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PHD THESIS

ELEMENTS OF COMPARATIVE LAW IN THE MATTER OF TESTAMENTARY SUCCESSION

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Introduction to the issue of succession

Numerous Romanian academics describe the matter of inheritance as being intimately related to property, which is also closely related to family and its organization, thus being at the intersection between family law and real rights. The patrimonial relations between spouses or relatives are in accordance with their personal relations, and the relations between family members are also influencing the pecuniary relations between them.

The present work aims to bring back into discussion the concept of succession and those circumscribed to it, with an increased emphasis on that of testamentary inheritance, both in the Romanian, as well as in the Anglo-American and Italian context. The general objective of this approach is to capture the particularities of successions in Romania, Italy, the United States of America and Latin America, but also subsidiarily outlining the benchmarks established by Romanian and French law. The option for these states is based on the desire to highlight the concept of testamentary freedom in areas as culturally different as possible, some tributary to the Latin culture, others to the Anglo-American one.

The particular objective of this thesis consists in exploring the ways in which testamentary freedom is currently understood and respected by the legislative frameworks of these states. We believe that ***the notion of testamentary freedom*** is implicit in an idea of democratization of family and social relations, as a whole; as such, it ***must be respected and must not be subject to countless limitations that may end up contradicting the will of the testator***. Otherwise, we are of the opinion that we can no longer speak of testamentary freedom, but of a simple possibility to test.

Since most studies that deal with the issue of successions tend to focus on a strictly technical perspective, talking predominantly about inheritance quotas, financial rights and/or considering a historicist approach, I considered it important to highlight an overview of how death as a phenomenon is perceived in global religions, along with the principles of succession that emerge from these religious thoughts. The reason that guided this approach was both that of highlighting the transition from the profane to the sacred and vice versa, along with the occurrence of death - a fact that provides a suitable context for debating the issue of death beyond the established, strictly legal approaches, with its pertaining cultural nuances - and that of the possible influences on the principles of succession. and/or cultural subcommunities.

Prolegomena: perceptions of death in the dominant religions globally

The law of justice based on the love of God and all peers guides the entire substance of Christianity. Here, justice does not necessarily mean equity, but the achievement of peace between people, the renunciation of self, in order to receive an even greater reward from God.

Christian dogmas did not have the role of delimiting in any way the allocation of inheritances, since the practice of succession on an earthly level is seen as strictly profane, and the purpose of creation is the attainment of the Kingdom of Heaven through charity and gain of the Holy Spirit. When Jesus is asked to indulge a man to divide an inheritance with his brother, He answers: "*Man, who made Me judge or divide over you? [...] See and beware of all covetousness, for one's life is not in the grip of his possessions*[1]". From here, one can deduce that the practice of succession is seen as strictly profane, which does not bring spiritual benefits to people because of the greed it can generate.

In Buddhism, there is no mention of succession, the goal of earthly life being the attainment of Nirvana[2]. In Islam and Hinduism, on the other hand, we find principles that fully or partially disqualify women from inheriting. In Islam, widows cannot inherit, and women in the family of a deceased inherit half of a man's share. The possibility of probate is explicitly mentioned in the Qur'an, but changing or attacking the will is considered a sin, and any changes must be made in agreement with the testator[3]. In Hinduism, any transaction made by a woman has no value unless it is approved by a male member of the family[4]. In Judaism, inheritance is passed down from father to son, and the principle of the first-born, who inherits twice as much as any of his brothers, is enshrined, specifying that women have the right to succession on the same terms[5].

