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Ani Dimitrova Kaneva

INHERITANCE OF COMPANY SHARES

ABSTRACT

OF THE DISSERTATION

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The dissertation “Inheritance of Company Shares” 199 pages, including a title page, a table of contents, an introduction, four chapters dealing with the substantive topic of the dissertation, a conclusion, and a bibliography. There are 362 footnotes. 54 textbooks and monographs in Bulgarian, 13 textbooks and monographs in English, 53 articles and studies in Bulgarian are cited. The bibliography is accompanied by a reference to the case-law used in 84 judicial acts. The list of author's publications consists of 4 titles.

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I. General Characteristics of the Dissertation

1. Relevance of the study

The topic of the dissertation is "Inheritance of company shares". This is the first work entirely devoted to the complex matter of the succession of a partner, respectively a shareholder in a commercial company. Due to the interdisciplinary nature of the topic, it covers issues of both inheritance law and commercial company law.

The succession of company shares is a topic that has become increasingly relevant since the adoption of the modern Commerce Act in 1991. The free establishment and participation in commercial companies, as well as the opportunities that open for entrepreneurs to participate in the commercial turnover in a capacity that avoids the disadvantages and risks that a sole trader has, namely as partners or shareholders is becoming an increasingly preferred form of entrepreneurial activity in the country. Participation in a commercial company has a direct impact on the property of the participant, which gives rise to the need to find answers to the questions that arise on the death of a partner or shareholder in a commercial company. The topicality of the study is also conditioned by the numerous commercial companies registered in the country since the adoption of the Commerce Act in 1991.

The regulation of issues relating to participation in a commercial company does not sufficiently reflect the socio-economic relations reached and the problems arising in connection

with the death of a partner or shareholder. The necessity for the present work arises also from the brevity of the legislator. The legal regulation of inheritance of company shares is scarce and not well systematized. This leads on the one hand to a lot of contradictory case law, and on the other hand, the contradictory case law further deepens the problem and, accordingly, the need for a comprehensive and complete study dedicated to the issues arising in the succession of company shares.

2. Subject, aim and method of the study.

The subject of the dissertation is the inheritance of company shares and the issues that arise upon and in connection with the death of a partner, respectively a shareholder in a commercial company in our country. The dissertation work goes through several preliminary questions, devoted to the basic conceptual apparatus of inheritance and commercial company law, the clarification of which is required first of all by the interdisciplinary nature of the work, and is also necessary to achieve a better argumentation of the theses advocated by the author.

Two problems occupy the central focus of the dissertation:

First of all, the question is raised what are the property consequences for the heirs who have accepted the inheritance of a deceased shareholder or partner in a joint stock company. The property rights of the shareholder or partner fall within the scope of the estate.

Secondly, the main and central question of the study is whether the membership in a commercial company is inherited and from which moment the heir acquires the status of a partner, respectively the status of a shareholder. The answer to this question varies depending on the type of company. The question of the existence or otherwise of the possibility for the general meeting of shareholders to oppose the heirs of a shareholder from acquiring the status of shareholder is also relevant in this respect. Attention is also drawn to the effect of the entry in the register of shareholders of the succession of shares in the company concerned.

The main objective of the dissertation research is to make a monographic study fully dedicated to the succession of company shares, which will answer the variety of practical and theoretical questions that arise in the hypotheses of succession of a partner or shareholder. The aim of the study is to contribute to the enrichment of legal theory in the field of company commercial law and inheritance law, as well as to provide mechanisms for the accurate application of the law on the issues discussed.

In relation to achieving the main objective of the study, several tasks were set:

Firstly – a detailed analysis of the current legislation governing the inheritance of shares should be made. The historical method of research has been used in order to achieve the completeness of the exposition by tracing the development of the legislative framework in the field of inheritance and company commercial law, as well as the relationship between them as far as the topic of the dissertation is concerned. Secondly – to make a systematic and summarised

statement of the various opinions in the doctrine, setting out the author's opinion and the supporting legal conclusions. Thirdly – to analyse the case law decided on the discussed issue. Often it is contradictory, therefore the author's opinion in support of the existing theses is presented.

Different research methods are used in the dissertation, which are necessary to achieve an answer to the set tasks, due to the interdisciplinary nature of the considered problem some of which are:

The historical method makes it possible to trace the development of the legal framework and the concept of inheritance of company shares to clarify what changes it has gone through to reach its current form. The comparative law method allows for the comparison of different opinions of authors from EU member states, the UK and the USA, etc., on the same matter, as well as a comparison of the legal framework in the respective country and the legal framework in our country. The normative method helps to clarify the meaning of specific legal norms in view of their systematic place in the normative act. The normative method is sometimes supported by the logical method, which helps to fill gaps in legislation by applying the law by analogy.

