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Forms of Succession in the Kingdom of Georgia and Castile: A Comparative Analysis of Medieval Law

This article offers a comparative analysis of medieval inheritance law in the Kingdom of Georgia and Castile from the 10th to 15th centuries. By employing a legal-comparative approach, it examines basic aspects of two forms of succession: testamentary (ex testamento) and intestate (ab intestato). The study highlights both commonalities and differences in how each region adopted these forms, based on various medieval sources and scientific literature. Key aspects discussed include the influence of Roman law on the local legislations, the formal requirements for a will, the scope of testamentary freedom, intestate inheritance rules, degrees (priority order) of succession, gender issues, the inheritance rights of illegitimate children, widows and so on.

Keywords: *inheritance in the Siete Partidas, medieval Georgian inheritance law, gender and inheritance in medieval law, reception of Roman law, intestate and testamentary inheritance in the Middle Ages*

1. Introduction

The Middle Ages were a long historical period lasting from the fifth to the fifteenth centuries in the Western Europe, including the kingdom of Castile, but in Georgia it is basically considered to cover a period from the fourth to the eighteenth centuries. For the present article we have chosen a common framework for the research period – from the tenth to the fifteenth centuries (also the beginning of the sixteenth century) in the scope of which we well revise and analyze, based on the legal-comparative method, a fundamental aspect of inheritance law in the named countries – the forms of succession, by emphasizing common and different signs of their regulations and their basic peculiarities.

The Ancient Roman law recognized both universal succession (lat. *in universium ius, per universitatem*) and singular succession (lat. *singularis, in singulas res*). In the case of universal succession, the property was fully transferred to the heir, and in the case of singular – only its separate part. The main type of the universal succession is *mortis causa* succession – i.e. succession due to a person's death.[1] In this case, we are interested in the forms of inheritance, that is, in what ways the inheritance was transferred to the heir as a result of a person´s death. In ancient Rome, also in late medieval Castile and Georgia, there were two forms – testamentary inheritance (lat. *ex testamento*) and intestate inheritance (lat. *ab intestate, successio legitima*). Exactly these two aspects will be the

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1 *García Garrido M. J.,* Derecho Privado Romano: casos, acciones, instituciones, Madrid 2015, 239-240.

subject of study of the present research. The article covers the basic and general characteristics of the issue, mainly outlining the fundamental principles and key aspects of succession in each region (excluding, for example, the throne succession, object of inheritance, testament execution, feudal inheritance, singular succession, etc.).

It should be noted that Castilian law, in this case, is reviewed in terms of the reception of Roman law and, accordingly, the formation of *Ius Commune*, which is the main peculiarity of the Spanish law of the late Middle Ages, based on the legislation of Alfonso X Sabio (in the XIII century). *Las Siete Partidas* was practically the main regulatory source of inheritance law in this era.[2] Norms of inheritance law are also envisaged in Alfonso's *Fuero Real*, as well as in the *Fuero Viejo de Castilla* (a systematized edition was compiled in the 14th century), the *Ordenamiento de Alcalá* of 1348, the laws of Toro (*Las Leyes de Toro,* 1505) of so-called Catholic Monarchs – Isabella and Ferdinand, and so on. Medieval Castilian wills are have also preserved, which provide us with valuable infomation about testamentary inheritance. We find significant details about the Spanish inheritance law of the late Middle Ages in works of J. A. López Nevot, R. Morán Martín, F. J. Díaz González, F. L. Pacheco Caballero, M. C. Fernández, A. M. Alemán Monterreal, J. M. Pérez Prendes Muñoz-Arraco, A. Murillo Villar, etc.

Information about the inheritance law during the period of the Georgian Kingdom is provided by The Law of Bagrat Curopalate (the identity of king Bagrat and, accordingly, the creation time of the code are still questioned, but it definitely belongs to the middle ages), Book of Law of Beka and Aghbugha (XIII-XIV centuries), Dzeglisdeba of Giorgi Brtskinvale (XIV century), as well as preserved wills and literary sources. The issue was studied by Ivane Javakhishvili, Ivane Surguladze, Isidore Dolidze, Giorgi Nadareishvili and other great Georgian scientists, however, Besarion Zoidze's work – Ancient Georgian Inheritance Law, stands out for its deep and exhaustive research.

