TO THE MEMBERS OF THE SCIENTIFIC JURY
FOR THE AWARD OF THE DEGREE OF DOCTOR OF LAW
TO ANI DIMITROVA KANEVA-FACULTY OF LAW
OF PLOVDIV UNIVERSITY "PAISII HILENDARSKI"

R E V I E W

by

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By order RD - 21-550 of 9.05.2024 of the Rector of PU "Paisii Hilendarski" I have been appointed as a member of the scientific jury for conducting an open procedure for the defense of a dissertation thesis "Inheritance of company shares and stocks" for the acquisition of the scientific degree "PhD" by Ani Dimitrova Kaneva - a regular PhD student at the Faculty of Law of PU.

1. The dissertation is written in 199 pages, including an introduction, four chapters, a conclusion, and a bibliography. It contains 362 footnotes and cites 120 textbooks, monographs, studies and articles in Bulgarian and English.

The first chapter of the dissertation is devoted to the succession of shares in a limited liability company. Within three paragraphs, the author makes a historical and comparative legal analysis, examines the peculiarities of inheritance of a company share, as well as the possibilities for the heirs to become partners in the same company in which their heir was a member. Attention is also drawn to the concept of a company share and a share in the capital of a limited liability company and a proposal is made to amend Article 115 of the Commercial Law by proposing that the mandatory content of the company agreement "should include the issue of the fate of the company shares after the death of the partner". The hypotheses of inheritance of company shares by incompetent persons, determination of the value of the shares, exercise of the rights under the inherited shares, the will and the testament are not omitted. The executor of a will and the important difficult, controversially decided issue of the succession of the sole owner of the capital of an LLC are also discussed.

The second chapter covers the many issues of shareholder succession in a public limited company. Both certificated and uncertificated shares are covered, as

well as succession to membership of the plc. Incapacitated heirs, the succession of vitiated shares, shares not paid in full, bequests, direct and indirect legacies of shares, the timing of their succession, and the determination of their book value are not left out of the author's consideration.

The third chapter analyses the succession of a partner in a partnership - general and limited partnership, as well as the new partnership with variable capital.

The last fourth chapter is devoted to the interesting and hitherto untouched issues of the special hypotheses of inheritance of shares - the reverse effect of the acceptance of inheritance, the exercise of the rights on company shares entering into the unoccupied inheritance, the cases of unconscionable absence and the legal position of the state and the municipality when the inheritance passes over them.

Each of the chapters contains scholarly contributions, both in terms of posing new problems and proposing solutions, and in some cases de lege ferenda.

2. The topic of the work is suitable for dissertation due to the following characteristics:

First of all, there is a lack of comprehensive and independent monographic studies on this topic. It has been dealt with in textbooks, courses on commercial law, individual articles or parts thereof. However, for the first time it is the subject of a dissertation, which may be published as a monograph in the future.

Secondly, the topic is topical given the manifestation of several factors. One is the rapid and aggressive development of company law and the quantitative increase in the number of commercial companies in Bulgaria. The second is the human factor in the establishment, organisation and management of commercial companies. The latter combine the property, material and human elements. The third is the ageing of the people who have been involved in setting up and maintaining trading companies for 35 years. And human old age inevitably leads to death, which gives rise to succession relations. In the beginning, people who enthusiastically rushed into building companies to make money, wealth, grew old and naturally began to pass away from this world, which made it right to think about how these economic formations will continue after their death.

Third, the topic is complex and difficult because it is interdisciplinary and requires the author to have knowledge of commercial and inheritance law. It combines two different areas of private law - the modern and relatively young in Bulgaria 35 year old commercial law with the older 75 year old inheritance law.

Fourthly, the topic is difficult because there is little direct legal regulation on the succession of company shares. The law of succession was created in the early

years of socialism, during which commercial law was abolished and did not exist, and the Commercial Law was adopted in the years of a democratic society and market economy, but unfortunately did not think about the succession of commercial enterprises, of commercial companies, shares and stocks. These peculiarities in the legal framework require lawyers to show their creative mastery and to interpret and analyse the legal norms and to discover the rules of inheritance of the company shares and stocks as well as the ex mortem relations accompanying them. This indeed makes the topic complex, complicated and difficult, but at the same time it gives the doctoral student the opportunity to show his research talent, his ability to interpret the law and to draw new conclusions that would constitute a scientific contribution to the law. The topic provides an opportunity not to retell and reproduce rules of conduct, but to create them.

3. The style of exposition, the language of expression are precise and accurate. The doctoral student has a clear and logical thought, presented in a good expression. The author demonstrates good development of his/her creative abilities.

4. The work is useful for the jurisprudence, which is at the stage of unification and search for the best and fair solutions to the problems arising from the combination of commercial and inheritance law. The Commercial Law only states that company shares and stocks are inheritable, but further legal regulation of inheritance is lacking. There are no provisions at all in the Succession Act on the succession of company shares. It is for the author to answer the questions which the legislator has not provided for in either the Companies Act or the Succession Act. It could therefore be said that the work constitutes a contribution to the development of jurisprudence and legal scholarship.

