



# WOULD IT BE USEFUL TO REGULATE FAMILY PROPERTY? BRIEF EXAMINATION OF A PROPOSAL EMPHASISING THE REFORM OF THE FORMER ROMANIAN CIVIL CODE

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## ABSTRACT

*This expert opinion argues that keeping family farms and businesses intact in Romania is mainly a political, not a legal, issue. It revisits Constantin Hamangiu's 1931 bill and Alexandru Angelescu's 1934 study proposing an inalienable, unseizable "family property" and explains why the plan did not pass. The analysis intertwines these efforts in a broader narrative influenced by the 1865 Civil Code's equal division of inheritances, agrarian reforms, the 1907 peasant revolt, communist collectivisation, and the post-1989 transition. It shows that Angelescu's practical design – mandatory creation, size tied to family needs, and income-based payouts to co-heirs – was blocked by politics rather than legal doctrine. The Romanian case suggests that durable family assets depend on stable public policy and could benefit from modern, EU-compatible homestead-style protections.*

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This paper presents a perfect opportunity to pay tribute to Alexandru Angelescu, who served as a professor at the Faculty of Law in Cluj-Napoca. The faculty's new headquarters, inaugurated in spring 2025, was built using the estate left in a 1944 bequest. Gratitude is extended to all the professors at Cluj.

I must now shift my focus from cherished memories to politics, as the guiding thesis of this discussion is as follows: preserving the family agricultural or business assets is rather a political issue than a juridical one.

I will work on the specific Romanian example to demonstrate this thesis. As soon as Professor Veress told me about this conference, I remembered finding, during my earlier research, a booklet. It was an excerpt from one of the most important legal journals in Romania, which was published in the 1920s and 1930s: “Despre bunul de familie / On family property”, published in Bucharest, in 1934. Its author is Alexandru Angelescu, the aforementioned former professor of Cluj.

In his study, Angelescu presented and critically analysed a reform, which was supposed to take place at the beginning of the 1930s in Romania. In 1931, the Minister of Justice, the famous Constantin Hamangiu (founder and the director of the legal journal where Angelescu's study was later published), sent to the parliament a project concerning the specific problem I am discussing here. How did they arrive at such a project, and what was the fate of it?

In order to understand, one must acknowledge the legislative context of that emphasised historical moment. The modern Romanian civil code was drafted in 1864 and got into force on the 1<sup>st</sup> of December 1865. Its provisions were a 70–75% translation of the French civil code. Why is such a detail important? Because we must consider those who were negatively impacted by this code in practice. Who were they? At the end of the 19<sup>th</sup> century, peasants represented more than 90% of the population. Such people did not welcome the modern civil code into their daily life and habits. They were quite reluctant to its appliance in practice because of the specific circumstances I shall detail later.

In April 1864, the Romanian Government, led by Mihail Kogălniceanu, issued an agrarian reform (it was enforced on the 23rd of April 1865), intended to consolidate the middle class: they expropriated a strong number of landowners in favour of peasants. The reform was, unfortunately, conceived in an unsatisfactory manner. One must consider that, at the end of the 19th century and beginning of the 20th century, a typical Romanian peasant had between 5 and 15 children. For the sake of example, let us say the agrarian reform of 1862 gave this peasant 10 hectares of land. Such a land surface was sufficient to support the entire family. When he died, the 1865 civil code provisions in the matter of *mortis causa* successions equally divided these 10 hectares, by the number of children he had; for example, if he had ten children, they were left with one hectare each, and it was difficult for them to survive out of one hectare. One more generation later, certainly, it was insufficient to survive economic circumstances. The poorness of the peasants (who had to pay for the land received in 1865!), the bad quality of the land they were given and the obsolete manner of practising agriculture contributed to the failure of this agrarian reform. It all led to the point where some sociologists are now considering these circumstances as being one of the causes igniting the 1907 peasant uprising. King Charles I and the government used the army to break it: 11,000 peasants were killed, and another 10,000 peasants were arrested. Such tragic outcomes may be considered as proving the (partial) inefficiency of the 1862 agrarian reform.

As mentioned before, the Civil Code of 1865 contained that egalitarian principle of division between heirs. Therefore, the partition of an agrarian family property would have been able to attract unwanted economic consequences. What did the peasants do in practice? They ignored the civil code and kept up with the old Romanian customary laws on successions. A survey of the decisions pronounced by the High Court of Cassation in Bucharest and of all the commentaries on these cases reveals how they were conducted between bankers, manufacturers, landowners, mine owners, oil field owners, etc. – but no peasants. The peasants lived aside the civil code, or beside the civil code, and avoided its appliance due to such less fortunate consequences he brought up.

