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THE FORM OF WILL IN THE REPUBLIC OF MOLDOVA: CONTEMPORARY HISTORY, NOTARIAL PROCEDURE AND ENFORCEMENT

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Abstract
The new version of the Civil code of the Republic of Moldova starting March 1st, 2019, traditionally has already revised the forms of will by which an individual can dispose for the cause of death. In this context, some forms of will have been maintained, some forms have been excluded, and some have changed their own legal nature, which affects their legal force. In this article we will draw attention to the changes in the form of the will in the Republic of Moldova in the contemporary period, with a special focus on the authentic and holographic forms.Consequently, special attention will be given to the authentic form of the will and the notarial procedure for assigning the legal force of public authority to a will. With reference to the holographic wills, the author will describe the procedure for obtaining their enforceability, through the point of view of his own notary practice, as well as will be elucidated some existing normative uncertanties. Although the domestic legislation does not expressly regulate the circulation of oral wills, a quasi-oral form has been introduced (which assumes that the testator's will is expressed orally, although it is to be expressed in written form in the end) and the notarial procedure with oral wills, allowed by the international treaty to which the Republic of Moldova is a party, has not been described.
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JEL Classification: K11, K12, K15, K36.

1. CHANGE OF WILL FORM IN THE REPUBLIC OF MOLDOVA (RM)

In the present case, we will not concentrate on a detailed presentation of all the forms of will provided by law. The basic task is to elucidate the permissible forms of the will, given that it is a solemn legal act, in the light of contemporary historical developments.

In the specialized literature, there are also general rules regarding the form of the will, applicable to any will. Thus, for example, Negrila D. reports on the following requirements: a) the will must be in written form; b) the will must be drawn up by the testator individually, through a separate act; and c) to be drawn up in one of the forms expressly provided by law (Negrilă, 2013, pp. 94-98).

Another scientist, Bratu D.-D. mentions only two requirements: a) to be in written form; and b) the prohibition of mutual wills (Bratu, 2015, pp. 81-84). In a researched monographic study, in which testamentary succession in the Republic of Moldova is examined in detail, including from the perspective of comparative law, this requirement was not identified (Bănărescu, 2015, pp. 49-107).

Infra we will identify the cases where the law allows the oral form of the will. At the same time, the obligation to express a testamentary will only in a separate act goes beyond the requirements of the law. Both Moldovan and Romanian legislation prohibit two or more persons from making wills by the same will in favor of one another or in favor of a third party, although the wording of the legal provision is different. However, the same author points out that in practice there may be situations in which several wills, drawn up by different persons, without any connection between them, may be set out individually and independently on the same source (material support) and be considered perfectly valid. I consider that, in substance, this rule seeks to emphasize the unilateral and autonomous nature of the testator's will, which must not depend on the will of other persons, and, in any event, the revocability of that will must not be affected. Basically, the legal construction, when unilateral legal acts are related in a contract, which remain autonomous from the point of view of revocability, are known and permitted by law. Thus, for example, a civil partnership or partition contract may include clauses granting powers of representation (which could also be set out in a separate document - a power of attorney). The inclusion of this clause in the contract does not remove the representative's right to revoke these empowerments at any time. By analogy, I consider that the inclusion of a testamentary provision in a contract, under the current legislation, is not prohibited by law as long as the testator's free will is not affected, and if the legal effects of the contract are dependent on this testamentary provision - the revocation of the testamentary provision will dissolve legal relations created on the basis of such a contract, similar to legal acts subject under condition.

1.1 Form of the will according to the Civil Code 1964

The Civil Code of the Moldovan S.S.S.R. of 26.12.1964 (Parliament of R.S.S. Moldova, 1964), in art. 575 recognized only the authentic form of the will. At the same time, Art. 576 of the same code assimilated to notarially authenticated wills also wills drawn up in certain exceptional circumstances, such as the citizen's being found: for treatment in hospitals, in other stationary curative-prophylactic institutions, in sanatoriums or living in homes for the aged and disabled; traveling by sea vessels or domestic navigation vessels sailing under the flag of the Union of the SSR; on prospecting, optical and other similar expeditions; in places of detention, as well as of military personnel and other

persons undergoing treatment at military hospitals, sanatoriums and other military curative institutions; and soldiers, and at the deployment points of units, formations, military institutions and military educational establishments, where there are no state notary offices and other bodies, which execute notarial acts, as well as the wills of workers and servants, of their family members and of members of military families. By the Law of RM No. 1153 of 11.04.1997 on notaries (Parliament RM, 1997), wills drawn up by consuls were considered authentic, and since 17.08.2001, following the amendment by the Law of RM No. 384 of 19.07.2001 (Parliament of RM, 2001), and by the secretary of the village (commune) town hall.

The entry into force of RM Law no. 1453 of 08.11.2002 on notaries (Parliament of RM, 2002b) has not changed this situation, the competence of consuls and persons with authorized positions of responsibility of local public administration authorities to authenticate wills remained unchanged.

