it is evident that the type of personal relations between the members of a family affect the extent and nature of the pecuniary relations between them. Individual wills have an important role in determining these relationships since the law intervenes only subsidiarily.

Thus, by inheritance we mean that the movable or immovable property of a deceased person comes into the possession of one or more heirs, which more or less ensure that the persons who are entitled to come and reap the inheritance, that is the family, enjoy a certain level of protection.

According to art. 955 paragraph (1) Civil Code, "The estate of the deceased is transmitted by legal inheritance, to the extent that the defunct has not ordered otherwise by will". Thus, "depending on the source of the right of inheritance of those who acquire the patrimony of the deceased person, the inheritance can be legal or testamentary" (*Deak, Popescu, 2014, p.22*).

In national law, the inheritance is collected by the legal heirs who are, for example, the surviving spouse and relatives of the deceased in a certain order, as follows: first class, descendants, second class, privileged ascendants and collaterals, third class, ascendants ordinary and fourth class, ordinary collaterals.

The descendants and ascendants of the deceased come to the inherit regardless of the degree of kinship, and their collaterals, only up to the fourth degree.

Romanian legislation also has the mechanism of inheritance by right to representation, but this will operate only in the case of the descendants of the deceased's children and in the case of the descendants of the deceased's brothers and sisters. If we are in such a situation, the inheritance will be divided by stem. If a stem has several branches, the subdivision will be made per stem and the due portion will be divided equally.

As for the institution of the forced share, it represents half of the inheritance share due to each forced heir, a share from which they will benefit even against the will of the deceased.

"The forced share is an institution specific to continental European law, inherited as a principle from classical Roman law: the freedom to dispose of one's

own wealth is encumbered by a family affectation, being limited to an available quota" (*Bob, 2012, p. 68*).

An increasingly common question in the specialized literature, in relation to the forced share, is: should the legislator maintain it or should he give it up? There are voices that support the necessity of its existence and voices that are totally against it.

If we analyse the two situations, we find that renouncing the reservation, on the one hand, "would generate the effects of a legal anarchy", and on the other hand, "keeping the current regulation intact would be likely to place Romanian law in a dangerous area of rigid, excessive formality, and far too impervious to the will of one who, by efforts, abnegations, and privations, has been the craftsman of an estate which he should naturally be able to manage for the moment of his death as naturally and free as he could do during his life" (*Negrilă, 2014, p. 17*).

The French jurist Felix Julien Jean Bigot de Preameneu, one of the four legal authors of the Napoleonic Code, written at the request of Napoleon at the beginning of the century. of the 19th century, showed more than 200 years ago that: "The individual's will or right must yield to the need to maintain social order, which cannot subsist if there is uncertainty in the transmission of part of the patrimony of the father and mother to their children, it is the successive transmission of the reserve that establishes the rank and condition of citizens".

II. THE EFFECTS OF INHERITANCE ON THE FINANCIAL SECURITY OF CITIZENS IN ROMANIA AND CHINA

Returning to the proposed theme, it is true that inheritance can bring wealth and financial security to the inheritors, but all this depends on the value of the inheritance.

If we refer to the national economy, we can say that in recent years, Romania has faced complicated issues, because both in the past and in the present, society was and is deeply marked by uncertainty, against the background of general insecurity, lack of predictability from the economy and other factors. For example, in our country, the purchase of a home has become a real struggle, due to the increase in interest rates, the tightening of conditions for long-term loans and the increase in prices, which inevitably led to an extremely high cost of living.

We must mention the fact that the Romanians who went to work abroad have become the main external investors of Romania, because the transfer of their money represents a source of economic development. In general, the transfer of these amounts tends to be more stable than capital flows and are not cyclical, on the contrary, during economic crises, when private capital flows tend to decrease, they increase and become an important source of subsistence⁴.

⁴In the last 15 years, Romanians from the diaspora have contributed over 65 billion euros to Romania's GDP.

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So, as I have shown above, inheritance can indeed provide comfort and financial security, but only if it is consistent.

In Romania, no study has yet been carried out to show the correlation between obtaining an inheritance and improving the financial situation of a family or an individual.

In contrast, in the People's Republic of China, economists, jurists, sociologists, and even historians have conducted several such studies.

Asia is the largest continent on Earth⁵.

Precisely because of its extent, it is difficult to analyse and present the culture and legal reasoning underlying the laws of Asian countries. Asian states have suffered, over the centuries, the influences of colonialism from states such as: Great Britain, France, Germany, Holland, Portugal, Spain, Switzerland and the United States of America. The influences of colonialism intersected with Chinese, Buddhist, Hindu, and Islamic legal traditions. However, from a legal point of view, among Asian states, there are commonalities related to religion, similar historical influences and approach to the processes of modernization and industrialization. These aspects common to Asian countries have existed since pre-colonial times.

