THE CONCEPT OF “TESTATE SUCCESSION” IN THE ROMANIAN AND GEORGIAN LEGAL SYSTEMS (TERMINOLOGICAL SIMILARITIES AND DIFFERENCES)

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Abstract

The death of an individual never causes an automatic termination of his (her) rights and obligations. They are transferred to his (her) descendants. The permanent connection of generations has inspired the world civilizations to create rules of succession for establishing people’s obedience to them.

In the old times, the transmission of property of the Romanian people was governed by the legislation, which had been created under the influence of the Roman law. According to the conception of this legislation, a deceased person’s property had to stay with his blood relatives i.e. within the same family. On the background of these circumstances, a surviving spouse suffered disadvantages. A widow’s rights were limited in accordance with the old Georgian legislation too – the hereditary property was mainly divided between the male issue, while females owned only wedding gifts (dowry).

However, the area of family law has suffered crucial changes throughout the centuries. Nowadays, during the times of globalization, these changes are directed towards the internationalization of legal systems of the world. Juridical differences are becoming irrelevant and females’ rights are equalized with the males’ ones.

The given paper is dedicated to the precise study of the Romanian and Georgian “testate successions”. It singles out major terminological units and discusses women’s rights vis-à-vis men’s ones.

Keywords: *Georgian, law, Romanian, testate succession, testator.*

Introduction

Throughout the centuries human societies of the world have progressively established closer contacts. However, the pace has significantly increased during the last decades. The “all-embracing” process of globalization has stipulated an international integration arising from the interchange of the experiences depicted in different areas of life. The latest advances in communication and transportation technologies have given capital, goods and services unprecedented mobility. The world has been gradually becoming a boundless space connected with the exchange of ideas, world views and advances. Besides offering significant innovations, the process of globalization has even changed the contours of law and has created new global legal institutions and norms.

The given paper is dedicated to the problems associated with the transference of a deceased person’s property. This process acquires a pressing urgency in today’s world. Special attention is paid to the countries, which undergo a transitional period from socialism to capitalism. All-embracing globalization with the accompanying historical processes changes the contours of their laws. The contemporary legal literature tries to depict the development of legal processes. However, it’s obvious, that still a lot must be done in this direction.

The given paper makes an attempt to answer the demands of the modern epoch via comparing the Romanian and Georgian legal systems. The greatest emphasis is put on the major concepts and their nomination, which somehow reveals the impact of the contemporary globalizing processes.

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"TESTATE SUCCESSION" IN THE ROMANIAN AND GEORGIAN LEGAL SYSTEMS

Inheritance law – sometimes called wills and probate – is concerned with the distribution of a person's property after his (her) death. This may occur either in accordance with the provisions of a will which that person has made, or under the applicable rules relating to intestacy[1] - if a person dies without having made a will. Almost all civil law jurisdictions of the world distinguish two major types of succession: intestate succession (i.e. the legal inheritance) and testate succession (i.e. the inheritance established through the last will or testament).

The Romanian inheritance law has a long history of development. In the old law, the transmission of a deceased person's property was governed by the legislation, which was under the influence of Roman law based on the principle of blood relation to the defunct. In the conception of this legislation, the defunct's patrimony had to stay with his blood relatives, which means that it had to be preserved in the same family. The thorough application of the above mentioned principle and the fear of transmitting a family patrimony to the surviving spouse was an obstacle to the recognition of the direct succession right for a long time[2]. Therefore, in contrast to blood relatives, a surviving spouse faced disadvantages throughout the centuries - when the spouses had no children, a surviving spouse received only one sixth of the inheritance, while in cases of surviving children, a widow inherited only the right of usufruct over a portion of the inheritance equal to the child's portion. However, the adoption of the Romanian Civil Code of 1864, inspired by the French Civil Code of Napoleon of 1804, provided that the surviving spouse acquired the inheritance only after the last blood relative of the 12th degree defunct[3]. Later, under the law of 1944, the rights of a widower (widow) expanded. Therefore, he (she) acquired: a general inheritance right, a temporary right of the occupancy of the house and a special right over wedding gifts and movables of household.