1.2 Form of the will according to the Civil Code 2002 in its original wording

Since 12.06.2003, the Civil Code of the RM (CC RM) of 06.06.2002 (Parliament of RM, 2002a) has broadened the form of the will allowed by law. Thus, according to art. 1458 of the Civil Code of the RM in its initial wording, the will could be drawn up only in one of the following forms:

- *holograph - written entirely personally, dated and signed by the testator;*
- *authentic - authenticated by a notary, as well as assimilated to the authenticated by a notary* (the list of those assimilated was provided in art. 1459 of the Civil Code of the RM in its original wording)*;*
- *mystic - written in its entirety, dated and signed by the testator, closed and sealed and then presented to the notary, who applies the authentication endorsement on the envelope and signs it together with the testator.*

Notarially authenticated wills authenticated by notaries, as well as by consuls and authorized persons in positions of responsibility of local public administration authorities have been recognized. The notarial practice of instrumenting the succession procedures demonstrated that the number of mystical and holographic wills was very small, mainly the authentic form was used and only in exceptional cases the person used the holographic form. Mystical wills were requested even less frequently.

Statistical information on notarial activity for the years 2002-2016 was processed by the author on the basis of statistical reports submitted by notaries and kept on paper at the Ministry of Justice of the Republic of Moldova. Further, the competence for processing statistical data was passed to the Notarial Chamber, which did not include in the statistical reports the information on the number of authenticated wills.

We note that, if in 2002, a notary authenticated on average about 70 wills, then in 2016, a notary authenticated on average about 46 wills.

The statistical data show the following (excluding localities from the left bank of the Nistru and the municipality of Bender):

Table 1. Statistics of authentic wills in RM

Year	Total number of wills	% compared to the total number of notarial acts	% compared to the total number of authenticated documents	Stable population
2002	9110	1.0508%	5.0165%	3627812
2003	9362	0.8949%	3.7116%	3618312
2004	14273	1.0193%	4.2351%	3607435
2005	14080	0.8535%	4.0308%	3600436
2006	13059	0.8067%	3.6139%	3589936
2007	14065	0.7244%	3.2584%	3581110
2008	13911	0.6372%	2.9306%	3572703
2009	14625	0.6487%	3.3436%	3567512
2010	12870	0.3999%	2.4906%	3563695
2011	13626	0.3706%	2.3146%	3560430
2012	13638	0.4719%	2.7443%	3559541
2013	14159	0.5448%	2.0791%	3559497
2014	13930	0.6433%	2.2303%	3557634
2016	13507	0.4141%	1.5331%	3553056

Source: computed by author using National Bureau of Statistics (2024)

As a result of the increase in the number of notaries, the number of notarial acts, including authentication procedures, and the decrease in the population, the number of authenticated wills has remained almost stable, ranging between 12870 and 14625 (excluding 2002 and 2003).

Using the official data of the National Bureau of Statistics (National Bureau of Statistics of the Republic of Moldova, 2024), we note that in 2014, according to the data on the stable population, on average, 1 person out of 256 made a will, and in 2016 this figure did not change significantly, being 1 person out of 264 (without the localities of the left bank of the Nistru and the municipality of Bender).

1.3 Form of the will according to the Civil Code 2002 in its current wording

As of 01.03.2019 (Parliament of RM, 2018a) the form of the will was conceptually revised.

According to Article 2222 of the Civil Code of the RM (CC RM), only two types of wills are allowed: ordinary and privileged. Ordinary wills can be holograph or authentic. The holograph will is the one drawn up personally by the testator by a written declaration signed by him (art. 2223 CC RM). At the testator's request, the holograph will must be kept by a notary (art. 2224, 2231-2233 CC RM). According to art. 2226 CC RM, the will is considered authentic if it is authenticated by a notary or by the representative of the diplomatic mission or consular office.

In contrast to ordinary wills, privileged wills can be drawn up: in special situations (art. 2227, 2228 CC RM) or in emergency situations (art. 2229 CC RM). Wills drawn up in special situations are those, which were previously assimilated to authenticated wills, as well as wills authenticated by the secretaries of local councils (art. 2227 CC RM). It should be noted that the wills authenticated by local council secretaries have been reported as privileged wills among the authentic wills, which reduces the cases of authentication, as well as their validity term.

A will made in emergency situations shall be drawn up by oral declaration by the testator in the presence of three witnesses. The formal requirement is that this must be stated in a written document, to which the legal provisions on notarial authentication apply accordingly. This form is possible only when it is not possible to draw up the will in the presence of a notary or in compliance with the requirements for a will drawn up in special circumstances (art. 2229 CC RM). It should be noted that the law does not regulate the procedure of notarial authentication of this form of will or, if this procedure is to be complied with by another person - as in the case of wills drawn up in special circumstances, nor does it specify the person who is to "replace" the notary in order to draw up a document in compliance with the authentication procedure. It is also unclear how this person will comply with the authentication procedure if he has not been previously instructed? These premises make it almost impossible to use this form or, if it is drawn up, make it easier to have it cancelled on the grounds of non-compliance with the form.

