A HISTORICAL PERSPECTIVE ON THE SPECIAL AVAILABLE PORTION OF THE SURVIVING SPOUSE PROVIDED BY THE ROMANIAN CIVIL CODE

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Abstract

Nowadays, the article 1090 of the New Civil Code regulates the special available portion of the surviving spouse, a legal institution that has passed the test of time. Although the 2004 draft of the new Civil code failed to mention it, the Amending Commission (re)introduced the special available portion of the surviving spouse in competition with the children resulted from a previous relationship of the deceased spouse.

For a better understanding of the legitimacy and perennity of this institution, this short overview attempts, on the one hand, to highlight certain historical aspects that defined its evolution and present-day configuration, and, on the other hand, to examine the relation between the special available portion of the surviving spouse and the succession by representation of the deceased's descendants.

Keywords: *Romanian Civil Code, estate, inheritance, special available portion of the surviving spouse, donations and bequests, succession by representation.*

1. Introduction

At first glance, the regulation regarding the special available portion of the surviving spouse would have a novelty character, given the fact that the initial draft of the (new) Civil Code[1] did not contain these stipulations. Nevertheless, the special available portion of the surviving spouse is not a legislative novelty brought by the 2009 Civil Code[2], taking into consideration that it existed in the previous regulation.

Consequently, the current article is supposed to capture the historical evolution of the regulations regarding the above mentioned portion, but also to try solving some ambiguous aspects resulted from the different terminologies and from the different terms used throughout time, to practically outline, in the end, the same category of heirs. Also it tries to highlight the importance of the regulation regarding the special available portion of the surviving spouse both in terms of its existence throughout time, but also in terms of the necessity to realise a fair and equitable succession partition, regardless the number of heirs who are entitled to receive the deceased's inheritance.

What is more, from the arguments in this article, there could be identified the right methods to interpret the norm, starting from the premises taken into consideration at the moment of its editing, but without losing sight of the fact that no surviving spouse should undergo an unjustified limitation of the special available portion by extensively interpreting the rule of law.

Wishing to offer a stable foundation to the current study and to accurately delineate the frame of the norm envisaged for analysis, it starts from historical reasons, their beginning being placed in the late Roman era. After a brief presentation of the historical stages that defined its evolution, it is analysed the content of the current disposition of the article 1090 from the 2009 Civil Code.

Based on this analysis, made both in terms of the purpose intended by the legislator in the edict of the norm, but also in grammatical terms, being reported certain ambiguities of expression, which could generate difficulties in their application, it was intended to find the right solution in interpreting it.

After the entering into force of the 2009 Civil Code, it seems that there were no studies to express an argumented opinion by reference to the relation between the special available portion of the surviving spouse and the succession by representation of the deceased's descendants, in such a situation being imposed the necessity of the existence of a scientific approach that would highlight some of the cases that could arise and could be enclosed in the above mentioned norm, in a motivated and logical way, able to highlight the correlation between the purpose of the norm and its applicability.

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[1] See *Proiectul Noului Cod Civil (The Draft of the New Civil Code)* (Bucharest: C.H. Beck, 2006), 167-170.

[2] *Law no. 287 from 17th July 2009 on the Civil Code*, republished in the Official Journal of Romania, Part I, no. 505 from 15th July 2011.

2. Historical aspects that defined the evolution of the special available portion of the surviving spouse

1.1. **Late** Roman Law

During the Principate, as a result of the noticeable and alarming decrease of the population, Augustus encouraged subsequent marriages, but during the Dominate, under the influence of Christianity[3] the legislator dealt with the overgrown ease with which the spouses favoured each other and thus sacrificed the interests of the children resulted from a previous marriage. In these conditions, on the one hand, the Church did not forbid the remarriage, and, on the other hand, the legislation did not encourage it, but somehow tried to prevent it[4].

The first step was in the year 382, when a constitution was drafted by which the widow who had children from a previous marriage was prohibited to dispose of the liberalities received from the first husband for the benefit of a stranger or of the children resulted from the second marriage, her having only the usufruct. Later, in 439, this provision was extended to widowers.[5]

The second step was in the year 469, when it was decided that the person who had children resulted from the first marriage could not give, through liberalities, to the new spouse more than the child had received by will or donation; this child's part could not have been inferior to his or her reserved portion. Later, in 486, this provision was extended to any subsequent marriage.[6]

Thus, as a result of the last two constitutions appeared, in the Roman law, what is called today the special available portion of the surviving spouse.