By examining the inheritance regulations in these two medieval societies of Castile and Georgia, with the help of a large scope of historical, legal and scientific sources, we can gain a deeper understanding of how legal systems reflected cultural and social influences in these two countries.

2. Testamentary Inheritance

As Iv. Javakhishvili points out, a will (testament) was a declaration of a wish made in writing or orally by a person awaiting tribulation or death, which was to be fulfilled after death.[3] In Castile, a will, according to *Las Siete Partidas*, was a form of expression of the testator's wish that outlined how their property was to be distributed after their death and determined the heir.[4] We can say that the definitions mostly coincide with each other. Due to the influence of Roman law, it is not surprising that the word *testamento* (from Latin *testamentum*) was used (and is still used) to denote a will (testament) in Castile, whereas, according to Ivane Javakhishvili, initially the word *aghtkumai* was

[2] *Pestalardo A., Berasategui I.,* La legítima hereditaria en el Proyecto de Código Civil y Comercial, "Revista Derecho Privado" 2013, Año II, N° 6, 241.

[3] *Javakhishvili Iv.*, History of Georgian Law, vol. 2, part II, Tbilisi 1929, 380 (in Georgian).

[4] P.6.1.1., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 2 (obv.).

used in the Georgian language for a testament and only later appears *anderdzi*, becoming the basic term, from the Persian word *andraz*, *andrez* (in Persian: advice, counsel, plea, testament), although the influence of Roman-Byzantine law can also be felt in the Georgian testamentary rule.[5] Unlike the Castilian law, which extensively deals with our topic (primarily, a huge part of the Sixth *Partida*, which describes in detail the issues related to a will), medieval Georgian legislation is not distinguished by abundance of regulation of the issue of wills.[6]

According to the definition presented in the Sixth *Partida*, we think it becomes obvious that the appointment of the heir (lat. *haeredem instituere*, as the Sixth *Partida* states) was a necessary element for the validity of the will,[7] similar to the provisions of Roman law.[8] Ivane Javakhishvili, based on the studied sources, does not single out the mentioned criterion among the mandatory content components of the will, [9] however, we consider it less likely that the uncertainty of the heir did not affect the validity of the document, since the main idea of the will is to determine to whom the property remains. It was perfectly recognized by the Castilian legislation: "the foundation and the base of any will, no matter what kind it is, is the appointment of an heir in it" – we read in The Sixth *Partida*.[10] We think that there should have been a similar approach in Georgia, for example, if we look at the king Davit IV Aghmashenebeli's will of 1125, he specifically names to whom he will transfer the property (for example, "the drahkans – to Kostanti Tsuata and my rubies and precious stones will be donated to the Mother of God of Khakhuli").[11] As to Castile, notwithstanding the above, it is noteworthy that the *Ordenamiento de Alcalá* of 1348 expressly stated that even if a heir was not appointed, this could not be a ground for invalidating the will.[12] According to R. Morán Martín, it was a sign of legal flexibility, establishing a possibility to make a "secret will" when the heir was not named and the testator retained the right to define the heir late by another document.[13]

Iv. Javakhishvili, based on a Georgian nobleman Grigol Surameli's will (XIII century), concludes that in order to draw up a testament, it was mandatory to indicate the name of the testator in full and to emphasize that it had been written "with his own will" and "being fully aware", which obviously showed the soundness of mind and absence of any pressure. [14] It is interesting that similar wording can be found, for example, in the will of Benito Fernández de Villaverde (1409, Paredes de

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5 *Javakhishvili Iv.*, History of Georgian Law, vol. 2, part II, Tbilisi 1929, 383 (in Georgian) .

6 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 296 (in Georgian).

