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THE INSTITUTION OF THE INHERITANCE RESERVE IN THE OLD AND CURRENT REGULATIONS OF THE CIVIL CODE OF THE REPUBLIC OF MOLDOVA

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Abstract

Inheritance is an inevitable legal and social phenomenon that every family faces, regardless of its social, cultural status or the value of the assets it owns. Basically, it is the process by which a person's assets and rights are transmitted to the next generation, thus ensuring the continuity of the family heritage.

This transfer is not made at random, but is regulated by strict rules of inheritance law, designed to protect both the wishes of the deceased and the interests of his heirs. Through these rules, the law guarantees not only a fair division of wealth but also the fulfilment of the social and family obligations that the deceased had. In essence, inheritance law contributes to maintaining balance within the family and the continuity of patrimonial relations between generations, preventing conflicts and ensuring social stability.

One of the traditional institutes of inheritance law is the inheritance reserve, which is related to the category of privileged heirs, called reserved heirs. They are entitled to a certain share of the inheritance, regardless of the content of the will or the will of the deceased.

Key words*: classes of heirs, descendants, succession reserve, reserved heir, inheritance estate, legal heir.*

Introduction

The institution of inheritance has been known since ancient times. Even in the period of primitive order, the first signs of inheritance began to appear. In the event of the death of one of the members of the community, the tools of production and household items passed into the possession of the closest blood relatives and members of the tribe. Of course, at that time, this was determined only by the traditions and customs of the community and was not regulated by law, but by social influence, existing only for its well-being. Therefore, it is difficult to call this process inheritance proper, given that all property belonged to the entire community and was not divided as private property. However, it can be considered that the first foundations of inheritance were formed just then.

Over time, the institution of inheritance was constantly improved, and one of the first sources of law that enshrined inheritance relations was the Code of Hammurabi. Although

the regulation was casual and referred only to certain aspects, even then, the first signs of inheritance reserve can be observed.

Thus, in article 166 of the Code of Hammurabi, it is provided that if a father took wives for his older sons, but did not take a wife for his younger son, then his brothers, after the death of the father, must offer him a certain amount of silver from the estate left in order to be able to redeem a wife.

Also, art. 180-182 and 184 establish rules according to which, if a father did not offer his daughter a dowry before his death, she has the right to receive a part of the inheritance, the size of which is determined according to her status, and she can benefit from it as long as she is alive.

Hammurabi's Code does not directly regulate inheritance, but the analysis of its articles allows the identification of a prototype of inheritance law. Moreover, from the aforementioned provisions it follows that the law intervened in favour of vulnerable or disadvantaged persons, offering them a part of the wealth in the absence of an actual inheritance, which reflects the essence of the inheritance reserve in its modern meaning.

The next important stage in the evolution of inheritance law is represented by the formation and development of the Roman Empire (4th century BC – 6th century AD). One of the most significant sources of Roman law in the archaic period was the Law of the Twelve Tables. They did not contain specific provisions on the regulation of the inheritance reserve. This absence is explained by the fact that the Law of the Twelve Tables considered legal inheritance as being primary in relation to testamentary inheritance. Thus, Table V provided that, in the event of the death of a person without leaving testamentary dispositions, his entire estate reverted to the closest agnate. By agnate is meant a person under the authority or dependence of the head of the family (pater familias), regardless of the degree of kinship. If there were no agnates, the inheritance went to blood relatives (cognates). From these considerations, it follows that the Law of the Twelve Tables protected dependent persons from the one who leaves the inheritance.

For the first time, the succession reserve appears in the way it currently exists during the period of praetorian law in the Roman Empire, when a limitation of the freedom to testate appears in the succession law. This limitation was called the necessary inheritance or the succession reserve, which provided the rule according to which the one who left the will could not dispose of a certain part of his estate, which was intended for a specific circle of people.