Research conducted by the Romanian Academy in the XX century emphasised the non-partition of the family household and of its agricultural surrounding lands: the customs preserved all these for the eldest or, in some geographic regions, the youngest male heir. Why? Because the eldest son was the one who was supporting all his other siblings during their marriages in building their separate new houses. The alternative was to leave the family property to the youngest male heir, because he was the one who was taking care of his elder parents. In this manner, the family property lasted untouched and was governed by one of these two heirs mentioned above.

This situation lasted until 1919, when a much better agrarian reform was issued. At the beginning of WW1, politicians promised land to all the peasants to compensate their unselfish sacrifices during the war. The new king, Ferdinand I, previously considered it in 1917 as “an act of social justice but also a recognition of the contribution of peasants to the War of National Reunification”. The same Romanian king issued, between 1919 and 1921, several decrees of expropriation: all landowners were expropriated, leaving them with a maximum amount of 100 hectares each. The extent of this expropriation threshold varied, depending on the circumstances in different areas of the country, but the peasants had to pay no compensation anymore.

As a result, a real agrarian reform took place, resulting in the consolidation of a new middle class. This was the main political purpose of the reform.

I have described the socio-political and legislative context so far. The conclusions that can be drawn from what has been presented will allow us to understand the proposal for regulating family property, which came after 1930.

In 1931, Constantin Hamangiu, the above-mentioned Minister of Justice, issued a complex and extensive programme of legislative reform in order to ensure the necessary legal unity in the provinces acquired by Romania after WW1. In December 1931, along with other unification measures (concerning the main codes, etc.), he published a project on the establishment of a family business property. Hamangiu's sources of inspiration were very interesting. The so-called Household Enactment Act of Texas of 1839, which followed the American Depression of

1837–1839, the French Reform of 1909, and the Swiss legislation that already held such provisions, served as inspiration for the project. For example, on this project it was stated (following the Swiss example) that, two months after its entering into force, each and every *pater familias* had to choose one hectare of agricultural land and designate it as a family business by a declaration given in front of a notary. This surface of maximum one hectare was designed not to be seized by any creditor, and it was mandatory to pass to all male heirs inside that family. As you can see, it had its limits, but it was an interesting starting point.

Hamangiu presented the project to the Parliament in December 1931, but he died unexpectedly in January 1932. His political enemies blocked the project. It was up to Alexandru Anghelescu to revive it, with his study published in 1934 in a famous legal journal, founded by the same Hamangiu – “Pandectele Române”.

In the beginning of his study (entitled “On family property”), the author presents the motivation of his research:

*The unification of civil law, a need that has been increasingly emphasised in recent years, requires the resolution of many problems. Without a doubt, among these, family property, due to its complexity, constitutes one of the most difficult issues in legal life.*

*The organisation of this property and the extent to which it responds to its social role require careful examination now more than ever.*

*The excessive division of land, because of outdated inheritance laws, overcharging it with burdens that destroy any initiative and possibility of work, presents a true national danger. Social peace is, of course, based on a larger number of properties; the greater this number, the more secure the basis of property. But for this, it is necessary that each property should have an extent and value sufficient to allow, from its sole exploitation, the maintenance and development of a family.*

*It must not be forgotten that the State is not a conglomerate of individuals; it has at its base the family, which remains today a vital organ of social*

*collaboration. The normal development of the State will also depend on the family stability and good organisation.*<sup>1</sup>

As one can notice, it is the abbreviated conclusion, drawn in the beginning of this paper, when presenting the context.

In comparative surveys of the legislative evolution of family property in the USA, France, Germany, and Switzerland, Angelescu discovers that the necessities related to credit in agriculture are the decisive argument for its regulation in Romania as well:

*The agricultural industry, in order not to be destroyed, needs credit; however, this cannot be subject to an exceptional regime. The difficult situation in which the small farmer struggles seems to be due to much deeper causes: foreign competition and overproduction bring the price down to such a level that they make it impossible to remunerate any work. In addition, the stability of the family depends on new morals, which could not be removed by the creation of family property.*

*Without contesting that the hardships we suffer from today are due, at least in part, to foreign causes, independent of us, we nevertheless believe that family property is the only means capable of allowing the organic cell, which is the family, to survive the moments of crisis we are going through.*<sup>2</sup>

On these argumentative bases, Angelescu goes on to define family property, its way of formation, its main characteristics, and the criticisms to which it may be subject.