7 P.6.3.1., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 13 (obv.).

8 *Garishvili M., Khoperia M.*, Roman Law, Tbilisi 2013, 352 (in Georgian).

9 *Javakhishvili Iv.*, History of Georgian Law, vol. 2, part II, Tbilisi 1929, 381-382 (in Georgian) .

10 P.6.3. (pról.), *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 13 (obv.).

11 *Dolidze I.*, Monuments of Georgian Law, II, Secular Legislative Monuments (10th-19th Centuries), Tbilisi 1965, 19 (in Georgian).

12 OA. 19.1., *Asso y del Río I. J., de Manuel y Rodríguez M.*, El Ordenamiento de Leyes que D. Alfonso XI hizo en las Cortes de Alcalá de Henares el año de mil trescientos y quarenta y ocho, Madrid 1847, 32.

13 *Morán Martín R.*, Historia del derecho privado, penal y procesal, Tomo I: parte teórica, Madrid 2002, 398-399.

14 *Javakhishvili Iv.*, History of Georgian Law, vol. 2, part II, Tbilisi 1929, 381 (in Georgian); *Dolidze I.,* Monuments of Georgian Law, II, Secular Legislative Monuments (10th-19th Centuries), Tbilisi 1965, 38 (in Georgian).

Nava), a person from the lower class, which, first of all, fully defines the identity of the testator and emphasizes in the introduction that the will was made with "sound mind" (*en mi sano entendimiento*) and on the basis of "clear memory" (*en mi sana memoria*), [15] which corresponds to the requirement of the Sixth *Partida*. [16] Focusing on the memory is quite interesting, which we believe must be due to the simple truth that even a person with proper thinking (sound mind), if he does not remember events well, may make an inadequate decision. By the way, a similar wording can be observed in Georgian wills, although not in our research period – in Shahkuliani's "Firm will", that dates back to the 19th century, it is emphasized that the testator was "fully aware and with clear memory" when drawing up the document.[17] In general, we can say that in both comparable countries a sane will was required to write a testament.

At least 14 years old man and a 12 years old woman were legally allowed to make a will in Castile, as they were considered to be mentally mature enough.[18] Undoubtfully, this was also related to the marriageable age, which was defined in this way since the ancient Rome.[19] In Georgia, the regulation was alike in one way or another – the male testator had to be 14-15 years old, the female – 12 years old. [20] Accordingly, from a legal point of view, both in Georgia and Castile, a woman had the right to make a will.

It is clear from the sources that if the testator was able to write, he should have written the will himself, which was also noted in the wills by them. For instance, in the will of Grigol Surameli we read (in the section of the witnesses´ notes) that "he wrote with his own hand". [21] Likewise, according to Castilian law, the testator indicated that he had drawn up the will themselves under the conditions described above, however, the Sixth *Partida* adds that if a person could not (or did not know how) to write, someone else could do so at his will.[22] A similar approach should have existed in Georgia as well. For example, Davit Aghmashenebeli could not write the will himself due to its volume and lack of time, although he started writing it personally, which he specifically noted in the will of 1123, at the end of the text, along with his signature. If the testator was able to write, according to Iv. Javakhishvili, the text should have been written personally at least partially.[23] In extreme cases, when other person wrote the will, the testator had to sign it or put a cross. In general, it seems that

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15 *Martín Cea J. C.*, El modelo testamentario bajomedieval castellano y su reflejo en los diferentes grupos sociales, "Edad Media: revista de historia" 2003-2004, № 6, 146.

16 P.6.1.13., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 5 (rev.), 6 (obv.).

17 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 323 (in Georgian).

18 6.1.13., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 5 (rev.).

19 P.4.1.6., ibidem, 4 (rev.); Inst. Iust. 1.10. (prol.) and 1.22. (prol.), *Surguladze N.*, Monuments of Roman Law. Institutions of Justinian, translated from Latin, Tbilisi 2002, 24, 42-43 (in Georgian).

20 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 305 (in Georgian).