3. Scientific novelty of the work

The topic “Inheritance of company shares” has not yet been studied in a monographic work in legal science.

The hypotheses of inheritance in capital commercial companies, presented in the first and in the second chapter of the

work, are of a contributory nature; the legal situation of the incapacitated and limitedly incapacitated heirs of a partner, respectively of a shareholder in a commercial company is analysed, as well as the ways of exercising the rights of these persons over the inheritance, the volume of which contains company shares and stocks. The author's analysis of the question of whether membership in different types of companies is inheritable is also of a contributory nature, with the necessary comparison between capital and partnership companies and the differences between membership in them.

The issues discussed regarding the succession of the sole owner of the capital in a single-member limited liability company are also of a contributory nature. Controversial issues are addressed and the various opinions in the doctrine and case law are discussed with the author's reasoned opinion and in relation to the recent interpretative practice of the Supreme Court of Cassation on the same issues.

A scientific contribution is the analysis of the hypothesis of inheritance of outstanding shares as well as the analysis of inheritance of vinculated shares.

The dissertation for the first time seeks to answer the question of the inheritance status of the state and the municipality in the case of a vacant inheritance, the volume of which contains company shares and stocks. The hypotheses of the declaration of dishonorable absence and death are also examined, as well as the questions of the exercise of the rights on the company shares and stocks, part of the volume of the inheritance, while it is vacant, or

in the case of the declaration of dishonorable absence or death of a partner, respectively of a shareholder.

4. Volume and structure of the dissertation

The present dissertation consists of 199 pages, including a title page, a table of contents, an introduction, four chapters dealing with the substantive topic of the dissertation, a conclusion, and a bibliography. There are 362 footnotes. 54 textbooks and monographs in Bulgarian, 13 textbooks and monographs in English, 53 articles and studies in Bulgarian are cited. The bibliography is accompanied by a reference to the case-law used in 84 judicial acts.

II. Brief Content of the Work

1. Introduction

The introduction presents in a synthesized form the subject of the dissertation, the need for the research, the relevance of the problem. The aims, the main and additional tasks, as well as the research methods used are presented.

2. Chapter One – "Inheritance of shares in a limited liability company (LLC)."

Chapter one of the dissertation is divided into three sections as follows:

Paragraph 1 is entitled "Historical and comparative legal analysis". The paragraph is divided into two sections. The first section sets out the historical analysis that is necessary to achieve completeness and completeness of the study. The section traces the development of social relations and the economy of the state in relation to the law of succession, company law and the relationship between them in the light of the problem of the thesis. Commercial law emerged as a distinct branch of civil law in the Middle Ages. Until that time, matters of commercial law were not governed by either Roman law or local feudal custom. Thus, the first commercial law appeared in this country as early as 1897.

In its turn, inheritance law in this country has long been governed by the rules of custom. Gradually, social relations came to the need to create a special Law on Succession in Bulgaria. Thus, in 1890, the Inheritance Act was adopted.

The differential treatment of the rights of men and women was not only adopted in the 1890 Act (and the 1896 and 1906 amendments). The 1897 Commerce Act, adopted a few years later, also provided for substantial differences in the legal opportunities of men and women. Thus, Article 9 of the Commerce Act (1897) provides that a woman may not engage in trade without the express or implied consent of the man. It is undisputed that a trader can succeed himself under the Commerce Act.

The second point of paragraph 1 is entitled "Comparative legal analysis". In it, the author makes a comparative legal analysis of the types of companies and the rules for the succession of shares provided for in the Anglo-Saxon and Continental legal systems and those provided for in our country. The differences between the two

legal systems are due to who is the source of law in the respective family. The section focuses primarily on the regulation of the limited liability company in the laws of European countries and the United States. Secondly, the section analyses the rules of succession law. Significant differences are found between the rules in this country and those in force in the UK. For example, there are no limitations on the testamentary freedom of UK citizens, as there are in the UK regarding the reserved portion. Another difference is, for example, the statutory representative of the testator, also called the executor of the will in Great Britain, who in this country is an optional figure. The continental legal family includes the German legal system. Both there and here it is expressly if shares in a limited company are heritable.

