

# Women's Status Upon the Intestate Succession in Roman and Contemporary North Macedonian Law

## Research Article

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**Enis Kranli BAJRAM<sup>1</sup>**

<sup>1</sup>*Department Roman Law, Faculty of Law, Iustinianus Primus, RNM*

<sup>\*</sup>*Corresponding Author e-mail: eniskranli.bajrami@pf.ukim.edu.mk*

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### Abstract

Having in mind the fact that this paper's subject of interest basically is the place of women upon the intestate succession in Roman Law, and in the function of one more attestation for the influence of the Roman Law over the all ranges of iusprivatum of the continental legal systems, the conclusion of this short review will be brought down to an attempt to see the similarities, as well as the differences between the solutions of the Roman Law and the ones in the Macedonian legislation.

In addition, the paper shows the chronologically separate characteristics of the determination of the legal successors, which are appropriately characteristic for the three development stages through which the entire legal system of the grandiose Roman Empire passed. The presentation of the gradual development and the changes hereby occurred, which are conditioned by the modified social conditions, as well as the strong custom component influencing the system of intestate succession on the other hand, argumentatively show the indisputable strong connection between the still nonpareil Roman legal genius and the legal transplants into the modern continental legal systems.

The general conclusion which can be easily made from this partial analysis of the Roman law<sup>1</sup> succession system is that the influence of the Roman legal mind upon the creation of the modern succession systems is significantly striking in comparison to the modern tendencies for this area. Of course, this conclusion refers to the general principles and foundations which are taken into account upon the regulation of the intestate succession lines.

However, looking from historical point of view, it seems that the succession law is an area which underwent most modification and derivations of the Roman law rules compared to the rest iusprivatum.

*Keywords:* Women's Status, Intestate, Succession, Roman, Law.

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## 1. Introduction

In terms of defining the intestate succession, different authors give different definitions, which still do not significantly differ from each other. 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."<sup>2</sup>

This manner of defining the intestate succession indicates the fact 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 the testifying of the will was one of the tasks in the everyday life. However, this probably referred to the property classes, hence the great interest and significance of the functioning of the intestate succession law.<sup>3</sup>

Determination of the term and the system of the Roman law intestate succession system, monitored through the three aforementioned stages, is undoubtedly more simple task, if we take

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<sup>1</sup>We emphasize once again the need for the testamentary and necessary succession to be examined in order to complete the picture of Roman succession law in general.

<sup>2</sup>See Ante Romac, op.cit., 362.

<sup>3</sup>See Andrew Borkowski, Paul du Plessis, op.cit., 210.

into account the fact that the testamentary succession is a lot broader and complicated task. Therefore, intestate succession often serves as an introduction with the knowledge of which 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 is a matter of 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. Women's Status Upon the Intestate Succession Line according to Lex XII Tabularum (old ius civile)**

By the time of the modifications which the succession law began to suffer with the praetorian intervention, and according to the old ius civile the intestate succession system can be recognized in the interpretation of two provisions from Lex XII Tabularum:

*“si intestates moritur cui suus heres necescit, agnatus proximus familiam habeto. Si agnatus necescit, gentiles familiam habento.”*

It is evident that the agnatic relatives had 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<sup>4</sup>, which is actually composed of all the persons who are under defunct person's patria potestas or manus at the time of his death including: the born, adopted and adrogated children, conceived but still unborn children who would be under his governance after the birth<sup>5</sup>, 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<sup>6</sup>.

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 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<sup>7</sup>.

Within the frames of this succession line, the bequest was divided in stripes, according to lineage, upon which each of the defunct person's children formed special tree with their descendants within the frame of which the principle of progenitor presentation (principle of representation) was applied.<sup>8</sup>

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<sup>9</sup>.

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 literally understood: there is no presentation and there is no successiograduum<sup>1011</sup>.

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<sup>4</sup>Successors of themselves, since conditioned by the relation with the defunct person before his death, they already possessed the property that should remain to them in inheritance in certain sense.

<sup>5</sup>Nasciturus iam pro nato habetur.

<sup>6</sup>The big drawback of such determined first succession line is evident, which refers to the emancipated children, as well as the relatives by female line, which will be appropriately corrected, as we will see further.

<sup>7</sup>This rule derives from that time 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.