It could be observed that within the dominant religions, as well as at the level of the laws of modern states, the principles governing succession reflect both the society's vision of women

[1] The words of the Savior Jesus Christ in Matthew, 4, 40, 41, *The New Testament with psalms*, Publishing House of the Biblical and Orthodox Mission Institute, Bucharest, 2016, p. 12.
[2] Pew Reseach Center, "Religious group. Budists". In *The Future of World Religions: Population Growth Projections, 2010-2050*, Pew Templeton, 2015, pp. 102-111.
[3] The Quran, English edition, translated by Talal Itani, Clear Quran, n.y.
[4] H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (5th edition), Oxford University Press, Oxford, 2014, p. 83.
[5] Dayan S. Grunfeld, *Jewish Law of Inheritance,* Targum Press, Michigan, 1987, p. 83.

and of divinity. and the allocation of financial responsibilities within a family. Islam, for example, justifies the minor allocation of inheritance quotas to women by arguing that they do not have the responsibility to support a family. In today's secularized society and conditions of global migration, it is legitimate to ask ourselves to what extent these principles can still be functional and whether they can ever be more important than individuals in single-parent families, for example, or various other contexts with financial challenges. After all, the practice of successions has the role of supporting a family left without a member and, therefore, in a supposed financial difficulty.

CHAPTER I – Analytical elements in the testamentary transmission of *de cujus*' assets

Section I - *In Roman law*

Ancient Roman Empire practices revolved around the "pater familias", the father of the family, a person with almost unlimited power over his family, the children born, as well as over his wife, at least until the end of the Republican Period. Individuals under the tutelage of the father did not have the right to own any property and did not have the ability to represent themselves in court. Everything the sons or daughters acquired was, in reality, the property of the father, who was "authorized" with the wealth of the entire family[6].

Children could still have some economic autonomy through the *peculium,* which represented the goods that each child could administer as he pleased while remaining, at the same time, the property of the *pater familias*. However, *pater familias* could withdraw *the peculium* if he wished. From many points of view, the situation of the family members was not different from that of a slave owned by the *pater familias*, the difference being that the wife and children were Romanian citizens. The father's power had no definite term. If he lived long, his children remained under his authority even as adults. If a son married, his wife and children became subjects of the son's power; if a daughter married, she became subject to the power of the groom or his father[7].

The husband's power over his wife was called *manus*. Upon the death of the *pater familias*, if the slaves became the property of his heirs, the power over the wife and children

[6] Kenneth G. C. Reid, Marius J.de Wall, Reinhard Zimmermann (eds.), *Intestate Succesion, Comparative Succesion Law*, vol. II, Oxford, University Press, London, 2015, p. 3.
[7] Ibidem, p. 4

ceased - they thus acquired legal independence. Initially, *pater familias* could not voluntarily give up his power over the children. This changed with the Law of the 12 Tables, when, through *mancipatio* father could free his children, making them economically independent before his death[8].

Basically, the old Roman testament was a solemn act by which the head of the family designated a leader of the group. The establishment of such a leader (heredeus) could not be absent from any will. Only later on was this act able to contain dieing dispositions, which were called testamentary provisions: of dowry, of freedom, forgiveness, of usufruct[9], etc. These had to include the entire inheritance. Testamentary inheritance, as well as legal inheritance, by the same person was allowed. Succession by will excluded legitimate succession. The established leader took the place of the head of the family, acquiring this power for his whole life - "semel eres, semper eres". The ancient Romans considered that a person's patrimony disappears with his death. It was considered that the heirs acquire a new right, a property right - power. Ancient Roman law knew three forms of testament: *calatis comitiis, in procinctu* and *per aes et libram*. In the Roman postclassical era, two important categories of wills appear: private wills and public wills. Other categories of wills existing in the Roman law were: the will of the blind, the will of the patient with a contagious disease, the military will, the exceptional will of civil servants, the rustic will, the ascendant's will to his children, ordinary, public wills[10].

Section II - *In the French law*

The law of inheritance in France, before the Civil Code of 1804, was different: customary in the north of the territory and written in the south.

The customary one had German influences, but was very difficult to characterize, being very different from one place to another and depending on the nature of the goods.