In the Middle Ages and later in the modern period, the influences of Roman law were taken over and adapted by various legal systems, especially in countries with a Romano-Germanic tradition. The French Civil Code of 1804 (Napoleonic Code, 1804), which had a significant influence on the legislation of Eastern Europe, including that of the Republic of Moldova, expressly established the institution of the inheritance reserve. According to it, a part of the deceased's estate was mandatorily reserved for his children or other close relatives, regardless of the will expressed in the will.

In the legislation of the Republic of Moldova, the inheritance reserve was introduced by the entry into force of the Civil Code of 2002, in Article. 1505, first-class heirs incapable of work have the right to inherit, regardless of the content of the will, at least one-half share of the share that would have been due to each of them in the event of legal succession (inheritance reserve). (Civil Code of the Republic of Moldova, 2002).

In order to inherit the inheritance reserve, according to the old legislation, certain conditions had to be met: the reserved heir can only be a person who is part of the first class of legal heirs and is incapable of work.

According to art. 1499 paragraph 1 of the Civil Code, in the case of legal succession, heirs with equal share rights are: a) first class - descendants (sons and daughters of the decedent, as well as those born alive after his death, as well as those adopted), the surviving spouse and privileged ascendants (parents, adoptive parents) of the decedent.

But not all first class heirs have the right to the inheritance reserve. The main condition for receiving the inheritance reserve is that they must be incapable of work. The problem is that the legislator does not provide what is meant by the notion of "incapable of work." If we examine the civil legislation, as well as other normative sources of civil law and other legal branches, we notice that the concept in question does not benefit from a clear regulation. The Family Code of the Republic of Moldova (Family Code of the Republic of Moldova, 2000) refers to the term “unable to work”, but does not provide an explicit definition of it. I believe that a clarification of the meaning of this concept would be necessary, especially given that some normative acts concerning incapacity for work provide for aspects such as temporary incapacity for work, disability, etc. In this context, we wonder what exactly we should understand when we talk about incapacity for work in connection with the inheritance reserve.

In order to understand the term “unable to work”, it is necessary to study the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova no. 13 of October 3, 2005 (Decision 13/2005), on the practice of applying the legislation by courts when examining cases on inheritance”, which provides guidelines for the uniform application of the legislation in cases of inheritance.

According to point 48 of this decision, Those persons who at the time of opening the inheritance have reached retirement age, invalids of the I, II and III degrees, including those who have suffered from disability since childhood, regardless of whether or not an old-age or disability pension has been established for them, are considered unfit for work. Also, children who have not reached the age of 18 fall into this category.

The incapacity for work must be demonstrated by presenting the disability card, the pensioner card or the birth certificate – in the case of minors or those who have reached the legal retirement age.

It is important to emphasize that the person considered unfit for work was not supported by the deceased or was in another locality or in another country does not affect his status as a reserved heir. So, those persons are still entitled to the inheritance reserve.

In March 2019, the Civil Code of the Republic of Moldova underwent a substantial reform, considered one of the most extensive legislative changes since its initial adoption. The most important transformation concerned the Chapter dedicated to inheritance, where new concepts were introduced, and existing regulations were reformulated to bring more clarity and legal efficiency.

In particular, essential changes were made to the institution of the inheritance reserve, which was adapted to reflect a fairer balance between the testator's freedom to dispose of his assets and the protection of the reserved ones — that is, the legal heirs who benefit from this reserve.

In the amended Civil Code, the inheritance reserve is provided for in art. 2530, which provides: "(1) The reserved heirs retain the right to inherit, regardless of the content of the will, at least ½ of the inheritance share that would have been due to each of them in the event of legal inheritance (reserve inheritance). (2) The reserved heirs are the first-class legal heirs, the parents of the deceased, as well as the surviving spouse if, at the date of opening the inheritance, the deceased had a direct maintenance obligation towards the respective heir in accordance with the Family Code."