The definition he settled on is simple and, like the legal regime he proposed, is inspired by the North American Homestead: “*Family property is the house and a stretch of land, variable according to different legislations, inhabited by the family and called to protect in times of crisis.*”<sup>3</sup>

In Angelescu’s opinion, the establishment of family property is a matter of public interest, so it must be mandatory, and the property

1 Angelescu, 1934, p. 3.

2 Ibid., 1934, p. 11.

3 Ibid., p. 12.

must be inalienable. The owner must be the head of the family, regardless of whether it is a legitimate or a natural family. Only in 1943, paternity outside of marriage was legally recognised in Romania, whereas the equality between children issued from marriage and those born outside of it was legally accepted only in 1954. However, Angelescu considered that family property should also belong to the head of a natural family (i.e. having children who were not legitimised by the marriage of their parents), because

*the need for the existence of a minimum of unseizable and inalienable patrimony is more important than ever. The instability that characterises such a family seems in contradiction with this constitution; but the education of children then requires the existence of such a patrimony more strongly.*<sup>4</sup>

Therefore, Angelescu proposes that the establishment of a family property is mandatory and has to be done *ex officio*, by the court, after consulting the heads of the family. This was the system designed by Hamangiu in 1931, and it was inspired by the North American Homestead: the heads of the family were to be summoned by the judge in order to indicate (in the presence of the mayor and of the notary) which part of the wealth would be identified as family property. If those summoned did not appear twice at the court dates, the judge would decide in their absence, with a two-month deadline for those concerned to contest his decision. The property thus designated had to then be registered in the real estate advertising registers.

Two practical difficulties are identified and addressed here by the author of the study: (1) upon the death of the head of the family, the family property, being indivisible, will revert in kind to only one of the heirs, who will be obliged to pay compensation (a remainder) to the other co-heirs. Angelescu observes that such a payment may burden the exploitation; consequently, he proposes an ingenious system of establishing compensations according to the income of the family property, not the capital represented by the real estate;<sup>5</sup> (2) the inalienability of

4 Ibid., p. 14.

5 Ibid., p. 25.

family property can produce the opposite of the expected effect if its value is too high compared to the value of the entire inheritance. The Hamangiu project established that the family property can have a maximum area of 1 arable hectare and a maximum value of 200,000 lei. Angelescu goes for the more judicious Swiss solution: only agricultural/industrial assets and residential houses can be designated as family property, without their size exceeding the maintenance/housing needs of the respective family. I also see this solution as being more suitable to the specific needs of each family in question.

Furthermore, neither the inalienability nor the unseizable character of family property can be absolute. Angelescu makes complex analyses of comparative law and of the local Romanian context in order to conclude that well-founded exceptions must be accepted.

As mentioned earlier, Angelescu published his study on the family property to revive the initiative of Constantin Hamangiu. He succeeded to some extent owing to the certain landowners' opposition and several problems at the level of agricultural administration. All discussion halted in 1938, when King Charles II established his dictatorship and manifested no real interest in the described issue.

After WW2, the communist regime imposed the creation of state-owned agricultural exploitations, following the Soviet *kolkhoz* model. Therefore, between 1950 and 1962, almost all peasants were gradually forced to give up all their land to the communist state. Any discussion on family-owned private property had no place anymore. Even after the fall of communism (December 1989), the discussion on establishing such a statute was never seriously renewed, despite the observations made by some authors.

In conclusion, until 1930, Romania did not need special legislation on family property; in practice, its citizens managed to have something similar – by means of old Romanian customary law. After 1930, the government took the initiative in establishing it, but various political circumstances prohibited its entering into force.

The debate on the family property is rather nonexistent now in Romania, and several failed reform projects did not succeed in breaking the unity of *mortis causa* transmission in Romanian civil law. What can happen nowadays in practice? This unity principle was inherited

from the French civil code of 1804 (art. 732 Code Napoleon). Its origin was found in the egalitarian slogan of the French Revolution of 1789, opposed to the privileges specific to feudalism. The legislative consequence was that the goods were viewed by the code strictly in terms of value, without considering their concrete destination. As a result, art. 732 of the Code Napoleon opened the possibility for all successors to receive a share of any kind of goods left by the deceased. Things are, apparently, in order. An undesirable practical consequence may arise in the partition of the inherited estate: through the random play of the value of the goods in relation to the inheritance share of each heir, the deceased's farm may return to the daughter, who is a writer, while the library ends up in the share of the son, a farmer. We will see what the future brings us in a country like Romania, one of the most important agricultural producers in the EU. Similarly, the family business will not necessarily survive the death of one of its founders. Only the future will give a complete answer to this aspect, too.

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