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INTESTATE SUCCESSION IN THE ROMAN LAW
(With a Short Overview of the Macedonian Law on Succession)

Abstract

The solutions on the criteria for selection of intestate successors, as well as the position and significance of the intestate succession as subsidiary succession in different succession systems seem to be a constantly present question.

Having in mind the fact that the author of this paper is particularly interested in the historical aspect of the genesis and development of intestate succession and its characteristics, the focus of this work concerns the intestate succession system in the Roman law.

In addition, the paper reveals the chronologically separate characteristics of determination of legal successors, which are appropriately characteristic for the three development stages through which the entire legal system of the grandiose Roman Empire passed. The elaboration of the gradual development and the changes which were conditioned by the modified social conditions on one hand, and the strong custom component influencing the system of intestate succession on the other hand, argue in favour of the indisputably strong connection between the still nonpareil Roman legal genius and the legal transplants of the modern continental legal systems.

Key words: succession, intestate succession, successor, intestate succession lines.

Introduction

Beginning with the generally accepted Gaius's tripartite division of the Roman private law to law referring to persons, properties and lawsuits,[2] we focus on the part that, if translated literally, leads to the perception that it is a matter of property law. Honestly speaking, Gaius's "law referring to property" is the civil law in today's sense of the word. Of course, it has a much wider scope than the property law itself, which in turn, together with the obligation and succession law, constitute the unity of the civil law.

This short introduction attempts to differentiate the aforementioned legal branches according to certain characteristics they possess. Thus, the main characteristic of the property law and the law of obligations is their action inter vivos (between the living), contrary to the succession law whose action is mortis causa (on the occasion of death). Regarding the fact that this paper's topic forms a

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[2] Omne autem ius quo utimur vel ad personas pertinet vel ad res vel ad ctiones.

part of the mortis causa property and legal relations, the accent will be placed on the explanation of the characteristics and solutions of the Roman law referring to succession.

It is probably unnecessary to explain the meaning of succession law. That is, first of all, law providing the subject with a right to ownership. "During a man's life, it is possible for him never to be affected by the rules of usucaption or the accession, for example, but of course he could not avoid the rules of succession law."[3]

Exactly for these reasons, as well as because the widely-known Roman law is considered a foundation of the continental legal systems, it is justifiable to pay a large attention on the solutions that the Roman lawyers left as their legacy in terms of the features of the intestate succession. Besides giving clearer picture about this area, the texts on this subject indisputably have several meanings. This is because the regulation of this area, especially concerning the determination of the successors, as well as their position and manner of succession, has tight connection with the type and manner of functioning of the family communities, relations and status of their members, as well as the already established tradition regarding some issues. That results in using certain criteria reflecting the current situation of the society as a mirror.

Therefore, besides the succession principles and the situations in the area of personal and family law, the knowledge of the intestate succession system undoubtedly tackles some other issues, which are significant for the obtaining of the complete picture.

1. Short Historical Overview of Roman Succession Law

Having in mind the period we deal with, it seems to be inevitable to establish that it is practically impossible to talk about inalterability (speaking about the Roman law institutions, in general). Once again, we need to note the "unlimited duration" of the Roman law. Thus, in order to obtain clearer picture on the specific issues, we should have in mind the fact that under the influence of a large number of factors that have determined the social development in general, the legal norms have undergone certain changes, primarily as something that has been practically realized in a certain period. Hence, one cannot expect that the institutes and the legal norms are given once for all and that they would remain unmodified.

When examining the Roman succession law, one cannot deny that it had a really interesting and dynamic road of development, which was a result of the modified social relations and situations. A large number of authors considering this issue find that the Roman succession law passed through three main stages, starting from Lex XII Tabullarum, through the praetorian system that amended the succession according to ius civile, to the final regulation of succession law within the framework of the Justinian's legislation.[4]

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[3] Andrew Borkowski, Paul du Plessis, *Textbook on Roman Law*, 3 ed, Prosvetno delo AD, Skopje, 2009, 208.