The applicable law was the established one, not the custom of the place. If a person died without descendants, his "separated" property had to go back to his origins - the Principle of *paterna patrinis, materna maternis*. If the goods were received from the father, they returned to

[8] Ibidem, p. 5
[9] Vasile Mihai Jakotă, "*Roman Law*", vol. II, „Chemarea" Foundation Publishing House, Iaşi, 1993, p. 523.
[10] Ibidem

the paternal relatives, and the same thing happened if they were received on the maternal line. This rule could not be violated by a will[11].

At the beginning of the 13th century, 4/5 of the separate property was considered the reserve that had to be passed on to the ascendants. Movable goods and acquisitions did not have much importance in the beginning and could be passed on by will. If their value was high compared to the rest of the estate, in such a way that the reserve became insufficient, in some areas in the north the inheritance reserve from Roman Law was adopted, which was the same, regardless of the size of the estate.

According to the feudal law applicable to the nobility, the first born males had priority. This was the privilege of masculinity, aimed at preserving the family. However, the rules could be different from one region to another. This privilege was often reinforced by wills by which the deceased established the transmission of the property for several generations (commissary substitutions were common).

In the southern regions, testamentary inheritance was governed by different rules, more precisely since the adoption of Roman law in the 15th century. The transmission of the inheritance by will was the most common, and the legatee was the heir. The succession was not based on the power of the family, as in the other areas, but on the affection of the deceased towards the legatee. The inheritance mass was no longer divided into assets received as dowry and assets acquired during life. However, the inheritance reserve of Roman law was applied, which varied from a quarter to a half of the inheritance mass[12].

The revolution of 1789 produced a strong break with the past: the laws governing successions were changed for political reasons, with the aim of undermining the authority of the *pater familias*, in order to win the support of the younger generations. All the privileges related to age and gender disappeared. The rights of the children born outside of wedlock were recognized.

In matters of succession, the choice between the mandatory law and the freedom of the testator was avoided - the adoption of both possibilities was attempted. A succession reserve was established for the benefit of the descendants and ascendants, which was 1/4 when there was a

[11] Kanneth G. C Reid, Marius J. de Wall, Reinhard Zimmermann, *op.cit.*, p. 35
[12] Ibidem, p. 36

descendant coming to the succession and 3/4 when there were three or more sons of the deceased[13].

CHAPTER II - Death and the will in the Romanian tradition

2.1. The will

In the contemporary Romanian law, the will is defined as "the unilateral, personal and revocable act, by which a person named testator disposes in one of the forms required by law, for the time that he will no longer be alive." according to art. 1034 of the Civil Code. The definition given by the current Civil Code takes into account the criticisms formulated by the doctrine regarding the definition given by art. 802 of the Civil Code from 1864.

The will is a revocable act by which the testator disposes, for the time of his death, of all or part of his property. The will may contain, in addition to provisions relating to the inheritance, other provisions such as the revocation of previous provisions, the establishment of testamentary executions, the recognition of a child and others.

Art. 1034 manages to achieve a clear delimitation between the will and the testamentary provision, the latter being part of the former. Several independent legal documents can coexist within a single will. For example, the recognition of paternity of a child is an irrevocable legal act, although a will is essentially a revocable act. The possibility of the will to contain several independent legal acts, has as a consequence the fact that the nullity of one does not attract the nullity of the others. *Per a contrario*, deficits in the form of a testamentary disposition will attract the absolute nullity of the will, since the testamentary form is common.

The will is a unilateral, individual, essentially personal, revocable act; of disposition, solemn, for cause of death. The will is valid only if the testator had discernment and consent to its realization.

Art. 1325, also applicable to unilateral legal acts, lists 4 substantive conditions: the ability to test; the consent of the testator; the will’s lawful and moral substance; the determined and lawful object.

The object of the legacy must be in the civil circuit, it can also be a future asset that or one that begins to exist even after the opening of the inheritance.

[13] Ibidem

According to art. 1130 of the Civil Code, the successor omitted from the inheritance can employ an inheritance petition, by which he requests the recognition of his capacity as an heir and, as a second end of the request, requests the absolute nullity of the will.