21 *Javakhishvili Iv.*, History of Georgian Law, vol. 2, part II, Tbilisi 1929, 381 (in Georgian); *Dolidze I.*, Monuments of Georgian Law, II, Secular Legislative Monuments (10th-19th Centuries), Tbilisi 1965, 41 (in Georgian).

22 P.6.1.1., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 3 (obv.).

23 *Javakhishvili Iv.*, History of Georgian Law, vol. 2, part II, Tbilisi 1929, 381-382 (in Georgian); *Dolidze I.,* Monuments of Georgian Law, II, Secular Legislative Monuments (10th-19th Centuries), Tbilisi 1965, 12, 18 (in Georgian).

clergymen took care of writing the will.[24] Overall, it is clear to us that the law of both countries attached great importance for testament to be personally written for the validity purposes (to whatever extent possible).

We will also discuss the form of the will. In both Georgia[25] and Castile, a will could be either oral or written. In Castile, the oral will practically disappeared in the early Middle Ages, although it was revived with the reception of Roman law[26] (moreover, in the named era, before the reception, the dominant form of inheritance was the intestate inheritance, and inheritance by will was not even considered inheritance at all[27]). *Las Siete Partidas* distinguishes between two types of will: 1*) testamentum nuncupativum* – public will, executed in writing or orally, in the presence of seven witnesses; 2*) testamentum in scriptis* – will, executed only in writing, also before seven witnesses.[28] *Las Leyes de Toro* calls the first one an open will, and the second one a closed one.[29] The first was signed before a notary.[30] In Georgia, as B. Zoidze notes, it seems that the functions of notary were carried out by clergy (on one hand, as we mentioned, they were often the ones who wrote wills) and on many occasions they also preserved the wills.[31]

The principle of seven witnesses had obviously been taken from Roman law, which also established the identical number of witnesses,[32] although according to the *Ordenamiento de Alcalá*, this number was reduced to 3 for public wills.[33] Georgian law also took into account the need for witnesses, and usually their quantity was close to that determined by Roman law, however, it seems that there was no fixed number and sometimes it even exceeded 7.[34]

Alteration of wills seems to have been allowed in Castile, as it is clearly indicated by The Sixth *Partida*[35] (we should note, in this regard, one interesting norm: if a person revoked the first will by the subsequent will since he thought the named heir was dead and wanted to define a new one, although it turned out that he was alive, the second will would be considered invalid and the property would be

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24 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 329-330 (in Georgian).

25 *Javakhishvili Iv.*, History of Georgian Law, vol. 2, part II, Tbilisi 1929, 380-381 (in Georgian).

26 *Morán Martín R.*, Historia del derecho privado, penal y procesal, Tomo I: parte teórica, Madrid 2002, 402.

27 *Pestalardo A., Berasategui I.*, La legítima hereditaria en el Proyecto de Código Civil y Comercial, "Revista Derecho Privado" 2013, Año II, N° 6, 247.

28 P.6.1.1., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 2 (rev.).

29 LT. 3., LEYES DE TORO, Madrid 1977, 49.

30 *Morán Martín R.*, Historia del derecho privado, penal y procesal, Tomo I: parte teórica, Madrid 2002, 401.

31 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 330-331 (in Georgian); *Javakhishvili Iv.*, History of Georgian Law, vol. 2, part II, Tbilisi 1929, 382 (in Georgian).

32 Inst. Iust., 2.10.3., *Surguladze N.*, Monuments of Roman Law. Institutions of Justinian, translated from Latin, Tbilisi 2002, 84 (in Georgian).

33 OA. 19.1., *Asso y del Río, I. J., de Manuel y Rodríguez, M.*, El Ordenamiento de Leyes que D. Alfonso XI hizo en las Cortes de Alcalá de Henares el año de mil trescientos y quarenta y ocho, Madrid 1847, 32; *Martín Cea J. C.*, El modelo testamentario bajomedieval castellano y su reflejo en los diferentes grupos sociales, "Edad Media: revista de historia" 2003-2004, № 6, 108.