According to paragraph (2) of article 2530 of the Civil Code of the Republic of Moldova, the legislator provides a clear definition of the reserve inheritance and establishes who can be considered reserved heirs. This category includes, first of all, the first-class legal heirs – that is, the children of the deceased, and if they are absent, their direct descendants, such as grandchildren, great-grandchildren, etc. In addition to them, the parents of the deceased person, as well as the surviving spouse, are also included. However, in the case of the parents and the surviving spouse, they can benefit from the inheritance reservation only if, at the time of opening the inheritance, the deceased had a direct maintenance obligation towards them, established in accordance with the provisions of the Family Code of the Republic of Moldova.

Therefore, in order to determine whether such an heir is, legally, a reserved heir, we must verify whether there was, at the time of death, a maintenance obligation recognized by law between the deceased and the heir. This verification will be made by analyzing the relevant provisions of the Family Code, which regulate the maintenance obligation between family members. Chapter II. The concept and essence of the inheritance reserve in the old regulation of the civil code

Materials and methods

In this study, both the historical and comparative methods were used. Thus, an analysis was made of the evolution of the rules regarding the sharing of the inheritance mass through the institution of legal inheritance. Also, a comparison was made of the effects and the manner of application of the fundamental principles of legal devolution, in the old and current regulations of the Civil Code of the Republic of Moldova.

Results and discussion

The notion and essence of the succession reserve in the old regulation of the civil code.

The inheritance reserve is one of the most important and current compartments in the legal succession. Its importance and relevance is justified by the nature of the transformations that have occurred in the political and social life, by the realities and trends of social development, by the fact that these relations regulated by the Civil Code of the Republic of Moldova are of immense interest to many citizens of the country. Through the inheritance reserve, the right to dispose of one's goods is limited, imposed on the owner of the property right, which is a real right that has an absolute and unlimited character. The inheritance reserve has ancient roots that date back to Roman times and has always had, including today, the same reason: to protect the closest relatives of the deceased against his acts with gratuitous title, acts that could empty his inheritance patrimony of content.

The law does not define the inheritance reserve but determines its size and the circle of heirs who can benefit from it. Thus, according to art. 1505 of the Civil Code of the Republic of Moldova "First-class heirs incapable of work have the right to inherit, regardless of the content of the will, at least one-half share of the share that would have been due to each of them in case of legal succession (inheritance reserve)". And according to art. 1499 para. 1 of the Civil Code, "in the case of legal succession, heirs with equal share rights are: a) class I - descendants (sons and daughters of the testator, as well as those born alive after his death, as well as those adopted), the surviving spouse and privileged ascendants (parents, adoptive parents) of the testator.

The inheritance reserve can be defined as that part of the inheritance that is due to the reserved heirs under the law and that the testator cannot dispose of through testamentary dispositions due to cause of death (Băieșu A., *et al.*, 2010, p. 452).

In the case where the testator has reserved heirs, the inheritance will be testamentary only in part, because the reserved successors will collect the reserve under the law, and the testamentary heirs will come to the inheritance based on the will of the testator, collecting the inheritance only within the limits of the quota available.

Reserved shares and categories of reserved heirs

The right to reserve inheritance belongs to the legal heirs of the first class who are unable to work, i.e. the children, parents and spouse of the decedent. The reserve constitutes at least one-half of the share that would have been due to each reserved heir in the event of legal succession. If the reserved heir is also a legatee, he will be able to claim the reserve if he renounces the legacy; otherwise, he loses the right to the inheritance reserve in the amount of the legacy (art. 1509 Civil Code). When determining the share of the inheritance reserve for each reserved heir, all legal heirs who could have been called to the succession if the will had not existed are taken into account (art. 1508 Civil Code).

We must also take into account the legal heirs who have renounced the succession.

The share due to the reserved heirs is determined based on the entire inheritance patrimony, including the property assigned for the fulfillment of the legacy. The value of the inheritance patrimony when determining the reserve is not included in the testated monetary deposits or in respect of which there is a disposition of the depositor given to the bank (point 19 of the PCSJ Decision of 10.06.1998). If the reserved heir is bequeathed a part of the inheritance patrimony smaller than the share due according to the law, he may request the completion of this share from the bequeathed property to other persons.