[4] Namely, according to Romac, the development of the Roman succession law can be examined in four stages. The third stage (referring to the reforms conducted by the Emperor's legislation before Justinian) is usually absent in

Briefly, the main features of the Roman law succession system in the three separate stages depend mainly on the changes in the social and economic relations. Therefore, the main characteristic of the succession law from the old ius civile is the insistence that the inheritance remains within the framework of the consortium. It means that the principle of determination of the succession lines at the intestate succession is based principally on the agnatic kinship. Therefore, this manner of determination of the succession lines system is conditioned by the fact that it belonged to a society whose main activity was primitive agriculture and stockbreeding.[5]

It can be easily established that the Praetorian intervention in succession law is due to the aspiration that the noticeable faults of the succession system are removed. This resulted from the acknowledgment of the agnate relation as a foundation for applying for succession.[6] The decay of the consortium as family community and the primacy of the cognatic kinship in the succession and legal relations in this period conditioned the necessary need for the Praetor to intervene in this direction. The rules on the so-called bonorum possessio (governance of the bequest) were created then. They provided that the blood relatives gain the right of ownership of the bequest property as soon as the acquisitive prescription deadline has passed. It must be mentioned that this correction of the succession system does not abrogate Lex XII Tabullarum, but it creates a parallel intestate system for succession, which was an alternative for the relatives who would like to use their right. Anyway, as we will see later, this praetorian right performed quality reforming of many noticeable abnormalities of the system of intestate succession.

Finally, Justinian's legislation abolished the dichotomy of the legal norms in this area, harmonizing the norms of the civil and ius honorarium law. It determined that the intestate succession system would be based exclusively on the existence of blood relationship between the defunct person and the potential successors, which is a principle of the majority of modern intestate succession systems.

2. Intestate Succession in Roman Law

2.1 Term

In terms of defining the intestate succession, different authors give different definitions, which still do not differ from each other significantly. Therefore, according to Romac ..."the term intestate succession means the manner of transfer of the property rights and obligations in case of death from one subject to another, which applies when the deceased has not left a will." [7]

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the periodisations of most Romanists. See: Ante Romac, *Rimsko pravo*, Pravni fakultet u Zagrebu, Zagreb, 1981, 361.

[5]The old ius civile recognized the testamentary succession, given the fact that the Law on Twelve Tables regulates the will. However, it should be emphasized that the early will did not contain all characteristics that are sine qua non for the later forms.

[6]For example, the exclusion of the emancipated children and descendants through the female line.

[7]See: Ante Romac, op.cit, 362.

This manner of defining the intestate succession indicates that it is a matter of subsidiary system of succession.

The Roman authors occasionally leave an impression that Rome was a society obsessed with wills, in which testifying of the will was one of the tasks in the everyday life. However, this probably referred to the classes that had property. Hence, there was great interest and significance of the functioning of the intestate succession law.[8]

Monitored through the three aforementioned stages, the determination of the term and the system of the Roman law intestate succession system is undoubtedly a simpler task, if we take into account the fact that the testamentary succession is a lot broader and more complicated task. Therefore, intestate succession often serves as an introduction and the knowledge of it allows that the testamentary succession could be determined in a simpler manner. With reference to the fact that the topic of this short paper is the system of intestate succession, we explain once again that it concerns the determination of the succession right-holders when the defunct person has not left a will or when the will is not valid, due to certain faults.

2.2 Intestate Succession Line according to Lex XII Tabullarum (old ius civile)

Before the time of modifications of succession law due to the praetorian intervention and according to the old ius civile, the intestate succession system could be recognized in the interpretation of two provisions from Lex XII Tabullarum:

"si intestatus moritur cui suus heres nec escit, adgnatus proximus familiam habeto. Si adgnatus nec escit, gentiles familiam habento."