Over time, a number of studies have been conducted that have analysed the transformation of traditional laws in controlled territories, and the unanimous conclusion is that colonial powers and indigenous elites wilfully manipulated customary laws in a manner consistent with political and economic interests that they had (*Chanock, Erni, 2014, p. 5*).

Although the colonial powers left their mark on the legislation of the conquered territories, the area of personal laws, i.e., family law and inheritance, was less affected (*Hooker, 1978, pp. 123-152*). For example, in the Asian colonies of Great Britain, legal issues related to family law and inheritance law were judged in British courts but with the help of local counsel.

Since 1980, the PRC economy has taken off, passing through several stages of development. Under the leadership of the leader of the Chinese Socialist Party, Deng Xiaoping⁶, Western companies and capital were allowed to enter the Chinese economy. Due to this economic growth, Chinese citizens began to earn

⁵The population represents more than 60% of the entire world population, that is, out of about 7 billion inhabitants of the Planet, 4 billion live in Asia, and the population grows every year by 50 million inhabitants. Asia's population is multi-denominational, from Orthodox Christians, which predominate in the Russian Federation, to Islam, to Judaism in Israel, Orthodox in Armenia and Georgia, Hinduism in India, Buddhism combined with Taoism in China and Korea, and Shintoism in Japan.

⁶Deng Xiaoping is nicknamed the "Architect of Modern China". He became the leader of the Chinese Communist Party in 1978 and remained in this position until 1983. He was the de facto leader of the PRC thus starting the modernization of the Chinese economy by: denouncing the cultural revolution, reintroducing national college entrance exams (Gao Kao), sponsoring 10,000 Chinese citizens to study abroad and establishing diplomatic relations with the US

significant sums and enrich their wealth. A new level of social mobility is emerging from the ashes of the cultural revolution⁷. However, the modernization and liberalization of the Chinese economy has also brought new problems.

Due to the large influx of foreign capital and the establishment of many private businesses, an economic rift has emerged in Chinese society⁸. While some citizens were still living in poor but relatively stable conditions, other citizens, who were employed by foreign firms or started their own businesses, were beginning to lead an almost luxurious lifestyle.

At the demographic level, there have been mass migrations from the rural to the urban environment. In 1980 only 20% of China's population lived in cities, in 2022 this percentage will reach 65%⁹. This rapid urbanization has led to exponential real estate development, which has drawn criticism from the Western media (*Guanghua Chia, Yu Liub, Zhengwei Wua, Haishan Wua, 2015 p.1*). Because of these changes, corruption became a major problem during the 1990s. For example, in 1998 approximately 158,000 members of the Chinese Communist Party were punished in an exemplary manner for acts of corruption¹⁰.

In 1985, a new law imposed the equality of female heirs with that of male heirs (*Davin, 2007, p. 54*). Although early communists in China fought for women's emancipation as early as the 1920s, there was no clear legislation on women's right to inherit until 1985. The courts and urban society still supported the need for equality between women and men. Between the 1950s and the 1980s, the law clearly stipulated the equality of spouses regarding the totality of rights and obligations arising from marriage (*Davin, 2007, p. 58*). Although the Chinese state authorities made great efforts, the status of women in society remained unfavourable. Female heirs are often forced by male heirs to give up their share in order to maintain the patrilineal family patrimony (*Davin, 2007, p. 62*). "Now that households are becoming wealthier and can own private property, something that was impossible in the past, the injustice to women in the application of inheritance law is becoming more apparent."

We observe a first big problem with regard to the economic contribution of inheritances, namely, the deprivation of female heirs from the right to inherit. Because of this, women have a clear disadvantage in terms of the financial security conferred by the right of succession. Due to outdated social prejudices, female heirs do not enjoy the same economic protection as male heirs.

⁷The Cultural Revolution or the Great Cultural Revolution of the Proletariat was a policy adopted by Mao Zedong between 1966-1976 with the aim of reinvigorating the spirit of the Chinese revolution. In practical terms, Mao Zedong organized students into paramilitary groups called the Red Guards and encouraged the destruction of any traditional symbols or values that could be considered "bourgeois".

⁸ <https://www.jri.co.jp/english/periodical/rim/1999/RIMe199904threereforms/>.

⁹ <https://www.statista.com/statistics/270162/urbanization-in-china/>.

¹⁰ <https://www.jri.co.jp/english/periodical/rim/1999/RIMe199904threereforms/>.