If only a part of the patrimony has been bequeathed, the inheritance reserve is separated first of all from the unbequeathed property, and in case of its insufficiency, the reserve is completed from the bequeathed property (art. 1510 Civil Code).

The reserved heirs may accept or renounce the inheritance reserve. The renunciation is admitted without indicating the person in whose favor the renunciation is made. The share of the reserve due to the renunciating heir passes to the testamentary heirs in proportion to their bequeathed shares.

Any natural person may, according to the law, freely dispose of the goods that make up his patrimony. Thus, the patrimony that the person leaves upon death may be totally insignificant in terms of value.

Also, no one is obliged to leave an inheritance, even if they have close relatives or a surviving spouse.

However, the right of disposition, an exclusive and absolute right, is exercised only within the limits and with the modifications regulated by law.

The main limitations of the right of disposition in this matter favor the close relatives of the deceased (descendants and parents) and the surviving spouse. This is because they have the quality of reserved heirs (Macovei D., 1993, p.114). However, the limitations only concern liberalities made through acts between the living (donations) and for the cause of death (bequests), as well as exheritances made through a will. Such acts of disposition, although permitted by law, must comply with the legal limits that favor reserved heirs.

However, even when there are reserved heirs, acts with onerous title and those with gratuitous title that are not liberalities, but only disinterested acts (commodat, interest-free loan, etc.) are not limited in succession matters. This is because the respective acts do not result in the reduction of the inheritance patrimony. Of course, it is prohibited that under the appearance of these acts for which the law does not provide for limitations, other acts (disguised donation, etc.) for which the law regulates limitations in favor of reserved heirs are actually concluded.

The right of disposal of the person who leaves the inheritance is unlimited in the absence of reserved legal heirs. For example, if at the date of death he will have only collateral relatives (siblings, uncles, etc.), these relatives will not be able to attack the liberal acts of the deceased (donations or bequests made in favor of other persons or for ex-inheritance) on the grounds that they would be excessive. The acts of disposal of the deceased (liberalities or ex-inheritances) produce effects without limitations if he has only non-reserved heirs or if he has no relatives in the successional degree.

Therefore, if the deceased has reserved heirs and if he disposed of his patrimony through donations and/or a will, the estate, to which are added the donations made during his lifetime, is divided into two parts:

• the estate reserve, which the reserved heirs will inherit, even against the free will of the deceased, and

• the available share, regarding which the will of the deceased is sovereign, discretionary.

This division of the estate is required both in the case of testamentary inheritance proper, and in the case where the deceased did not leave a will, but made donations. Within the legal devolution of the inheritance, it must be verified whether or not the rights of the reserved heirs were respected through the donations made.

On the other hand, the reserve protects the reserved heirs both against excessive liberalities made in favor of foreign persons, and against liberalities made in favor of legal heirs, even reserved co-heirs. For example, if the deceased has several children, he can gratify one of them only by respecting the reserve of the others. This means that the deceased could favor him by attributing, in addition to the reserve to which he is entitled equally with the others, the available quota. In this way, the deceased can restore any objective patrimonial inequality existing between them, regardless of the cause (illness, accident, several dependents, etc.). But this possibility of advantage is limited - regardless of the motivation - to the amount of the available quota; the reserve cannot be reached either by

liberalities made to one (some) of the reserved heirs. Chapter 3. The concept and essence of the inheritance reserve are set out in the current Civil Code.

Legal provisions regarding the inheritance reserve in the new Civil Code

In March 2019, the Civil Code of the Republic of Moldova underwent a substantial reform, considered one of the most extensive legislative amendments since its initial adoption. The most important transformation concerned the Chapter on inheritance, where new concepts were introduced and existing regulations were reformulated to achieve greater clarity and legal efficiency.

In particular, essential changes were made to the institution of the inheritance reserve, which was adapted to reflect a fairer balance between the testator's freedom to dispose of his assets and the protection of the reserved persons — that is, the legal heirs who benefit from this reserve.