2.2. Edict of the Second Marriage (1560)

The above mentioned legislation was received in the old French law applied to the southern French regions of written law, mainly influenced by the Roman law, while the northern ones were dominated by the Frank customary law[7].

The regulation of the special available portion of the surviving spouse was extended to the regions of the northern France by Francis II through the *Edit des seconds noces* (Edict of the Second Marriage). Its writer, the Chancellor of l'Hôpital, mentions in the preamble that the widows do not know that they are rather sought for their wealth than for their person, forgetting their natural obligation towards their children, to whom they should be both mother and father. This normative act represents a reaction of the legislator to a famous scandal of the era: Anne d'Aligre, an old widow with seven children, remarried the younger Georges de Clermont, the latter receiving an enormous donation from his new wife[8].

The dispositions of the edict related to the special available portion of the surviving spouse passed in 1580 in the second edition of the Paris Custom, becoming article 279, and at the end of the 18th century this article was also extended to men[9].

2.3. Napoleon's Civil Code (The French Civil Code of 1804)

The special available portion of the surviving spouse appears within the preparing works of the French Civil Code in the third project presented by Jean-Jacques-Régis de Cambacérès in July 1796[10].

Later, in the project presented by Jean-Ignace Jacqueminot in 1798 to the legislation commitee, named by Council of the 500, the article 156 stipulated that „the man or the woman who remarries, having *children or descendants* from a previous marriage can only give the recent spouse a part equal to the *part of the* legitimate *child* who received the least, *and only in usufruct*."

This article was adopted by the Civil Code project editing commission appointed by Napoleon in 1800, becoming article 161. After consulting the courts of appeal, in 1801, the one from Paris presented the following remark: „This disposition seems too harsh; there were taken from the Roman laws the wisdom and equity of the Edict of the Second Marriage […] the conjugal love being equalled to the paternal one. But one should not be put beneath the other, and it is not fair that when the child has his or her own part in property, the spouse has his own in usufruct."[11]

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[3] The Fathers of the Church regarded the second marriage as a „legal prostitution", François Laurent, *Le droit civil international,* tome sixième (Bruxelles: Brulyant-Christophe&C^ie^ Editeurs, 1881), 470.

[4] The early Byzantine legislation (Novel 2.2.1) also stipulated pecuniary sanctions against people who contracted a second marriage (the man risked losing the dowry brought by the first wife and the woman risked losing the *ante nuptias* donations and the ones regarding the marriage received from the first husband, see M. Bérenger fils, *Les Novelles de l'empereur Justinien,* tome premier (Metz: Lamort, Imprimeur, 1811), 19.

[5] C.5.9.3 şi C.5.9.5, see P.-A. Tissot, *Les douze livres du Code de l'empereur Justinien de la seconde édition,* tome deuxième (Metz: Behmer, Editeur-Propriétaire, 1807), 217-220.

[6] *Idem,* 222-228.

[7] Jean-François Gerkens, *Droit privé comparé* (Bruxelles: Larcier, 2007), 71-74.

[8] Marcel Planiol, *Traite élémentaire de droit civil conforme au programme officiel des facultés de droit,* tome troisième (Paris: Librairie générale de droit & de jurisprudence, 1910), 222-223.

[9] See Robert-Joseph Pothier, "Traité du contrat de mariage", in *Œuvres de R.-J. Pothier,* tome troisième, ed. M. Dupin Ainé (Bruxelles: Tarlier, Libraire-Editeur, 1831), 512.

[10] Raymond-Osmin Benech, *De la quotité disponible entre époux, d'après l'article 1094 du Code Civil* (Toulouse: Administration du Mémorial de Jurisprudence, 1841), 68.

[11] *Idem,* 77.

During the year 1803, the new project was discussed within the State Council. In what concerns the special available portion of the surviving spouse, previous to the debates, no innovation intervened but the fact that art. 161 became art. 176.

