

THE INHERITANCE RIGHTS OF THE SURVIVING SPOUSE PROVIDED BY THE ROMANIAN LAW

[“Los derechos hereditarios del cónyuge sobreviviente en el Derecho rumano”]

ILIE URS*

“Dimitrie Cantemir” Christian University Bucharest

RESUMEN

En el antiguo Derecho rumano de sucesiones, la transmisión se regía por una legislación influenciada por el Derecho romano. El cónyuge sobreviviente estaba en una situación de desventaja en comparación con los parientes del difunto. La injusta situación de la sucesión del cónyuge supérstite fue objeto de encendidas críticas en la doctrina rumana. Hoy los derechos sucesorios del cónyuge sobreviviente se rigen por la Ley N° 319, de 10 de junio 1944, que implícitamente derogó las disposiciones de los artículos 679 y 681-684 del *Código Civil* rumana. Así, de acuerdo con aquella ley, el cónyuge supérstite tiene tres derechos sucesorios: i) un derecho de herencia en general, en concurrencia con cualquiera de los herederos de las clases I a IV; ii) un derecho sobre la herencia de bienes muebles y objetos pertenecientes al hogar

ABSTRACT

In the old Romanian law succession, the transmission was governed by legislation that was under the influence of Roman law. The surviving spouse was quite at a disadvantage compared to the blood relatives of the defunct. The unfair succession situation of the surviving spouse was the object of vehement criticism in the Romanian doctrine. Nowadays, the inheritance rights of the surviving spouse are regulated by Law Nr. 319 of 10th June 1944 for the inheritance right of the surviving spouse that implicitly abrogated the dispositions of article 679, 681-684 of the Romanian *Civil Code*.

Thus, according to Law Nr. 319 of 10th June 1944, the surviving spouse has three distinctive succession rights: i) a general inheritance right, in competition with any of the classes of heirs

* Associate Ph.D Professor at Faculty of Law, Dimitrie Cantemir Christian University, Bucharest, Cluj-Napoca. Str. Dorobantilor, Nr. 74. ap 27, Cluj-Napoca 400609, Romania. E-mail: dr_ursilie@yahoo.com

y a los regalos de boda; iii) un derecho de ocupación temporal de la casa.

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I-IV; ii) a special inheritance right over the movable goods and objects belonging to the household and over the wedding gifts; iii) a temporary right of occupancy of the house.

KEY WORDS: Romanian law of successions – Inheritance rights of the surviving spouse.

I. SHORT HISTORY

In the old Romanian law succession transmission was governed by legislation¹ that was under the influence of Roman law, based on the traditional principle of blood relation to the defunct, justified by a presumed affection of the defunct for his relatives. In the conception of this legislation, the defunct's patrimony had to stay with his blood relatives, which means that it had to be preserved in the same family.

The thorough application of the above mentioned principle and the fear of transmitting a family patrimony to the surviving spouse was an obstacle to the recognition of his direct succession right² for a long time.

The surviving spouse was quite at a disadvantage compared to the blood relatives of the defunct. Thus, if the spouses had children, the surviving spouse only inherited a right of usufruct³ over a portion of the inheritance equal to a child's portion. The ownership remained to the children. If the spouses did not have children and the precedent spouse did not have children from any other previous marriage or the children deceased before the opening of the inheritance, the surviving spouse had a right of one sixth of the inheritance in ownership, the remaining five sixths going to the defunct's relatives⁴.

¹ We refer to the first laws in Romania that regulated the inheritance right of the surviving spouse, more specifically "*Pravilniceasca condică*" of Alexandru Ipsilanti of 1780, *Caragea Law* and *Calimach Code*.

² See: R. PETRESCU, *Drept succesoral* ["Successional Right"] (2nd edition revised and completed, Oscar Print Publishing House), p. 84.

³ The usufruct right is the derived property right, mainly temporary, over the good or goods belonging to another person that gives its holder called usufructuary, the attributes of possession and use, with the obligation of preserving their substance and returning them to the owner when the usufruct ends. See: L. POP, *Dreptul de proprietate și dezmembrămintele sale* ["Ownership Right and its Dismemberments"] (Bucharest, Lumina Lex Publishing House, 2001), p. 159.

