

# A POINT OF VIEW ON THE DIVISION OF PROPERTY IN THE CATEGORY OF FURNITURE AND HOUSEHOLD ITEMS AFFECTED BY THE COMMON USE OF THE SPOUSES - SPECIAL RIGHT OF LEGAL INHERITANCE OF THE SURVIVING SPOUSE

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## **Abstract**

*This study aims to capture issues related to the surviving spouse's special right of inheritance over furniture and household items affected by the common use of the spouses. The origin of the subject is art. 974 Civil Code, which establishes, under certain conditions, a special right of inheritance in favor of the surviving spouse over furniture and household objects affected by the common use of the spouses. Although the existence of this right dates back more than six decades, the provisions of the Civil Code, as we will see in the analysis we have undertaken, are not able to provide a solution for all practical situations, which fall under its scope. In this regard, we sought to, by interpreting the relevant provisions, provide a coherent solution for the equitable distribution of goods belonging to the analyzed category. In the elaboration of the study, we will highlight the following: general aspects, granting conditions, legal nature, the way of dividing furniture and household items affected by the common use of spouses, conclusions.*

**Keywords:** surviving spouse, furniture, household items, method of division.

**JEL Classification:** K32

## **1. General aspects**

Regarding the special right of the surviving spouse, the first mention is found in *The Decree Law no. 319/1944 for the right of inheritance of the surviving spouse*<sup>2</sup>, normative act, which, in addition to the other rights of the surviving spouse (the quotas due depending on the class of heirs with whom it comes in competition with, the right of habitation over the dwelling), provides in art. 5 the following: "In the cases provided in art. 1 point b - d<sup>3</sup> inclusive, the surviving spouse will inherit, in addition to his or her share of the estate, the furniture and objects belonging to the household, as well as the wedding gifts."

The same text is to be regulated later with some amendments to the current Civil Code, in art. 974, under the marginal name: "the special right of inheritance of the surviving spouse".<sup>4</sup>

We note that from the first regulation, in the *Decree Law no. 319/1944 for the right of inheritance of the surviving spouse*, until the entry into force of the current Civil Code we are in a period of six decades. The longevity of the provision denotes its sustainability, which is why the legislator found it appropriate that this special right of the surviving spouse be reiterated in 2009, with some changes taking into account the opinions expressed in the doctrine, as well as the solutions offered by the jurisprudence.

For a start, we will try to find the motivation for this text of law. It is easy to notice and understand that the pain of losing a loved one is immeasurable, and after its demise, the relief and ability to overcome suffering are often reflected in memories of the deceased. As in the other

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<sup>2</sup>Published in the Official Monitor, no. 133 from 10<sup>th</sup> of June 1944.

<sup>3</sup>The surviving spouse inherits from the other spouse's estate as follows: a) when he/she comes to succession with legitimate and recognized children or only with some of them, or with their descendants, he/she inherits a quarter; b) when he/she comes to the succession in competition with the father and mother of the deceased, or only with one of them, in both cases together with the brothers and sisters of the deceased husband and their descendants, or only with one of them, he/she inherits one third; c) when he comes to the succession with the father and mother of the deceased, or only with one of them, or only with his brothers and sisters and their descendants, or only with some of them he inherits half; d) when he comes to the succession with the other ascendants or collaterals up to and including the fourth degree, he inherits three quarters; e) in the absence of the relatives shown above, the surviving spouse inherits the entire fortune.

<sup>4</sup>Art. 974 Civil Code: "When he does not compete with the deceased's descendants, the surviving spouse inherits, in addition to the quota established according to art. 972, the furniture and household items that have been affected by the common use of the spouses."

provisions of the transmission of the succession, also in this situation, the legislator takes into account the emotional ties and the fairness of the division of the patrimony and chooses that these goods be granted, under certain conditions, to the surviving spouse, so as not to change the conditions of life.<sup>5</sup>

Analyzing the same provision in the light of the two normative acts that provide for it (Decree Law no. 319/1944 and the Civil Code of 2009), we observe that the legislator eliminates from the category of goods that form this right, wedding gifts.