The following **paragraph 2** is entitled **“Inheritance of a company share”.** In 7 paragraphs, questions are dealt with as to whether the membership in the limited liability company is heritable; whether a resolution of the general meeting of the partners is necessary for the admission of the heirs as partners in the limited liability company, whether the company shares constitute matrimonial property, etc. It is undisputed that the company shares are heritable based on the provision of Article 129 of the Commerce Act. The dissertation examines the peculiarities of inheritance of a company share, the possibility of the heirs' right to be admitted as partners to be limited already in the articles of association, and the concepts of a company share and a share in the capital of an LLC, through the prism of the issue of inheritance of a partner in an LLC. During the exposition the author concludes that the inheritance of the company share does not automatically lead to the substitution of the heir in the membership relationship,

i.e. that the membership in the limited liability company is not inherited. The author makes a de lege ferenda proposal to amend the provision of Article 115 of the Commerce Act. It is necessary to include in the mandatory content of the articles of association the issue of the fate of the company shares after the death of the partner. If the relevant amendment of the said provision is not adopted, it should be borne in mind that the heirs are third parties to the company and their admission as partners in the company should be affected in accordance with the procedure laid down in Article 122 of the Commerce Act for the admission of third parties to limited liability companies.

The next issue addressed in chapter one of the thesis is in paragraph 2(2) and concerns the legal status of incapacitated and limitedly capable heirs. The author takes the view that the requirements of Art. 65 para. 1 of the Commerce Act regarding the legal capacity of the founders of a commercial company should not be interpreted literally but should be interpreted extensively and should also apply to partners admitted to the company after its incorporation. This supports the common assertion of a personal element in the otherwise capital character of LLCs and prevents compromising the trust between the partners by allowing persons who are not provided by law with the possibility of independently forming a legally valid will to acquire partner capacity and to participate in voting at the general meeting of partners.

Paragraph 2, section 3 deals with the issue of determining the value of shares in a heritable limited liability partnership. The provision of Art. 125 para. (3) of the Commerce Act provides that the property consequences of the termination of membership in a

limited liability company shall be determined in accordance with the balance sheet at the end of the month in which the ground for termination occurred. The provision is dispositive, and the partners may agree in the articles of association another way of determining the value of the company share. At the time of the termination of the membership relationship in the event of the death of a partner, there is a going concern, i.e. no liquidation proceedings are initiated. Since no liquidation share is formed and no assets are converted into cash, it follows that there is no legal basis for determining the amount of the company share on the basis of the market valuation, but the view of the book value shared by the case law and part of the doctrine should be accepted.

In the following **paragraph 4** of paragraph 1 of the thesis, the question of how the rights under inherited company shares are exercised is answered. It is possible for co-ownership to arise between the heirs who have acquired heritable company shares because the company share is indivisible under the Commerce Act. The co-owners of a company share exercise the rights thereunder jointly. Regarding the unpaid capital contribution corresponding to the inherited company shares, the author concludes that the heirs are separately liable, in accordance with the amount of their inherited share, on the basis of Article 60(1) of the Law on Succession.

Paragraph 5, section 1, Chapter One, in its first part, is devoted to wills and covenants of partnership. The second part is on the application of the claim under Art. 1 of the Act. The provision of Art. 129 par. 1 of the Commerce Act provides for the possibility of inheritance of the company share without specifying the type of

inheritance – by operation of law, will or testament. Obtaining a company share by virtue of a testament is in principle a possible hypothesis. In all cases of a private will with the subject matter of company shares in a limited liability company, the effects of the testator's acquisition of the rights under the will in respect of the company shares will attach to him, provided that the provisions of the Law on Succession are complied with. The legatee is the transferee of the shares, but he does not replace or succeed to the membership of the person who executed the will, just as the heir does not inherit the membership.

There is no obstacle to the claim under Art. 1 of the Law of Succession in respect of an impaired reserved part where the volume of the succession contains company shares. The heir's reserved share is always recovered in money. This means that if the heir's reserved share is impaired by N number of company shares, he will not acquire those N number of shares in the restitution, but their monetary equivalent. There is no provision in the Commerce Act for such a redistribution of company shares, therefore it is impermissible to uphold a claim under Art. 30 para. 1 of the Law of Succession can be reflected in the company structure.

Section 6 of paragraph 1 of Chapter One addresses the role of the executor of a will. In respect of company shares, the powers of the executor of the will extend to the acts of management conferred by law. The executor of the will is not the representative of the heirs, but merely assists in the exercise of the rights conferred by the will. He may not collect the income of the estate representing the right to a dividend from a participation in a

commercial company unless that dividend was distributed during the testator's lifetime and was included in a testamentary disposition.

