DOI: 10.29302/Pangeea 17.18

REFLECTING ON NOTIONS ABOUT WILL AND LEGACY CONTRACTS IN THE ALBINA JOURNAL 1934

Assoc.prof.PhD. MARIA URECHE
"1 Decembrie 1918" University of Alba Iulia, Romania

ABSTRACT: *Legal issues regarding inheritances, who has the right to make a will, which forms it, who can inherit are in the past and were a particular concern for citizens and authorities.*

What we proposed in the present paper was an analysis of how, in the press of 1934, in Romania, in the Albina journal, were exposed in writing and explained to them, so that the great mass of the population to understand them and they form a legal culture to refer to them.

We note also that, in a language distinct notions of 1934 are explained clearly and concisely and the number of those who could read the magazine was very high. In this magazine we find not just legal information. She refers to subjects from different areas: social, cultural, medical, agricultural, religious, even astrology, education and news from sin country worldwide.

Key-words: *family; legacy; testament; legal notices.*

1. Introduction

The way about how the documents concerning inheritance can be prepared, who can do so, under what conditions it can inherit, constitute major themes at the present time. This interest has been in our past but not very distant period, respectively, under a 1934. Public authorities, and then and now, and in Romania and in Europe are directly involved and responsible for the way in which they're legislating, governing and resolve disputes [1].

The approach not only about legal issues but also of moral, social and legal education, which was intended to be made by means of existing at the time of release, there is a unique one. The children had a particular status but although there was wanted for their protection, desiring to promote certain social institutions like marriage, family [2], it reached a situation in which children who came from a different marriage to be deprived of legal rights. Also the role of the father in the legal and social framework was huge compared to the that of the mother who was often lacking in authority.

In these circumstances, it is appropriate to point out aspects of who and under what conditions could inherit or be able to conclude acts of inheritance [3].

2. About testament in 1934

The word testament comes from our roman ancestors. In their language, latin, the word testis means witness. That's why the word testament[1] would not mean anything other than a letter, giving testimony that what's written in it happened exactly as it is written there.

For the purposes of this section, under the

[1]According to Decree 79 of 30 March 1950 on the organization of the State Notary, authentic wills are drawn up by State notaries. See also the decision of the Ministry of Justice no. 1827 of 12 July 1950 on the organization of the State Notary Office

testament should understand all the letters and contracts made between living people, because all these are testimonies about what's written in it.

Under the will, however, both the Romans and the Romanians, didn't understand anything other than some kind of letter, that someone is making when he feels that he is nearing the end of his life, having the purpose to give all his wealth to someone who will respect, after his death, all his wishes left in the testament.

A contract of inheritance means a contract concluded between two people, one of whom commits himself to leave to the other one after his death, all his wealth or only a part of it.

As the name implies, the contract of inheritance, as well as contract and testament, whereas it is a fortune that only after the death of her master will be the heir. The difference between the testament and the contract of inheritance is that it includes only the will of a man who makes the testament. Therefore, if, for example, today I make my Testament and my fortune goes all to Peter, but tomorrow I reckon and I want to give it to Paul, I just have to do my other testament without the fear that I'll be in trouble with Peter. This is because in my testament it's only my will beyond which I can change after[2].

Otherwise things are contracts of inheritance. Here are two wills, one of the most giving and one of the fortune that it receives. Therefore, the contract of inheritance cannot be hurt, than only with the accept of both parts. An example to see the difference as follows: the old man Nicolae Urs does not have anyone in the world. Nevertheless, he has a house and a beautiful garden in the village head. Being too skinny to work the garden, he is making a mutual consent with a nephew who moved in the house of the old man to take care of the house. Instead, the old man promised him, that after death all his wealth will be him. They go to the town, to make a letter about the mutual consent, because the oral word it comes and goes but the letter remains. They go to a lawyer who says that Nicolae can leaves all the wealth to his grandson, or perhaps to make a contract of inheritance. The two decided to conclude a contract of inheritance. If Mos Nicolae would have done a testament, he can always make another, and let someone else's entire fortune. And nephew could have remained of no reward for work and carried his uncle's care. The contract of inheritance cannot be exchanged only with knowledge and the will of both. Thus, if the nephew will work for his uncle, after his death his fortune will remain on his account.

Regarding the benefit of making the will. It's good to make people will and Testament? When someone has no wealth, why he should to do it? Also, if a man has only one child, he does not have to even care of think of writing a will, because his child will inherit the fortune after him, in the power of the law.

When someone else is having more children, and wealth is not money, but from a garden and some lands on the border. That's the thing, most lawsuits arise between brothers and gentiles, because they cannot reconcile on the parental wealth. Each heir would want to have for it the best land, while others leave the weakest. Here are born quarrels, disagreement and endless lawsuits.