The invalid will due to formal defects can give rise to a moral obligation for the deceased's heirs.

The sanction of testamentary nullity does not affect testamentary dispositions which, according to the law, may take another form - for example, the recognition of filiation.

2.2. The legal regime of the main testamentary provisions

The Romanian Civil Code regulates the following testamentary forms: ordinary testaments, respectively the authentic holographic testament; privileged wills: wills made during epidemics, catastrophes, wars or other exceptional circumstances, wills made on board ships or aircraft, military wills; the will made by an individual who is hospitalized in a health institution; other testamentary forms.

The Civil Code in force abandoned the least used ordinary testamentary form regulated in the Civil Code from 1864 - the mystical testament, as, over time, this testamentary form became obsolete.

Regarding privileged wills, the current code preserves all the existing forms in the previous legislation and adds one more, namely the will made by a person hospitalized in a health institution.

The Romanian Civil Code establishes the freedom to dispose of assets by will, but with the following limitations: the inviolable nature of the inheritance reserve; the revocability of the act; the lack of legal effects in the case of trustee substitutions; the transmission of assets is possible only along with the death of the testator and the opening of the inheritance. Thus, the heirs can freely dispose of the rights acquired by inheritance. In addition, the acts on the unopened successions are invalidated.

According to articles 1087 and 1088, reserved heirs are the privileged descendants and ascendants of the deceased, together with the surviving spouse, regardless of testamentary dispositions; and their shares, which cannot be disposed of by will, refer to half of the inheritance share that, in the absence of liberalities or disinheritance, would have been due to them as legal heirs, respectively half of:

- 25% of the inheritance mass in the case of the husband survivor, if there are children who are both his and the surviving spouse's;
- 50% of the inheritance in the case of the surviving spouse, if he comes into competition with the descendants of the deceased;
- one third of the inheritance mass in the case of the surviving spouse, if he comes into competition with both privileged ascendants and privileged collaterals of the deceased;
- 50% of the estate in the case of the surviving spouse, if he comes into competition only with privileged ascendants, or with privileged collaterals of the deceased;
- 75% of the inheritance mass in the case of the surviving spouse, if he comes into competition either with ordinary ascendants or with ordinary collaterals of the deceased.
- 75% of the estate in the case of children, in equal parts. Violation of inheritance quotas through testamentary dispositions or liberalities is subject to reductions

As shown by Decision no. 4267/2020 of 09/25/2020, the reduction can be operated only if the entitled heirs expressly requested it from the court, and, implicitly, requested for the revocation of the will, together with the confirmation of their quality of reserved heirs. Otherwise, if the reduction is not expressly requested, the reserved heirs risk not taking possession of the related inheritance quotas[14].

Regarding the revocability of the act, it is important to specify that although in general the voluntary destruction of the will by the testator is understood as the cancellation of the testamentary act, if we are talking about an authentic will, registered with a notary, the action of destroying a copy does not entail the revocation of the will - as shown by decision no. 1057 of May 18, 1987[15]. At the same time, a will is void if it does not have the purpose of generating certain legal effects.

Referring to the lack of legal effects due to fideicommissary substitution, this refers to the attribution of the property that makes its object, and not to the successional vocation assigned by will, as shown by Sentence no. 4196 of April 2, 2001[16]. Thus, the nullity of the fideicommissary

[14] Decision no. 4267/2020 of 25/09/2020 - Civil - judicial division, Galati Court - Civil Section (CC3), https://lege5.ro/App/Hotarare/giztgmbqgaydambqgiztamjrge3a/?pid=1155410919&expression=mostenitori%20rezervatari%20#p -1155410919

[15] https://www.ilegis.ro/spete/spete/act/id/1477

[16] https://www.ilegis.ro/spete/spete/act/id/17072

substitution does not affect the validity of another legacy included in the will, nor any possible disinheritance.