In the amended Civil Code, the inheritance reserve is provided for in Article. 2530, which provides: (1) The reserved heirs retain the right to inherit, regardless of the content of the will, at least ½ of the inheritance share that would have been due to each of them in the event of legal inheritance (reserve inheritance). (2) The reserved heirs are the first-class legal heirs, the parents of the deceased, as well as the surviving spouse if, at the date of opening the inheritance, the deceased had a direct maintenance obligation towards the respective heir in accordance with the Family Code.

In order to reveal the essence of reserve inheritance, it is necessary to highlight those particular features that differentiate it from other concepts of inheritance law, and at the same time, establish the framework for a more efficient application of the legal norms that govern it. From art. 2530, we can highlight certain specific characteristics of this civil law institution (Cazac O., 2022, 444).

The legal nature of the inheritance reserve is directly established by the articles of the Civil Code of the Republic of Moldova that regulate it. It is essential to emphasise that this legal nature is guaranteed by a mandatory rule of law, which means that the size of the reserve cannot be modified or cancelled by the will of the deceased or the successors.

The inheritance reserve is regulated by law and does not result from the will of the testator or from an agreement between the heirs. The inheritance reserve benefits only the reserved heirs who meet the conditions required by law to be able to inherit, regarding capacity, unworthiness and renunciation of inheritance. Therefore, in order to collect the inheritance reserve, the reserved heir must be alive on the date of opening the succession (date of death of the deceased), not be unworthy, not have renounced the inheritance and meet the conditions required by art. 2530.

The second character of the inheritance reserve is represented by the fact that the reserve is a part of the inheritance. Thus, art. 2530 provides that reserved heirs can collect at least one-half of the inheritance share that would have been due to each in case of legal inheritance (reserve of inheritance), regardless of the content of the will. In other words, the reserve of inheritance represents a part of the entire inheritance, not of each asset in particular. It does not matter what specific assets make it up, but only that the reserved heirs receive the part established by law from the deceased's patrimony.

Although the reserve is part of the inheritance, the right to the reserve is a right of its own, born in the person of the reserved heirs at the date of opening the succession and not a

right acquired from the deceased by inheritance. However, if the reserved heir dies before accepting the reserved heir, this right is transmitted to his legal successors. They do not have to meet the conditions to have the quality of reserved heir (Cazac O. 2022, 449).

The collective nature of the reserved heir is closely linked to the previous one and presupposes the existence of a collectivity both in terms of the assets that make up the estate and in terms of the circle of people who will collect the inheritance. This character is manifested in the fact that the reserve represents a mass of assets, a share of a universality that is attributed to a group of heirs and not to the reserved heirs individually (Deak FR., et al., 2014, p. 381).

If there is only one heir within a class, such as descendants, and he receives the entire inheritance reserve intended for that class, this does not change the collective nature of the reserve into an individual one. The reserve remains collective, but the entire share intended for descendants will be attributed to a single heir.

Category of reserved heirs in the current regulation

According to paragraph (2) of article 2530 of the Civil Code of the Republic of Moldova, the legislator provides a clear definition of the inheritance reserve and establishes who can be considered reserved heirs. This category includes, first of all, the legal heirs of class I – that is, the children of the deceased, and if they are absent, their direct descendants, such as grandchildren, great-grandchildren, etc. (Cazac O., The Legacy, Chișinău, Ed: Animus, 2022, p. 155). In addition, the parents of the deceased and the surviving spouse are included. However, in the case of parents and surviving spouse, they may benefit from the inheritance reserve only if, at the time of opening the inheritance, the deceased had a direct maintenance obligation towards them, established in accordance with the provisions of the Family Code of the Republic of Moldova.

Therefore, in order to determine whether such an heir is, legally, a reserved heir, we must verify whether there was, at the time of death, a maintenance obligation recognised by law between the deceased and the heir. This verification will be done by analysing the relevant provisions of the Family Code, which regulate the maintenance obligation between family members.