Nowadays, according to the contemporary Romanian law, during an intestate succession, a spouse is regarded as one of the legal inheritors of a deceased person and has the right to at least ¼ of the inheritance. Moreover:

- In addition to the fraction of the inheritance established by law, the surviving spouse has a special inheritance right to furniture, domestic objects and wedding gifts;
- If the surviving spouse is not the owner of the house where he/she has lived for at least one year since the death of the deceased spouse, then he/she has a right of habitation to that house…;
- In the event of no inheritors, the surviving spouse inherits everything[4] .

Despite having the above mentioned inheritance rights, a surviving spouse is regarded as a "separate inheritor" in the contemporary Romanian Civil Code. He (she) stands separately and is not included in the major four classes of heirs nominated during the intestate succession. Therefore, a deceased parson's intestate estate is distributed in the following way:

1. The first class of inheritors – the deceased's descendants: children, grandchildren;
2. The second class of inheritors – the deceased person's privileged ascendants and collaterals: parents, brothers and sisters and their descendants until the fourth degree;
3. The third class of inheritors – the deceased person's ordinary ascendants: grandparents, parents of grandparents, etc.;

[1] Rupert Haigh, Oxford handbook of legal correspondence (Oxford University Press, 2006), 154.

[2] Ilie Urs, "The inheritance rights of the surviving spouse provided by the Romanian law". Accessed January 2, 2013, http://pdfsb.com/readonline/5a56424566774639586e78374158316855513d3d-4365471.

[3] Ilie Urs, "The inheritance rights of the surviving spouse provided by the Romanian law". Accessed January 2, 2013, http://pdfsb.com/readonline/5a56424566774639586e78374158316855513d3d-4365471.

[4] What inheritance laws apply in Romania? Accessed January 5, 2013, http://www.globalpropertyguide.com/Europe/Romania/Inheritance.

4. The fourth class of inheritors – the deceased person's ordinary collaterals – relatives until the fourth degree, for instance: uncles, aunts, primary cousins, brothers and sisters of the grandparents.

During the intestate succession, the existence of more preferable classes of successors excludes the less preferable ones. However, in contrast to the testate succession, legal inheritance is less popular nowadays. Testate succession i.e. the inheritance established through the last will or testament is usually regarded as a distribution of the estate of a deceased in accordance with his or her will[5]. It comprises three major elements:

- ***Testator*** – a person who creates a will;
- ***Legatar –*** a person or an entity to receive property from the estate of a deceased, through a will or the operation of laws governing intestacy[6];
- ***Testament*** – a document created by the testator.

In cases of the testate succession, the distribution of the property depends on the testator, who makes a valid will. The Romanian Civil Code differentiates two major types of wills: *authentic* and *holographic*. "*Authentic wills*" are drawn up by the civil law notaries. They are usually recorded in the register, while "*holographic wills*" are written, dated and signed by the testator himself (herself). Both types of wills are kept by the civil law notaries. However, the existence of the testate succession does not mean the total freedom of a testator's wish. The concept of a "*reserved portion*" restricts the testator's rights of disposition. The given portion is transferred to the surviving spouse, the privileged ascendants and the descendants of the deceased. Moreover:

- The portion of the estate reserved for descendants varies depending on their number;
- The portion of the estate reserved for privileged ascendants is ½ - when the deceased leaves 2 or more parents (or ¼ - when only one parent survives the deceased);
- The reserved portion of the surviving spouse varies depending on the inheritance class he/she comes up against. If against the descendants, the reserved portion is 1/8. If against the privileged ascendants and collaterals of the deceased together, the reserved portion is 1/6. If against only the privileged ascendants or collaterals the reserved portion is ¼. If against the ordinary ascendants and collaterals the reserved portion is 3/8. If against any other inheritors, other that the legal ones, the reserved portion of the surviving spouse is ½ [7].

After the transference of all reserved portions, the remained part of the testator's property is called a *residue of the estate.* It can be freely transferred to anyone. However, sometimes certain restrictions regarding the ownership of the land by foreigners or non-residents of Romania occur.

Like other civil law jurisdictions, the Constitution of Georgia nominates the right of inheritance as one of the major rights of an individual. The legal mechanism of its practical realization is guaranteed by the law of succession, which is usually regarded as a complex of rules regulating a legal fate of a deceased person's ownership. The death of an individual has never caused an automatic termination of his (her) rights of property. They have been transmitted to his (her) descendants. However, like the Romanian women, the Georgian widows suffered hereditary disadvantages.