Within the meeting from 18th March 1803, at the end of it, art. 176 came into discussion. The report records five speeches[12]: (1) Mr. Regnaud observed that this article changed the existent legislation[13]. (2) Mr. Treilhard said that the second part of this article would not be useful unless the goods whose disposition was forbidden would be reserved to the children from the previous marriage. Following this comment, the idea "*and only in usufruct*" was suppressed. (3) Mr. Regnaud observed that the first part of the article, by putting obstacles in the way of subsequent marriages, tended to determine the maintenance of the concubinage between persons who otherwise could not favour each other. (4) Mr. Cambacérès said that the interest of the children from the previous marriage determined the legislator to make a distinction between the two marriages, that it was enough to leave to the person that was remarrying the right to dispose over a child's part, but that he or she could be allowed to give it as a full ownership to the other spouse. (5) Mr. Berlier observed that, by giving the new spouse the right to receive a child's part, even in property, which was reasonable, might have been convenient to slightly modify this norm; because if there was only one or two children from the first marriage, and none from the second, the new spouse could take a half or a third from the heritage, if he was in competition with them. Thus, it would be fair to establish besides this main norm related to the child's part, an exception establishing that this could not exceed, in what concerns the new husband, a certain portion of the inheritance, for example a quarter. Thus, the limit of ¼ represents an innovation of the French Civil Code intended to strengthen the protection of the children from the previous marriage.

The article establishing the special available portion of the surviving spouse was adopted with the amendments proposed by the Consul Cambacérès and Mr. Berlier, six days later, becoming art. 1098, once the project was converted into a law. In its final form, art. 1098 from the French Civil Code provided that „The man or the woman, who, having *children* from a previous marriage, contracts a second marriage or a subsequent marriage will be able to give the new spouse only a portion equal to the *part of the* legitimate *child* who took the least and, by no means, these donations cannot exceed a quarter of the goods".

As the children's faith motivated the appearance of this legal institution, the term "*child*" used throughout art. 1098 of the French Civil Code deserves a special attention. This included not only the first degree descendants, but also the ones of subsequent degree, meaning the grandchildren and great-grandchildren of the deceased.

As we have already seen in the Jacqueminot project, the first part of art. 156 was referring to "*children or descendants*", while the second part was referring to "*the child's part*". The French legislator did not mention in the final draft the structure "*or descendants*", that going without saying that a child's previous death could not fail to offer his or her descendants the protection established by the special available portion of the surviving spouse.

We have to remark that the mention to the term *child* from the *second part of the art. 1098* from the French Civil Code cannot include the descendants, thus "*the child's part*" does not mean the part of the descendent of the subsequent degree (grandchild, great-grandchild). Otherwise, the surviving spouse would have had his or her special available portion exceedingly diminished as a result of its reference not to a child's part, but to a descendant's part when one of the children was previously deceased, but he or she had left children behind, each grandchild receiving a part from a child's part.

The grandchildren came to the inheritance of the ascendant on the basis of art. 739-740 from the French Civil Code (which corresponds to art. 664-665 from the Romanian Civil Code adopted in 1864, later abrogated) and art. 914 of the same code (art. 842 Civil Code 1864) regarding the available portion expressly stated that "*however, they are only taken into consideration for the child they represent*", so the number of grandchildren who came to the inheritance by representation did not influence the part of the surviving spouse as a result of the application of the norm regarding the special available portion[14].

By not referring the special available portion of the surviving spouse to the part of the subsequent degree descendant, it was possible to find ourselves in the situation in which a descendant of the donor could get less inheritance than the surviving spouse. In the event that one of the children was previously deceased but he or she had children, each grandchild would have received a part from the child's part, which meant less than the surviving spouse[15].

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[12] See Pierre-Antoine Fenet, *Recueil complet des travaux préparatoires du Code civil,* tome douzième (Paris: Videcoq, Libraire, 1836), 416-417.

[13] "Existent legislation" meant the transitory legislation after the Revolution from 1789.

[14] See Emile Saintespès-Lescot, *Des donations entre-vifs et des testaments*, tome cinquième (Paris: Auguste Durand, 1861), 616.

[15] Planiol, *Traite élémentaire de droit civil*, 830.

2.4. Alexandru Ioan Cuza's Civil Code (The Romanian Civil Code of 1864)

In what concerns the inheritance, the Romanian legislator from 1864, took up, with some exceptions, ad litteram, the text of the French Civil Code[16], and thus, art. 1098 became art. 939 of the Romanian Civil Code.

According to art. 939 of the 1864 Civil Code: "The man and the woman having *children* from another marriage, will be able to give the new spouse only a portion equal with the legitimate *part of the child* who received the least, and, under no circumstances, the donation should not exceed the quarter of the goods." [17]

The explanations based on the term "child" used throughout the article 1098 of the French Civil Code are thus valid also for the article 939 of the Civil Code from 1864. The same, by "*the part of the child*" it is not intended the part of the subsequent degree descendant.