<sup>8</sup>The descendants from closer relative (grandchildren from the prematurely deceased) shared equally the part that their father should have obtained.

<sup>9</sup>Defunct person's daughter.

This succession line usually covered brothers and sisters<sup>12</sup> 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 heresvoluntarius, 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 proximagnatus 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 that 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 in historical point of view, having the common name is a positive characteristic of the affiliation to one kin.<sup>13</sup>

### **3. Women's Status Upon Intestate Succession Line According to Praetorian Law (Praetorian Intervention)**

According to the Law of the 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<sup>14</sup>, 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 in large amount unfair<sup>15</sup>.

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 of time, an alternative system of rules was created which referred to the succession. In that sense, the possibility for the newly established rules to be used sometimes corresponded to the old ius civile, and sometimes served only for amendment and correction of the old rules.

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

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

Besides this, since there was a possibility for the 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 bonorumpossessio was called sine re, and it was cum re when the praetorian successor had the advantage.<sup>16</sup>

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<sup>10</sup>Berry Nicholas, Introduction to Roman Law, with preface, revised biography and dictionary with Latin terms from Ernest Meger, transl. Natasha Aleksovska, Renata Georgievska, Biljana Mitovska (Skopje: Prosvetno delo, 2009), 246.

<sup>11</sup>The non-existence of the so-called successiograduum means that the succession will not be divided to the distant relatives if the closest agnate refuses it.

<sup>12</sup>The initial equal status of the sister as person of female sex who applied for the succession of her brother, was disadvantageously modified by Lex Voconia 169 B.C. when only the full-blood sisters or the sister by father lineage became successors by the limitation of testamenti factio passiva.

<sup>13</sup>Ibid.

<sup>14</sup>In this sense, the developed private ownership and commodity and money relations.

<sup>15</sup>Gaius describes it like "strictum" (Ins. Gai. 3. 18.)

<sup>16</sup>Here, the following question should be posed: what is the benefit of having bonorumpossessio 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

As we have mentioned before, the introduction of this praetorian institution means 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).

On reference to the fact that the Praetor could not determine 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, whereupon the term began to be counted from the day when the applier 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 represented by four succession lines: undeliberi, undelegitimi, undecognati and unde vir et uxor was a consequence of the introduction of this institution.

a) according to the praetorian law, the first succession line, undeliberi, covers the p-0 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 for the bonorum possessio<sup>17</sup> to be used by the emancipated children, as well as the children who have been given to adoption, and their adoptive parent emancipated them before the death of the defunct person<sup>18</sup>. This group did not cover the adopted children who were emancipated, nor the wife in a marriage without manus.

Although Praetor's intention was elimination of the evident drawback of the first succession line of the old law, the praetorian intervention seems to make 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 who 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 is unfair.

In order for equality to be enabled between the aforementioned categories of persons, the obligation for the emancipated persons to include<sup>19</sup> the property obtained after the emancipation<sup>20</sup> into the bequest property was provided in this period. This institute is known under the name collati 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, undelegitimi, i.e., the persons who would have the right to succession according to the Law on the Twelve Tables if there were

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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.

<sup>17</sup>For this succession line bonorum possessio was cum re.

<sup>18</sup>According to the principle of representation, children of this persons (grandchildren of the defunct person) also had right to bonorum possessio. 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 collati bonorum

<sup>19</sup>At the beginning, the collation was performed with real inclusion of the property in the bequest property, later it was performed only with subsequent calculation of the same, whereupon the part belonging to the emancipated person was appropriately reduced.

<sup>20</sup>It is a matter of 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.

no successors of the first succession line, undeliberi, or they did not required for bonorumpossessio<sup>21</sup>.

According to this, this succession line was presented by the closest agnate (proximusagnatus), which means 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, undecognati. It is a matter of succession line composed of the defunct person's relatives up to the sixth knee<sup>22</sup>. The rule of successiograduum applies for this group, and in the same time it does not apply for 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 a right, and the relatives by female line were mutually inherited.

d) unde vir et uxor was the third and last succession line according to the praetorian law. It is about the right of bonorumpossessio<sup>23</sup> which the surviving spouse had<sup>24</sup>, under the condition for the marriage to be legal (matrimonium iustum) and to last by 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<sup>25</sup>.