The drafting of a privileged will is permitted only if there is a fear that the testator will die before the will can be drawn up before a notary. If 3 months have passed since the will has been drawn up and the testator is still alive - it is considered that this privileged will has not been drawn up (art. 2230 CC RM).

The preservation of privileged wills falls within the competence of the notary. To this end, any privileged will is to be transmitted to the notary for safekeeping, with respect for the territorial competence (to the notary in whose

territory of activity is the registered office of the persons who have drawn up the privileged will), and the testator may at any time request that the will be transmitted to another notary (art. 2231 CC RM).

1.4 Oral will. Application of international treaties to which the Republic of Moldova is a party

In Romanian and French law, oral wills or, otherwise called – nuncupative (*nuncupatio* – declaration of will, which in private Roman law was permitted in the presence of seven witnesses) are prohibited. In Moldova, as in Austrian law, oral wills are permitted (privileged in exceptional circumstances), which are declared in the presence of three witnesses. Although art. 2229 para. (3) CC RM, requires that the fact of drawing up the oral will in this case is to be mentioned in a written document (which distorts its oral character in the RM).

As it is a requirement *ad validitatem*, failure to comply with the form required by law for a will leads to its absolute nullity. In this case, the purpose of the written form is to give the person the opportunity to clearly state his or her own will for the cause of death (when he or she will no longer be alive and it will not be possible to materialize this will), in a serious and precise manner, in order to avoid any subjective perception (sometimes wrong) of witnesses or the court or notary (who will establish his or her will to be executed) (Chirică, 2017, p. 195; Ionaș, 2020, pp. 30-31).

Failure to comply with the solemn character of the will, which requires the written form of the holograph will, does not always lead to its nullity. Thus, according to paragraph 23 of the Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova no. 13 of 03.10.2005 (Plenum of the Supreme Court of Justice of the RM, 2005), *In the event that the holograph will has been destroyed or concealed without the testator's knowledge or after his death, either by force majeure, the testamentary heir or legatee shall be able to prove by any means of proof, including by the evidence of witnesses, the existence and content of the will, the fact of destruction, loss or concealment and that this act of last will and testament meets the substantive and formal requirements of the law*.

In a similar situation, Romanian judicial practice and doctrine are based on the provisions of Art. 1037 para. (4) of the Civil Code of Romania (Parliament of Romania, 2009), which expressly allows the use of any means of evidence (Chirică, 2017, p. 196). The position recommended by the Plenum of the Supreme Court of the Republic of Moldova can be criticized, since the law expressly relates the legal effect of nullity, if the form of the will has not been respected. If the testator wished to ensure that the will was kept intact, he could send it to the notary for safekeeping. Otherwise, we have no means of protection against a fraudulent arrangement by a group of persons who, by their depositions as witnesses, will affirm the existence of a holograph will destroyed after the

death of the *de cuius*, and will declare its contents to his own liking. In order to apply the Plenum's position, it is necessary to amend the national law and to introduce this derogation from the observance of form, moreover, we are in the presence of the violation of an express rule – art. 2216 para. (1) of the RM CC, which renders such a 'will' absolutely null and void on the grounds of failure to comply.

As of 24.06.2011 in the Republic of Moldova oral wills are also recognized as valid, following the accession to the Convention on the Conflicts of Laws Relating to the Form of Testamentary dispositions, concluded in Hague on 5 October 1961 (Parliament of RM, 2011). According to this law, *in accordance with Article 10 of the Convention, the Republic of Moldova reserves the right not to recognize testamentary dispositions made orally by one of its citizens who does not possess any other nationality, except in exceptional circumstances*. Respectively, if the person who drew up an oral will holds a foreign citizenship (it does not matter whether he or she also holds the citizenship of the Republic of Moldova or not) – this will is recognized as valid in the Republic of Moldova. At the same time, "*in exceptional circumstances*", the Republic of Moldova may also recognize verbal wills drawn up by citizens of the Republic of Moldova, although the development of these provisions has not been detected in the national legislation, neither in the part related to the notarial procedure, nor in the part related to the judicial procedure. From the procedural point of view, the author considers that only the court is competent to specify the will, as well as to attribute the validity of an oral will, drawn up in compliance with the international treaty mentioned, and the notary only to execute it.

2. AUTHENTIC FORM OF WILL

Searching the wide spectrum of the varieties of the forms of wills known in the world, we observe the existence of oral wills (nuncupative), holograph wills, mystical wills, authentic wills, privileged wills, simplified wills concerning the amounts of money, values or securities deposited in specialized institutions (existing in Romania and in the Republic of Moldova until 06.06.2003 as regards deposits of money), electronic wills (currently 16 states in the USA (Uniform Law Commission, 2019) allow the drawing up of electronic wills), international wills (the international will is considered, drawn up in accordance with the Washington Convention of 29.10.1973 on the Uniform Law on the Form of International Wills), etc.