Point 7 deals with the legal position of a spouse who is the legal heir of a partner in a company. The special position of the spouse and how he succeeds with the other lines of heirs is examined. The question of whether shares in companies are PIE or personal property is also addressed. The issue is the subject of Judgment No. 2 in Case No. 2/2001 of the Supreme Court of Cassation, which gives a binding interpretation that the shareholding of a partner with unlimited or limited liability is excluded from the matrimonial property community.

Paragraph 3 of the first chapter is devoted to the succession of the sole owner of the capital of an LLC and the liquidation proceedings of the same. Attention is paid to the question, which was topical at the time of preparation of the dissertation, concerning the grounds for dissolution of an sole owner LLC in case of death of the sole owner of the capital and specifically whether the public prosecutor has the legitimacy to request dissolution of the company on the basis of Article 155(3) of the Commerce Act in the absence of a registered manager for more than 3 months. The author has set out the prevailing and conflicting opinions on the issue and argued in favour of one of them. According to the author, the company is dissolved on legal grounds – the fact of death of the sole owner of the capital. Indeed, there is a gap in the law regarding the question of who is legitimised to initiate liquidation proceedings against the dissolved company. The problem can be solved either by applying the law by analogy or by finding an explicit legislative regulation. The author

argues that the issue should find explicit legislative regulation. It is necessary to make the relevant amendments to the Commerce Act, thus the interest of the legitimate persons will derive from Art. 15 para. 1(3) of the Commercial Register and Register of Non-Profit Legal Persons Act, namely "another person in the cases provided for by law".

Upon the death of the sole owner of the capital, the heirs, in addition to initiating proceedings for the liquidation of the company, may request the continuation of its activities. As used in Art. 157 para. 157(1) of the Commerce Act should not be interpreted narrowly, but should also include the legatees who, on the basis of a bequest, receive company shares, and they should be granted the right, if they meet the requirements of Article 65 of the Commerce Act and the articles of association, to continue the activities of the limited liability company.

3. Chapter Two – "Succession of a shareholder in a joint stock company (JSC)."

Chapter Two is entitled **"Succession of a shareholder in a joint stock company (JSC)".** It consists of two paragraphs. Historical and comparative legal analysis and "§.2. Content of the problem of succession of available shares".

Paragraphs 1, section 1 and 2 provide a brief historical and comparative legal analysis. The regulation of JSCs in the country since the adoption of the Commerce Act in 1897 until today is traced. The rules laid down in French, German and Spanish commercial law in respect of JSCs are briefly examined.

The issues of inheritance of available shares, whether the membership in the JSC is inherited, what is the legal status of the incapacitated heirs, from which moment the heir acquires the status of a shareholder, etc. are discussed. The second part is devoted to the inheritance of dematerialised shares as financial instruments gaining more and more popularity.

In the following paragraphs, the concept of a share is discussed and the question "Is membership of a JSC inheritable?" is answered. From the capital nature of a joint stock company and the characteristics of a share, as detailed by the author, the unambiguous conclusion is reached that shares enter into the scope of the estate of a deceased shareholder.

The primary method of membership formation (through incorporation) is applicable to all corporate entities. The secondary method of membership, such as succession, is only applicable to companies limited by shares. While in the case of inheritance of a company share the membership is not inherited, this is not the case with a share. A share is a document in which the right of its holder to be a member of the plc is materialised – the document contains the right to membership. Inheritance of the share results in inheritance of membership and entry into an existing membership relationship, rather than the creation of a new one in respect of the new shareholder in the person of the heir. The existence of non-proprietary elements in the membership relationship does not preclude membership of a public limited company from being inheritable on a general basis.

Shares are in principle freely transferable (as regards the succession of vintaged shares, see later in the statement) and, as the only condition for their transfer to have effect against the company, their transfer must be recorded in the shareholders' book. The company is disinterested in the personality of the individual shareholder, so that the heir acquires the status of shareholder on the basis of succession without any further action being required (other than notification to the company of the fact of the shareholder's death).