### ***3.1 S.C. Tertullianum (succession right of the mother) and S. C. Orphitianum (children's succession right to the bequest of their mother)***

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

S.C. Tertullianum derives from Hadrian's time around 130 AD, and regulated the succession right of the mother in terms of the bequest of the marital or non-marital children<sup>26</sup>.

Namely, according to the provisions of this S.C. mother had succession right to the bequest of her own child if he died without descendants, father or brothers from the entire kin. If the defunct person had sister, i.e. sisters, the succession was divided on half 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)<sup>27</sup>. However, this succession line was applied later irrespective of the fact whether the mother had iusliberorum<sup>28</sup>.

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<sup>21</sup>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.

<sup>22</sup>Bonorumpossessio sine re

<sup>23</sup>Sine re

<sup>24</sup>The wife in manus marriage was second line successor (undelegitimi), since she was successor according to Lex XII tabularum. See Andrew Borkowski, Paul du Plessis, op.cit., 213.

<sup>25</sup>In some sense, this succession line aggravates the status of the wife, unlike the rules of the old law, 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.

<sup>26</sup>According to ius civile, she did not have such right, unless she was in manus in certain way.

<sup>27</sup>Meeting of this condition meant that the mother had so-called iusliberorum.

<sup>28</sup>We should have in mind the fact that this S.C. was used for specific cases, and did not applied the rules of praetorian succession line in general.

S.C. Orphitianum regulates children's right to succession (regardless the fact whether 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, this reform was quite limited according to its range.

#### **4. Women's Status Upon the 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 the cognatic kinship.

The first attempts for the amendment and correction of the so far rules ended with equalization of female relatives in the succession rights<sup>29</sup>, as well as the recognition of slave blood relationships *cognatioservilis* and the application of the *sucessiogradum* rule for the agnates.

The completely new and revised system of intestate succession rules is contained in the Novels 118 and 127 (dated 543 и 548 AD). This system is based exclusively on the cognatic kinship, and simultaneously eliminates every difference which so far existed among the successors whether it is a matter of successor of female or male sex. Furthermore, Justinian's law generalizes the *sucessioordinum*<sup>30</sup> and *sucessiogradum*<sup>31</sup> rules, as well as the principle of representation.

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

a) *descedentes* or *de cuius* descendants composed the first succession line. It means that this group consists of the children, grandchildren of formerly deceased children<sup>32</sup>, as well as adopted<sup>33</sup>, *adrogated* and lawfully affiliated children<sup>34</sup>. The bequest was divided *per capita*<sup>35</sup>. b) this succession line is composed by the ancestors of the defunct person *ascendentes*, as well as his full-blood brothers and sisters (*germani*). Within the frames of this succession line, the surviving ancestors shared the bequest equally with the surviving brothers and sisters<sup>36</sup>. 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<sup>37</sup>.

c) the principle of representation was applied in the succession line of half-brothers and half-sisters<sup>38</sup> (*consanguinei*, brothers and sisters by father, and *uterine*, brothers and sisters by mother)

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<sup>29</sup>Lex Voconia

<sup>30</sup>Successors from the following succession line obtain the right to succession when none of the previous order became successor.

<sup>31</sup>The closer relative excludes the distant one.

<sup>32</sup>The principle of progenitor representation was applied.

<sup>33</sup>These children kept the succession right by their biological father.

<sup>34</sup>Extramartial children were successors of their mother and her relatives.

<sup>35</sup>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 one did not have to give succession statement for the acceptance of the property. See Ante Romac, op.cit., 369.

<sup>36</sup>This succession line acknowledges the *adrogated* and adopted children with *adoptio plena*

<sup>37</sup>so, 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.

<sup>38</sup>Regardless the fact whether they were born in marriage or not.

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 rest of the relatives by side kinship (collaterals, lineacollateralis)<sup>39</sup>. Within the frames of this line the principle of successiograduum and per capita applied for the relatives of same knee of side kinship. Often, the relatives up to the sixth knee were considered according to the Roman law of kinship degree calculation.<sup>40</sup>

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 the mutual succession between the spouses. Because this provision was not derogated in Corpus IurisCivilis, it remained as certain supplement of the previous intestate succession system<sup>41</sup>.