In contrast to other forms of wills, the authentic will requires the participation of a specialist in the field - a notary (abroad the will can be authenticated by the representative of the diplomatic mission or consular office), who can help to translate the testator's real will into the written form in a correct legal language.

2.1 Procedure for authenticating a will

The competence of the notary to authenticate is general and does not require a notary in a particular territory to be addressed. The notary cannot authenticate a will ex officio, but only at the testator's request, which may be either oral or written.

Being part of the notarial authentication procedure, the drawing up of the will by the notary includes the same basic obligations: Establishing the identity of the testator on the basis of the identity document; verifying the testator's capacity and discernment; providing the necessary notarial advice; drafting the text of the will; reading the text of the will and giving the testator the opportunity to read it before it is signed; verifying whether the content of the will represents the testator's true will (will check consent); observing the procedure for the testator to sign the will and, where appropriate, ensuring the participation of third persons (Pistriuga, 2020, pp. 536-545).

Taking into account the solemnity of the will, some procedures are regulated in a different way from other authentication procedures. Thus, e.g. in the reading procedure, unlike other acts, in the case of the first will, the notary reads the will and then the testator reads it. Likewise, there are stricter rules on the participation of witnesses and the signatory if the testator has a disability (hearing, speech, sight, etc.). Similarly, in the drafting procedure it is expressly specified that the testator may submit the text of the will to the notary in writing or dictate the testamentary provisions orally, and the notary is responsible for explaining the legality and legal effects of the will, for drafting the will in legal language appropriate to the testator's requests, and - if the testator insists on using his own drafting - for warning the testator that in this case the notary will not be responsible for the wording of the testamentary provisions.

The notary is obliged to register the authentic will in the register of succession files and wills kept in electronic format. The notary does not verify the ownership of rights, including property, which may be indicated in the contents of the will. This provision is based on the "*mortis causa*" nature of the will, which means that until the will comes into force, the composition of the testator's estate may be altered, including by acts concluded by the testator. The legal framework that regulates the notarial authentication procedure is art. 44 and 45 of RM Law no. 246 of 15.11.2018 (Parliament of RM, 2018b).

2.2 Role of the notary in authenticating wills

As a legal specialist and, at the same time, an impartial and independent representative of the state authority, the notary is the competent person to:

- to provide the notarial advice necessary to understand the legal effects of the will drawn up, as well as to organize a correct estate planning, by understanding the real will of the applicant;
- to draw attention to certain legal rules for the interpretation of

testamentary provisions, as well as to the legal provisions which will apply if the will does not contain a special solution;
- □ to draw attention to the limits of testamentary dispositions (in particular, the effects of violating the reserved portion, the donation ratio);
- □ to ensure that the testator's true will is explicitly expressed in clear and correct wording, using legal terms;
- □ ensure the legality of testamentary dispositions expressed;
- □ to ensure that the will is drawn up by a person with the necessary capacity, with discernment and without defects of consent;
- □ to attribute to the will the legal force of an act of public authority;
- □ to ensure the preservation of the will, which allows the will to be restored (duplicated or reconstituted) in the event of its loss by the testator (authentic wills are preserved for 75 years);
- □ to ensure publicity of the existence of the will, by introducing the information in the register of succession files and wills kept in electronic format.

The notary's list of duties can be extended and detailed. The advantages of drawing up an authentic will are obvious: it is accessible to any person, even the physically disabled, and the result of the notarial authentication procedure ensures a presumption of legality of the will and compliance with the substantive and formal conditions of the will against any challenge. Drawing up a will without the notary's participation is possible and sometimes advantageous: it is more operational (no need to be present in front of the notary) and cheaper (no additional costs for authentication by a notary), although it is not accessible to all persons (it can only be drawn up by a scholarly person). At the same time, drawing up a will in a form other than an authentic will reduces the guarantees that the will will be found (the fact of its existence is known), will be correctly set out (the testator's real will is clear as it is set out in the will), will be enforceable (testamentary dispositions are legal and enforceable); and, finally, before execution, the holograph will has to be endorsed for non-modification and validated, i.e. additional special notarial procedures need to be applied after the death of the testator, which cost more than the authentication of the will.

The use of traditional testamentary provisions is not recommended, as the legal situation of the testator may not be appropriate in cases where it would be appropriate to apply these formulations of the will. Unlike in countries with the Anglo-Saxon system (based on Common Law, such as England, Australia, USA), where wills are usually drawn up upon reaching the age of adulthood or in a short period after it (in the first part of life), in Moldova, similarly as in the Russian Federation (Bevzenco *et al.,* 2018, p. 123), the drawing up of the provision for the cause of death is left to the second part of life, after the wealth has been agonized, sometimes even in the short period before death, as a rule in old age (the man is "ripe" for drawing up a will late or too late, when legal

requirements require the notary to refuse in the authentication of the will). For this reason, in the majority of cases in which a will is contested, it is alleged that the testator's consent is vitiated by a reduction in his intellectual and volitional capacity (if the notary nevertheless authenticates the will).