It is evident that the agnatic relatives had an absolute advantage, but simultaneously there were three succession lines: sui heredes; proximus agnatus and gentiles in this period.

a) the first succession line was reserved for the so-called heredes,[9] composed of all persons who are under defunct person's patria potestas or manus at the time of his death. That includes: the born, adopted and adrogated children, conceived but still unborn children who would be under his governance after the birth,[10] members of the family community, grandchildren of the formerly deceased or emancipated male successors if they remained under the defunct person's governance, as well as the woman in manus marriage.[11]

By enumerating the specific successors of this succession line, it can be established that it is a matter of persons who became sui iuris after the death of the defunct person. This category of successors was

[8]See: Andrew Borkowski, Paul du Plessis, op. cit, 210.

[9]As they were conditioned by the relation with the defunct person before his death, the successors that already possessed the property should retain this as inheritance, in a certain sense.

[10]Nasciturus iam pro nato habetur.

[11]The big drawback of this first succession line is evident. It refers to the emancipated children, as well as the relatives by female line, which will be appropriately corrected, as we will see further.

simultaneously called heredes necessarii in reference to the fact that the succession was obtained immediately after the death of the defunct person with no possibility to waive it.[12]

Within the frames of this succession line, the bequest was divided in stripes, according to lineage, where each of the defunct person's children formed special tree with its descendants within the frame of which the principle of progenitor presentation (principle of representation) was applied.[13]

The female spouse in manus marriage applied for part of the heritage, same as the defunct person's born children, which means that she had a status of filae loco.[14]

b) The second succession line according to the old ius civile was reserved for proximus agnatus or the closest agnate. In addition, the interpretation of the word proximus should be understood literally: there is no presentation and there is no sucessio graduum.[15] [16]

This succession line usually covered the brothers and sisters[17] of the defunct person, as well as their descendants, who shared the bequest per capita if they were two or more persons. As aforementioned, unlike the first line successors, these successors had the opportunity to obtain the succession heres voluntarius, upon which the bequest was transferred to the successors of the following succession line.

c) The bequest was passed to gentiles, i.e. gens if the deceased person did not have sui heredes or proximus agnatus who wanted to accept the bequest. To be honest, the functioning of the transfer of the bequest to this succession line is not completely clear. Of course, the intention of the law to follow the concept of unity of the property within the same kin is clear. In classical times, this succession was already forgotten. However, we cannot disregard that from the historical point of view, having the common name is a positive characteristic of the affiliation to one kin.[18]

2.3 Intestate Succession Line according to Praetorian Law (Praetorian Intervention)

[12]This rule derived from the contemporary perception of the succession as a foundation for the prolongation of the family cult and tradition. Thus, the collective interest and the survival of the family community was more important than the separate wishes and interests of the members.

[13]The descendants of the closer relative (grandchildren from the prematurely deceased) shared equally the part that their father should have obtained.

[14]Defunct person's daughter.

[15] Berry Nicholas, *Introduction to Roman Law*, Prosvetno delo, Skopje, 2009, 246.

[16] The non-existence of so-called sucessio graduum means that the succession will not be divided to the distant relatives if the closest agnate refuses it.

[17]In 169 B.C. Lex Voconia disadvantageously modified the initially equal status of the sister as a person of female sex who applied for the succession of her brother. According to the new solution, only the fool-blood sisters or the sister by father lineage became successors by the limitation of testamenti factio passive.

[18]Ibid.

According to the Law of Twelve Tables, the main drawbacks of the intestate succession undoubtedly come from the dominant role of the agnatic kinship upon the determination of the circle of potential successors. Having in mind the occurred changes in the social and economic relations,[19] as well as the decay of the consortium, the determination of the intestate successors, by applying the principles of the old law, became evidently inadequate and, to a large degree, unfair.[20]

Some of these abnormalities were solved by praetorian intervention, which, of course, could not completely abolish and eliminate the old ius civile. Hence, in this period, an alternative system of rules was created that referred to succession. In that sense, the possibility that the newly established rules were used sometimes corresponded to the old Ius civile and, sometimes, they served only for amendment and correction of the old rules.