5. As a positive feature of the dissertation I would like to point out the author's analytical abilities and her ability to summarize everything that has been written so far in the doctrine.

6. I would like to make a methodological note on the content of the introduction. It should introduce the problem or problems that are the subject of the dissertation and which its further exposition will answer. The introduction should not be associated with an annotation of the work, as has been done here. It should not reproduce the future content of the dissertation. Logic demands that the tasks and plan of the future work be outlined first, rather than beginning with a description of what the future chapters contain. The general formulation of the dissertation topic should have its place in the introduction.

Technically, it would be useful to include a list of abbreviations used at the beginning, before the introduction. This would give the work a clearer appearance.

7. In general, the historical method of research is used in every dissertation. In view of the topic of the dissertation, however, it seems to me superfluous to devote attention to the development of inheritance law in the past in Bulgaria. After all, the thesis is devoted to the inheritance of company shares and stocks, and at that time such objects were not recognised by the legal framework. The author should not overlook the narrow scope of her work, which is not devoted to the development of inheritance law, but only to a particular segment of it.

8. Comparative legal analysis also has an important place in every dissertational work. But it should not be self-purposed. To be useful, the exposition of the legal frameworks in individual countries, chosen by the author according to a certain criterion, should not only be informative, but also accompanied by conclusions that will be important for the improvement of the Bulgarian legal system. Attention should be paid in a separate conclusion to the different ways in which shares are inherited and, above all, to the possibility of providing in the company's articles of association for a different way of inheriting company shares than that provided for in the law. It would be curious to find legislation which does not allow the succession of shares. It would also be useful to have a statement as to what type of legal framework each country shows a preference for - mandatory or discretionary.

9. The distinction between membership of a limited company and the acquisition of shares in a company is worth supporting. The issue of inheritance of shares by incapacitated persons is interesting. It has been rightly held that minors and persons under full legal guardianship cannot become members of limited liability companies because of the explicit legal framework in this country. But it seems to me that the case for membership of persons of limited capacity - between 14 and 18 years of age - and those under limited legal guardianship is not fully defended. Nor is it clear from the work what the legal position of the person in respect of whom there is a covenant of shares is. This leads me to put the following question to the doctoral student:

Is the legatee a "special creditor" of the opened estate and does he acquire a right to the company share(s) subject to the will from the moment the estate is opened? What, according to the author, does it mean to be a creditor of the inheritance, what actions should the heirs by law perform towards the legatee - should they transfer the company share to him and, if so, how is this done in practice - by a contract of transfer of the company share? Put another way, how does the legatee of a company share become its holder - by virtue of the covenant, i.e. automatically, or by the heirs at law transferring the company share?

10. Is it not sufficient and persuasive reasoning that, in the case of the restoration of a retained interest in the case of a bequest of partnership interests, the latter are valued at their market value and not their book value, since the author has held that, in the case of the termination of membership on death, the partnership interest is valued at its book value and not its market value? Why, according to the doctoral student, is it necessary to measure the same object - the company share in the event of the death of a member of an LLC - with different measure?

11. The reasoning in the work about the reversionary effect of the acceptance of inheritance and the ex nunc effect of the acceptance of an heir as a member in an LLC and the difference in the reversionary effect of the inheritance of shares that are inherited from the moment of the opening of the inheritance are worthy of support.

12. Interesting are the author's analysis and reasoning on the issue of termination of a sole proprietorship in the event of the death of the sole proprietor of the capital and the failure of the heirs to continue its activities. It is concluded that the heirs, the creditors of the company and the public prosecutor have the right to request the entry of the dissolution of the limited liability company in the commercial register, and the limited liability company itself has ipso facto dissolved with the death of the sole owner of the capital, if he is an individual. It should be noted that the issue is controversial, but the doctoral student has adopted and argued the view of automatic dissolution of the company.

13. Regarding the covenant of available shares, the dissertation assumes that a contractual relationship arises between the covenantor and the heirs, and that the covenantor is their creditor and has the right to demand from the heirs the performance of the covenant. She then adds that the heirs are obliged to hand over the shares and partially clarifies how this is done - actually by handing over or by a formal act - giro, transfer of temporary certificates, contract, etc. However, there are no definite answers on these issues. Certainly, there is no legal framework in our country to facilitate answers to these questions. There is also no generally accepted theory and practice. The difficulties are compounded by the fact that a devise of shares is not a devise of a specific thing, as the doctrine and case law have hitherto known. Moreover, it must also be borne in mind here that, as the doctoral student points out, two types of covenant are possible - direct and indirect. In the latter, there is no direct passing of the available shares to the legatee, but the heirs must vest them in him. Yes, it is pointed out that the transfer of the shares is by way of a giro, but that applies only to the shares in issue and not to the dematerialised shares. Further, I would question how the legatee will receive them if the heirs do not voluntarily surrender the shares. How will he protect his right as legatee - by what action?