In the specialty literature<sup>6</sup> it was argued that the intention of the legislator to remove wedding gifts from this category was motivated by the fact that the jurisprudence has not encountered such situations, and consequently the text of the law becomes inapplicable, the goods that constitute wedding gifts, no longer existing in the patrimony of the deceased at the date of death, given that the period between the date of marriage and the date of death is presumed to be long.

It is interesting to note whether the regulations regarding the special right of inheritance of the surviving spouse are also stipulated in the legislation of other states.

Thus, we note that the French legislature speaks of furniture in the Civil Code<sup>7</sup> when it regulates the right of the surviving spouse to temporary housing and the right to housing for life.

In art. 763 Civil Code<sup>8</sup>, the French legislature offers the surviving spouse a right of temporary residence (one year) over the dwelling actually occupied, as the main residence, belonging to the spouses, or totally dependent on succession, free use of housing and furniture included.

Also, the same provision regarding furniture is stipulated in art. 764 French Civil Code<sup>9</sup>, which regulates the permanent (for life) right of the surviving spouse over the above-mentioned dwelling.

We note that the French legislature regulates, in favor of the surviving spouse, a right of free use of the furniture only when it considers granting the surviving spouse the right to live temporarily or permanently, not as a separate special purpose right, as qualified by Romanian jurisprudence<sup>10</sup>. Consequently, the French specialized doctrine<sup>11</sup> mainly analyzes the essential aspects of the two rights (temporary and permanent) with the related legal consequences and gives the same meaning to the furniture, regarding it as a home accessory.

We find, therefore, that the special right of the surviving spouse over furniture and household items affected by the common use of the spouses is not regulated in French law as an independent

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<sup>5</sup> Decision of the Constitutional Court no. 237/2006 regarding the exception of unconstitutionality of the provisions of art. 30 of the Family Code and of art. 1 lit. c) and art. 5 of Law no. 319/1944 for the right of inheritance of the surviving spouse, published in the Official Gazette. no. 268/2006, quoted by Fr. Deak and R. Popescu in *Treaty of Succession Law*, Vol.1, Legal Inheritance, 3<sup>rd</sup> edition, updated and completed, Universul Juridic Publishing House, Bucharest 2013, p.259, footnote 1, where the Court holds that the destination of the goods is so that the husband is not **unjustifiably** deprived of these goods and thus his living conditions are altered.

<sup>6</sup> Fr. Deak, *Succession Law Treaty*, 2<sup>nd</sup> edition updated and completed, Universul Juridic Publishing House, Bucharest, 2002, p. 134 - 136; Fr. Deak, R. Popescu, *op. cit.*, p.134-136.

<sup>7</sup> *Livre III: Des différentes manières dont on acquiert la propriété, Titre Ier: Des successions, Chapitre III: Des héritiers, Section 2: Des droits du conjoint successible, Paragraphe 3: Du droit au logement temporaire et du droit viager au logement*, art. 763 - 766.

<sup>8</sup> "Si, à l'époque du décès, le conjoint successible occupe effectivement à titre d'habitation principale, un logement appartenant aux époux au dépendant totalement de la succession, il a de plein droit, pendant une année, la jouissance gratuite de ce logement, ainsi que du mobilier, compris dans la succession, qui le garnit. Si son habitation était assurée au moyen d'un bail à loyer ou d'un logement appartenant pour partie indivise au défunt, les loyers ou l'indemnité d'occupation lui en seront remboursés par la succession pendant l'année au fur et à mesure le leur acquittement. Les droits prévus au présent articles sont réputés effets directs du mariage et non droit successoraux. Le présent article est d'ordre public."