⁴ See: M. ELIESCU, *Moștenirea și devoluțiunea ei în dreptul Republicii Socialiste*

By the Calimach Code, if the deceased man left children from another marriage, the poor widow was entitled in full ownership to either one fourth of the inheritance or a part equal to a child's portion depending on the number of children.

In the absence of the defunct's blood relatives, the whole fortune was due in full ownership to the surviving spouse.

Later, the Romanian *Civil Code* of 1864⁵, inspired by the French *Civil Code* of Napoleon of 1804, provided that the surviving spouse acquired the inheritance only after the last blood relative of the 12th degree defunct⁶ (article 679).

As an exceptional case, according to article 684 of the Romanian *Civil Code*, the poor widow inherited a usufruct right over one third of the inheritance if she came with just one descendant of the defunct to the competition or an usufruct right over a portion of the inheritance equal to a child's portion if she came with several descendants to the competition. In all the other cases, the poor widow benefited from one fourth of the inheritance in full ownership.

The succession condition of the surviving spouse was improved by the effect of the Law on the progressive tax on successions of 28th June 1921, which provided that the surviving spouse acquired the inheritance after the last relative of the fourth degree of the defunct, the law restraining the succession vocation of the defunct's relatives up to the fourth degree inclusively. In the absence of the fourth degree relatives of the defunct, the surviving spouse acquired the whole inheritance⁷.

The unfair succession situation of the surviving spouse was the object of vehement criticism in the Romanian doctrine. Thus, it was thought that if the presumption of affection of the defunct for his descendants or ascendants can be accepted, we cannot say the same about the defunct's presumption of affection for distant relatives that could be so strong as

România ["Inheritance and its devolution in the law of Socialist Republic of Romania"] (Bucharest, Academia Republicii Socialiste România Publishing House, 1966), pp. 127-128.

⁵ Currently in force, but with substantial modifications.

⁶ According to article 660 of the Romanian *Civil Code*, the relative degree is established by the number of generations, each generation has a degree. For example, in a straight line the father and his son are first-degree relatives, the grandfather and his son's child are second-degree relatives. In collateral line, the degrees are given by generations, beginning with one relative up to the joint author and from him to the other relative. For example, brothers are second-degree relatives, the uncle and his nephew are third degree relatives, and the primary cousins are fourth degree relatives.

⁷ M. ELIESCU, cit. (n. 4), p. 129.

to remove the surviving spouse from the inheritance⁸. Raising a simple presumption to the degree of principle led to the removal from succession of the person that usually contributed to the foundation of patrimony⁹. Another author showed that in the hypothesis of the competition with collateral relatives, the quota of the inheritance attributed to the surviving spouse was too modest.

This criticism and other social and economic causes (the progressive impoverishment of the lower and medium middle classes that characterizes the nineteenth century; the great capital was forced to adopt a politics of defense against the labor movement in the nineteenth and twentieth centuries) made the Romanian legislator widen the succession rights of the surviving spouse¹⁰.

II. LEGAL REGULATION

Nowadays, the inheritance rights¹¹ of the surviving spouse are regulated by Law Nr. 319 of 10th June 1944 for the inheritance right of the surviving spouse¹² that implicitly abrogated the dispositions of article 679, 681-684 of the Romanian *Civil Code*.

Taking into account the mutual (presumed) affection between spouses, Law Nr. 319 of 10th June 1944 brought a series of improvements to the succession situation of the surviving spouse, recognizing his inheritance right in competition with any class of legal heirs¹³, including the right to

⁸ R. PETRESCU, cit. (n. 2), p. 86.

⁹ Ibid., p. 86.

¹⁰ M. ELIESCU, cit. (n. 4), p. 130.

¹¹ According to article 650 of the Romanian *Civil Code* the inheritance right is granted either by law or by man's will, by testament. It results that in the Romanian civil law succession there are two types of successions: a legal succession and a testamentary one. The inheritance is legal if the defunct did not leave a valid testament, when the succession patrimony is transmitted to the heirs by virtue of the law in the order and quotas established by law. The inheritance is testamentary if the succession patrimony is transmitted to the heirs by virtue of the defunct's will expressed in a testament.

¹² Published in the "Official Gazette of Romania" Nr. 133 of 10th June 1944.