14. I disagree with the conclusion that the book value of the share or shares is taken into account in determining the heirs' reserved and disposable share. A share has a nominal value and an issue value, and there is also a stock exchange price, i.e. a market price, but what the author calls the book value refers to so-called quota shares, which, however, are not known to Bulgarian law. In these the value of a share is equal to the net value of the property behind it. The rule about the value of a company share cannot be automatically applied to the value of a share. Under Bulgarian shareholder law, the value of the share is not necessarily compatible with the value of the net assets. Shares are registered in the capital at their nominal value and this follows very clearly from the provisions of the Commercial Law.

15. The right to a dividend as an object of the covenant is only possible if the dividend is detached from the share. It exists in a contingent state with the appearance of the share, but only after a certain factual composition has been fulfilled does it separate as an independent right and can become an object of the covenant. The opinion of the doctoral student is partly correct. She denies the dividend as an object of the covenant altogether and accepts that the dividend can be the subject of the covenant only if it has been distributed during lifetime among the heirs.

16. I do not agree with the view that dematerialised shares are inherited at the time of opening of the succession and not at the time of registration of the heirs with the Central Depository, because according to the prevailing view, the de facto acquisition of dematerialised shares ends with the registration and with the recording of their transfer from the heir's account to the heir's account. There is a difference in the legal significance of the registration with the Central Depository and the entry of the available shares in the book of shareholders with registered available shares. The registration is not part of the inheritance but is a constitutive element, part of the de facto acquisition of dematerialised shares. Registration with the Central Depository is a condition without which no dematerialised shares can be acquired, but it is not a condition for the exercise of the rights attached to those shares, and that is the difference between the legal regime for the acquisition of dematerialised and dematerialised shares.

17. Chapter 3 is devoted to the succession of a partner in a partnership and to the succession of a partner in a company with variable capital. It seems to me that this chapter is not compatible with the title of the dissertation, which analyses the succession of partnership shares only (at least this follows from the title). In partnerships, members do not own partnership shares in the strict sense of the term. One should not confuse the holding of a partnership share with a membership relationship and the consequences of the death of a partner. The subject is not the consequences of the death of members in all companies, but the succession to a shareholding and shares which are not inherent in partnerships. It is therefore beyond

the scope of this topic to consider the consequences of the death of a partner in a partnership or limited partnership. In other words, the work goes beyond its subject matter. On the other hand, it does not cover the succession to shares in a limited partnership with shares, which is a proper limited partnership. As regards the most recent Variable Capital Company, due to the lack of sufficient theoretical developments and especially of case law, the author has not sufficiently and consistently addressed the succession issues related to it. Moreover, it is not clear what is the legal nature of the company share in the VCC. I believe that Chapter Three is redundant, and raises more questions than it gives answers. The work would look different if the topic were devoted to all the consequences of the death of a partner in all types of companies.

18. The opinion on the possibility for a trustee of an unoccupied estate to exercise the rights of a deceased shareholder is interesting. He can receive the dividend following the inherited shares. But in my view he should be entered in the register of registered shareholders precisely as a trustee of an unoccupied estate. Otherwise, it is worth mentioning the contribution of the doctoral student in dealing with the property consequences in respect of company shares in the case of the unconscionable absence of their holder, as well as the other special hypotheses of inheritance of shares united in Chapter Four.

19. Finally, I would like to mention 4 publications on the dissertation topic in: the Proceedings of the Scientific Conference "Knowledge, Science, Innovation, Technology"; in "Property and Law" 2023, vol. 4; in "Commercial and Obligation Law" 2023, vol. 11, in electronic version and a second article in the Proceedings of the Scientific Conference "Knowledge, Science, Innovation, Technology".

The dissertation is accompanied by an abstract that meets all the requirements stipulated in the PRAADB and its implementing regulations.

20. Conclusion:

The presented work shows the following scientific merits: dissertation topic; the first monographic study of the institute of inheritance of company shares and stocks in Bulgarian law; good knowledge of the commercial and inheritance law science in our country and reference to all theories and opinions both in the doctrine and in the jurisprudence on the considered topic; clear and correct presentation; critical analysis of the so far expressed scientific opinions on the problem; complete bibliographic description; independent views of the doctoral candidate on the posed issues.

On the basis of the above, I consider that the dissertation of Ani Dimitrova Kaneva "Inheritance of company shares and stocks" contains scientific and scientifically applied results, which represent an original contribution to science and show that the candidate possesses in-depth theoretical knowledge in the relevant specialty and abilities for independent scientific research, which gives me grounds to propose to the scientific jury, on the basis of Art. 11, para. 2 of the Law on the Development of Academic Staff in the Republic of Bulgaria to award the PhD candidate Ani Dimitrova Kaneva the scientific degree "Doctor of Law" in the scientific field. Social, Economic and Legal Sciences. 3.6. 6.6 Law. Scientific speciality: Civil and Family Law. 05.05.08.

31.05.2024 Reviewer:

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