<sup>9</sup> "Sauf volonté contraire du défunt exprimée dans les conditions de l'article 971, le conjoint successible qui occupait effectivement, à l'époque du décès, à titre d'habitation principale, un logement appartenant aux époux ou dépendant totalement de la succession, a sur ce logement, jusqu'à son décès, un droit d'habitation et un droit d'usage sur le mobilier, compris dans la succession, le garnissant. La privation de ces droits d'habitation et d'usage exprimée par le défunt dans les conditions mentionnées au premier alinéa est sans incidence sur les droits d'usufruit que le conjoint recueille en vertu de la loi ou d'une libéralité, qui continuent à obéir à leurs règles propres. Ces droits d'habitation et d'usage s'exercent dans les conditions prévues aux articles 627, 631, 634 et 635. Le conjoint, les autres héritiers ou l'un d'eux peuvent exiger qu'il soit dressé un inventaire des meubles et un état de l'immeuble soumis aux droits d'usage et d'habitation. Par dérogation aux articles 631 et 634, lorsque la situation du conjoint fait que le logement grevé du droit d'habitation n'est plus adapté à ses besoins, le conjoint ou son représentant peut le louer à usage autre que commercial ou agricole afin de dégager les ressources nécessaires à de nouvelles conditions d'hébergement."

<sup>10</sup> D. Chiriță, *Civil Law Treaty. Successions and liberalities*, Ed. C. H. Beck, Bucharest, 2014, pp. 69 - 70, in which he mentions the guiding decision no. 12/1968 of the Plenum of the Supreme Court which enshrines this right as a *right of legal inheritance with special purpose*.

<sup>11</sup> M. Grimaldi, *Droit Patrimonial de la famille*, Troisième Edition, Editions Dalloz, Paris, 2008, p. 475 - 487.

right, granted under certain conditions determined by the presence or absence of heirs, as provided in Romanian civil law.

## 2. Granting conditions

The conditions for granting this right are clear from the careful analysis of the legal norm that regulates it.

1. We, therefore, note that the legislature is very specific and states that the surviving spouse enjoys the special right of inheritance over furniture and household objects affected by the common use of the spouses, when he does not compete with the descendants. Specifically, when competing with classes II, III and IV of heirs, the surviving spouse benefits from this right.

But how do we approach the situation in which the surviving spouse competes with the descendants in the situation in which they are ex-heirs?

This is the point of interest for this study, which we will address in the next section.

2. Another condition imposed by the free character of the act of last will, is that the deceased did not dispose of these goods by will.

If the deceased chooses to dispose of these assets by bequest, we agree with the opinion expressed in the doctrine<sup>12</sup>, namely that the surviving spouse no longer has the benefit of this right, unless he is the one gratified with such assets. The argument in this regard is that the surviving spouse does not have a succession reserve in respect of this right.

### 2.1. Legal nature

Although there have been discussions in the doctrine<sup>13</sup> about the legal nature of the special right of the surviving spouse, as a presumed legatee<sup>14</sup> or as a right of legal inheritance, currently it is established as a right of legal inheritance<sup>15</sup>, but having the destination established by law.

Interesting are the reasons for which this solution was established. Thus, the specialized literature<sup>16</sup> surprises the fact that if the special right established by art. 974 of the Civil Code would be regarded as a presumed legatee, in the event of a contest of the surviving spouse with the parents of the deceased (reserved heirs), they would enjoy the right only within the available quota, because if the legatee affects the parents' reserve, consequently it will be subject to reduction. But as a special right of legal inheritance, it remains untouched, the parents' reserve being completed from the other goods, if they exist.

At the same time<sup>17</sup>, the aspect regarding the right of option that the surviving spouse has in the two situations is underlined: in the case of the special right of legal inheritance, the surviving spouse has no right of option over it, compared to the hypothesis of the presumed legatee, where the legal heir, who is also a legatee may choose differently, either as a legal heir or as a legatee<sup>18</sup>.