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<sup>42</sup> who was very poor and who did not have dowry, nor any other type of property, received one-third of her spouse's property if she shared the succession with her children<sup>43</sup> or quarter if she shared it with other relatives of her spouse<sup>44</sup>.

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.<sup>45</sup>

Besides this, the case of the so-called quartadiviPii<sup>46</sup> was special, whereupon the unjustifiably emancipated adrogated minor son had the right of quarter of the property of his adrogate defunct person<sup>47</sup>.

## 5. Conclusion

Having in mind the fact that this paper's subject of interest basically is the intestate succession in Roman Law, and in the function of one more attestation for the influence of the Roman Law over the all ranges of iusprivatum of the continental legal systems, the conclusion of this short review will be brought down to an attempt to see the similarities, as well as the differences between the solutions of the Roman Law and the ones in the Macedonian legislation.

This is very complex since it is really hard to examine the similarities and differences in the rules of intestate succession isolated from the rules of testamentary and necessary succession.

Namely, general provision of the Law on Succession (Official Gazette of the Republic of North Macedonia No. 47/96 dated 12.09.1996<sup>48</sup>) refers to the testamentary and necessary succession,

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<sup>39</sup>They have origin from at least one relative, but not directly from each other.

<sup>40</sup>Tot gradus, quod generationes

<sup>41</sup>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.

<sup>42</sup>The widower did not have such right.

<sup>43</sup>In case of usufruct.

<sup>44</sup>In ownership

<sup>45</sup>Mother of extramarital children had right to part of the inheritance only together with her children

<sup>46</sup>Although it was considered that it is a matter of legate

<sup>47</sup>Besides this, he should return the property belonging to him

<sup>48</sup>Hereinafter referred to as LS

whereas the equality of the citizens upon the succession<sup>49</sup> can be firstly noticed, which, as it can be previously seen, is not a feature of the Roman succession law according to *ius civile*, and in some hand the praetorian succession system, which makes a distinction between male and female descendants, giving a privilege to the first ones. Gender equality in the succession rights was definitely established in the Justinian's succession system. In the modern legal systems, it is unthinkable to make such distinction and obvious inequality deriving of the gender difference.

The Law on Succession also equals the extramarital children with the marital ones, as well as the adopted persons with the blood relatives<sup>50</sup>, 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 the basis of law or will. However, the fact that the Roman principle *Nemo pro parte testatus, pro parte intestatus* 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 a part of his bequest by will, and the remaining part will belong to the legal successors<sup>51</sup>.

Besides these provisions, it must be mentioned that blood kinship<sup>52</sup> is being considered upon the determination of the intestate successors at the modern legal systems (including the Macedonian system).

In terms of the short comparative analysis of our legislator's solutions regarding the intestate successors and the provided order of succession lines, it can be freely established that, as it is the case of more modern succession systems whose foundation is the Roman Law, large number of the solutions offered by the Roman succession law "has survived" in a manner in which they were provided for in the Justinian's legislation.

Namely, the legislator has determined three legal succession lines, reserved for the descendants and spouse of the deceased person<sup>53</sup>; parents and spouse of the deceased person (brothers and sisters and their descendants according to the principle of representation)<sup>54</sup> and grandparents of the deceased person<sup>55</sup>.

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 at the scale for application for succession, which, on contrary, is not the case with the modern succession systems, including ours. Generally, the spouse together with the defunct

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<sup>49</sup>Article 3 of LS.

<sup>50</sup>Article 4.

<sup>51</sup>If the aforementioned rule was respected, and if 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 a law (when there is no will) or on the basis of a will, and combined succession for the same bequest on two bases could not be considered. See Marijan Horvat., *Rimskopravo, II Dio*, drugo izdanje, (Zagreb: Školska knjiga, 1954), 130.

<sup>52</sup>Except in cases referred to in Article 29 of the LS, which refer to persons who lived in permanent community with a continuous duration of at least five years from its establishment up to the death of the defunct person, half of the inheritance is given to certain persons (listed in paragraph 1) who are per capita successors, if 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).

<sup>53</sup>First succession line Articles 13-15 of LS.

<sup>54</sup>Second succession line Articles 16-19 of LS.