At the same time, as it appears from art. (1) of GEO no. 99/ 2006, the depositor of financial funds, respectively of securities in a credit institution can dispose of them through a testamentary provision included in the agreement signed with the credit institution. Thus, only these amounts or securities placed by the testator at the respective credit institution can be the subject of a testamentary provision. This also translates into the fact that the testator will not be able to dispose of other sums of money, securities from other credit institutions unless he has made separate testamentary dispositions for each credit institution[17].

Chapter III. Aspects regarding succession in Italian law

According to art. 587 of the Italian Civil Code, the will is a revocable act by which a person disposes, for when he will no longer be alive, of all his assets or a part of them[18]. Wills containing non-patrimonial dispositions are also valid.

Testamentary dispositions can either be universal, if they contain a universality or a share of the testator's assets and confer the status of heir; or with a private title, when they contain well-defined assets and confer the status of legatee[19].

Provisions containing specific goods or a set of goods do not exclude the possibility of the will being universal, as long as the testator intended to assign the respective goods as a share of the entire estate[20].

One can observe that although the freedom to dispose of property by will is limited to a certain extent, significant shares of the estate can be offered to the heirs designated by the will. Another interesting aspect that emerges from the Italian law of testamentary succession is that the brothers and sisters of the deceased are not reserved heirs even if they are the only living

[17] Ioana Nicolae, "Considerations regarding other testamentary forms. Testament of deposited amounts and values. The will made abroad by Romanian citizens", *Law Universe*, no. 12, 2020, pp. 14-21.
[18] Guido Capozzi, *Successioni e donazioni* – Quarta editione, Giuffre Editore, 2015, p. 663.
[19] The content of this subchapter was published in English in Andreea Bușureanu, "Testamentary Inheritance in Comparative Law. A comparative View of Testamentary Practices and Legal Frameworks in Italy and Latin America", *Journal of Legal Studies*, 28, 2021, pp. 124 – 141.
[20] Ibidem, p. 125

relatives. As such, only if the testator explicitly specifies that his brothers or sisters receive part of the estate, they will inherit according to the legally specified quotas.

The same common typologies of special wills can be found in Italy: during contagious disease, public calamity or fortuitous case; on board ships and aircrafts; wills of the military and those assimilated to them.

A will is invalid in the following cases: in the case of a secret will - if it was not written by the testator's hand or if his signature is missing; in the case of a will drawn up by a notary - if the written version of the testator's statements by the notary is missing or if the will was not signed by the notary or by the testator.

The will may be declared void by any interested party on the ground of any other formal error. Currently, the illegitimate sons of *de cujus* can also inherit[21].

Chapter IV. Testamentary inheritance in Anglo-Saxon and American law

4.1. Succession Regulations in the United Kingdom of Great Britain and Northern Ireland

As the United Kingdom of Great Britain is subject to political devolution, many legal aspects, including succession, differ in England, Wales, Northern Ireland and Scotland. For this reason they will be discussed separately, although they are guided by a number of common legislative bodies and rationales.

The testamentary act is based on the desire to eliminate the primacy of the right of the first-born, which was maintained until the 14th century, and to give individuals a certain freedom in passing on the inheritance after death. Making wills is a practice encouraged by local churches and gained momentum with the Statute of Wills in 1540[22].

Beginning in 1963, the Wills Act introduced into British law the provisions of the 9th Hague Convention on conflicts of laws in the matter of the form of testamentary dispositions. Thus, from this moment on, a will is considered to be adequately executed if it complies with the laws of the state where it was drawn up, or where the testator lived, or if it is in accordance with the laws of the state of which the testator is a citizen. In either case, this means that UK law does not apply to all wills belonging to individuals who may be in the UK at the time of death.

[21] Andreea Bușureanu, *op. cit.*, p. 127
[22] Linda Tollerton, *Wills and Will-Making in Anglo-Saxon England,* York Medieval Press, Suffolk, 2011, p. 285.

The drafting of wills in Britain is guided by the principle of testamentary freedom, with the consequence of not recognizing any reserve to succession.