## 3. The division of furniture and households items affected by the common use of the spouses

The provisions of art. 974 of the Civil Code do not provide complete details on the method of calculation for furniture and household items affected by the common use of spouses for all practical assumptions that may arise. The only mention refers to the situation in which the surviving spouse

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<sup>12</sup> Fr. Deak, R. Popescu, in *op.cit.*, pp. 262.

<sup>13</sup> I. Genoiu, *The right to inherit in the Civil Code*, 2<sup>nd</sup> edition, C.H. Beck, Bucharest 2013, p. 71, footnote 1; Fr. Deak, R. Popescu, *op. cit.*, p. 267-269; D. Chirica, *op.cit.*, p. 69 - 70.

<sup>14</sup> M. Eliescu, *Her legacy and devolution in the law of the Socialist Republic of Romania*, Academy Publishing House, Bucharest, 1966, pp. 140 – 142.

<sup>15</sup> *Ibidem*, note 10.

<sup>16</sup> Fr. Deak, *op. cit.*, p. 133.

<sup>17</sup> *Ibidem*, note 16.

<sup>18</sup> This possibility of exercising the right of option is provided by art. 1102 Civil Code.

competes with classes II, III, IV, in which case he has an exclusive right to the goods of the above-mentioned category.

In this section, we will present some of the situations that could fall under the provisions of art. 974 Civil Code.

**Situation no. 1** - we are in the presence of the surviving spouse, parents and brother of the deceased, given that the estate is 1600, of which 400 furniture and household items affected by the common use of the spouses.

<p>Ms = 1600 m = 400 Ss = 1/3 T+M = 1/3 F = 1/3</p>	<p>The surviving spouse receives the legal quota due in competition with the second class of legal heirs, both with the privileged ascendants and with the privileged collaterals (art. 972 paragraph 1 letter b Civil Code). The privileged ascendants and the privileged collaterals share the rest of the inheritance according to art. 978 lt. b Civil Code.</p>
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We notice that in this situation the surviving spouse comes in competition only with the second class of legal heirs. From the analysis of art. 974 of the Civil Code, it results that the surviving spouse has the right to collect the goods from the category of furniture and household objects affected by the common use of the spouses, as it does not compete with the first class of legal heirs.

Thus, the surviving spouse will collect the movable goods and household objects affected by the common use of the spouses (400), distinct from his legal quota due based on art. 972 Civil Code. We note that the remaining 1200 other goods<sup>19</sup> (1600-400 = 1200) will be divided according to the legal provisions between the surviving spouse, the privileged ascendants and the privileged collaterals as follows:

- Ss will collect a share of 1/3 of 1200 = 400 other goods;
- T + M will collect, together, a share of 1/3 of 1200 = 400 other goods;
- F will collect a share of 1/3 of 1200 = 400 other goods.

Consequently, the surviving spouse will inherit from the deceased's property goods worth 800, respectively 400 furniture and household items affected by the common use of the spouses and 400 other goods.

**Situation no. 2** - we are in the presence of the surviving spouse and the child of the deceased.

<p>Ms = 1600 m = 400 Ss = 1/4 C = 3/4</p>	<p>The surviving spouse receives the legal quota due in competition with the first class of legal heirs (art. 972 paragraph 1 of the Civil Code).</p>
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Unlike situation no. 1, in this case the surviving spouse does not benefit from the special right over the furniture and household objects affected by the common use of the spouses, as it comes in competition with the deceased's descendant. Thus, the goods that are part of this category will be included in the estate subject to division, and the inheritance will be distributed as follows:

- Ss will collect a share of 1/4 of 1600 = 400;

<sup>19</sup> By the phrase “other goods” we will understand, in the content of the study, the goods from the succession table, which are not part of the category of furniture and household objects affected by the common use of the spouses.

- C will collect a share of  $3/4$  of  $1600 = 1200$ .

**Situation no. 3** - we are in the presence of the surviving spouse, the parents of the deceased who are ex-heirs and the grandparents of the deceased.