34 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 332-334 (in Georgian).

35 P.6.1.25., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 9 (rev.).

received by the first heir[36]). From the sources of Georgian law, it can be seen that in Georgia there was no restriction on changing and canceling the will either, which is also evidenced by the article 57 of the Book of the Law of Beka and Aghbugha.[37]

A testamentary heir, under Castilian law, could be virtually anyone,[38] with specific exceptions, such as apostates, outcasts, etc.[39] Furthermore, according to the Sixth *Partida* (later it was canceled by Enrique III (1390-1406)[40]), a women who remarried within 1 year of widowhood could not be an heir under a "stranger´s" will (the law explains this for two reasons: to avoid any doubt regarding whichever husband she actually had a child with, and so that her second husband did not have suspicions about her, for the reason that she wanted to marry him so soon). [41] The law adds that the heir could not be a child born as a result of a "forbidden union" (lat. *natus ex dannato coito*), for example as a result of an incest or a relationship with a nun.[42] Accordingly, the testator was somewhat limited and there was no absolute freedom of will.

Due to the scarcity of sources, it is difficult to talk about the freedom of will in Georgia. B. Zoidze believes that the freedom of the will was usually limited by the circle of heirs at law, however, there was still a certain level of freedom.[43]

One of the most visible limiting mechanisms of the freedom of will is the existence of a forced heir and, therefore, a compulsory share. Castilian legislation envisaged the case of preterition (lat. *praeteritio*) – when the testator omitted an heir at law in the will (an heir of the descending line, in case of its exclusion – the descendants), without determining their disherison. Such a will was void[44] (as it was according to the norms of Roman law).[45] Unfortunately, we do not see any evidence in Georgian sources about the existence of a compulsory share, however, we will share B. Zoidze's opinion that, considering the limited nature of wills in Georgia, this institution would probably have existed here as well. [46]

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36 P.6.1.21., ibidem, 8.

37 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 334 (in Georgian); The Book of Law of Beka-Aghbugha, article 57, *Dolidze I.*, Ancient Georgian Law, Tbilisi 1953, 312 (in Georgian).

38 P.6.3.2., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 13.

39 P.6.3.4., ibidem, 13 (rev.), 14 (obv.).

40 *Díaz González F. J.*, El Derecho de sucesiones en los primeros manuales de Derecho español. El caso de la Ilustración del Derecho real de España de don Juan Sala Bañuls (I), "Anuario de la Facultad de Derecho (Universidad de Alcalá)" 2011, № 4, 306.

41 P.6.3.5., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 14 (obv.).

42 P.6.3.4., ibidem, 14 (rev.).

43 *Zoidze B*., Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 293-294 (in Georgian).

44 *Díaz González F. J.*, El Derecho de sucesiones en los primeros manuales de Derecho español. El caso de la Ilustración del Derecho real de España de don Juan Sala Bañuls (I), "Anuario de la Facultad de Derecho (Universidad de Alcalá)" 2011, № 4, 319; P. 6.7.10 and 6.8.1., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 48 (rev.), 49 (obv.), 53 (rev.).

45 *Bartošek M.*, Roman law (Concepts, terms, definitions), Moscow 1989, 256.

46 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 304 (in Georgian).

3. Intestate Inheritance

In the case of the absence or invalidity of the will, as well as the refusal of the heirs to accept the inheritance, since the ancient Rome, the regime of intestate inheritance (*ab intestato*) had been in effect, which established the order of priority in a succession (heir degrees).[47] Georgian legislation of the Middle Ages, in this regard, is characterized by disorder, first of all, during the period of the unified Georgian kingdom, since we cannot find a systematic regulation of this issue and determination of the grades.[48] In Georgia, in Basil Zarzmeli's work "The Life of Serapion Zarzmeli" (which dates back to the 10th century), the rule of intestate inheritance is referred to as a "world rule".[49]