In the same sense, it was also opined in the Romanian doctrine from the beginning of the last century[18], even though the Romanian legislator from 1864 did not take up the stipulation from art. 914 from the French Civil Code related to the available portion in art. 842, mentioned above[19].

This specification can be found in Carol II's Civil Code (adopted in 1940, but never entered into force), which, in the section dedicated to the available portion, in art. 1064 stipulated that the children who came by representation "are taken into consideration only for the one that they represent in the deceased's inheritance"[20].

Summarizing the above mentioned, as an intermediate conclusion, we could say that in the term "children", mentioned in the first part of the law, there were also included his or her descendants both in art. 1098 from the French Civil Code, as well as in its correspondent, art. 939 from the 1864 Romanian Civil Code.

Also, the child's part compared to the special available portion of the surviving spouse was the child's part – the first degree descendant – who inherited the least, not the part of a subsequent degree descendant who would have come to the inheritance by representation, the children's descendants being taken into consideration only for the stem they represented.

Thus, the special available portion of the surviving spouse was determined in relation to the stems by which the inheritance was divided, which meant in relation to the stem that had received the least, not in relation to the descendants (the branches) that the surviving spouse was actually competing with.

3. Present-day configuration of the special available portion of the surviving spouse in the Romanian Civil Code

Nowadays, the article 1090 of the New Civil Code regulates the special available portion of the surviving spouse, a legal institution that as we saw above has passed the test of time.

Although the 2004 draft of the new Civil code failed to mention it, the Amending Commission (re)introduced the special available portion of the surviving spouse in competition with the children resulted from a previous relationship of the deceased spouse through art. 829^2, which, by renumbering, became art. 1090 of the Civil Code.

According to the first paragraph of the article 1090 from the Civil Code: "The unreportable liberalities granted to the surviving spouse, who comes to the inheritance in competition with *other descendants than the ones they have in common*, cannot exceed a quarter of the inheritance or *the part of the descendant* who received the least."

In motivating the (re)introduction of the special available portion of the surviving spouse the Amending Commission[21] limited its action to mentioning that "Art. 829^2 regulates the special available portion of the surviving spouse, which, nowadays, can be found in art. 939 of the 1864 Romanian Civil Code.

This institution, whose purpose is to protect the children (or other descendants) from the previous marriage of the deceased in competition with the surviving spouse, as a result of the transformation of the reserved portion calculation system, the ordinary available portion that would be on the benefit of the latest spouse would be too large in the absence of a

[16] Mircea-Dan Bob, *Probleme de moşteniri în vechiul şi în noul Cod civil (Inheritance issues in the old and the new Civil Code)* (Bucharest: Universul Juridic, 2012), 31.

[17] For details regarding the translation error: „*the part of the legitimate child*" vs. „*the legitimate part of the child*" and the implications in what concerns the method of calculation of the special available portion of the surviving spouse, see Mircea-Dan Bob, „Cotitatea disponibilă a soţului supravieţuitor în concurs cu copiii dintr-o legătură anterioară a defunctului (Special available share of the surviving spouse in competition with the children resulted from a previous relationship of the deceased spouse)", in *Revista de ştiinţe juridice (Journal of Law Sciences)* 1 (2013): 63-65.

[18] „The descendants are only taken into consideration for the respective stem that they represent, according to art. 667", Constantin Hamangiu, Ion Rosetti-Bălănescu and Alexandru Băicoianu, *Tratat de drept civil român (Treatise on Romanian Civil law)* (Bucharest: ALL Beck, 1998), 430.

[19] „Although the words *néanmoins*, etc. were erased from art. 914 Nap. C. however the norm that the descendants of a child are only taken into consideration for this child applies with no difficulties", Constantin Nacu, *Comparaţiune între Codul civil român şi Codul Napoleon (Comparison between the Romanian Civil code and Napoleon's Code)* (Bucharest: Leon Alcalay, n.d.), 377.

[20] Ministerul Justiţiei, *Codul civil Carol al II-lea – ediţie oficială (Carol II's Civil Code - official edition)* (Bucharest: Monitorul Oficial şi Imprimeriile Statului, 1940), 210.

[21] This document was available at this address: http://www.just.ro/.

special limit. In editing this text, there were taken into consideration all the criticisms of the doctrine related to the current article 939 of the Romanian Civil Code from 1864."