<p>Ms = 1600  m = 400  Ss = 1/2  RsT+RsM = 1/4  B1+B2+B3+B4 = 1/4</p>	<p>The surviving spouse receives the legal quota due in competition with the nearest class of legal heirs, class II (art. 972 paragraphs 1 and 2 of the Civil Code). We notice that the privileged ascendants are disinherited, so it is necessary to grant them the succession reserve. The rest obtained will be granted to the legal heirs from the III class of legal heirs to the deceased's grandparents.</p>
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As in situation no. 1, the surviving spouse benefits from the special right over the furniture and household objects affected by the common use of the spouses, although in this case he comes in competition with two classes of legal heirs.

The remaining 1200 other assets ( $1600-400$  furniture = 1200) will be divided according to the legal provisions between the surviving spouse, the privileged ascendants and the ordinary ascendants as follows:

- Ss will collect a share of  $1/2$  of  $1200 = 600$  other goods;
- RsT + RsM will be  $1/4$  of  $1200 = 300$  other goods;
- B1 + B2 + B3 + B4 will collect together a share of  $1/4$  of  $1200 = 300$  other goods.

Receiving also the goods from the category of furniture and household items affected by the common use of the spouses, the surviving spouse will inherit goods worth of 1000.

**Situation no. 4** - we are in the presence of the surviving ex-inherited husband, parents and brother of the deceased, given that the estate is 1200, of which 400 furniture and household items affected by the common use of the spouses.

<p>Ms = 1200  m = 400  RSs = 1/6  T+M = 5/12  F = 5/12</p>	<p>The surviving spouse receives the legal quota due in competition with the second class of legal heirs, both with the privileged ascendants and with the privileged collaterals (art. 972 paragraph 1 letter b Civil Code). Being disinherited, he benefits by virtue of art. 1086-1088 Civil Code of Succession Reserve. The privileged ascendants and the privileged collaterals share the rest of the inheritance according to art. 978 lit. b Civil Code.</p>
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In this situation the question arises whether or not the surviving spouse benefits from the special right of inheritance, considering that he is called to inherit with relatives from the II class of legal heirs, against which, according to art. 974 Civil Code, would enjoy such a right.

As we have shown whilst presenting the conditions for granting this special right, the spouse does not benefit from it if the deceased disposed by will of the goods of the analyzed category. Can we assimilate the disinheritance of the surviving spouse with the exercise of the liberal will in favor of someone else? We consider that the direct disinheritance of the surviving spouse cannot be assimilated to a liberality made in favor of someone else but given the legal nature of the special right of inheritance over furniture and household objects affected by the common use of the spouses as a right of **legal inheritance** with special destination, he will be removed by the will of the deceased

spouse, including in the event of direct disinheritance of the surviving spouse. As it has been argued in the literature<sup>20</sup>, the surviving spouse is not a reservist for the goods that are part of the analyzed category. Being disinherited, the surviving spouse no longer has the special right of inheritance over furniture and household objects affected by the common use of the spouses, but such property will be included in the estate and will be subject to division, according to legal provisions, between the surviving spouse, the privileged ascendants, and privileged collaterals:

- RSs will be  $1/6$  of  $1200 = 200$ ;
- T + M will collect, together, a share of  $5/12$  from  $1200 = 500$ ;
- F will collect a share of  $5/12$  from  $1200 = 500$ .

**Situation no. 5** - Ss comes in competition with an inherited descendant (there may be even more), given that the estate is 1600, of which 400 furniture and household items affected by the common use of the spouses.

In the silence of the law, the solution for the presented situation can result only from the systematic and logical interpretation of art. 974, 972 para. 2 and 1088 Civil Code. The analysis undertaken revealed two possible calculation methods for the situation presented below, so as to offer coherent and complete solutions for the distribution of estate goods, including those belonging to the category of furniture and household items affected by the common use of spouses, with which to come to support the jurisprudence and the specialized doctrine.