Castilian law clearly defined the grades of heirs: 1) relatives in the descending line (for example, sons, grandsons and their descendants); 2) relatives of the ascending line (for example, father, grandfather and their respective line ancestors); 3) relatives of the lateral line (for example, brothers, uncles and their descendants). [50] In Georgia, by researching the sources, it can be seen that the order also started with the relatives of the descending line (even though the grades are not directly provided in the legislation), which can be confirmed by an episode of Giorgi Merchule's "Life of Grigol Khandzteli" (10th century), in which after the parents´s death the inheritance remains for Zeno and his sister, who "was at home with him". This, in addition, indicates that a daughter was also an heir, although she was "at home", that is, unmarried. [51] And, according to the sources, a married woman had to rely on her dowry only, when her parents died[52] (according to "The Life of Serapion Zarzmeli", the desire of Giorgi Chorchaneli's sister's son-in-law to demand a share in Giorgi's estate from her brothers ended in his murder[53]), although in the case of so called *zedsidze* (son-in-law that moves to the wife´s house), which is reflected in both the Book of Law of Beka and Aghbugha and the Law of Bagrat Curopalate, the son-in-law became the heir of the father-in-law (however, this issue is more clearly defined not by the legislation of the time of the Kingdom of Georgia, but by the later, 18th century legal source – The king Vakhtang VI´s Law Book specifying that if a man had no son as an heir, whoever married his daughter would get the entire estate). [54]

In the case of Castile, The Sixth *Partida* explicitly states that it did not matter whether the heir was male or female (e.g. daughter or son, mother or father), without specifying marital status, which

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47 *García Garrido M. J.*, Derecho Privado Romano: casos, acciones, instituciones, Madrid 2015, 249.

48 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 112 (in Georgian) .

49 *Surguladze I.,* Essays on the History of Georgian Law, I, Tbilisi 2000, 20 (in Georgian); Life of Serapion Zarzmeli, III.10., *Vachnadze N.*, The life of Serapion Zarzmeli as a historical source, Tbilisi 1975, 154 (in Georgian).

50 P.6.13.2., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 87 (rev.).

51 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 111, 112 (in Georgian).

52 Ibidem, 186-187.

53 *Surguladze I.,* Essays on the History of Georgian Law, I, Tbilisi 2000, 21 (in Georgian).

54 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 96, 191-193 (in Georgian); The Book of Law of Beka-Aghbugha, articles 72 and 73, also The Law of Bagrat Curopalate, articles 157 and 158, *Dolidze I.*, Ancient Georgian Law, Tbilisi 1953, 321, 322, 341. The Law Book of Vakhtang VI, articles 145 and 257, *Dolidze I.*, Monuments of Georgian Law, I, Vakhtang VI Law Books Collection, Tbilisi 1963, 517, 546 (in Georgian).

makes us think that women of any status could inherit. The reception of inheritance by the next grade was only allowed when the previous grade was excluded, and the entire property was distributed equally among the heirs. [55] Therefore, in general, discrimination based on gender or age, as we can see, was not allowed by law. Unlike Castile, in the Kingdom of Georgia, although, as we discussed above, a woman could be an heir, but still sons were preferred, probably as the ones who were believed to continue the lineage. [56] In addition, conceptually, the property was divided equally among the sons, although in fact there was a "senior" share (*sauproso*, *saukhutseso*) for the elder brother, and a "junior" share (*saumtsroso*) – for the younger one. [57]

Adopted children could also be heirs in Castilian law, but it is important to emphasize that just like in Roman law, there were two types of adoption – *adrogatio (arrogatio)* and *adoptio*,[58] with certain modifications. In Castile, *arrogatio* required the king's consent, *adoptio* needed to be approved by a judge.[59] The Sixth *Partida* unequally treats these adopted persons, depending on the type of the adoption, granting hereditary rights to one and not to the other, except some *ab intestato* rights. [60] In particular, besides other details, in case of *arrogatio* we see a full protection of the person's hereditary rights, but even though a person adopted through *adoptio* could inherit from the adopter and share equal rights with the biological children (which is clearly stated by the law), if the adopter belonged to the ascendant line of the adopted person, the rights of the latter were placed on the same level as those of an illegitimate child.[61] In Georgia, adoption was quite common and was recorded in a so-called adoption book/deed, which was frequently approved by the king. The hereditary rights of an adopted child were equal to those of biological children,[62] but we only meet detailed information in the later period of the history of Georgia (first of all, in the Law Book of Vakhtang VI).[63]

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55 P.6.13.2-5., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 87 (rev.) – 91 (obv.).