In England and Wales, a will can be revoked in the following situations: if there is another will or subsequent codicil; if there is another document that certifies the fact that the will is intended to be revoked; or the testamentary instrument is destroyed by the testator or by someone else in his presence for the purpose of revoking[23]

The definition of a will in the UK can be considered quite controversial, as it was delineated by the Property Law Commission of Inquiry in the 4th report: "any piece of paper, memorandum in ink or pencil, stating a disposition filed over the property, even if written by another person, even if not re-read or simply seen by the testator, but which makes the proof that it complies with the testator's instructions"[24].

According to Article 9 of the Wills Act, in England and Wales instructions deemed to come from the testator through trusts, which may be secret or semi-secret, are accepted as valid wills. Secret trusts are the equivalent of nuncupative wills existing in Romanian law and in some old Romanian regulations, but later rescinded.

The particularly problematic nature of secret trusts lies in the fact that they represent verbal agreements not formalized in the will, but which have an equal value to it and can be complementary or bring corrections to it[25].

However, to be considered valid, agreements based on a trust must to be proven on the basis of the following conditions: the person who wants to be trustee must clearly show that the testator intended to form a trust, that this intention was communicated to the trustee and that he accepted the testator's wish in this regard. Unlike semi-secret trusts, secret trusts are not the subject of any mention in a will, and become effective upon the death of the testator.

[23] „Form PA13: Lost Will questionnaire". https://www.gov.uk/government/publications/form-pa13-lost-will-questionnaire.

[24] David *Wilde, „Secret and semi-secret trusts: justifying distinctions between the two",* Conveyancer and Property Lawyer, 1995, pp. 366–378.

[25] Stephen James Alan Swann, *From Law to Faith: Letting Go of Secret Trusts*. PhD thesis defended at the University of Leicester, 1999, p. 93.

Although trusts do not comply with the Statute of Frauds (1677) - the law that still guides the succession in the Anglo-Saxon space and whose provisions specify the need for written dispositions to validate the succession - they have often received recognition in the courts[26].

Northern Ireland's succession law is largely identical to that of England and Wales, but the laws that guide intestate succession here are the Inheritance Order (Provision for Family and Dependents) (1979) and the Wills and Administration Order (The Wills and Administration Proceedings) (1994).

As in England and Wales, succession after death is carried out through executors and administrators[27]. Testators are advised to appoint executors so that relatives or close people do not have to pay an administration fee. It is recommended that the elderly appoint at least 2 executors. It is not possible for some people to challenge their right to probate, but the will itself can be the source of challenge based on the following reasons: the will was not properly executed; or the testamentary deed was made under the influence of some people so that they would benefit from it later.

Based on the Inheritance Order (1979), the following categories can issue financial claims from the estate: unmarried spouses and ex-spouses, civil partners who have lived with the deceased for at least 2 years - although the latter have lower chances of inheritance than spouses - children and individuals that have been financially supported by the deceased[28].

Irish citizens can opt for the creation of a discretionary trust by which they mandate a person full power over the existing assets and capital, to be entrusted to the beneficiaries. This may mean that some people may receive more of the inheritance than others, but this is up to the trustee[29].

Discretionary trusts are considered useful if the beneficiaries are minors, suffer from certain disabilities or are elderly. They differ from the secret ones precisely in that the trustee has full freedom both in terms of the beneficiaries of the estate and the amount of it; they are written

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[26] Statute of Frauds (1677), sectiunea IV, paragraful XI, https://www.legislation.gov.uk/aep/Cha2/29/3/contents.

[27] David Bunn, *Wills and Probate*, Abebooks, 2012, p. 33.

[28] Inheritance Order (1979), articolul 4, paragraful 4. https://www.legislation.gov.uk/nisi/1979/924

[29] Deloitte, „Succession Planning. Use of Discretionary Trusts for children and those with disabilities", 2018. https://www2.deloitte.com/ie/en/pages/deloitte-private/articles/succession-planning.html#

and can be found both in the legislation of England, as well as in New Zealand and Australia. No inheritance tax is normally payable on property or assets left through trust institutions.