<p> <math>M_s = 1600</math>  <math>m = 400</math>  <math>S_s = 1/4</math>  <math>R_sC = 3/8</math>  <math>T+M = 3/8</math> </p>	<p>In this situation, the surviving spouse receives the legal quota due in competition with the first class of legal heirs (art. 972 paragraph 1 letter a) and 2 of the Civil Code).</p> <p>We notice that the descendant is disinherited, so it is necessary to grant him the succession reserve. The rest obtained will be granted to the legal heirs of the second class of legal heirs - the privileged ascendants.</p> <p>The method by which we propose to make the division will be explained below.</p>
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We note the fact that the surviving spouse, the child of the deceased, who is ex-heir and the parents of the deceased have a legal vocation.

Regarding this situation, the doctrine is relatively poor. There are authors<sup>21</sup> who have dealt with this subject, however, not having established a concrete and complete calculation system to determine exactly the part due to the surviving spouse, in situations such as the one presented above.

An approach was presented in the doctrine<sup>22</sup>, which, however, attracted our attention. The authors present the example in which *de cuius* leaves a succession table of 800, of which 200 furniture and household items affected by the common use of the spouses.

The surviving spouse, the disinherited child and the brother of the deceased are called to inherit. The child being a reservist receives the succession reserve, which is calculated from the entire succession table, namely  $3/8$  of  $800 = 300$ . To complete the calculation, the authors assume that the child's reserve is granted from the other goods of 600 ( $800-200 = 600$ ), so that later, the surviving spouse alone benefits from the entire furniture and household items affected by the common use of the spouses of 200.

We notice a difference of 300 from the other goods in the succession table, after they assigned the child's reserve from the other goods of the succession (not from the furniture and household items affected by the common use of the spouses),  $600-300 = 300$ .

As the surviving brother and husband have not yet received the appropriate shares, the remaining 300 will be divided between them, as follows,  $5/8$  of which they have together S and F, S

<sup>20</sup> Fr. Deak, *op. cit.*, p. 126; Fr. Deak, R. Popescu, *op. cit.*, p. 262.

<sup>21</sup> I. Genoiu, *op. cit.*, 2013, p. 74.

<sup>22</sup> Fr. Deak, R. Popescu, *op.cit.*, pp. 259 - 260, footnote 4.

has  $2/8$ , which means 120, and F  $3/8$ , which means 180.

We cannot agree with this proposal to calculate and divide the total goods (all the furniture and household items affected by the common use of the spouses as so the other goods of the succession), for the following reasons:

- the two authors assume that the descendant's reserve is covered by the other goods of the inheritance. As a consequence, we deduce that the sharing has already taken place. However, the extent of the succession rights is fixed at the moment of opening the inheritance. We thus understand that the division of goods cannot be conditioned by an operation subsequent to the opening of the inheritance, i.e. the division of the estate.

- art. 974 of the Civil Code, clarifies very well that when he/she does not compete with the descendants, the deceased's spouse benefits in addition to his legal share of furniture and household objects affected by the common use of the spouses.

If the legislator conditions the special right of the surviving spouse to the absence of descendants, how can we grant the goods that represent furniture and household items affected by the common use of the spouses, integral and singular to the surviving spouse and when there are descendants who want and can inherit? What is the purpose of limiting this right, as provided and understood by the legislator?

**The first calculation option.** In order to explain the calculation method, fair in our opinion for this situation, we start from the provisions of art. 974 Civil Code, according to which, "*if it does not compete with the descendants....*". Interpreting *per a contrario*, it results that if he comes in competition with the descendants, the surviving spouse no longer has the sole benefit of inheriting only these goods, and consequently he will share them with those who compete with him, namely the descendants.