A father, when he sees that he starts to be weaken, that he reached at the toughest of his life, when he is no longer able to gain something, but enjoy if he can take what he won until then, he is making a good decision if he's putting his will on a paper. So, if he makes his will, after his death, his children will not be arguing over property, but will take what's left of their father through

[2]In Article 802 of the Romanian Civil Code of 1865 (which is valid from 2011 with the change of the current Civil Code), it was shown that the Testament is a revocable act by which a person named a testator has a part or all of his possessions for when he will die.

testament. For example, a father has 3 children: 2 sons and a girl who got married. His wealth consists of a house with a garden, 2 hayfields and 3 farmlands. The father shared his wealth as follows: to the elder son he leaves the house. To the other son and to the girl he leaves the hayfields and the farmlands. Thus, children, have each one a part of the wealth of his father without others misunderstandings. Related to inheritance, in our country, by the law was ordained how to do when the legacy [4], has left and no testament in its wake[3]. The law says clearly who has the right to inherit and which is the order to inherit [4]. This is the inheritance by law. Thus, the child inherits from his father. If there are several children or grandchildren, then they inherit all. If there are children and grandchildren then inherit the decedent's parents, the one his brothers and other related people.

Legacy after testament is above the law. Thus, legacy legal is done if there is no will. Example: Ion Poponea lived a full life with his wife, Ana, in the best understanding. They haven't wasted his fortune from his parents, but on the contrary they have increased it. Ion passed over sixty years ago, and has been made worse in the evening and before he died, he started to tell his wife that with the remaining wealth she will be able to live without worry. Barely buried him, and his brothers immediately asked for part of the wealth. They heard that if a person dies without a will and testament, and he has no children, ¾ of the estate are of his brothers and only the fourth part of his wife. In vain the poor woman said that her husband told her on his deathbed that the whole fortune will be of it. Could not show a will because her husband died in shallow graves. The upshot was that she had to leave her husband brothers ¾ of the estate, and she remained with only 4 of part of this. If her husband would have been a more skilled man would not have left work one day to the next, but also would have done. Thus, all the wealth of his wife was companions with whom he worked together a full life and to him brothers who hated him.

3. Who has the right to make testament?

Drawing up a will isn't a thing some because a will hang the fate of an entire fortunes. That's why the legislature has been thought of as not everyone to do his will, but that to have healthy mind and have come to understand that as long as he understands the significance of the step that you do. Thus, the law says that only a good testament, when one who makes him has reached a certain age. Private wills may not only those who have reached 18 years of age. The law is harsh, and if only one day is missing, the will is not good, it has no power. Those who have not turned 18 may-testament, before making public notary public. But also here it is required to be a certain number of years. Thus, the Hungarian parties [5], which were not subject to the Austrian civil code, shall make public those who testament fulfilled 12 years in Transylvania, only those who have reached 14 years of age. Until this age there cannot be made testament. If the child dies before the age question, his wealth, by law, will inherit the gentiles. However, the child may make a will if the legal age, the notary public. Thus, the legislature has sought to not be able to avail themselves of the cluelessness of a child who has not reached 18 years of age. The clerk, as a man of trust law, it is obliged to interpret the significance of child pass what it wants to do and he's careful that his willingness to be very well presented.

[3] Accordind to Art. No. 650 from the Romanian Civil Code from 1865, the succession is made or by the law, or by the man's will through Testament.

[4] Art.651 from the Romanian Civil Code from 1865 says that the succession begins at the death of the owner of Testament.

From 18 years upwards, any sane man may do his will. Maybe to make it private or the notary public. In addition to this age, it may require that the man is sane and sober head. Therefore, there may make people mad and drunk testament, how long take madness or drunk. It is true that there are lunatics who once in a while they're awake mind and talk like the people in good health. In such a state a crazy man may do his will, but it has turned out that crazy man, when he said the will last before witnesses, was really sane.

The law says that one who has proved, and the wealth of predator because it was put under the tutoring of part of the Tribunal, is not entitled to do, than about half of the estate, and the other half, or wants or not, will be the heirs by law. For example: Peter D was given the dangerous drunkenness. His wife was not able to turn it back to the right track. Useless were the prayers made by the priest of the village, to return to the God of good thought. Seeing this, his wife showed up at the courthouse and demanded to be put under the tutoring, for if not all will lose wealth and she will remain on the road. The Court put her under the tutoring and starting from that day Peter could not sell anything without the consent of the guardian. As revenge on his wife, Peter started and made a will in which, after death, the whole fortune one leaves to the bartender from the village who promised that she will keep him up with brandy until to death. Peter died in one night. It is said to have been lit "vinars" in him. On the third day the bartender has come with a will and it causes poor widow to leave the house, because Peter gave her all her possessions. The poor woman goes crying to a lawyer, and she tells him that her husband, being put under the tutoring, had no right to make a will than about half of the estate. Thus, half of the estate will be of the bartender, and the other half will remain hers. Her husband had no other brothers and so it happened. This judgment is only in Austrian law, in Transylvania. In the Hungarian parties, after the laws out there, the one released under the tutor has the right to make a will regarding the entire fortune. Thus, in the example above, the wife would have remained of damage, so she would not have received anything.