The aforementioned praetorian intervention refers to the possibility for the application of the established bonorum possessio (governance of the bequest).

This institution could be ab intestato (sine tabulis) when there is no will and secundum tabulas (contra tabulas), when there is will.

Besides this, since there was a possibility for conflict of rights by the descendants according to the praetorian law on one hand, and the civil law on the other hand, the praetorian successor who first required and obtained possessio bonorum could lose the succession in competition with the civil successor. Hence, this type of bonorum possessio was called sine re, and it was cum re when the praetorian successor had the advantage.[21]

As we have mentioned before, the introduction of this praetorian institution meant gradual correction of the evident injustice of the old law over the emancipated children, relatives according to female kinship, spouses (except women in manus marriage), as well as mothers and children who are not mutual successors (except in case of manus marriage).

Having in mind that the Praetor could not determine a successor who was not it by the civil law, he allowed a possibility for requiring bonorum possession in a period of one year for ancestors and descendants and in a period of 100 days in all other cases. The term began to be counted from the day when the applicant would become aware of his right and he was or should have been able to submit an application.

The clear formation of the praetorian succession system that represented four succession lines: unde liberi, unde legitimi, unde

[19]In this sense, the developed private ownership and commodity and money relations.

[20]Gaius describes it like" strictum" (Ins. Gai. 3. 18.).

[21]Here, the following question should be posed: what is the benefit of having bonorum possessio sine re? The answer is simple: "The burden is on the civil successor. Namely, he should appear and prove his right in a given period of time (one year). Otherwise, he will obtain dominium, according to the rules of usucapio, bonorum possessor ". See Andrew Borkowski, Paul du Plessis, op.cit, 214.

cognati and unde vir et uxor was a consequence of the introduction of this institution.

a) According to the praetorian law, the first succession line, unde liberi, covers the descendants, children of the defunct person whereupon the rule of per stripes distribution was valid, as well as the principle of representation. The most significant difference of the old law is the possibility that the bonorum possessio[22] is used by the emancipated children, as well as by the children who have been given to adoption, and their adoptive parent emancipated them before the death of the defunct person.[23] This group neither covered the adopted children who were emancipated, nor the wife in a marriage without manus.

Although the Praetor's intention was to eliminate the evident drawback of the first succession line of the old law, the praetorian intervention seems to have created an evident injustice. Namely, the question has been posed whether the rights of the children who are under patria potestas at the time of death of the pater familias should be equal to the rights of the emancipated ones. Having in mind the fact that the emancipated children were able to gain property working for themselves, whereas those who were still under father's governance could only manage and gain the property that was already in the property of pater familias, it is obvious that the possibility for these persons to apply for equal parts of the succession was unfair.

In order to ensure the equality between the aforementioned categories of persons, the obligation for the emancipated persons to include[24] the property obtained after the emancipation[25] into the bequest property was envisaged in this period. This institute is known under the name collatio bonorum and, if the emancipated descendant did not want to perform collation, he had no right to bonorum possessio.

b) The second succession line was reserved for the legal successors, unde legitimi, i.e. the persons who would have the right to succession according to the Law of Twelve Tables if there were no

[22]For this succession line, bonorum possessio was cum re.

[23]According to the principle of representation, the children of this person (grandchildren of the defunct person) also had right to bonorum possessi. But, their right could be endangered by the bonorum possession application of their emancipated father (under the assumption that the children were under pater governance of their grandfather at the time of division). For the purposes of correction of this rule, the praetorian edict established that the emancipated father and his children received one half of the part belonging to them respectively, with emancipated person's obligation for collatio bonorum.

[24]At the beginning, the collation was performed with real inclusion of the property in the bequest's property. Later, it was performed only with subsequent calculation of the same, whereupon the part belonging to the emancipated person was appropriately reduced.