Paragraph 9, section 2 of Chapter 2 deals with the question as to when the heir acquires the status of shareholder. The different doctrinal opinions on the effect of the entry in the register of shareholders are set out. The author takes the view that the entry has effect against the company, but that this requirement should not be approached as a disqualification. If, at the time of the general meeting of shareholders, the change in shareholding is not recorded in the register of shareholders, but the new holder is present at the meeting and has the necessary evidence of the transfer, the new holder should be allowed to vote at the general meeting. The author makes a corresponding proposal de lege ferenda with regard to the provision of Art. 185 para. 3 of the Commerce Act, which could be supplemented with a new sentence for the sake of speed and expediency of the shareholders' law, namely “In the event that the company is not notified in time, the transferee shall be entitled to participate in the general meeting of shareholders if he presents proper proof of the acquisition of shares in the company, after which he shall be entered in the register of shareholders”.

Section ten deals with the issue of inheritance of shares by minors. The law, doctrine and case law allow any person to be a member of a joint stock company, regardless of his or her legal capacity. It follows that the incapacitated heirs of a deceased shareholder may be full members of the JSC. It is possible for shares to belong to several persons simultaneously. Pursuant to Article 177 of the Commerce Act, shareholders must authorise a person to represent them in the general meeting of shareholders when they jointly own shares. In the case of incapable shareholders, this requirement is a turnover inhibitor. The author justifiably proposes an amendment to Article 171 of the Commerce Act, in its new wording, to allow that, in addition to a proxy, the rights under the jointly held shares may be exercised by the shareholders' legal representative.

Section 11 relates to the liability of heirs to inherit outstanding shares. The inheritance of outstanding shares entails the obligation for the heir to pay the relevant contribution. Where the heir has accepted the inheritance outright, he shall be liable for the obligation to contribute both in respect of the property inherited and his personal estate. If the heir has accepted the inheritance by inventory, he shall be liable for the contribution obligation up to the amount of the inheritance received. In the case of incapacitated heirs, there are complications as to what means these persons may use to pay off the inherited shares. It is necessary to amend the legislation accordingly by providing for the possibility of extending the one-month notice period for the exclusion of a shareholder provided for in Article 189(2) of the Commerce Act. The contradictory result would be to violate the principle of equal

treatment of all shareholders. Failure to comply with this principle is grounds for the annulment of the decision of the general meeting of shareholders (GMS). However, since it is accepted that a shareholder may also be an incapacitated person, the author considers that the articles of association should be able to provide for certain mechanisms to protect such persons.

Section 12 is devoted to the important question of the succession of vinyl shares. The author concludes that the rules on the vindication of shares are not applicable in the case of succession to shares. Membership arises from the time of acquisition of the share. That is to say, the assessment of whether a person meets certain requirements for acquiring membership rights cannot be made because they pass to the heir by virtue of the succession.

Section 13 relates to the bequest and devise of shares and separate rights thereunder. Shares shall form part of the estate, both in the case of intestate succession and intestate succession. The author considers the question of what determines whether the bequest is direct or indirect. It is concluded that a bequest of shares can be either direct or indirect, depending on the testator's intention and the wording used. In both direct and indirect bequests, in order to become a shareholder, the legatee must be entered in the share register. The issues of reserved and disposable shareholding and what is the value of the shares to be taken into account in determining the amount of testamentary freedom are discussed. The author reasoned that the book value is relevant. Nor should the disposable and reserved portions of the estate be determined on the

basis of market value, since a 'sale' of shares to third parties does not take place in the case of a succession.

Section 14 is entitled “Succession of dematerialised shares”. The author concludes that although dematerialised shares do not have a tangible medium, they continue to have the substance of cash shares and it is not correct to distinguish in principle between the two types of shares. They constitute a facilitation in commercial turnover and their introduction into Bulgarian legislation is a response to the development of shareholder law and dematerialisation worldwide. For this reason, a number of technical steps must also be carried out in the event of their succession because of the special registration regime to which they are subject.

The author proposes to amend the provision of Art. 1 of the Regulations of the Central Depository. According to the current wording of Article 172, par. 1 of the Regulations, the registrar shall submit an order to the Central Depository (CD) for registration of a transfer of financial instruments by succession under the law after requiring certain documents specified in the Regulations. The term “transfer” as used by the legislator refers to the transfer of financial instruments from a client account to a client account. No equivalence could be drawn between a 'transfer' and the transfer of property to the heirs' patrimony on the basis of universal succession. It would be appropriate to amend the provision accordingly, using only the term succession instead of transfer – “The registrar shall submit an instruction to the Central Securities Office to register the succession by operation of law of financial instruments and their transfer to client accounts of the heirs...”.

Regarding the question from which moment the heir of dematerialised shares becomes a shareholder, the thesis reaches the following conclusion: the registration in the CD is not part of the factual composition of the inheritance, but represents a complex of subsequent actions that ensure the heir's ability to exercise the rights under the inherited shares.