As a testament to be well done and cannot be attacked by anyone, it takes as one who made it, in addition to years and sound mind, to free from his will and Testament, forced by anyone. For instance, it may happen that someone to threaten him a man that if he doesn't leave his entire fortune by testament, kills him. In fear, the man can make such a will, but after his death his children or other heirs can spoil if they prove that this testament was done solely by fear.

All the same, it will be worthless if someone with the will rebuild this ancient fortress or deceit, urged another to leave his wealth through testament. For example: Mos Toma of Andrei, twenty-five years ago, has been at loggerheads with his son Symeon. He was upset on his father, he took to the road and went into a strange land, where he had married and had a son who's now aged 20 years. Because of the offense, poor Symeon died, without ever returning to the country and no longer reconcile with his father. A former friend of the son of Symeon, a clever and thief child, heard that his friend had a fortune grandfather in Transylvania. One day he took to the road and came up in his village of Mos Thomas. Once he arrived here, he said that he's the child of Symeon. He said that his father had died, and thus remained on the road, came to look for the grandfather. Poor Mos Toma, whom had seemed evil injustice which he had made to his unique child, received him with joy. It took him and at his death he left his whole fortune made, made throughout the rule. The son of his brother has discovered that the real child of Symeon, died before his father, and so the young who man came and to whom Mos Toma has left all his wealth, it's a misleading. They started a lawsuit against the young and they won because it turned out that Mos Toma was deceived and went

astray. If the old man would have known that he is not his nephew, but a misleading, he would not have received him in the house, neither to leave his entire fortune. It is clear, from these parables, that even a will made in the entire rule can overturn if it's done with fear or following a fraudulent misrepresentation is or mistakes.

4. Conclusions

For 1934, keeping the period-specific language in the following we draw some conclusions regarding the kinds of testamentary dispositions. The will can be made by the man himself, if he knows writing and has the necessary skills to put on paper what he hopes. If it's not in a good state of mind, he goes to a man who knows to read and write, just like a lawyer or a notary, or so he have a will. The notary public shall draw up Testaments. Trusted notary is the man put by domination, who has his tasks and help citizens in the making of contracts, wills and other papers.

There is a testament, made in writing and verbally, and it can be made only by word of mouth. A will cannot be made public other than in writing, while the private sectors can be made in writing or by word of mouth. The notary public shall observe the rules required the legislator to ensure that his will be a good one. For any mistake he is liable and he must give compensation to those who have suffered a loss. With respect to wills, we know that death does not make news when he comes. Most times it comes unexpectedly, so often barely we have time to say hastily the last wish. Fewer requirements regarding the wills are privileged if wills are in the time of plague or cholera, other diseases.

For them, the law requires only half the number of witnesses required nor should be present when all is done.

Such wills are entitled to make and those who traveling, soldiers on the battlefield and other such special cases.

Succession opens on the assets of the deceased's patrimony. In case we have the situation of the deceased's absence, in this hypothesis, the sequence could not be opened because the art.651 of the Romanian Civil Code (1865) explicitly demanded death and the absence was seen as a state of uncertainty. In Ardeal, however, the solution was exactly the opposite, the absence being replaced by the declaration of death.

The Decree Law of March 4, 1941 adopted for the whole country says the declaring death by court order, repealing the corresponding texts in the Old Kingdom and Transylvania. Regarding the act of death or a missing person during the war or in catastrophes (earthquake, shipwreck, explosions) could not be written by the Civil Status Officer because he had to have a legal medical certificate to find the death. This being impossible, in these hypotheses, a court decision was needed to find out the death. Based on this judgment, the civil status officer was required to register death in civil registers.

Regarding those who disappeared during the First World War, the Law of December 11, 1923 (applicable until December 12, 1941) stipulated in Article 1 that all who disappeared between July 13, 1916 and April 1, 1921, could be presumed to have ceased life, if the disappearance lasted at least one year from the latter.

The followers of the missing had to make a request for the purpose of establishing the presumed death. The judge at the last home of the disappeared after the analysis of the evidence could find the death of the disappeared by judgment. Based on this judgment, the succession was opened on the date of the final judgment.

REFERENCES:

[1]. Ureche, Maria, (2011), *Autorităţile publice în dreptul statelor europene*. Altip House Publishing, Alba Iulia. p.56.
[2]. Cetean-Voiculescu, Laura, (2012), *Dreptul Familiei*, Hamangiu House Publishing, Bucuresti, pp.20-32.
[3]. Ionaşcu, A. R., (1946), *Curs de Drept Civil Român. Vol V. Regimurile matrimoniale şi succesiunea legală*, University "Regele Ferdinand I" from Cluj. pp.94-95.
[4]. Rarincescu, M. (1930), *Noţiuni de drept civil*, vol.I. Bucharest. p.83.
[5]. Negrea, C., (1921), *Dreptul civil al ţinuturilor ardelene şi ungurene*, vol I. Cluj.