¹³ In order not to summon to inheritance at once all the defunct's relatives with vocation to inheritance (the blood relatives up to the fourth degree), when the succession patrimony would excessively be fragmented, the Romanian law divides them in 4 classes of heirs, each class having priority compared to the following classes that are removed from the inheritance. For example, first class removes second, third and fourth classes from inheritance; if there are no first class heirs, then second class heirs will inherit and remove from the inheritance the third and fourth classes and so on. Thus, according to articles 659, 669, 670, 672 of the Romanian *Civil Code*, the clas-

a portion of an inheritance that must devolve upon the heirs¹⁴ and certain secondary succession rights.

Thus, according to Law Nr. 319 of 10th June 1944, the surviving spouse has three distinctive succession rights¹⁵: a general inheritance right, in competition with any of the classes of heirs I-IV (1); a special inheritance right over the movable goods and objects belonging to the household and over the wedding gifts (2); a temporary right of occupancy of the house (3).

As it was shown in Romanian legal literature, the alive spouse is summoned to the inheritance of his preceded spouse no matter if the preceded

ses of heirs are: i) First class contains the defunct's relatives in a descending straight line to the infinite; the children, grandchildren, great-grandchildren, etc. Inside the same class, the relatives with a degree closer to the defunct remove the distant degree relatives. For example, the children remove the grandchildren and the grandchildren remove the great-grandchildren; ii) Second class contains the privileged ascendants (the defunct's parents) and the privileged collateral heirs (the brothers and sisters of the defunct). These relatives can come together to the inheritance, the parents that are first degree legacies to the defunct do not remove the brothers and sisters, second degree relatives of the defunct –exception from the principle of priority of proximity of the degree of relationship–; iii) Third class contains the ordinary ascendants, which are the grandparents, great-grandparents, and great-great grandparents to the infinite; and iv) Fourth class contains the ordinary collateral heirs, who are the uncles, aunts and primary cousins. The defunct's blood relatives with a degree more distant than the fourth degree are removed from the inheritance. They can inherit only by virtue of a testament left by the defunct. For supplementary details, see: M. MUREȘAN - I. URS, *Drept civil. Succesiuni* ["Civil Law. Successions"] (Cluj-Napoca, Cordial Lex Publishing House, 2006), pp. 17-31.

¹⁴The portion of an inheritance that must devolve upon the heirs is that part of the defunct's patrimony to which the heirs are entitled by virtue of the law, even against the will of the defunct, manifested by liberalities done during life (donations) or by testamentary dispositions for cause of death (legacies). The defunct can dispose freely and without constraints, by donations or by testament, of only the available portion of the inheritance, not of the portion of the inheritance that must devolve upon the heirs, portion that must be left to the heirs who cannot be totally disinherited (article 841-843 of the Romanian *Civil Code*). In the Romanian civil law the heirs who cannot be totally disinherited are: the defunct's descendants, the parents and the surviving spouse.

¹⁵See: F. DEAK, *Tratat de drept succesoral* ["Successional Law Treaty"] (2nd edition updated and completed, Bucharest, Universul Juridic Publishing House, 2002), pp. 301-320; D. CHIRIĂ, *Drept civil. Succesiuni și testamente* ["Civil Law. Successions and testaments"] (Bucharest, Rosetti Publishing House, 2003), pp. 300-318; St. D.CĂRPENARU, *Drept civil. Drepturile de creație intelectuală și succesiunile* ["Civil Law. Intellectual creation rights and successions"] (Bucharest, Editura didactică și Pedagogică, 1971), pp. 206-207; R. PETRESCU, cit. (n. 2), pp. 98-99; I. ZINVELIU, *Dreptul la moștenire* ["Right to Inheritance"] (Cluj-Napoca, Dacia Publishing House 1975), p. 40; M. MUREȘAN - I. URS, cit. (n. 12), p. 32.

spouse is a man or a woman, if he or she has survival means, if children resulted from the marriage, if the spouses lived together at the date of opening the inheritance or were separated in fact. The only requirement of the law is that at the date of opening the inheritance¹⁶ he or she has the quality of spouse of the defunct¹⁷.

We will present below, in brief, each of the legal succession rights of the surviving spouse.