1. Chapter 12: Maintenance obligation between parents and children: art. 74. "Obligation of parents to maintain their children", art. 78. "The right of adult children incapable of work to a maintenance pension" art. 80. "Obligation of adult children to maintain their parents".

2. Chapter 13: Maintenance obligation between spouses and former spouses: art. 82. "Obligation of spouses to support each other", art. 85 "Exemption of the spouse (former spouse) from the maintenance obligation or limitation of this obligation in time".

3. Chapter 14: Maintenance obligation between other family members: art. 86. "Maintenance obligation between brothers and sisters", art. 87. "Obligation of grandparents to support grandchildren", art. 88. "Obligation of grandchildren to support grandparents" (Băieșu A., *et al.,* 2019, 441).

At the same time, it is not necessary that the deceased has actually fulfilled the maintenance obligation during his or her lifetime, nor is it required that the obligation has been established by a court decision or contract regarding the payment of maintenance. It is sufficient to meet the legal conditions for the existence of the obligations at the date of

opening the inheritance. If the law imposes the condition that the maintenance creditor "needs material support", given that the creditor is in a precarious situation (is a minor, has disabilities, is elderly), the fulfilment of this condition will be presumed. Since the reservor has the status of heir, he is also required to report donations received from the decedent when the decedent was alive under the conditions of art. 2537 Civil Code of the Republic of Moldova

Otherwise, the regime of the succession reserve is to offer the reservee a position of at least half of the succession share that he would have had in the absence of the will, so that he cannot be disinherited of this half. When determining the succession share for each reserved heir, all legal heirs called to the inheritance if the will had not existed are taken into account. Legal heirs who have renounced their heritage are not taken into account. Testamentary heirs are not taken into account if they are not legal heirs (art. 2531 CC RM). If the reserving heir renounces his share of the inheritance reserve, the shares of the inheritance reserve of other reserving heirs are not increased. In this case, the share of the reserving heir passes to the testamentary heirs in proportion to the inheritance share tested to them. If the reserving heir is also a legatee, he will be able to claim the reserve only if he renounces the legacy. Otherwise, he loses the right to the inheritance share as a reserving heir in the amount of legacy value.

To calculate the reserve and the available share, it is necessary to determine, in advance, the calculation table (the inheritance) to which the fractions of the reserve and the available share will be applied (Deak F. 1999, 334). For this, it is necessary to reconstruct the deceased's patrimony by calculating on paper, as it would have been if the person leaving the inheritance had not made donations. Such a solution is necessary because the institution of the succession reserve protects the reserving heir not only against legacies, but also against donations in situations where these liberalities exceed the limits of the available means.

Conclusions

The regulation of inheritance reserve has evolved considerably in the civil law of the Republic of Moldova, reflecting the need to balance the freedom of the testator with the protection of close relatives and dependents. A comparative analysis of the old and current regulations highlights the fact that the 2019 Civil Code reform brought clarity, fairness and legal efficiency to a sensitive and important area of inheritance law.

The new regulation is superior to the previous one for several essential reasons. First of all, it eliminates the ambiguities regarding the notion of “unfit for work”, which previously created difficulties in interpretation and application in practice. The introduction of the maintenance obligation as a criterion for the status of reserved heir ensures real protection only for those persons who, objectively, had a patrimonial dependency relationship with the deceased. Thus, a fairer and more rational application of the principle of family solidarity is ensured.

Secondly, the new regulation provides a clear and coherent formulation of the categories of reserved heirs, the shares of the inheritance due to them, as well as the method of calculating the reserve and the available quota. This clarity contributes to better legal predictability and to the avoidance of conflicts between heirs..

In conclusion, the current regulation of the inheritance reserve represents a step forward from a legislative and social point of view, better adapting to contemporary realities and providing a fairer, more functional and better theoretically substantiated legal framework. This not only ensures more effective protection of vulnerable persons but also strengthens citizens' trust in justice and the civil legal order.

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