4. Chapter Three – "Succession of a partner in a partnership. Succession of a partner in a partnership with variable capital."

Chapter 3 deals with the succession of partnership interests in partnerships. A separate section deals with the newest type of commercial company envisaged by the Bulgarian legislator – the Variable Capital Company. A brief comparative legal and historical analysis is made. The genesis of the general partnership (GP) and the limited partnership (LP) is traced, as well as the development of their regulation in our country. In a comparative-legal aspect, the rules for the succession of a partner in an LP and a limited partnership under Bulgarian commercial and inheritance law are compared with those in force in France and Germany, as well as in the countries of the Anglo-Saxon legal system.

Paragraph One of Chapter Three is entitled "Succession of a Partner in a General Partnership (GP)". It deals with the nature of the GP and the distinction between a partnership interest and a participation in the GP. One of the manifestations of the personal nature of the general partnership is the death of a partner as a ground for dissolution of the partnership. Art. 93 of the Commerce

Act lists the cases in which the company is dissolved, as item 4 of the same states "unless otherwise agreed – by the death or placement under full disability of a partner or the dissolution of a partner – a legal person". In terms of the question of what the heir of a deceased partner in the general partnership inherits, the author accepts the following answer – the right to membership in the general partnership is strictly personal – it is lost with the death of the partner. Due to the complex nature of the membership relationship and the property and non-property rights contained therein, only the property rights should pass to the heirs.

Art. 97, par. 1 of the Commerce Act provides that heirs may join the company in place of the heir. This is done through an informal will addressed to the company. However, this possibility of joining the company is not part of the succession but is based on what is provided for in the articles of association. As stated earlier, membership is not inherited. Although there is a stipulation in the articles of association based on Art. 97 para. 1 of the Commerce Act for the successors to take the place of the heir, the author considers that the provision can bear some criticism. The assumption that no statement by the partners is necessary to accept the heirs, but that they automatically join the company, may lead to the real danger that the qualities of the heir and the heirs may substantially diverge. Such a hypothesis leaves the "doors" of the GP open, which is unacceptable given the non-transferability of a share in the GP in principle.

The regulation of the GP does not use the concept of a share in the company, accordingly, there is no provision for co-ownership, unlike in the case of LLCs. The author assumes that if there is more

than one heir of a partner in an GP who has expressed a wish to join the company, the respective number of membership rights arises for each of them within the scope of their inherited shares.

Paragraph Three of Chapter Three is devoted to Succession of Partner in a Limited Partnership (LP). The LP reveals specifics regarding the succession of limited partners. The LP does not answer the question of what the consequences are for the partnership upon the death of a limited partner. Accordingly, the application of the provisions on the termination of limited partnership membership leads to the conclusion that only the death of a limited partner entails the dissolution of the partnership, unless otherwise provided. Of course, if there is only one limited partner the consequences of his death should be the same. As in the case of an GP and an LLC, membership in an LP is not inheritable.

Therefore, the limited partner's heirs receive the property value of the limited partner's interest. The doctrine holds that the heirs of a limited partner become members of the limited partnership without the consent of the other members of the partnership. In the opinion of the author of the dissertation, such a statement finds no legal support. Based on inheritance, the heirs receive the property value of the limited partner's membership, but do not automatically acquire partnership status. They are third parties to the partnership and the provision of Article 97, para. 1 of the Commerce Act as in case of death of an unlimited partner in the limited partnership – they may join the company if agreed in the articles of association. This entry into the company must be preceded by an application to the company.

The question arises – can the heirs choose whether to enter as limited or unlimited partners? The heir's capacity as a partner is not bound by the heir's capacity as a partner, as there is no inheritance of membership. The only restriction is that the requirement of Art. 99 para. 1 of the Commerce Act with regard to the existence of limited and unlimited partners in order for the LP to exist as such. If all the heirs want to be limited or unlimited partners, the company should be converted into a limited liability partnership or a limited liability partnership, respectively.