56 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 123-124 (in Georgian).

57 Ibidem, 131; The Book of Law of Beka-Aghbugha, articles 48 and 49, also The Law of Bagrat Curopalate, articles 153-155 and 157, *Dolidze I.*, Ancient Georgian Law, Tbilisi 1953, 341 (in Georgian).

58 In ancient Rome, arrogatio was an adoption of a sui iuris (independent) person, while adoptio was the adoption of a *persona alieni iuris* (a person who was already under the power of the head of other family – paterfamilias). The first type of adoption was conducted before a comitia curiata assembly and required its approval. The second one could only be authorized by Roman magistrates. *Garishvili M., Khoperia M.*, Roman Law, Tbilisi 2013, 252 (in Georgian).

59 P. 4.16.8., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 46 (obv.).

60 *Alemán Monterreal A. M.*, Los derechos sucesorios del hijo adoptado, in: Fundamentos romanísticos del derecho contemporáneo, vol. 2 (Derecho de personas), coord. S. Castán Pérez-Gómez, Madrid 2021, 21-22 (683-684). <https://boe.es/biblioteca_juridica/anuarios_derecho/abrir_pdf.php?id=ANU-R-2021-20067500696> (27.07.2024).

61 P. 4.16.8-10., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 46; *Alemán Monterreal A. M.*, Los derechos sucesorios del hijo adoptado, in: Fundamentos romanísticos del derecho contemporáneo, vol. 2 (Derecho de personas), coord. S. Castán Pérez-Gómez, Madrid 2021, 21 (683). <https://boe.es/biblioteca_juridica/anuarios_derecho/abrir_pdf.php?id=ANU-R-2021-20067500696> (27.07.2024).

62 *Nadareishvili G.*, From the History of Georgian Family Law, Tbilisi 1965, 192 (in Georgian).

63 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 205-206 (in Georgian).

In Georgia, they were also familiar with the heritage of the lateral line, which is can be seen, for example, in the "Rkoni inscription" of the 13th century. According to the document, if a man had no children, his heir was his brother. There is little information on the inheritance of the ascending line in the Georgian legislation and historical sources, however, ethnographically, its existence is confirmed.[64]

According to The Sixth *Partida*, a widowed person (both female and male – widow or widower) became the heir of the spouse only in extreme cases – when the ascending and descending lines were excluded, and no one was found in the lateral line, within ten generations. In such a case, the widow or a widower would receive the entire property of the deceased. [65] If a widow was married without a dowry and, after widowhood, she had no property remained, even if she had children, she could claim a quarter of the estate left by her rich husband (although this quarter also had an upper limit on the amount). [66] In Georgia, according to the Book of Law of Beka and Aghbugha, if a widow did not have a child from her husband, she was left with only her dowry, and in the case of having a child, she received some movable property, *sasakonlo* (and, apparently, not a land, which is transferred to the children).[67] Accordingly, we consider her situation to be partially better than that of a Castilian widow (except for the case when a Castilian widow was the last heir, since she would get all the estate), and in Georgia, a widower was considered the heir of his wife, although we meet this regulation formulated more perspicuously later – in the Law Book of Vakhtang VI.[68]

As for illegitimate children (*fijos naturales*), under Castilian law, their right to inherit existed, but in a limited form: on the father's side, an illegitimate child could claim a small share of the inheritance if the man had no legitimate children left (regardless of the existence of a legitimate wife at the time of his death), provided that this child was born when neither parent had a lawful spouse. [69] In the case of a woman, with certain exceptions, the child was always her heir, regardless of legitimacy, and it was not required for the woman to have no legitimate children[70] (although we would add that later *Las Leyes de Toro* significantly limited the intestate inheritance for illegitimate children from the mother's side as well[71]).