Although the last part of the text stipulates that the members of the commission would have had in mind all the complaints of the doctrine related to the form of the regulation of the special available portion of the surviving spouse, however, the justification to maintain this institution, namely that "the ordinary available portion that would be on the benefit of the latest spouse would be too large in the absence of a special limit", is reproduced *ad litteram* after a *de lege ferenda* proposal of the professor Francisc Deak[22].

Comparing the version from 1864 to the present one, we notice that the legislator has replaced the structure "*children from another marriage*" with the structure "*other descendants than the ones they have in common*", modification that is fully justified since, in the doctrine, it was unanimously admitted that the meaning of children should not be restricted to the first degree descendants, but it should refer also to the ones of subsequent degrees[23].

However, what strikes is the replacement of the structure "*child* who received the least" with the structure "*descendant* who received the least". This transformation cannot be considered one with implications only on the form of art. 939 of the Romanian Civil Code from 1864, although from the motivation mentioned above it seems to result that there were no changes in what concerns the substance of the special available portion of the surviving spouse. In addition, we could not identify, in the doctrine, any *de lege ferenda* proposal that would have had as purpose the restriction of the special available portion in the hypothesis of the competition between the surviving spouse and at least two descendants who come to the inheritance by representation of the same child of the deceased.

If we were to interpret *ad litteram* the art. 1090 of the new Civil Code, we would find ourselves in the situation in which the surviving spouse, in competition with the descendants of the deceased's children, would be in the position to beneficiate from a special available portion a lot smaller than the one stipulated in the Civil Code from 1864, because, according to the new provision, his or her special available portion would be calculated not in relation to the stem (child) that received the least, but in relation to any descendant's part who received the least.

As we have mentioned above, the part of a grandchild who comes to the inheritance by representation together with his or her brothers/sisters is a part of a child's part (in this case, the grandchild's part is a fraction of the part of the stem the grandchild represents), which, implicitly, leads to the reduction of the special available portion of the surviving spouse, as opposed to the case in which the surviving spouse would be in competition with only one grandchild who comes by representation (in this case, the grandchild's part is equal with the part of the represented stem).

This innovation of our legislator is reflected in doctrine by two opinion trends. One of the opinions claims that "the term «the part of the descendant who received the least» designates the reserved portion of each descendant, calculated according to the dispositions of art 1088 NCC"[24], which implies referring the special available portion of the surviving spouse to the reserved portion of whichever descendant received the least, so not only the reserved portion of the child who would have taken the least, but including the reserved portion of the grandchild who would not come alone by representation on the same stem and would receive less than any other children or grandchildren of the deceased.

The other opinion claims that "the part of the descendant who received the least" should have sounded like this: «the part of the child who received the least from the inheritance»"[25]. Therefore, the descendant means only the child (the stem) and not the ones who come to the inheritance by his or her representation (the branch). If under the influence of the 1864 Civil Code the doctrine enlarged the concept of "child" from the first part of the article, to include the subsequent degree descendants, this time, the same doctrine replaces, in the second part, the term descendant with the one of child, although they are not equivalent, but they have different coverage.

A plausible explanation of this innovation is that the members of the Amending Commission extended the meaning of the term "children from another marriage" (descendants of any degree) also to the second part of the article which mentions "the legitimate part of the child who received the least" (first degree descendants) by mistake. The commission, after deciding that it would be more appropriated that instead of "children from another marriage" the new structure should be "other descendants than the ones they have in common", probably did not notice that the term "child" did not

[22] See Francisc Deak, *Tratat de drept succesoral (Treatise on succession law)* (Bucharest: Universul Juridic, 2002), 321, n. 2.

[23] *Idem*, 321.

[24] See Codrin Macovei, Mirela Carmen Dobrilă, „Art. 1090. Cotitatea disponibilă specială a soţului supravieţuitor" (Art. 1090. Special available portion of the surviving spouse), in *Noul Cod civil: comentariu pe articole (The New Civil Code: comments on articles)*, coord. Flavius-Antoniu Baias et al. (Bucharest: C.H. Beck, 2014), 1191.

[25] See Dan Chirică, *Tratat de drept civil: succesiunile şi liberalităţile (Treatise on civil law: successions and liberalities)* (Bucharest: C.H. Beck, 2014), 921.

have a unitary meaning in art. 939 of the Civil Code from 1864, but it had a wider meaning in the first part and a more restricted meaning in the second, and replaced the term "child" with that of "descendant" even in the second part of art. 1090 of the new Civil Code.