[25]It concerns the property that the emancipated person had at the time of defunct person's death, but if he was not emancipated, he could not acquire it.

successors of the first succession line, unde liberi, or they did not require bonorum possession.[26]

According to that, this succession line was presented by the closest agnate (proximus agnatus) and that would be brothers and sisters of the defunct person or their descendants. The distant agnates were excluded.

c) The third succession line was composed of the defunct person's blood relatives, unde cognati. It is a matter of succession line composed of the defunct person's relatives up to the sixth knee.[27] The rule of sucessio graduum applies for this group, and at the same time, it does not apply on the principle of representation. The blood relatives who were equally distant according to the kinship degree shared per capita. Given the fact that the foundation for succession within the frames of this part is the blood relationship, the children given to adoption also had right, and the relatives by female line could inherit each other.

d) unde vir et uxor was the third and the last succession line according to the praetorian law. It is about the right of bonorum possession[28] that the surviving spouse had,[29] under the condition that the marriage was legal (matrimonium iustum) and it lasted until the death of the defunct person. This right could be realized, of course, if there were no successors of the previous three lines or if they did not want to effectuate their rights.[30]

2.4 S.C. Tertullianum and S. C. Orphitianum

In this period, the legislation referring exactly to this domain was especially prevailing. The most important modification that influenced the intestate succession is included in S.C. Tertullianum and S. C. Orphitianum.

S.C. Tertullianum derives from the time of Hadrian, around 130 AD and it regulated the succession right of the mother in terms of the bequest of the marital or non-marital children.[31]

Namely, according to the provisions of this S.C, the mother had succession right to the bequest of her own child if it died without descendants, father or brothers from the entire kin. If the defunct person had sister, i.e. sisters, the succession was divided in halves

[26]According to this, the praetorian succession line acknowledges the institute of devolution, according to which, the right that the first line successors did not want to use transfers to the second line successors.
[27]Bonorum possessio sine re.
[28]Sine re.
[29]The wife in manus marriage was second line successor (unde legitimi), since she was successor according to Lex XII tabullarum. See: Andrew Borkowski, Paul du Plessis, op. cit, 213.
[30]In some sense, unlike the rules of the old law, this succession line aggravates the status of the wife, having in mind the fact that she applied for succession as daughter in the family. The fact that the right of the husband as successor was regulated in the same manner should not be overlooked. See: Ante Romac, op.cit, 367.
[31]According to ius civile, she did not have such right, unless she was in manus in certain way.

between the mother and the sister (sisters). This succession right was firstly provided for the mothers who had born at least three children (for women born in freedom - ingenui), i.e. at least four children (for liberated women – libertini).[32] However, this succession line was applied later, irrespective of the fact whether the mother had ius liberorum.[33]

S.C. Orphitianum regulates children's right to succession (regardless the fact if they are marital or not) to the bequest of their own mother. According to this, the children excluded the closest agnate who should be the successor according to the old rules.

Thus, the largest deviation was made from the principle of the agnatic kinship present at the intestate succession. However, according to its range, this reform was quite limited.

2.5. Intestate Succession According to the Justinian's Legislation

The Justinian's law gives definitive and complete clarification of the agnatic relatives in the legal succession lines, as well as the creation of strict and clear system of succession lines with the application of only cognatic kinship.

The first attempts for the amendment and correction of the previous rules ended with equalization of female relatives in the succession rights,[34] the recognition of slave blood relationships cognatio servilis and the application of the sucessio gradum rule for the agnates.

A completely new and revised system of intestate succession rules can be found in Novels 118 and 127 (dated 543 и 548 AD). This system is based exclusively on the cognatic kinship and it simultaneously eliminates each difference that existed previously among the successors, both for female or male. Furthermore, Justinian's law generalizes the successio ordinum[35] and successio graduum[36] rules, as well as the principle of representation.