3. CONDITIONS FOR THE EXECUTION OF A HOLOGRAPH WILL

In substance, although the holographic will was introduced since 12.06.2003, the conditions for the execution of the holographic will were introduced by the legal framework only beginning with 01.03.2019. Until that date, in order to execute a holographic will it was sufficient to comply with the conditions of its validity, without the need to apply additional procedures. At present, the procedures introduced aim to check the validity and effectiveness of the will after it has been drawn up (after the death of the person who drew it up), so that all the substantive and formal conditions of the will are respected before it is executed.

The legal relationships are regulated by art. 2225 CC RM and art. 75-78 of Law No. 246/2018 RM. The solutions offered by these normative acts are different, as is the terminology used. Thus, the RM CC stipulates that the holograph will (and not the envelope with the holograph will) is opened and its endorsement for non-modification is required. This Code does not lay down rules describing the opening procedure, but only refers to a special law. At the same time, RM Law No. 246/2018, being a special law, provides that before being executed, the holographic will must be endorsed for non- modification and validated, and the procedure for opening the holographic will is not mentioned either, only the procedure for opening the envelope with the holographic will is regulated, if it is kept in an envelope and presented to the notary in this way.

This procedure does not apply to oral wills. At the same time, if the holograph will has not been kept on paper, the notarial procedure cannot be applied either, but only the judicial procedure. Below, we will try to determine the cases and the general manner of fulfillment of these procedures, based on the premise that the rules of the Law No. 246/2018 of the Republic of Moldova prevail, being a special law for these legal relations.

3.1 Notarial procedure for opening the holograph will envelope

This procedure only applies if the holograph will is kept by the notary. If we exclude authentic wills (which are not kept in envelopes), the following can be kept by the notary: mystical wills (drawn up between 12.06.2003-28.02.2019), holograph wills (drawn up between 12.06.2003-present), privileged wills (drawn up between 01.03.2019-present). The legislation does not contain an obligation to keep holograph wills, with the exception of privileged wills.

The competence to open the envelope belongs to the notary to whom the holograph will has been transmitted for safekeeping. The envelope is opened

only after the death of the testator, within 30 working days from the date of the request. At the same time, if the will has been kept for 20 years, the notary is obliged to order, ex officio, investigations to establish whether the testator is still alive (art. 2238 CC RM). If the result of these investigations does not show that the testator is still alive, the notary shall proceed to open the will.

A minutes shall be drawn up on the opening of the envelope, in the compulsory presence of two witnesses and, where appropriate, of the legal heirs of the class to be called to the succession in the absence of this will, as well as of the persons justifying his legitimate interest. It is, after all, complicated to comply with this procedure without carrying out the investigation with a view to establishing the circle of heirs called to the succession. Respectively, for this purpose, the notary shall verify the fact of opening the succession procedure after the death of the testator, as well as the fact of the testator's death, and in case the succession procedure is not opened - to propose the opening of the succession procedure in order to minimize the expenses for the probate of the succession rights and to simplify the subsequent procedures of the endorsement for non-modification and validation of the holograph will. Taking into account the provisions of art. 70 para. (4) of RM Law no. 246/2018, the notary is entitled to open the probate proceedings also ex officio, if: he will ascertain the death of the testator and the absence of an opened notarial probate proceedings.

The law does not specify the content of the minutes, i.e. I consider that the minutes should describe the process of opening the envelopes and ascertaining their material state, as well as the contents of the envelopes. After the envelope has been opened, a copy of the record together with the envelopes and the holograph will (the contents of the envelopes) is kept by the notary.

At the same time, Art. (5) of RM Law no. 246 of 15.11.2018, provides that *A copy of the minutes, a certified copy of the holograph will and the authentication stamp affixed on the envelope, after the endorsement for non-modification, shall be issued on their own expense to the interested parties*. It should be noted that neither the procedure for submitting the holographic will for safekeeping nor the procedure for opening the envelope requires the application of the authentication stamp on the envelope. The application of the authentication endorsement on the envelope was provided by law for the mystical will, according to art. 1458 of the CC RM in its initial wording.

As a result of this procedure, the contents of the envelope (and of the will, if it will be kept in this envelope) and, where applicable, the details of the heirs and other persons indicated in the will found in the envelope (legatees, executors, etc.) become known.

3.2 The notarial procedure of endorsement for non-modification of holograph wills

The first mandatory requirement for executing a holograph will is the endorsement for non-modification procedure. In this case, the competence of endorsement for non-modification goes to the first notified notary, even if the succession procedure is opened by another notary. As a result, there are two distinct situations:

a) when the holograph will has been kept by the notary who opened the envelope following the previous procedure - then the endorsement for non-modification procedure can only be carried out by him;

b) when the holograph will has not been ikept by the notary - then the procedure of endorsement for non-modification may be carried out by the first notary notified by the person who has presented this will and requested this procedure.