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[5] Business dictionary. Accessed January 12, 2013, http://www.businessdictionary.com/definition/testate-succession.html.

[6] Business dictionary. Accessed January 12, 2013, http://www.businessdictionary.com/definition/testate-succession.html.

[7] What inheritance laws apply in Romania? Accessed January 4, 2013, http://www.globalpropertyguide.com/Europe/Romania/Inheritance.

According to the old Georgian legal codex "Dzeglis Deba" (created during the reign of George V of Georgia (1286/1289 - 1346)), a surviving spouse inherited only a portion for her subsistence - the so-called "sasapkro". Another legal monument of the 11th-14th centuries - "The Law of Beka and Aghbuga" - stated, that a childless spouse inherited only a dowry. However, if there were children, a deceased person's armour was transferred to the children, while a wife inherited only sasakonlo[8]. In the old Georgian language, the term "sasakonlo" denoted inanimate movable property. Therefore, in contrast to the blood relatives, the widows suffered disadvantages during the 11th -14th centuries. They inherited only a portion for subsistence or an inanimate movable property. The childless widows were entitled to their dowry. The tendency of preserving a deceased person's ownership within the same family has existed throughout the centuries. However, the widow's legal rights have gradually changed.

Nowadays, according to the contemporary Georgian law, a spouse is nominated as the first order successor. She is a rightful and a privileged member of a five-storeyed hierarchy of intestate successors. The given hierarchy can be presented in the following way:

1. **First order successors** – a deceased person's child, spouse and parents. Grandchildren are considered as intestate successors if by the time of the opening of an estate their parent is not alive. They succeed in equal shares that portion of the estate to which their deceased parent would have the right.
2. **Second order successors** – a decedent's sisters and brothers (their descendants).
3. **Third order successors** – a decedent's grandfather, grandmother and their parents. The parents are considered as intestate successors if by the time of the opening of the estate grandparents are not alive.
4. **Fourth order successors** – a decedent's uncles and aunts.
5. **Fifth order successors** – a decedent's cousins.

The existence of at least one successor of the previous order excludes the succession of the following order. Moreover, an estate is distributed equally between the representatives of the inheriting order.

In contrast to the legal inheritance, a testate type of succession becomes more and more popular in today's Georgia. It is generally regarded as a distribution of the defunct's estate in accordance with the will and comprises three major elements:

- ***moanderZe (moanderdze)–*** a person who creates a will;
- ***anderZismieri memkvidre (anderdzismieri memkvidre)*** – a person or an entity, which receives property from the estate of a deceased through a valid will;
- ***anderZi (anderdzi)***– a document created by the testator.

In cases of a testate succession, the distribution of the property depends on the testator, who makes a valid will: a natural person may leave his (her) estate or its part by the will in the event of his (her) death to one or several persons from the circle of successors or outside it[9]. A person making a will must be a capable adult, who wisely justifies his (her) actions and clearly expresses desires during the process of the creation of the document. The Georgian wills are created according to the proper format. They must be in writing. A written will may be in a notarial form (the so-called *sanotaro anderZi* (sanotaro anderdzi) - a "notarized will") or without it.

A notarial form requires a will to be prepared and signed by the testator and attested by a notary, but if a notary is not available, the above mentioned function is executed by a local self-government body[10]. Generally, wills are prepared by testators, but in certain cases, it is permitted, that a will in words of the testator be written down by a notary in the presence of two witnesses. The

[8] Iv. Javakhishvili, Works in 12 volumes (Tbilisi: Metsniereba, 1982), 418.
[9] The Civil Code of Georgia (Tbilisi: Bona Causa, 2012), 294.
[10] The Civil Code of Georgia (Tbilisi: Bona Causa, 2012), 297.

usage of generally accepted technical means while writing down the given document is also permitted. A will written by a notary in words of the testator will be read by the testator and signed by him (her) in the presence of a notary and a witness[11]. "Notarized wills" (official wills) differ from unofficial or holographic wills (the so-called *xelnaweri anderZi* (khelnatseri anderdzi)).