1. *The general inheritance right of the surviving spouse in competition with different classes of legal heirs.*

According to article 1 of Law Nr. 319/1994 a spouse inherits the fortune of the other spouse as follows:

a) in competition with the defunct's descendants¹⁸ (first class), irrespective of their number, the surviving spouse receives one fourth of the inheritance;

b) in competition with privileged ascendants (the defunct's parents), who are part of the second class, irrespective of their number, who come to the inheritance together with privileged collateral heirs (the defunct's brothers and sisters), who are part of the second class as well, irrespec-

¹⁶ The date of opening the inheritance is the moment of death of the person about whose inheritance we talk (article 651 of the Romanian *Civil Code*).

¹⁷ See: M. ELIESCU, cit. (n. 4), p. 131. **Since the surviving spouse has certain succession rights over the patrimony left by the deceased spouse, the problem is to know of what was composed the inheritance (fortune, patrimony) left by the defunct.** The matrimonial regime acknowledged by the *Family Code* of 1954 is that of the community of goods. Thus, the inheritance left by the deceased spouse will be composed of his or her portion due from the joint goods and his or her own goods. According to article 30 of the *Family Code* of 1954: "*The goods acquired during the marriage by either spouse are from the date of their acquisition joint goods of the spouses. Any convention is null and void*". According to article 31 of the *Family Code* of 1954, the own goods of each spouse, not joint goods, are: the goods acquired before the conclusion of the marriage; the goods acquired during the marriage by legal or testamentary inheritance, donation, the goods of personal use and the goods for the exercise of the spouse's profession; the goods acquired with the title of prize or reward, the scientific or literary manuscripts, the artistic sketches and projects, the projects of investments and the innovations; the value that represents and replaces a personal good or the good that passed this value.

¹⁸ According to article 462 of the Swiss *Civil Code*, changed by the federal law of 1984, the surviving spouse has a quota of one half of the inheritance in competition with the defunct's descendants and three fourths of the inheritance in competition with the father, mother or brothers and sisters of the defunct, therefore a larger quota than in the Romanian civil law. See: J. Guinand - M. STETTLER, *Droit civil, II: Successions* (Fribourg, Suisse Publishing House, 1999), pp. 31-33 and 24-27.

tive of their number, the surviving spouse is entitled to one third of the inheritance;

c) in competition only with the privileged ascendants or only with the privileged collateral heirs, irrespective of their number, the surviving spouse receives one half of the inheritance;

d) in competition with ordinary ascendants (grandparents, great-grandparents, great-great-grandparents of the defunct, etc.), who are part of the third class, irrespective of their number, the surviving spouse receives three fourths of the inheritance;

e) in competition with ordinary collateral heirs (uncles, aunts, primary cousins, etc.), who are part of the fourth class, irrespective of their number, the surviving spouse receives three fourths of the inheritance;

f) in the absence of the defunct's relatives of the four classes of legal heirs, the surviving spouse collects the whole succession property.

The quota due to the surviving spouse is calculated from the whole succession property, with priority, the remaining portion being divided between the legal heirs from the opponent class¹⁹.

The surviving spouse is also the heir who cannot be totally disinherited. According to article 2 of Law Nr. 319/1944, the portion of the inheritance that must devolve upon the surviving spouse is one half of the succession quota due to him or her in capacity of legal heir²⁰.

2. The special inheritance right of the surviving spouse over the furniture and objects belonging to the household and over the wedding gifts.

If the surviving spouse comes to the inheritance in competition with the heirs in second, third, and fourth classes, the article 5 of Law Nr. 319/1994 provides that: "*apart from his or her succession portion, the surviving spouse will inherit the furniture and objects belonging to the household and the wedding gifts*". If there are descendant heirs, the surviving spouse no longer benefits from this special inheritance right, and the goods provided by article 5 will enter the succession property and will be divided between the heirs by the usual rules.

The special inheritance right of the surviving spouse over the furniture and objects belonging to the inheritance and over the wedding gifts was recognized by law so that he or she should not be deprived of certain goods

¹⁹ See: M. MUREȘAN - I. URS, cit. (n. 12), p. 33; F. DEAK, cit. (n. 15), p. 118.

²⁰ For example, if the surviving spouse comes to the inheritance in competition with the defunct's descendants, irrespective of their number; the portion of the inheritance that must devolve upon the surviving spouse is one eighth of the inheritance (which means one half of the legal quota of one fourth).

he or she used with the deceased spouse and his/her life conditions should not change without a solid justification²¹.