Paragraph Four of Chapter Three is devoted to Succession of a Partner in a Variable Capital Company (VCC). A VCC is the newest type of company provided for in the LC in a new chapter – fifteenth “a” (art. 260a-260ja). By its characteristics, the SPC combines the advantages of the regulation of JSCs and LLCs. However, for the purposes of the law, it is not a capital trading company as there is no minimum capital requirement. The provision of Article 260h of the Commerce Act expressly provides that the company share may be inherited, transferred, and pledged. The free transferability of shares, which is characteristic of a JSC, is also adopted here, as it is provided that the company share is freely transferable, unless otherwise provided. At the same time, the provisions of Art. 260h, para. 3 of the Commerce Act are reminiscent of the rules for the successors of a shareholder in the general partnership provided for in Art. 97 of the Commerce Act. It is provided that within three months from the death of a partner, his heirs may express their wish and join the VCC. The author concludes that the membership in the VCC is heritable, as a free transfer of the company shares is provided for. Moreover, Article

260h(4) of the Commerce Act provides that the succession of company shares must be entered in the register of members in order to have effect in relation to the company.

5. Chapter Four – "Special hypotheses of inheritance of shares"

The fourth and final chapter is entitled "Special hypotheses of inheritance of shares". In several paragraphs the following issues are dealt with: the reverse effect of the acceptance of the inheritance containing company shares; the exercise of rights under company shares, part of the volume of the unoccupied inheritance; the exercise of rights under company shares in the case of unconscionable absence; the application of Art. 10 and Art. 11 of the Law of Succession in relation to a holder of company shares and stocks who is absent without a conscience; Consequences of the absence without a conscience for the legatees; The legal position of the state and the municipality in the case of passing of inheritance on the basis of Art 11 of the Law of Succession.

Central to the study is the question of the ex tunc effect of the acceptance of an inheritance containing company shares. According to the provision of Article 48 of the Law on Succession, the succession is acquired by its acceptance and the acceptance has effect from its opening, i.e. retroactive effect. The rule applies without exception also to the acceptance of an inheritance containing company shares. Although membership of a limited liability partnership is not inheritable, the acceptance of an inheritance has effect from its opening and the heir is entitled to

the property equivalent of the deceased partner's share at the time of his death. The acquisition of the capacity of partner is outside the scope of the succession, i.e. it is outside the question of the retroactive effect of the acceptance.

On the other hand, a JSC is a capital company and according to the author's thesis, which coincides with that in the doctrine and case law, the membership in a JSC is inherited. That is to say, the effect of the acceptance of the succession is preserved ex tunc, but the acquisition of the shares on the basis of inheritance or a legacy has effect for the company from the moment the circumstances are recorded in the shareholders' book.

For the period from the opening of the succession until its acceptance, the estate left by the heir is practically nothing. The acts which the law permits to be done with the estate are acts of administration and, in some cases, with the leave of the court, acts of disposition. When an inheritance is opened, the management of the inherited property is usually assumed by any or all of the heirs, without this implying that they have expressly accepted the inheritance. Article 59 of the Law on Succession provides for the possibility of appointing an administrator of the estate. The figure of the administrator of the estate is optional in our country. Regarding the management of an unoccupied estate, the contents of which include company shares and stocks, the author comes to several conclusions generally applicable to all types of commercial companies. The right to vote, part of the company shares, is a personal right. In LLCs, GPs, LPs, it is not inherited, but the heir must be admitted to the company in order to exercise his voting rights. The pure capital character of the JSC and the possibility

provided for in Art. 220 para. 1 of the Commerce Act for participation in the general meeting by proxy leads to the conclusion that the trustee of an unoccupied succession should be granted the right to vote in the general meeting in the event that action is necessary in order to preserve the succession, in particular the shares in its volume, and in the event that the action falls within the ordinary management and does not lead to any disposal of the shares.

In principle, the right to vote is a personal right of the shareholder. It may not be exercised by other persons, except under the conditions of express authorization provided for in Article 137, paragraph 6 of the Commerce Act in respect of LLC, Article 260u of the Commercial Companies Code in respect of VCCs. Regarding limited liability companies, in order for there to be an express authorisation, it is necessary that the authorising party has acquired membership in the relevant commercial company. It follows that the trustee of the estate, whether an heir who has not yet accepted the inheritance or a court-appointed special trustee, should not be able to exercise voting rights over the company shares. The strictly personal nature of the GP excludes, as a matter of fact, the possibility of the voting rights being exercised by a third party for the company. Regarding the LP, it is again inadmissible for a third party to exercise voting rights. The position of the unlimited partner is like that of a member of the general partnership and, as I have pointed out, the strictly personal nature of the partnership necessitates personal action in the exercise of the partner's rights. On the other hand, the limited partner, according to the literal interpretation of the law, does not have the right to manage and cannot suspend the decision of the unlimited partners,

which makes the participation of this type of partner in the management and representation in principle inadmissible. The author came to similar conclusions regarding the scope of the representative power of an appointed representative of an absentee within the meaning of Article 8 of the Persons and Family Law.