<sup>55</sup>Third succession line Articles 20-22 of LS.



person's descendants is put in the first succession line, which means that he/she receives absolute advantage over the remaining distant blood cousins of the defunct person<sup>56</sup>.

In this sense, for example, children are considered as primary successors and 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<sup>57</sup>.

Our law regulates the special provisions for certain successors in several articles, such as the adopted children without completed process of adoption, spouse who loses the right of succession, increase of the succession part of the spouse and parents, as well as the rights of the persons who lived in permanent community with the defunct person<sup>58</sup>.

Finally, we will mention the application of the *successioordinum*<sup>59</sup> and *successiograduum*<sup>60</sup> principles, as well as the right of representation<sup>61</sup> present in our Law on Succession, which, as seen before, are accepted completely by the Justinian's law as rules according to which intestate successors are given the succession.

Despite this, the unlimited *successiograduum* in English law (by surviving female spouse, parents, siblings, grandparents) is not present farther 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 under. The German system does not imply such limitation.<sup>62</sup>

The general conclusion which can be easily made from this partial analysis of the Roman law<sup>63</sup> succession system is that the influence of the Roman legal mind upon the creation of the modern succession systems is significantly striking in comparison to the modern tendencies for this area. Of course, this conclusion refers to the general principles and foundations which are taken into account upon the regulation of the intestate succession lines.

However, looking from historical point of view, it seems that the succession law is an area which underwent most modification and derivations of the Roman law rules compared to the rest *iusprivatum*.

This is mainly due to the influence of the tradition and the customary law, from which it can be deviated in practice very slowly and difficult. Sometimes (even the statistics shows it<sup>64</sup>) besides the different legal regulation of the succession rights, the successors find valid way 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, new quality of the family relations conditioned by the extremely rapid development

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<sup>56</sup>We mentioned before the reasons for this approach towards the succession right of the spouse in Roman Law, whereupon we have established that they are due to the different concept and completely different perception of the marital relationship according to the opinions of old Romans, unlike the modern world, but also because of the rules for the regime of *dos* and *donatio ante (propter) nuptias*, which, in certain sense, meant separation of the property aspect from the very beginning at this marriage community.

<sup>57</sup>Stein, *Legal institutiones*, citation according to Andrew Borkowski and Paul du Plessis, *op.cit.*216

<sup>58</sup>Article 23-29 of LS.

<sup>59</sup>Article 12 page 2 of LS.

<sup>60</sup>Article 12 page 3 of LS.

<sup>61</sup>Article 14 of LS.

<sup>62</sup>Berry Nicholas, *Introduction to Roman Law*, with preface, revised biography and dictionary with Latin terms from Ernest Meeger, transl. Natasha Aleksovska, Renata Georgievska, Biljana Mitovska (Skopje: Prosvetnodelo, 2009), 249

<sup>63</sup>We emphasize once again the need for the testamentary and necessary succession to be examined in order to complete the picture of Roman succession law in general.

<sup>64</sup>Characteristic especially for our region

of all life areas which have a tendency completely opposite of the traditional ones so far known to us.

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

The equality of the citizens upon the succession, as it can be previously seen, is not a feature of the Roman succession law according to *ius civile*, and in some hand the praetorian succession system, which makes a distinction between male and female descendants, giving a privilege to the first ones. Gender equality in the succession rights was definitely established in the Justinian's succession system. In the modern legal systems, it is unthinkable to make such distinction and obvious inequality deriving of the gender difference

In terms of the short comparative analysis of modern solutions regarding the intestate successors and the provided order of succession lines, it can be freely established that, as it is the case of more modern succession systems whose foundation is the Roman Law, large number of the solutions offered by the Roman succession law "has survived" in a manner in which they were provided for in the Justinian's legislation.