There are two conditions that must be fulfilled so that the surviving spouse benefits from these goods and these conditions are:

a) The surviving spouse should not come to the inheritance in competition with the defunct's descendants (the first class heirs), but he or she should come in competition with the heirs in the second, third and fourth classes.

If there are no descendants, the goods provided by article 5 of Law Nr. 319/1994 are due to the surviving spouse in whole and exclusively²², and the remaining goods, if there are any, should be divided between the surviving spouse and the heirs in second, third and fourth classes. Therefore, the surviving spouse benefits from this special inheritance rights over his or her succession quota from the other goods.

b) The deceased spouse should not have disposed of these goods by liberalities between the living persons (donations) or for cause of death (legacies done by testament)²³. If the defunct disposed of all these goods in favor of third parties or in favor of all his or her heirs, then the surviving spouse can no longer acquire the goods exclusively. If the defunct disposed only of one good or a part of the goods, the surviving spouse will collect the goods that were not disposed of.

The content of the notion "*furniture and objects belonging to the household*" was stated in the specialized legal literature²⁴ and in the practice of judge ruling²⁵.

Therefore, by "*furniture and objects belonging to the household*" we understand the goods serving at furnishing the household of the spouses (furniture, television, radio, carpets, etc.) and the objects that by their nature

²¹ See: F. Deak, cit. (n. 15), p. 124; D. Chirică, cit. (n. 15), p. 99.

²² See: the Plenum of the Supreme Court (the former Supreme Court in Romania), the guiding decision Nr. 12/1968 in C.D. (Collection of Decisions) 1968, p. 31; the Supreme Court in a panel of 7 judges, decision Nr. 70/1978, in C.D. of 1978, pp. 161-164; the Supreme Court, decision Nr. 2193/1979, in C.D. of 1979, p. 131.

²³ As the Supreme Court ruled by decision Nr. 154/1972, C.D. of 1972, p. 79, the special right of the surviving spouse is removed only if the defunct disposes of the household goods "expressly" and not by generic terms, such as "any fortune" that can refer to the other goods.

²⁴ See: M. Eliescu, cit. (n. 4), pag. 138-139; St. D. Cârpenaru, cit. (n. 15), p. 209; D. Chirică, cit. (n. 15), pp. 99-100; I. Zinveliu, cit. (n. 15), p. 41.

²⁵ See the Supreme Court, guiding decision Nr. 12/1968, quoted over note 22, p. 31; the Supreme Court, civil department, decision Nr. 2218/1971, in *Romanian Law Magazine* 8 (1972), p. 160.

are designed to serve in the household (household objects, the cooker, the refrigerator, the vacuum cleaner, the stove, etc.) and that were concretely affected to the joint use of the spouses, according to the living standard of the spouses, even if they do not satisfy a need, but a commodity or a joint pleasure of the spouses²⁶.

If the spouses in the household used these goods, their origin is not important; it means that is not important if the goods were acquired together by the spouses or only by one of them before or during the marriage²⁷. As the former Supreme Court decided, the multitude of the goods is not relevant, even if some of them are of the same kind, and whether they can be used simultaneously is not important²⁸.

The category of furniture and objects belonging to the household does not comprise the goods that due to their nature were not and cannot be used by the spouses in the household, such as: the car, the motorcycle, the goods needed for the exercise of the defunct's profession, the objects of special value, artistic or historical value or of precious metals, that exceed the usual understanding of the notion of household goods²⁹, the goods acquired for another purpose (for investments or for donation), the objects for the personal and exclusive use of the defunct.

By "*wedding gifts*" we understand the manual gifts³⁰ given to the spouses at the celebration of their marriage, no matter if these gifts were given to both spouses or to either one of them, including the gift given by a spouse to the other spouse, no matter if these goods were affected to the joint use of the spouses³¹.

But the goods given by third parties or by the deceased spouse only to the surviving spouse and his or her portion of the joint gifts do not make the object of the special inheritance right because they belong to the surviving spouse³².

The notion "*wedding gifts*" differs from the notion "*the household goods*"

²⁶ See: F. DEAK, cit. (n. 15), p. 127-128; M. ELIESCU, cit. (n. 4), p. 138.

²⁷ F. DEAK, cit. (n. 15), p. 128.