The procedure may be brought by any person, even if he or she is a stranger (a neighbor, friend, executor, etc.) and is not a successor by operation of law or will, including this holograph will. In order to ensure that this procedure is carried out correctly, the notary must first familiarize himself with the contents of the will. On the basis of the contents of the will, the notary will be able to identify the persons to be summoned for the drawing up of the minutes, including, if necessary, the translator, or will propose to the heir that he should arrange for the presence of the translator authorized for the language in which the holograph will was drawn up. The endorsement for non-modification is recorded in a minutes (this is called either "on endorsement for non-modification" or "statement of the material status of the will" - the law does not use a single terminology in this respect), in the mandatory presence of two witnesses and, where appropriate, the heirs and persons justifying his legitimate interest. There is no specification as to which "heirs" are meant: either heirs under this will, or successors under the law who are removed by this will, or both these categories. As with the procedure for opening the envelope, there is difficulty in determining the circle of heirs called upon to notify/summon them.

The law shall provide the data to be compulsorily described in the minutes: the identification data of those present, the particularities of the material on which the will is written, the number of pages of the will, the writing instrument, the color of the pen, etc. If the holograph will is drawn up in a foreign language, then the translation into Romanian shall be transcribed in the minutes. One copy of the minutes together with the holograph will: i) shall be filed in the succession file (if the succession proceedings are opened with the same notary); ii) shall be transmitted to the notary who is conducting the succession proceedings (if the succession proceedings are opened with a different notary); or iii) shall be kept in the archives of the notary who endorsed for non-modification (if the

succession proceedings have not been opened until the opening of these proceedings).

The purpose of this procedure is to ascertain the material state of the contents of the holograph will in order to avoid disputes related to the existence/absence of this document, as well as to ensure the publicity of the existence of the will. However, endorsement for non-modification may be carried out by any notary, including a notary who is not involved in the probate procedure in question. The details of the holograph will endorsed for non-modification are recorded in the register of succession files and wills. This step does not give additional legal force to the will, but publicizes the existence of a will, which will be taken into account when the probate of the estate is being debated (even if this will is not subsequently validated).

Notarial practice has not revealed any legislative gaps for this procedure. Although the law prohibits the legalization of a copy of a document issued by a natural person (Art. 46 para. (2) of RM Law no. 246/2018), however, taking into account express provisions, a copy of a holograph will can be notarized only after endorsement for non-modification.

The law does not stipulate a time limit for the fulfillment of this procedure, but taking into account the obligation to notify the participants, we consider that the time limit applied by the notary must be reasonable. At the same time, the time difference between the date of submission of the holograph will for endorsement for non-modification and the date of the minutes creates additional risks of deterioration of this will: either for the applicant (if the notary does not demand its surrender or the applicant refuses to surrender it, as the law does not provide for this obligation) or for the notary (if the notary does not want to take this risk and does not take over the will). In this case, it would be more relevant to split this procedure in two, similar as in Romania.

Under Romanian law (Parliament of Romania, 1995) there are two separate procedures:

❖ procedure of endorsement for non-modification – the purpose of which is to ascertain the existence in itself of a will ad instrumentum and the form in which it is displayed. This procedure takes the form of an endorsed for non-modification and the notary's signature and seal. No minutes is drawn up, since it is basically a similar procedure to the appointment of a date. As a result of this procedure, the will does not become effective, but it becomes public (the existence of a will is certain and its content becomes known) and any interested person can obtain a certified copy of it from the notary. If the will is drawn up in a foreign language, it must be translated into Romanian at this stage. Even if, at this stage, the notary will notice that the will does not correspond to the conditions of substance or form of the holograph will - there is no ground for refusal in the fulfillment of this procedure, although the notary will notify the successor about the fact detected and possible legal effects, in particular the

subsequent refusal to validate this will (Negrilă, 2013, pp. 120-128);

❖ the ascertainment of the material state of the holograph will - the purpose of which is to provide a detailed description of the material state of the will, including the reproduction of the text of the will. As a rule, this is carried out immediately after endorsement for non-modification (if it is carried out at the notary who is competent to open the succession proceedings), in the presence of the person who has submitted the will. This procedure is carried out by the notary who is in charge of the succession proceedings, which is why, before drawing up a minutes, the notary must check whether succession proceedings have been opened and, if not, whether to open them on the basis of the application of the person entitled. In practice, the notary may draw up a minutes on the material state of the holograph will on the day of endorsement for non-modification (thus, the will will be described in the state in which it was found and endorsed for non-modification, without there being a time gap between finding the will and ascertaining its state, which may constitute some possible assumptions of possible modification of its contents by the applicant or the notary, as well as will exclude a possible deterioration or loss/destruction of the will). At the same time, there is no mistake, if the notary will postpone this procedure, notifying the heirs and other interested persons, thus ensuring their possibility to be present at the drawing up of the minutes in question. Even in this case, if the notary will notice that the will does not comply with the substantive and/or formal conditions of validity, he may proceed similarly as in the case of endorsement for non-modification (Negrilă, 2013, pp. 128-136).