In Scotland, same-sex unions have been recognized by law since 1981 and the same provisions apply to them in the event of the death of one of the partners. The Civil Partnership Act (2004) and the Family Law Act (2006) bring reinforcements regarding the definition of the family as a civil union between two people who may be of the same gender, the separation of the partners being done through a decree of dissolution. Therefore, this decree is equivalent to divorce and has the same effects in terms of inheritance, respectively the removal of the ex-spouse or partner from the will.

If the testator wants the wife/partner/partner to be the executor of the estate regardless of the circumstances that may arise later, he must mention this explicitly in the testamentary act.

In Scotland, nuncupative wills are accepted, but only those left by soldiers and airmen, whose life with a high degree of risk did not allow for an official formalization of the succession. The letters sent to the family, the personal notes from the soldiers' notebooks, as well as the verbal instructions given to those close to them regarding the destination of goods and properties are considered valid wills.

The Scottish Government portal allows the search of wills left by army and air force personnel from 1513 to the present by the personal data of the deceased (name, surname, rank, regiment, place of death and date of death, where known). Therefore, after the testamentary notes are found, they are transcribed, registered and published on the Government portal. As in the rest of the Anglo-Saxon space, the relatives of the deceased must apply for the right of probate, but for goods or sums of money in a value of less than 300 pounds, this is no longer necessary. The Family Law Act mentions the existence of gay unions in the form of cohabitation of persons of the same sex in Article 34, paragraph 1.

4.2. Regulations regarding succession in the United States of America

The practice of drawing up wills in the USA is, for the most part, tributary to Anglo-Saxon law. Here, as well, we find the establishment of administrators or executors for managing the inheritance, paying outstanding credits and distributing the estate. However, the status of these individuals does not derive from the fact that they could be heirs, since most of the time, they may not be the beneficiaries of the estate whatsoever[30]. Administrators are appointed by the court, upon the proposal of family members[31].

There is a contradiction in the literature regarding the acceptance of oral wills: Ronald J. Scalise Jr. states that they are not accepted in America[32], although case laws in 18 states (including New York and Washington) show that oral wills are still considered valid, but within certain limits and conditions. The statement of Ronald J. Scalise Jr. can only be true in the sense that this type of wills cannot be applicable to all audiences and not in every state.

To the same extent, holographic wills - those drawn up by the testator, with or without witnesses - are not recognized throughout the entire US territory, but their presence can be found in several state laws (in 28 out of 50 existing ones[33]), although on the territory of Great Britain they no longer listed valid.

In most circumstances, US law prohibits the total exclusion of an exclusive spouse from a will. As a general rule, in community property states, each spouse will automatically own half of everything the couple earned during their marriage. This means that half will automatically go to the spouse, and the remaining part of the estate can be distributed according to the wishes of the testator.

Louisiana is officially the only federal state that uses the concept of forced heir, referring to the descendants of *de cujus*. In the rest of the federal states, children can be disinherited either

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[30] Ronald J. Scalise Jr., „Testamentary Formalities in the United States of America". In Kenneth GC Reid, Marius J. De Wall, Reinhard Zimmermann (eds.), *Comparative Succession Law, Testamentary Formalities* (vol. I), Oxford University Press, New York, 2011, pp. 358-380.
[31] Ibidem, p. 360
[32] Ibidem, p. 361
[33] According to Theodore E. Hughes, David Klein, *The Executor's Handbook* (3rd edition), *A Step-by-Step Guide to Settling an Estate for Executors, Administrators, and Beneficiaries*, Facts On File, New York, 2007, p. 86.

by omission, by accident, or by explicit transfer of derisory sums (such as $1 in New Hampshire)[34].