²⁸ See the Supreme Court, decision Nr. 70/1978, quoted over note 22.

²⁹ See: H. A. Ungur, *În legătură cu dreptul de moștenire special al soțului supraviețuitor asupra mobilelor și obiectelor aparținând gospodăriei casnice* ["In Relation to the Special Inheritance Right of the Surviving Spouse over the Furniture and Objects Belonging to the Household"], in *Romanian Law Magazine* 11 (1988), pp. 11-16.

³⁰ Manual gifts are donations of tangible movable goods, valid without observing a solemn form, provided that the good is handed to the donee.

³¹ F. DEAK, cit. (n. 15), p. 135.

³² See note 17 regarding the personal goods of the surviving spouse or the quota of the joint goods that belong to the surviving spouse and do not enter the succession property left after the deceased spouse and are due to the surviving spouse.

as the former are acquired on the occasion of the celebration of marriage. However, we do not exclude the possibility of affecting wedding gifts in the household. If these goods (*wedding gifts*) were affected to the joint use of the spouses in the household, than the surviving spouse will collect them as such, by virtue of the special inheritance right.

3. *The temporary right of occupancy of the inhabited house.*

According to article 4, paragraph 1 of Law Nr. 319/1944, the surviving spouse who does not have his or her own place will have an occupancy right³³ over the house where he or she lived if this was part of the succession for at least one year from the death of his or her spouse, apart from the above-mentioned succession rights. *The occupancy right* will be acquired by the surviving spouse from the moment of opening the inheritance, irrespective of the opponent heirs if the following conditions are fulfilled:

- i) the surviving spouse has no other house of his or her own;
- ii) the house or flat is part of the defunct's inheritance, as it is the exclusive or joint ownership of the defunct;
- iii) at the date of opening the inheritance, the surviving spouse lived in the house or flat that makes the object of the occupancy right;
- iv) the surviving spouse does not become, by inheritance, the exclusive owner of the house (for example, the surviving spouse is the only heir of the defunct);
- v) the defunct did not remove by a testament the occupancy right of the surviving spouse, which he or she could do.

The occupancy right of the surviving spouse is a temporary right that lasts until the execution of the exit from co-ownership, but at least a year from the opening of the inheritance or until the remarriage of the surviving spouse³⁴.

The occupancy right of the surviving spouse is a strictly personal, indefeasible right (it cannot be transferred or entailed in favor of another person) and inapprehensible (the creditors of the surviving spouse do not have the right to follow it).

In specialized literature the occupancy right of the surviving spouse does not have a succession character because it is not part of the inheri-

³³ The occupancy right is a variety of the usufruct right that has a house as an object. It gives its holder the right to possess and use that house which is the property of another person, for the satisfaction of the inhabiting needs of the holder and his family. The rules of usufruct apply to the occupancy right. See: L. POP, cit. (n. 3), pp. 171-172.

³⁴ See: F. DEAK, cit. (n. 15), p. 137.

tance, but it is born directly in the person of the surviving spouse at the opening of the succession³⁵.

We think that this opinion cannot be accepted because from the dispositions of article 1 and 4 of Law Nr. 319/1944 it results that the surviving spouse inherits an occupancy right over the house where the deceased spouse lived, from the patrimony of the deceased spouse, apart from the inheritance right in competition with each class of heirs. Therefore, the surviving spouse acquires the occupancy right from the defunct as a right of legal inheritance, by dismembering the ownership right over the house that belonged to the defunct. Only the rights that did not belong to the defunct can be said to be one's own, born directly in the person of the heir³⁶. We believe that the occupancy right of the surviving spouse is a succession right.

It was said that the occupancy right of the surviving spouse is a right that results directly from the law, which means that it must be invoked by the surviving spouse in order to be obtained by the surviving spouse³⁷.

It is true that this occupancy right results directly from the law, but we consider it to be a succession right because the holder (surviving spouse) must accept the inheritance within the deadline set by the law (6 months from the moment of opening the inheritance) in order to obtain it, it is not enough for the surviving spouse to invoke it.

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³⁵ See: I. ZINVELIU, cit. (n. 15), p. 42.

³⁶ See: F. DEAK, cit. (n. 15), p. 137.

³⁷ See: D. CHIRICĂ, cit. (n. 15), p. 105.

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