According to the Justinian's law, the succession lines were: descedentes (descendants); ascedentes (ancestors, and brothers and sisters); consanguinei et uterine (half-brothers and half-sisters); cognates, collaterals (blood relatives by side line, indirect relatives) and unde vir et uxor (spouse, as in the previous period).

a) Descedentes or de cuius descendants composed the first succession line. It means that this group consisted of children, grandchildren of formerly deceased children,[37] as well as adopted,[38]

[32]Fulfilling this condition meant that the mother had so-called ius liberorum.
[33]We should have in mind the fact that this S.C. was used for specific cases and it did not apply the rules of praetorian succession line in general.
[34]Lex Voconia.
[35]Successors from the following succession line obtain the right to succession when nobody from the previous order became successor.
[36]The closer relative excludes the distant one.
[37]The principle of progenitor representation was applied.
[38]These children kept the succession right through their biological father.

adrogated and lawfully affiliated children.[39] The bequest was divided per capita.[40]

b) This succession line was composed by the ancestors of the defunct person ascendants, as well as his full-blood brothers and sisters (germani). Within this succession line, the surviving ancestors shared the bequest equally with the surviving brothers and sisters.[41] The direct ancestors (mother and father) excluded the distant ancestors (grandfather and grandmother). The principle of representation was applied for prematurely deceased brothers and sisters, only if there was another surviving brother, i.e. sister.[42]

c) The principle of representation was applied in the succession line of half-brothers and half-sisters[43] (consanguinei, brothers and sisters by father, and uterine, brothers and sisters by mother) only for the children of the half-siblings. Half-siblings shared per capita, and their direct descendants in stirpes.

d) The following succession line is composed by defunct person's remaining relatives by side kinship (collaterals, linea collatreralis).[44] Within this line, the principle of successio graduum and per capita applied for the relatives of the same knee of side kinship. According to the Roman law, the relatives up to the sixth knee were often considered in kinship degree calculation.[45]

e) The right to succession of the surviving spouse could be realized only if the defunct person did not have descendant of the aforementioned succession line. Namely, Justinian's succession law did not intervene in terms of mutual succession between the spouses. Since this provision was not derogated in Corpus Iuris Civilis, it remained as a certain supplement of the previous intestate succession system.[46]

The succession system determined by the Justinian's law regulated several special cases of intestate succession, besides the aforementioned succession lines. For example, the widow[47] who was very poor and who had neither dowry, nor any other type of property,

[39]Extramarital children were successors of their mother and her relatives.

[40]The only difference between the children who were sui heredes according to the old rule and the children who were not sui heredes was the fact that the first did not have to give succession statement for the acceptance of the property. See: Ante Romac, op.cit, 369.

[41]This succession line acknowledges the adrogated and adopted children with adoptio plena.

[42]Therefore, if the defunct person had surviving father, brother, or nephew from his sister, he shared one-third of the property, but if only the father and the nephew applied for the inheritance, it belonged to the defunct person's father.

[43]Regardless the fact if they were born in marriage or not.

[44]They originate from at least one relative, but not directly from each other.

[45]Tot gradus, quod generations.

[46]This determination of surviving spouse's status in the system of succession without a will is almost unthinkable for the modern succession rights, where nearly always the bequest belongs to the children and spouse of first line. The fact that the Roman law mostly considered the marriage as some kind of agreement, unlike the modern perception of the marriage community, should not be overlooked. The legal regime of dowry and pre-marital, i.e. present during marriage should be taken into account.

[47]The widower did not have such right.

received one-third of her spouse's property, if she shared the succession with her children[48] or a quarter if she shared it with other relatives of her spouse.[49]

The defunct person's children born in concubinatus received one-sixth of their father's bequest respectively, if their father acknowledged them as his children and if there was no female spouse with whom he was in legal marriage or other children born in wedlock.[50]

Besides this, the case of the so-called quarta divi Pii[51] was special, whereupon the unjustifiably emancipated adrogated minor son had right to one quarter of the property of his adrogate defunct person.[52]

Similarities and Differences between the Intestate Succession in Roman Law and the Positive Legal Solutions in the Macedonian Law on Succession

This paper concerns only the intestate succession in Roman law. Nevertheless, in order to provide a proof about its influence on ius privatum in the continental legal systems, the conclusion of this short overview will point to the similarities, as well as differences between the solutions of the Roman law and those from the Macedonian legislation.