4. **The relation between the special available portion of the surviving spouse and the succession by representation of the deceased's descendants in the** Romanian Civil Code

As we saw above, by interpreting *ad litteram* the art. 1090 of the Civil Code, we could find ourselves in the situation in which the surviving spouse, in competition with the descendants of the deceased's children, would risk to beneficiate from a special available portion a lot smaller than the one stipulated in the Civil Code from 1864.

However, we must bear in mind that the grandchildren and great-grandchildren usually come to the inheritance by right of representation regulated in the art. 965 of the Civil Code. According to the latter article, a legal heir of a more distant degree of kinship, for instance the child of the deceased's child (second degree descendant), will collect the portion of the estate that would have been due in our example to the deceased's child (first degree descendant) if he or she had not been unworthy toward the deceased or deceased at the date of the opening of the inheritance.

On the one hand, the representation is a legal institution devised by the legislator "to neutralise the effects of abnormal events that occurred within a family (death of children before their parents, perpetration of serous offenses punishable by unworthiness etc.), so that, from the legal view point, none of the innocents be affected"[26] and, on the other hand, the descendants who come by right of representation should collect only the portion of the inheritance that would have been due to the represented legal heir if he or she had not been deceased or unworthy toward the deceased. Furthermore, due to the proximity of the degree of kinship[27], in the absence of the representation, the abnormal chorology of deaths or the unworthiness, would have removed the descendants of a more distant degree of kinship.

Thus, the subsequent degree descendants (for instance the grandchildren of the deceased) should receive and divide among them *no more* than would have received their parent (the child of the deceased) had he or she been alive or worthy at the date of the opening of the inheritance, regardless of the fact that they come to the inheritance together with or without the surviving spouse.

The expression "*descendant who received the least*" should be interpreted as the *child* – the first degree descendant – who inherited the least or would have inherited the least had he or she not been deceased or unworthy toward the deceased, but he or she had left children behind, at the date of the opening of the inheritance.

Consequently, despite the Romanian legislator's poor editing of the regulation regarding the special available portion of the surviving spouse, no surviving spouse should undergo an unjustified limitation of his or her special available portion by extensively interpreting the term descendants in the second part of the art. 1090 from the new Civil Code. As we already mentioned, the special available portion of the surviving spouse should be determined in relation to the stems (children) by which the inheritance is divided, which means in relation to the stem that had received the least, not in relation to the descendants (branches) that the surviving spouse is actually competing with.

5. Conclusions

As the aim pursued by the legislator through the regulation of the special available portion of the surviving spouse was that of re-establishing an equity situation, the norm having a protection purpose for the children of the deceased, we have to express our objections towards its poor editing. As a result of the replacement of the term "child" with that of "descendant" in the second part of the article 939 of the Civil Code from 1864 (art. 1090 from the new Civil Code) it could practically reach an unjustified restriction of the surviving spouse's rights.

It would be unfair that determining the special available portion of the surviving spouse should depend on the survival of those children of the deceased, who had more than one child. So, it would be inequitable that the surviving spouse, in competition with the children of the deceased should beneficiate of a bigger special available portion, but in competition with grandchildren should have a smaller available portion.

At the moment, it cannot be said that the new legal dispositions related to the special available portion of the surviving spouse would have beneficiated of a lengthy and repetitive application, to create a specific uniform practice in order to facilitate their understanding. As a result, we consider being necessary that at the enforcing of the norm from the article 1090 from the Civil Code to be taken into consideration the fact that, through a unitary interpretation of the term "descendants"

[26] Radu-Romeo Popescu, „Efectul particular al reprezentării succesorale în noul cod Civil (The Particular Effect of Inheritance by Right of Representation in the New Civil Code)", in *In honorem Corneliu Bîrsan*, ed. Adriana Almăşan (Bucharest: Hamangiu, 2013), 231.

[27] For details see, Ioana Nicolae, *Drept civil. Succesiuni. Moştenirea legală (Civil law. Successions. Legal inheritance)* (Bucharest: Hamangiu, 2014), 95-96.

extensively, it might reach the unjustified reduction of the special available portion of surviving spouse. Consequently, the purpose of the norm, that of (re)establishing an equity situation among the different categories of heirs, would be evaded, and that could be seen as a penalty in what concerns the surviving spouse.

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