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In general, the succession in the Chinese economy is a real "golden ticket". As I have shown above, the liberalization of the economy and the emergence of private property led, on the one hand, to the increase of living standards and on the other hand, to a social rupture. Because of the accumulation of private capital by certain citizens and because of the corruption that arose immediately after the liberalization of the economy, some people became extraordinarily rich, while other people remained in poor economic conditions. This social division is directly correlated with the right to inheritance. This phenomenon happened in Europe after the Second World War (*Wei & Yang, vol. 68(1), pp. 234-262, 2022, p.235*). After the adoption of the inheritance law, China went through the same situation (*Wei & Yang, vol. 68(1), pp. 234-262, 2022, p.235*).

The vast majority of inheritances are left by parents (*Wei & Yang, vol. 68(1), pp. 234-262, 2022, p.248*). In the relatively rare cases when a descendant dies, he usually leaves behind debts (*Wei & Yang, vol. 68(1), pages 234-262, 2022, p.248*). According to some studies (*Wei & Yang, vol. 68(1), pages 234-262, 2022, p.235; Foster pp.151-153, 2003*), both the economic security and the social mobility of the people who are beneficiaries of inheritances are increasing. In the case of already well off households, an inheritance will only increase the pre-existing familial patrimony (*Wei & Yang, vol. 68(1), pages 234-262, 2022, p.250*). In the case of modest households, inherited property is a significant help, as it provides a certain degree of financial security. Most of the time, this heritage is not enough to allow increased social mobility (*Wei & Yang, vol. 68(1), pages 234-262, 2022, p.250*). Although inheritance universally brings enrichment to the inheritors, it also brings a discrepancy between rich and poor people.

Although no studies have been conducted in our country regarding the correlation between inheritance and the financial security of those who inherit, we can identify an advantage of Romanian heirs compared to Chinese heirs, and this consists in the fact that Romanian women really, they can enjoy the much-discussed equality between men and women. No female person in Romania can complain about discrimination when they are in the situation of inheriting.

On the other hand, what is extremely interesting and exciting at the same time, in Chinese law is the fact that the judges of the courts in which the disputes that have the object of succession reservation are discussed, analyse the relations that the deceased had during his life with the legal heirs, taking into account both the needs of the heirs and the economic relations between the deceased and them (Brown, no. 1/2019, p. 253). The forced share model allows judges to carry out a redistribution of shares and assets of the inheritance for the benefit of heirs who present certain disadvantages or persons to whom certain moral merits are attributed¹¹.

¹¹ The case of Mr. Ping's estate. The late Yu Ping died without leaving a will, leaving behind an elderly wife and a son who is grown and financially independent. Mr. Yu learned about the

Therefore, the Chinese judge can, depending on the circumstances of the surviving spouse and other heirs of the deceased, modify as they see fit, both the shares and the persons who will benefit from the estate¹². It is a competence that the European and implicitly the Romanian judge does not benefit from. They cannot, under any circumstances, modify, as they think it is more equitable or not, the shares due to the heirs by virtue of legal or testamentary inheritance.

CONCLUSION

After analysing the legal system of the PRC and how the Chinese legislator thinks about the distribution of a person's inheritance, we notice that this is a flexible system, in the sense that each family member who is also an heir will benefit from the inheritance which is due to him, depending on the current needs, the relationships he had during his life with the deceased and, even depending on the moral merits. Moreover, the Chinese legal system also grants the benefit of inheritance to people who have no degree of kinship with the deceased, provided that they were financially dependent on him or, during his life, provided him with financial support.

Instead, we note that in national legislation, succession law has a constant application with a strong technical character. The constant application resides in the fact that the usefulness and application of the rules governing succession law has not been affected whatever the ideological changes have been, over time, and as for the technical character, it emerges from the pecuniary legal relationships of which the family she is interested.

We can conclude by stating that succession law is closely related to property, family and, very often, the political organization in power. Also, considering the particularities of the legislation in Romania and the legislation in China, we find that succession law has developed in accordance with the historical, social, cultural and economic circumstances of each state, which has led to the existence of major differences.

We live in bizarre times when, apart from death, nothing seems certain anymore. The very idea of safety has become, to a certain extent, ephemeral, but

precarious financial situation of an old man in the countryside near his home. He voluntarily decided to donate 10 yen each month. Mr. Yu has donated this amount for more than a decade. After his death, the court decided that the surviving wife should receive a larger share than his son, taking into account her age and needs, and the old man to whom the deceased donated 10 yen a month received 500 yen from the estate successor

¹² In 1991, Mr. Wang Weifa died of cancer. He is survived by 4 first-class heirs: his surviving wife, their 10-year-old daughter, and his parents. The deceased's parents were infirm and financially dependent on their deceased son. The Court considered the desperate circumstances of the deceased's parents and increased the shares due to the deceased's parents and daughter to the detriment of the surviving wife. The court explained that its decision reflects the basic principle of the Chinese inheritance system, to support the elderly and provide a good upbringing for children.

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the theme that remains common, in any circumstances, is the status of democracy and personal freedoms (Rath Boşca, 2022, p.58).

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