This is a very complex task, since it is difficult to examine the similarities and differences in the rules of intestate succession in a manner that isolates them from the rules on testamentary and necessary succession.

Namely, the general provisions of the Law on Succession (Official Gazette of the Republic of Macedonia No. 47/96, dated 12.09.1996)[53] refer to the testamentary and necessary succession, although the equality of the citizens upon succession[54] can be noticed, at first. As it can be deduced from the previous analysis, it is not a feature of the Roman succession law - neither in the case of ius civile, nor, in some hand, in the case of the praetorian succession system, which makes a distinction between male and female descendants, privileging the former. Gender equality in the succession rights was definitely established in the Justinian's succession system. In modern legal systems, it is unthinkable to make such a distinction and establish an obvious inequality deriving from gender differences.

It must be mentioned, for example, that in the Serbian Civil Code (SCC), 1844 the biggest exemptions of the rules that served as a foundation for the preparation refer exactly to the regulation of the succession rights. Namely, the conservative Serbian succession law prevails. According to it, male descendants exclude the female

[48]In case of usufruct.
[49]In ownership.
[50]The mother of extramarital children had right to part of the inheritance only together with her children.
[51]Although it was considered as a matter of legate.
[52]Besides this, he should return the property belonging to him.
[53]Hereinafter referred to as LS.
[54]Article 3 of LS.

descendants. Besides the efforts to correct this solution (whose supporter was the author Hadjikj himself), the survey conducted among the population showed that, with the exception of the city population, the customary succession law was respected, giving advantage to the male descendants. Besides this, the fact that SCC equals the adult women with the younger minors in terms of their legal capacity should be taken into account.[55]

The Law on Succession also equals the extramarital children with the marital ones, as well as the adopted persons with the blood relatives,[56] which was established even during the Justinian's legislation in the Roman law.

The provision from Article 6 is identical to the solution of the Roman succession law, according to which succession can be rewarded on basis of law or will. However, the fact that the Roman principle ''nemo pro parte testatus, pro parte intestaus'' has been left behind should be taken into account. Thus, the will has an advantage over the law, but the defunct person could also dispose only of part of his bequest by will, and the remaining part belongs to the legal successors.[57]

Besides these provisions, it must be mentioned that blood kinship[58] is being considered upon the determination of the intestate successors in the modern legal systems (including the Macedonian system).

The short comparative analysis of our legislator's solutions on the intestate successors and the order of succession lines demonstrates that a large number of solutions offered by the Roman succession law "have survived" in a manner in which they were provided by the Justinian's legislation. The same happened in all modern succession systems whose foundation is the Roman law.

Namely, the legislator has determined three legal succession lines, reserved for the descendants and spouse of the deceased person;[59] parents and spouse of the deceased person (brothers and sisters and their descendants, according to the principle of representation) [60] and grandparents of the deceased person.[61]

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[55]See more in: Емилија Станковић, *О српском грађанском законику*, Правни факултет Универзитета у Крагујевцу, 2009 , 95-97.

[56]Article 4.

[57]If the aforementioned rule was respected and the defunct person had only one part of the bequest with will at his disposal, then the other part of his bequest was appropriately divided to the successors provided for in the will. Briefly, according to the Roman law, a person can be a successor on the basis of law (when there is no will) or on the basis of a will. Combined succession for the same bequest on both basis could not be considered. See: Marijan Horvat, *Rimsko pravo II*, drugo izdanje, Školska knjiga, Zagreb, 1954, 130.