In conclusion, we note that in Romania, where the authors of these amendments were inspired by, the law is clearer and more detailed, unlike the legal framework in Moldova, which needs to exclude contradictions and uncertainties, as well as to remove the gaps that currently exist.

3.3 Notarial procedure for validation of holograph wills

After endorsement for non-modification, before being executed, the holograph will shall be validated under the conditions of Article 78 of the Law of RM no. 246/2018. The purpose of the probate procedure is to check that the conditions of substantive and formal form required by law for a holograph will are met.

Unlike the procedures described above, the validation procedure falls within the competence of the notary, who is in charge of the succession proceedings. In other words, if the will has been endorsed for non-modification by another notary, it must be forwarded to the competent notary in order to complete this procedure. The law does not contain a special transmission procedure, i.e. the fact of transmission can be confirmed by a deed of handing over and receipt, and the relevant documents (minutes of endorsement for non-modification, etc.) are also transmitted, without the notary having to draw up any notarial deeds. In the

absence of an express provision, we note that this procedure may be requested by any person presenting a holograph will (if this document is not in the possession of the notary requested).

In view of the absence of a specific time limit, as in the case of endorsement for non-modification, the validation procedure must be carried out within a reasonable time limit, calculated taking into account the need to summons the person concerned.

The validation procedure is carried out without the compulsory presence of witnesses. However, it is not clear from the legal framework who is to be invited and how often. Thus, first of all, the law obliges the notary to notify the legal heirs of the class called to the succession (since it is not validated, the holograph will remains an ineffective legal act).

Although the next action of the notary is described in case these heirs do not appear (the notary orders a handwriting expert's report), nevertheless, in case of the absence of the called heirs or their non-appearance, the law relates the obligation to notify the legal heirs of the class called to the succession in the established order (i.e. next class), and in their absence - the competent territorial tax authority (which has the capacity both as legal heir and as collector of the vacant estate), at the request of the heirs designated by this holograph will. It follows from this provision that, in addition to the legal heirs nominated, the heirs indicated in the holograph will must also be called upon from the outset.

If all the cited heirs appear at the validation procedure and recognize that the will is written, dated and signed by the testator - the notary will draw up a minutes of validation of the holograph will. In practice, the representative of the State Tax Service does not know the testator's handwriting, which is why he can never confirm the handwriting on the will, which does not allow the holograph will to be validated. In the same way, if there are legal heirs - there has not been a single case when the legal heirs have recognized the testator's handwriting (either it does not belong to the testator or they do not know the handwriting). In any other situation (someone did not show up, someone did not know the handwriting or challenges the handwriting, or there are no legal heirs), the notary is obliged to appoint a graphoscopic expertise. In order to appoint an expertise, the notary has to be presented proof of the handwriting. Respectively, if the testamentary heir is a stranger (not a relative or spouse) - then this person has no legal powers to gather evidence of handwriting. The notary is also not empowered to demand samples of the testator's handwriting (affixed to official documents) from competent authorities.

This can lead to the following situations:

a) no sample of the testator's handwriting is presented – the succession proceedings are suspended and the parties are referred to the court. *De jure*, the law does not provide for the suspension of succession proceedings (as this may affect the rights of other persons), i.e. the notary will only issue the conclusion

suspending the issuance of the certificate of heir, pursuant to art. 73 of RM Law No 246/2018;

b) writing samples are submitted in the wrong format. Sometimes the notary is presented with copies (instead of originals) – which does not allow the expert to carry out the expertise. In this case, I consider that the notary should proceed similarly to the situation described in a). At the heir's insistence, the notary can appoint an expertise, explaining the consequences – he will incur expenses for the expertise, the expertise report will not be drawn up and it will take time for all these procedures;

c) samples of writing on unofficial documents are presented.

And if the heir brings certain documents claimed to have been made by the testator - the notary has no possibility to confirm that these private documents were made by the testator and not by another person, which could include the person who made this will in order to forge it. In the latter case, the expert will say that the will was drawn up by the testator (because the same person wrote the will), even though this is not the truth. To avoid any risks for the notary, we can highlight two situations:

c1) when all persons recognize that the informal (private) act was drawn up by the testator.

The only effective way to do this is for all the persons involved to recognize this writing as a true sample for expertise – which again creates difficulties (or perhaps the problem that prompted the need for the expertise was that the writing was not known). If the person declares that he or she does not know the handwriting on the will, then it is not possible for that person to recognize that handwriting on any other document. As a result, the notary has to take the risk of presenting false documents with the private signature of the testator (not being able to verify this handwriting).

c2) when at least one person challenges or does not recognize that the unofficial act was drawn up by the testator.