## References

1. Baron, I. *Institucije Rimskoga prava*. Zagreb: K.N. Bibliografski Zavod, D.D., 1925.
2. Berger, Adolf. *Encyclopaedic Dictionary of Roman Law - New Series*, Vol. 43, Part 2. Philadelphia: The American Philosophical Society, 1953 (Reprinted 1980 and 1991);
3. Boras, M. и Margetic, L. *Rimsko pravo*. Zagreb: PFZ biblioteka udzbenici i skripta, 1980
4. Borkowski, A.: *Textbook on Roman Law* (3<sup>rd</sup> ed.), 1997.
5. Борковски, Ендру и Плесис, Пол. *Учебник по римско право*. прев. Елена Витанова 3 изд, Скопје: Просветно Дело АД, 2009 208.
6. Buckland, W. W.: *Textbook of Roman Law* (3<sup>rd</sup> ed.), 1963.
7. Вујуклић, Ђика. *Forum Romanum – Римска држава, право, религија и митологија*. Београд: Правни факултет у Београду - Библиотека „Приручници“, Центар за публикација – „Досије“, 2005.
8. Burdick, W.L.: *The principles of Roman law and their relation to modern law*. Clark, New Jersey: The Lawbook, Exchange LTD, 2004
9. Danilović, Jelena, Stanojević Obrad. *Tekstovi iz rimskog prava*. Beograd, 199.
10. Eisner, Bertold и Marijan, Horvat. *Rimsko pravo*. Zagreb: Nakladni zavod Hrvatske, 1948.
11. Gordley, James. *Foundations of Private Law – property, tort, contract, unjust enrichment*. New York: Oxford University Press, 2000.
12. Horvat, Marijan. *Rimsko pravo* (deseto izdanje). Zagreb: Školska knjiga, 1980.
13. Хвостов, В.М. *Система римского права*. Москва: Спарк, 1996.

14. Маленица, Антун. *Римско право* (друго измењено и допуњено издање); Нови Сад: Правни факултет у Новом Саду, 1996.
15. Машкин, Николај Александрович. *Историја на Стариот Рим*. Скопје: Зумпрес (Библиотека Универзум), 1995.
16. Moyle, J.B. *The Institutes of Justinian*. New Jersey: The Lawbook Exchange, Union, 2002.
17. Nicholas, Barry. *An Introduction to Roman Law* - Clarendon Law Series; Oxford University Press; Oxford - 1962 (Hardback), 1975 (Paperback).
18. Николас, Бери. *Вовед во римско право*. Со предговор, ревидирана биографија и речник со латински поими од Ернест Мецгер. прев. Наташа Алексовска, Рената Георгиевска, Билјана Митовска, Скопје: Просветно дело, 2009.
19. Поленак-Аќимовска, Мирјана, Бучковски Владо. *Избор на текстови од римското право* (IV издание). Скопје: Правен факултет „Јустинијан Први“, УКИМ, 2008.
20. Поленак-Аќимовска М., Бучковски В, Наумовски Г. *Универзалноста на римското право (едукација, правни системи, европско право)*. Скопје „Жива антика“, Институт за класични студии, Филозофски факултет, 2007.
21. Пухан, И.. Поленак-Аќимовска, М. *Римско право*. Скопје: Универзитет „Кирил и Методиј“ -, 1991.
22. Ромас, А. *Rimsko pravo*. Zagreb: PFZ (Biblioteka: Udžbenici i skripta);
23. Salkowski Carl e. E. Whitfield. *Institutes and History of Roman Private Law with Catena of Texts* (Hardcover); Lawbook Exchange Ltd, 2008.
24. Stein, P. *Roman Law in European History*. Cambridge: University Press, 1999.
25. Watson, Alan. *Roman Law and Comparative Law*. Athens and London: The University of Georgia Press, (Paperback - 30 Jun 1991).
26. Вотсон, Алан: *Правни Транспланти (Приступ у поредном праву)*. Београд: Правни факултет Универзитета у Београду – Институт за упоредно право, 2000.
27. Закон за наследувањето. Сл. Весник на Р.М. бр.47/96, 12.09.1996.
28. *Зборник во чест на Иво Пухан*. Скопје: Правен факултет, 1996.
29. Зборник на трудови од Меѓународниот симпозиум: „Современото право, правната наука и јустинијановата кодификација“ – Том I и II. Скопје: Правен факултет „Јустинијан Први“ при УКИМ, 2004.
30. Зборник на трудови: *Јавно и приватно право – 50 години од Универзалната декларација за човекови права*. Скопје: Правен факултет; УКИМ, 1998.
31. Zimmerman, R. *Roman Law, Contemporary Law, European Law, The Civilian Tradition Today*. Oxford: University Press 1999