[58]Except in cases referred to in Article 29 of the LS referring to persons who lived in permanent community with a continuous duration of at least five years from its establishment until the death of the defunct person, half of the inheritance is given to certain persons (listed in paragraph 1) who are per capita successors. This is in case the defunct person did not have spouse or other first line successors or parents and siblings or when they apply with the spouse of the defunct person (paragraph 2).

[59]First succession line: Articles 13-15 of LS.

[60]Second succession line: Articles 16-19 of LS.

The difference in the determination of spouse's status upon the intestate succession is particularly striking. As we have already seen, the rules of the Roman law put the spouse very low on the scale for application for succession, which is not the case with the modern succession systems, including ours. Generally, together with the defunct person's descendants, the spouse is in the first succession line, which means that he/she receives an absolute advantage over the remaining distant blood cousins of the defunct person.[62]

In this sense, for example, the children are considered as primary successors and they exclude the other relatives in the French and German law. Moreover, the surviving spouse has a right to a quarter of the bequest (German law), or usufruct of a quarter of the bequest (French law), but if there are no surviving children, the spouse receives more than a quarter of the property.[63]

Our law has special provisions on certain successors in several articles, such as the adopted children without completed process of adoption, the spouse who loses the right of succession, the increase of the succession part of the spouse and parents, as well as the rights of the persons who lived in a permanent community with the defunct person.[64]

Finally, we will mention the application of the successio ordinum[65] and successio graduum[66] principles, as well as the right of representation.[67] Both of these exist in our Law on Succession, which, as we have seen before, have been accepted completely by the Justinian's law as rules according to which intestate successors are given succession.

Despite this, the unlimited successio graduum in English law (by surviving female spouse, parents, siblings, grandparents) is not present further than uncle or aunt (interpreted as weakening of the family ties). Usually, the modern civil law systems limit the rights around the sixth knee or less. The German system does not imply such limitation.[68]

The general conclusion that can be made easily from this partial analysis of the Roman law[69] succession system is that the influence of the Roman legal mind upon the creation of the modern

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[61]Third succession line: Articles 20-22 of LS.

[62]We mentioned before the reasons for this approach toward the succession right of the spouse in Roman law. We have established that they are due to the different concept and completely different perception of the marital relationship by the ancient Romans, which were contrary to the modern world. In addition, because of the rules concerning the regime of dos and donatio ante (propter) nuptias, which, in certain sense, meant separation of the property aspect from the very beginning of this marriage community.

[63]Stein, *Legal Institutiones*. Citation according to: Andrew Borkowski and Paul du Plessis, op.cit, 216.

[64]Article 23-29 of LS.

[65]Article 12, p. 2 of LS.

[66]Article 12, p. 3 of LS.

[67]Article 14 of LS.

[68]Berry Nicholas, op.cit, 249.

[69]We emphasize once again that the testamentary and necessary succession should be examined in order to complete the picture of the Roman succession law.

succession systems is significantly striking in comparison to the modern tendencies in this area. Of course, this conclusion refers to the general principles and foundations that are taken into account upon the regulation of the intestate succession lines.

However, from the historical point of view, it seems that the succession law underwent larger modification and derivation of the Roman law rules, compared to the rest of ius privatum.

This is mainly due to the influence of the tradition and the customary law, from which deviations in practice are very slowly and difficult. Sometimes (even the statistics show it[70]), besides the different legal regulation of the succession rights, the successors find valid ways to distribute the bequest without breaking the established tradition.

On the other hand, we should not neglect the influences and the modern tendencies in the area of family law, the new quality of the family relations conditioned by the extremely rapid development of all life areas that have a tendency that is completely opposite to the traditional ones so far known to us.

Therefore, we think that, de lege ferenda, the influence of the tradition will be more neglected and the modern notion of the interpersonal relations will come to the fore, which will inevitably influence the future regulation of the intestate succession.

[70]Characteristic especially for our region.

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