Point 2 deals with the consequences of a dishonourable absence for legatees. Pursuant to Article 12 of the Persons and Family Law, legatees and persons who have rights dependent on the death of the absentee may apply to be admitted temporarily to enjoy those rights. With regard to company shares, Article 12 of the Persons and Family Law applies as follows: a potential legatee of shares in a public limited company could exercise the rights attached to them on the basis of the decision under Article 12 of the Persons and Family Law without any legal impediment, since, due to the purely capital nature of the public limited company, it is not interested in the specific identity of the shareholder. The hypothesis of a company share covenant looks different. Regardless of whether it concerns company shares in an LLC, a general partnership and a limited partnership, it is inadmissible to grant an application under Article 12 of the Persons and Family Law for granting the usufruct of the company shares subject to the covenant. Considering the weight of the personality of the individual partner and the fact that the non-property rights under the partnership share are directly related to the personality of the partner, it follows that it is not permissible to grant the enjoyment of rights under a partnership share in the said companies.

An important place in the fourth chapter of the dissertation is occupied by the question of the application of Article 11 of the Law

of Succession with regard to inheritance, the volume of which contains company shares. Section 7 of Chapter 4 deals with the question of the application of Article 11 of the Law of Succession in the case of an inheritance comprising company shares. Undoubtedly, company shares in an LLC and shares in a plc form part of the estate. The provision of Article 11 of the Law on Succession would be applicable in case the articles of association, or the articles of association do not provide for the consequences of the death of a partner/shareholder in respect of the company shares held by him during his lifetime.

If it is assumed that the shares are regarded as special movable property and, based on Article 11 of the Law, pass to the municipality, the incorrect conclusion may be reached that the shares in companies pass to the State in the hypothesis of Article 11 of the Law of Succession. This leads to an illogical legal result. In the one case, shares in a company pass to the State, while in the other case the shares pass to the municipality, solely because the latter are materialised in a document having the characteristics of movable property. To avoid this illogical result, the author alternatively proposes two legislative changes: The first is an amendment to Article 115 of the Commerce Act regarding the mandatory content of the articles of association. The author envisages the creation of a new point 9, which would read "the consequences of the death of a partner with regard to the shares held by him and the possibility of his heirs being admitted as partners in the company, as well as the consequences of the death of the partner with regard to the shares held by him in the event that there are no heirs." It would be most logical for the two types of shareholding in a commercial company to be concentrated in

one of the two entities provided for in Article 11 of the Law of Succession – for example, the municipality. In this last part of the dissertation, attention is also paid to the question of whether it is possible for the state or the municipality to acquire membership in a commercial company based on Article 11 of the Law. Allowing the State or a municipality to participate in a commercial company in the event of a transfer of shares to it based on Article 11 of the Law of Succession is contrary to the basic principle of State participation in public undertakings. According to Article 5 of the Law on Public Enterprises, the basic principle is that the State/municipality should participate in public enterprises when the public interest so requires, to 1. eliminate existing market defects; 2. provide goods or services of strategic importance or those related to national security or development; 3. manage assets strategic for the State. Moreover, the law speaks of the establishment of an enterprise with state or municipal participation, and nowhere mentions the possibility of inheriting such an enterprise.

The dissertation ends with a Conclusion. In it the main results of the scientific research according to the objectives, the set tasks, and the answers, which the author has reached in the process of work on the dissertation, as well as the proposals de lege ferenda are systematically derived.

Publications related to the dissertation topic

1. Kaneva, Ani. Inheritance of a Company Share in an LLC. Legal status of the incapacitated heir. In: Proceedings of the scientific conference “Knowledge, science, innovations, technologies”, pp. 380 – 392, ISSN 2815-3472 (Print), ISSN 2815-3480 (CD);

2. Kaneva, Ani. Inheritance of available shares by minors. Ownership and Law, 2023, vol. 4, pp. 50 – 61; ISSN 1312-9473;

3. Kaneva, Ani. Succession of a Partner in a Variable Capital Company. Commercial and Bond Law, 2023, vol. 11, available in the electronic edition of the journal ISSN 1314-8133.

4. Kaneva, Ani. Inheritance of the Sole Proprietor of the Capital of an EOOD. In: Proceedings of the scientific conference “Knowledge, science, innovations, technologies”, pp. 210 – 222 ISSN 2815-3472 (Print), ISSN 2815-3480 (CD).