In our example, the share of the surviving spouse, as he comes in competition with the I class of legal heirs, is  $1/4$ . The child, being inherited, receives half of what he would have deserved if there had been no disinheritance, namely,  $3/8$  ( $3/4: 2 = 3/8$ ). The remaining  $3/8$  will be assigned to the class II of legal heirs, to the parents of the deceased.

Essential to give a fair solution in this case is to calculate how much of the estate represents furniture and household items affected by the common use of the spouses. In a simple calculation, we notice that 400 out of 1600 represent  $1/4$ . For an equitable distribution of wealth, this sentence must also be found in the part of the inheritance due to the disinherited descendant.

We note that the descendant benefits from the succession reserve, which is calculated from the entire estate mass (including furniture and household items affected by the common use of the spouses), namely  $3/8$  of 1600 = 600 (share that includes both furniture and other household items affected by the common use of the spouses and also other goods).

If the furniture and the household items affected by the common use of the spouses represents  $1/4$  of the entire succession table, we understand that we must also grant the child from these goods within the succession reserve that he deserves.

As a result,  $1/4$  of 600 = 150, meaning furniture and household items affected by the common use of the spouses. If from the reserve of 600, 150 represents furniture and household items affected by the common use of the spouses, it results that the remaining 450 (600-150) represent other goods.

In order to determine how much we attribute to the husband and how much to the parents, we subtract from the estate mass of 1600, the child's reserve of 600 and we obtain a remainder of 1000.

If out of the total furniture and household items affected by the common use of the spouses of 400, we gave 150 to the descendant, it results that there are still 250 movable goods and household items affected by the common use of the spouses, which will be attributed to the surviving spouse.

In order to find out how much of the remaining 1000 represents other goods, which must be attributed to the surviving spouse and the parents, we subtract from this rest the furniture and household items affected by the common use of the spouses granted above to the spouse and we obtain 750, other goods (1000-250 = 750).

We note that the surviving spouse, father and mother of the deceased share a total of 750 representing other assets. Together their shares add up to  $5/8$  ( $1/4 + 3/8 = 5/8$ ).

Thus, in order to determine the part of the surviving spouse and the part of the parents, we apply the mathematical method that allows us to find one of the terms of an equation of proportionality based on the others.

If  $\frac{5}{8}$  represents the total of 750, how much is  $\frac{1}{4}$ , the share of the surviving spouse? It turns out that the share of the surviving spouse will be 300 ( $\frac{1}{4} \times 750 \times \frac{8}{5}$ ) other assets.

If  $\frac{5}{8}$  represents the total of 750, how much does  $\frac{3}{8}$  represent the share of the parents together? It turns out that the mother's side and the father's side will be 450 ( $\frac{3}{8} \times 750 \times \frac{8}{5}$ ), other goods.

Concluding the calculation method, we observe the following:

- C will collect the succession reserve of 600, of which 150 furniture and household items affected by the common use of the spouses and 450 other goods;

- Ss will collect a share of 550, of which 250 furniture and household items affected by the common use of the spouses and 300 other goods;

- T + M will collect, together, a share of 450 other goods.

Summarizing the values mentioned above, we will notice that we fall within the succession mass of 1600 ( $600 + 550 + 450 = 1600$ ), respecting the intention of the legislator manifested in art. 974 Civil Code.

**The second calculation option.** For this case, we will consider the example presented above, however, with a different calculation approach.

If in the first case we calculated the special right of the surviving spouse from a single succession table, for the second case, we propose to look at the successor goods as two different<sup>23</sup> succession masses, namely the mass of goods - furniture and household objects and the mass of goods - other good.

**Stage I - exhaustion of the estate - furniture and household items affected by the common use of the spouses.** We have established for the example presented that the furniture and household items affected by the common use of the spouses will be attributed to the surviving spouse and the descendant who is disinherited.