Apparently, the Georgian legislation was not well-disposed towards an illegitimate child (*nabichvari, bichi, bushi*) either.[72] It should be noted that, like the Castilian law, according to the Law Book of Beka and Aghbugha, we can suppose that there was no distinction between legitimate and

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64 Ibidem, 112.

65 P.6.13.6., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 91 (rev.).

66 P.6.13.7., ibidem, 92.

67 *Zoidze B.,* Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 246, 255 (in Georgian); The Book of Law of Beka-Aghbugha, article 81, *Dolidze I.*, Ancient Georgian Law, Tbilisi 1953, 325 (in Georgian).

68 *Zoidze B.,* Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 251; The Law Book of Vakhtang VI, article 224, *Dolidze I.*, Monuments of Georgian Law, I, Vakhtang VI Law Books Collection, Tbilisi 1963, 539 (in Georgian).

69 P.6.13.8-9., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 92 (rev.) – 93 (rev.).

70 P.6.13.11., ibidem, 94.

71 LT. 9., LEYES DE TORO, Madrid 1977, 50.

72 *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 214 (in Georgian).

illegitimate children from the mother's side ("the bastard is his mother´s"). [73] From the father's side, it seems that an illegitimate child could not enjoy equal rights with his father's legitimate children (the Law Book of Vakhtang VI gives a very specific indication that "there is no bastard's share in the land").[74]

Finally, when the grades of intestate heirs were completely exhausted, both in Castilian[75] and Georgian law, [76] the property usually remained with the king, the treasury (state).

4. Conclusion

As a result of the comparative analysis of the basic characteristics of the inheritance forms in Georgia and Castile from the 10th to the 15th century, we can conclude that, in spite of some differences, the norms of these two countries share many common signs based on legal principles. We can emphasize some basic issues:

1. Both legislations emphasized the importance of a clear expression of the testator's will and the role of witnesses. Also, Castile and Georgia had quite similar provisions regarding the testator's age;
2. In the absence/invalidity of a will, the descendant line was prioritized in succession in both countries;
3. In both countries, women could be heirs just like men, but Castilian law directly established gender equality, while in Georgia a woman's inheritance rights strictly depended on her marital status and, in general, sons were clearly prioritized as heirs. Georgian law did not establish equal shares for brothers;
4. Generally, in Castile and Georgia an adopted child had inheritance rights along with biological children, with some exceptions specified in Castilian law. Illegitimate children´s inheritance rights were limited in a specific way in both cases;
5. As for a widow or a widower, they could be heirs, but with certain limitations (under the Castilian legislation, they could usually be heirs in extreme cases);
6. In both legal systems, when all potential heirs were excluded, the property was often transferred to the crown (state).

Furthermore, we can say that both Georgian and Castilian legislations were influenced by Roman law to a certain extent (primarily the Castilian law, while in the case of Georgia a slight influence can be observed). Furthermore, it is clear that Castilian inheritance law is much more extensive and comprehensive than Georgian law, making it difficult to study details of some aspects of the latter.

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[73] Ibidem, 221; The Book of Law of Beka-Aghbugha, article 31, *Dolidze I.*, Ancient Georgian Law, Tbilisi 1953, 298 (in Georgian).

[74] *Zoidze B.*, Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 221 (in Georgian); The Law Book of Vakhtang VI, article 100, *Dolidze I.*, Monuments of Georgian Law, I, Vakhtang VI Law Books Collection, Tbilisi 1963, 511 (in Georgian).

[75] P.6.13.6., *López G.*, Las Siete Partidas del Sabio Rey Don Alonso el Nono, Salamanca 1555, 91 (rev.).

[76] *Zoidze B.,* Ancient Georgian Hereditary Law (legal-comparative research), Tbilisi 2000, 274 (in Georgian).

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