The question arises in the present case – who is competent to establish a definite sample for comparison when appointing expertise? The notary has no special training in this part. As a consequence, if there is no certain handwriting sample admitted/recognized by all persons involved, then the notary can follow the way described in a) or, if the heirs insist on an expertise – he can appoint the expertise explaining all possible consequences, and after receiving the expertise report he will settle the question of the relevance and admissibility of the presented evidence (samples) when continuing the validation procedure.

d) samples of writing on official documents are presented.

In this case the appointment of expertise does not create difficulties.

It should be noted that we are in the technological century, when most of the processes do not require the use of holographic writing (using the means of technography), as well as without the application of the holographic signature

(using electronic signature, applying the scanned image of the holographic signature, applying the signature with the use of special devices). These processes diminish the possibility to identify true personal records of the testator for effective appointment of expertise.

If the heir disagrees with the results of the expertise – a repeat expertise can be requested.

If at least one heir or legatee disagrees with the results of the repeated expertise, the issuance of the certificate of inheritance is suspended and the parties are referred to court. At the same time, in parallel with this legal provision, there is another solution offered by the law – the notary will validate the will on the basis of the graphoscopic expertise report confirming the testator's handwriting in the presence of the testamentary heir only.

The law does not regulate the judicial procedure applicable to this case – is it a special procedure or a contentious procedure? In view of the purpose of this procedure (verification of compliance with the substantive and formal conditions of the holograph will), we are in the presence of a special procedure. However, the civil procedure has not undergone any changes for this purpose, which is why these disputes are examined in contentious proceedings, which are regarded as a dispute between heirs concerning the distribution (partition) of the estate.

In a case from the author's practice (succession case no. 653545/137/2020), the testamentary heir filed an application for validation of the holograph will in court and died (the succession proceedings were not opened by his heirs). The court returned the submitted application (Chisinau District Court, 2022), considering that in this case there is a legal dispute because the parties do not have a single position on the validity of the holographic will. In order to legalize the succession rights, being unable to apply the special procedure, the legal heirs had to file an action against the deceased testamentary heir and the notary who is conducting the succession proceedings, requesting the declaration of nullity of the holograph will (although this will is an ineffective act because it was not validated). The civil suit is not finalized (Chisinau District Court, 2024). Not having no interest, the notary will lose this lawsuit, which will unreasonably base the legal costs on the party who lost the lawsuit, i.e. the notary.

In another succession proceedings (succession file no. 719287/72/2023), no legal heirs were identified at the validation and the State Tax Service was invited. Graphoscopic expertise was called. However, the law does not provide for the State Tax Service to be summoned in order to inform it of the results of the expertise, nor does it provide for the right of this body to challenge (or disagree with) the results of the expertise. As a consequence, the logic of inviting the public authority at the initial stage and not notifying it of the results of the expertise in order to be in a position to influence the final solution in the validation process is not clear?

After all, the entire validation procedure described does not result in invalidation, but only in suspension of the issue of the certificate of inheritance. In this respect, it is not clear procedurally with which notarial act this procedure is to end in the event of a negative or impossible result? Is a minutes of invalidation to be drawn up (similar to the legal framework in Romania), or is a decision refusing validation to be issued, or is a court ruling on the validity of the holograph will sufficient? This issue is to be reflected in the legal rules, and until these solutions are introduced, I consider that the notary cannot draw up a notarial act in addition to this procedure, apart from the conclusion suspending the issue of the certificate of inheritance.

The biggest legislative gaps and contradictory rules have been found in the procedure for validating holograph wills, which in most cases leads the parties to go to court to settle the fate of the estate. The validation procedure in Romania is similar to the one in Moldova, although it is more detailed and clearer in the solutions offered to the notary.

4. CONCLUSIONS

Every development is normal, but not every change brings benefits. In this context, the permanent review of the forms of wills in the Republic of Moldova (and the form is in this case the condition *ad solemnitatem*), on the one hand, provides more options for the person to have the possibility to dispose *mortis causa*, and, on the other hand, creates more difficulties in establishing the legality, validity and execution of such testamentary dispositions. Notarial practice shows that the legal framework governing the enforcement of holographic wills contains several contradictions and gaps, being at the same time incoherent and inconsistent. The extrajudicial preventive procedure, in which the notary is involved, becomes ineffective and the heirs are referred to the courts to settle the fate of the holograph will and, ultimately, of the estate.

The existence of the permission to set out the will for the cause of death in an oral form, provided by international treaties, has not found express regulation in procedural legislation. If a holograph will has to be endorsed for non-modification and validated by a notary in order to be executed, then the law does not contain any additional procedures for attributing legal force to an oral will. Likewise, the law does not contain any express provisions, which would set out form requirements for such a will, in order to identify the cases in which this form is applicable and produces legal effects, as well as in order to exclude/minimize cases of forgery of such wills.

All the aforementioned factors, when considered cumulatively, destabilize the security of civil transactions. At any time during the prescription period, it becomes possible to cancel the certificate of inheritance issued by the notary based on a will or by law (without knowing the existence of a privileged or oral

will) and to dispossess the heir, as well as, subsequently, the acquirer of a property from the inheritance estate.

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