"Holographic wills" or handwritten wills are made personally by the testator. The creation of a will through a representative is not permitted. The category of handwritten wills consists of a "domestic will" (the so-called *Sinauruli anderZi* **(**shinauruli anderdzi**))** and a "closed will" (the so-called *daxuruli anderZi* (dakhuruli anderdzi)). "Domestic wills" are made in the testator's handwriting and signed by him (her). In cases of a "closed will“: at the request of a testator, witnesses will confirm the will so that they do not know its content (closed will). In this case, the witnesses should be present during the signing of the will. During the confirmation of a closed will, the witnesses have to indicate that it was made personally by the testator and that they did not become aware of the content of the will[12].

A will is usually executed by one person. However, the Civil Code of Georgia permits a joint creation of a will by two or more individuals. In such cases, only spouses are allowed to make a reciprocal will on joint legacy, which may be revoked by one of the spouses, but still during the lifetime of both of them. This type of a will is called a "joint will" (the so-called *saerTo anderZi* (saerto anderdzi)).

Like the Romanian legal system, the Civil Code of Georgia often faces the problem of the freedom of the disposition by will. Testators' wishes are usually restricted by the existence of the so-called "reserved portion" (*savaldebulo wili* (savaldebulo tsili)). According to Article 1371 of the Civil Code of Georgia: despite the contents of a will, a deceased person's children, parents and spouse are entitled to a reserved portion, which is equal to the half of the share transmitted to them in case of an intestate succession[13].

Conclusions

All the above mentioned enables us to conclude, that "all-embracing" process of globalization has stipulated an international integration arising from the interchange of the experiences depicted in different areas of life. Drastic changes have been seen in the laws of the countries of the former USSR. The given paper has presented a comparative analysis of the Romanian law and the Georgian legislation, which was formed on the basis of the legal system of the USSR. The major emphasis has been put on the concept of "testate succession" and terms related to it. The greatest attention has been paid to the Georgian and Romanian women's rights presented in the historical and contemporary legal monuments. On the basis of the carried out research we can single out the following outcomes:

1. The contemporary laws of Georgia and Romania make distinction between testate and intestate successions. The legal systems of both countries single out three major elements of testate succession: a testator *(the Romanian - testator; the Georgian - moanderZe),* an heir *(the Romanian - Legatar; the Georgian - anderZismieri memkvidre)* and a will *(the Romanian - testament; the Georgian – anderZi).*

2. The contemporary laws of Georgia and Romania nominate a "will" as the most commonly used legal instrument by which a testator regulates the rights of others over his (her) property after his (her) death. The legal systems of both countries differentiate official ("notarized will") and unofficial ("holographic will") types of wills. However, the major difference lies in the fact, that the Civil Code of Georgia recognizes domestic (*Sinauruli anderZi)*, closed (*daxuruli anderZi*) and joint (*saerTo anderZi)* wills, while the corresponding legal terms are not found in the Romanian law.

[11] The Civil Code of Georgia (Tbilisi: Bona Causa, 2012), 297.
[12] The Civil Code of Georgia (Tbilisi: Bona Causa, 2012), 299.
[13] The Civil Code of Georgia (Tbilisi: Bona Causa, 2012), 300.

3. The contemporary Romanian legal system singles out the concept of *a residue of the estate,* which is not especially distinguished in the Georgian law.

4. In the old Georgian and Romanian laws "non-blood relatives" - widows - faced significant disadvantages. In Romania childless spouses received only one sixth of the inheritance, while in Georgia they were entitled to the dowry. In cases of surviving children, widows had more hereditary rights. They inherited only the right of usufruct (in Romania), a portion for subsistence or an inanimate movable property (in Georgia of the 11th -14th centuries). The hereditary rights of widows have changed throughout the centuries. Nowadays, the existence of the concept of a testate succession enables a surviving spouse to inherit a deceased person's property according to his last will and testament. Therefore, a widow's hereditary portion may comprise the whole estate minus reserved portions of "obligatory heirs". In cases of disinheritance by the former spouse, a widow may receive a reserved portion, which varies depending on the inheritance class she comes up against (in Romania) or is directly equalized to the half of an intestate share (in Georgia) received by her in case of intestacy;

Finally, it's worth mentioning, that the comparative analysis of the Georgian and Romanian legal systems revealed their major differences and similarities. Obviously, the existed terminological and conceptual gaps will be filled during the flow of time via the influence of all-embracing globalization. The given study may play an important role in this process. However, the further investigation of the legal systems of other countries will fulfill the picture of the development of the European legal area.

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