To prevent a spouse from being disinherited, in the US, the legislatures of Alaska, Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wyoming use the elective share, which is a succession reserve. Traditionally, this fraction is one-third of the estate, regardless of the length of the marriage. At the same time, this share is called "elective" because if the surviving spouse receives less than he is entitled to by law, he can reject what was allocated to him by will and choose this higher share[35].

In Arizona, California, Georgia, Louisiana, Nevada, New Mexico, Texas, Washington, West Virginia, and Wisconsin, surviving spouses do not receive elective shares[36].

4.3. Inheritance regulations in Latin America

Latin American legislation on inheritance is fully tributary to the Spanish one, which limits the rights of the surviving spouse significantly, including in the case of a will; and establishes the rule of consanguinity, which guides the entire logic of successions.

We can say that the legal provisions regarding testamentary inheritance were designed specifically to mirror those of ab intestat inheritance, so testamentary freedom is very limited here.

As a general rule, the surviving spouse is in the 4th class of heirs and cannot receive a significant portion of the estate in any Latin American country. Traditionally, he is guaranteed the usufruct of the common home, and the right to full inheritance only if he either has assets in

[34] Alex S. Tanouye, Elisa Shevlin Rizzo, "2nd EDITION: SURVIVING SPOUSE'S RIGHTS TO SHARE IN DECEASED SPOUSE'S ESTATE", *Actec.org*, 2017, https://www.actec.org/assets/1/6/Surviving_Spouse%e2%80%99s_Rights_to_Share_in_Deceased_Spouse%e2%80%99s_Estate.pdf?hssc=1
[35] Idem
[36] Idem

joint ownership - an absolutely natural right because he has financially invested in these goods- or if there are no other heirs in the direct blood line[37].

5. Conclusions

In conclusion, what can be observed is that within the dominant religions, as well as at the level of the laws of modern states, the principles governing succession reflect both society's vision of women and of divinity and the allocation of financial responsibilities within a family. Islam, for example, justifies the minority allocation of inheritance quotas to women by arguing that they do not have the responsibility to support a family.

In today's secularized society and conditions of global migration, it is legitimate to ask ourselves to what extent these principles can still be functional and whether they can be more important than individuals in single-parent families, for example, or various other contexts with financial challenges. After all, the practice of successions has the role of supporting a family left without a member and, therefore, in an alleged financial difficulty.

Except for Anglo-Saxon and American law to a certain extent, most of the legislations discussed here, namely that of Romania, Italy and Latin America, tend to violate testamentary freedom from the perspective of the same criteria: the perceived role of women in society and the allocation of financial responsibilities within a family, in addition to various cultural biases regarding democratic freedom. From the start, legislators in these states question the good faith and judgment of testators in allocating inheritances and ensure that people who are supposed to have played an important role in the testator's life are not excluded from the inheritance.

In Romania and Italy, the inheritance reserve and the possibility of revoking the will make it difficult to pass on the inheritance exactly in the terms of the de cujus'. In any case, the elements that define the validity of a will are limited from the start in most legislations at a global level, under the pretext of avoiding forgeries, although the possibilities to attack a will remain very varied.

The United Kingdom of Great Britain enshrines full testamentary liberty, and has created, as in the United States, the institution of trusts, so that dying wishes cannot be challenged as in the case of wills.

[37] Carmen Diana Deere, Magdalena León, *Empowering Women: Land And Property Rights In Latin America*, University of Pittsburgh Press, 2001, p. 77.

In the United States of America, some federal states apply the principle of succession reserve or "forced heirs", while in others the accidental omission in the will can result in the complete exclusion of a family member from the inheritance. We consider of interest to the legal literature the fact that posthumous descendants can inherit despite not being named in wills, although this fact somehow contributes to the trivialization of succession freedom.

Finally, one can also remark that the redefinition of family and partnership concepts in strictly secular terms also has a noticeable effect on the legal realities of succession. Although this aspect may be salutary in the direction of supporting descendants in non-traditional families, the likelihood of more lawsuits in this regard increases as well, thus complicating the allocation of inheritances and their entire bureaucracy, already complex endeavors.

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