Thus, in order to exhaust these goods, we will proceed to grant the quota provided by law to the child disinherited from the succession table of furniture and household items affected by the common use of the spouses (400, in our example), as follows: benefiting from the succession reserve, he deserves the quota of  $\frac{3}{8}$  of the succession table – furniture and household items affected by the common use of the spouses, namely 150 ( $\frac{3}{8} \times 400 = 150$ ) furniture and household items affected by the common use of the spouses.

If the descendant receives a value of 150 from the furniture and household items affected by the common use of the spouses, it is easy to understand that the remaining 250 ( $400 - 150 = 250$ ) will be attributed to the surviving spouse, given that for this remainder he competes with relatives of the second class of legal heirs.

**Stage II - exhaustion of the estate - other assets.** Unlike stage I, in which the assets were divided between the surviving spouse and the disinherited descendant, in this stage, the assets in the estate - other goods (1200;  $1600 - 400$  furniture and household items affected by the common use of the spouses = 1200) belong to both the surviving spouse and the inherited descendant, as well as the parents.

As in the previous stage, we will proceed to grant the inheritance reserve of the disinherited descendant, granting the share of the surviving spouse and the share of the parents in the estate - other

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<sup>23</sup> We mention that this method of calculation is not likely to affect the principle of unity and indivisibility of inheritance. Although the calculation method considers the existence of two different patrimonial masses, we consider that it does not affect the principle of unity of inheritance, since, within the two stages (succession masses), the inheritance is deferred according to the same rules - granting legal quotas provided by legal provisions in force. Also, in the specialized literature, M. Eliescu, *op. cit.*, p. 52; Fr. Deak, *op. cit.*, pp. 16 - 17, for economic and equity reasons, the special right of the surviving spouse is regarded as an exception to the principle of unity, as it constitutes a part of the inheritance passed according to particular provisions. Given that one of the features of the patrimony is indivisibility, the transmission of the patrimony of a deceased person bears the same feature. Although we look at this variant of calculation from the perspective of two distinct succession masses, we believe that it cannot enable the surviving spouse to derogate from the principle of indivisibility, so as to accept one side and give up the other.



assets, as follows:

- the reserve of the child of  $\frac{3}{8}$  of the succession table of 1200, means 450 other goods ( $\frac{3}{8} \times 1200 = 450$ );
- the share of the surviving spouse of  $\frac{1}{4}$  of the estate of 1200, means 300 other assets ( $\frac{1}{4} \times 1200 = 300$ );
- the parents' share of  $\frac{3}{8}$  of the estate of 1200, means 450 other assets ( $\frac{3}{8} \times 1200 = 450$ );

Observing the two stages together, we conclude the following:

- C will collect the succession reserve of 600, of which 150 furniture and household items affected by the common use of the spouses and 450 other goods;
- Ss will collect a share of 550, of which 250 furniture and household items affected by the common use of the spouses and 300 other goods;
- T + M will collect, together, 450 other goods.

In conclusion, we note that both calculation systems, both option I and option II have as finality the same amount in terms of the division of assets left by the deceased, both furniture and household items affected by the common use of spouses and other assets from the succession table.

#### 4. Conclusions

As a result of those presented, we appreciate that, although art. 974 Civil Code has a clear wording, it does not provide solutions for all cases of practical applicability.

Given its undeniable longevity, it is easy to understand that its viability undoubtedly betrays the opportunity to maintain it in Romanian legislation.

In conclusion, we consider that it is necessary that the importance of regulating these provisions be supported by concrete and complete clarifications materialized in a calculation system, which should support the jurisprudence in order to unify it.

As far as we are concerned, we appreciate that a wording of art. 974 Civil Code, which can cover all situations of practical application, would be the following: (1) When he does not compete with the deceased's descendants, the surviving spouse inherits, in addition to the quota established according to art. 972, furniture and household objects that have been affected by the common use of the spouses. (2) *When the surviving spouse competes with legal heirs of classes II - IV and with the descendants of the deceased, the latter inherit the furniture and household objects that have been affected by the common use of the spouses in proportion to their share of the inheritance due to them.*

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