Plovdiv University "Paisii Hilendarski"
Faculty of Law
Department of Civil Law

Dissertant: Nikola Petev Yovchev
Scientific supervisor: Assoc. Prof. Velina Todorova

The Effect of the Testament under Bulgarian Succession Law

ABSTRACT

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1. General characteristics of the dissertation

1. Relevance of the study

The testament is one of the classical institutes of the law of succession. As a legal concept, it has existed since the time of Roman law, but the concept of the transfer of specific property

rights under the will of the deceased holder has accompanied mankind since the emergence of the idea of private property. The institute has solid foundations in the Bulgarian legal tradition - both in older times and in our post-liberation history. However, despite its traditional character and widespread application, a visible problem emerges from the fact that testaments often turn out to be vague. In addition to citizens drawing up the relevant testamentary dispositions, it not infrequently creates difficulties for active lawyers with many years of experience in the field of succession law. This applies equally to lawyers offering assistance to citizens, individuals entrusted with public powers such as notaries and even magistrates responsible for resolving legal disputes with *res judicata* effect. Indicative of this trend are the numerous doctrinal disputes and contradictory case law on a number of issues. This circumstance could be explained not only by the complexity of some practical aspects, but also by the lack of a sufficient number of in-depth studies in Bulgarian doctrine aimed at clarifying the controversial points and finding appropriate solutions. The problems thus outlined are further aggravated by the outdated legal framework, the insufficient synchronisation between individual institutes and the lack of the legal necessary updates to address these imperfections.

The dissertation research is focused on the examination and analysis of the sporadic information offered by various sources, reasoned advocacy of opinion on controversial issues, and also proposals for new solutions based on the current achievements in legal science.

2. Subject, aim and methodology of the thesis

The subject of the study are the provisions regulating the testament and their interrelation with the other institutes of inheritance and civil law.

The main objective is to highlight the key legal features of the testaments, their legal regulation and practical implications. In this way, it is possible to outline in a thorough and reasoned manner the operation of this legal institution, viewed through the triple prism of the statutory framework, existing doctrinal reasoning and

case law. In order to realise this objective, the following immediate tasks are set:

- To make own analysis of the existing normative regulation, based on the systematic consideration of the testament, in the context of other inheritance law institutions; the historical development and the sources from which the Bulgarian inheritance law is reciprocated;
- Discuss the views expressed in the doctrine and argue the merits and demerits of opposing theses on controversial issues;
- Examine the case law on the main issues, critically analysing it and identifying key trends and consistencies with theory;
- To reach conclusions on possible optimisation in the areas of theory, enforcement and future legislative changes.

To achieve the stated aims and objectives, a complex methodology combining general scientific and special methods is applied. In order to fully address the questions posed, the following methods were used:

The historical method is applied in the relevant systematic parts in order to reveal the genesis of the testament and its related institutes. The aim is thus to reveal the social needs and guiding principles that led to the creation and development of the testament, and also the adaptation of the means used to the specifics of the particular society.

The comparative law method is used to compare with similar Romano-Germanic legal systems. In this way, the means through which some of the solutions have been reciprocate into Bulgarian law and the way in which they are applied in the country from which they have been adopted is traced. Thus, it is possible to critically analyse the legal framework and to draw suggestions for interpretation, enforcement and future amendments to the current legislation.

The normative method aims at revealing the precise meaning of the legal norms in order to highlight the specificities of the institute and to reveal the precise way of their application. Due to certain normative deficits and the excessive level of abstractness

of the regulation, the normative method is insufficient in itself. In order to achieve the necessary results, it is combined with the normative-logical, teleological and systematic methods.

The normative-logical method allows filling gaps through the means of corrective interpretation, enforcement by analogy and by argument of the stronger ground, etc.

The teleological method aims at discovering the purpose of legislation in order to ascertain the actual meaning embedded in a particular rule of conduct.

The systematic method allows the legal norms to be considered as a systemic complex with internal linkages aimed at achieving a certain result. Only by considering the rules of conduct in their interrelation is it possible to reveal their full meaning and interaction.

In the study, political science, economics and sociology methods are used in a subsidiary way. In the context of particular topics, they help to analyse the conditions under which certain legal norms are adopted and applied. In this way, it is possible to reveal both the needs that are being met and societal changes that might suggest a different interpretation through the prism of time.

3. Structure of the dissertation

The dissertation is structured by a table of contents, an introductory part describing the subject, objectives, goals and methodology of the research, six chapters dealing with different aspects of the problem, a concluding part summarizing the conclusions and an attached bibliography. The total length of the dissertation is 260 pages and includes 416 footnotes. Various decisions and rulings of the higher courts are referenced and discussed 64 times in the study, aiming to illustrate the practical implications of the issues discussed.

The text is in line with legislation, case law and doctrinal research as of 01.03.2024.

4. Bibliography

In view of the objectives of the dissertation, a bibliographic reference was prepared, including 206 sources - 31 books and 175

articles. Of these, 103 titles have been cited and referenced, including editions in Italian, English and Russian. For the purposes of the study, native and foreign regulations were used.

2. Brief summary of the main points in the dissertation

Introduction

The introduction is developed to outline the subject, objectives and methodology of the study. It discusses the relevance of the research, the main issues and the structure of the thesis.

1. Chapter One "The Origin and Development of the testament"

Chapter 1 of the study focuses on the historical analysis in the context of the development of the law of succession. The genesis of the idea of the testament occurred within Roman law. In order to trace the origins and development of this institution, however, a brief reading of the emergence of the law of succession as a whole is offered. In this way, a historical context can be gained, since, like most legal phenomena, the institution of testament was the product of evolving social relations and the needs of civil circulation. No legal institute within a particular group of social relations can be elucidated if it is considered in a vacuum, without keeping in mind its logical and systematic belonging and also its conceptual evolution.

The first paragraph discusses in general terms the genesis of the idea of the law of succession as a whole in its correlative relationship with private property as one of the first and fundamental objects of succession. The exposition moves from the generalities necessary to outline the conceptual background to the specific issues concerning testamentary dispositions and testaments in particular. Some of the earliest societies and the way in which succession arose in them are used as examples.

The second paragraph focuses on the foundational provisions established within Roman private law. The need for this reading is suggested by the fact that the foundations of modern civil law were laid precisely in Ancient Rome. This fact is also particularly evident in the context of the law of succession of the states of the continental legal system. The original formulation of the testament as a legal institution was also precisely within Roman law. The different types of private testamentary dispositions and their

evolution during the different historical periods of development are presented.

Finally, the third and fourth paragraphs trace the historical transition in the Bulgarian legal system from the establishment of the Bulgarian state to its conquest in the late 14th century and from the restoration of the Third Bulgarian State to the present, respectively. Paragraph three deals with the transition from customary legal norms to the gradually increasing influence of Roman law, transmitted through simplified codifications such as the Eclogue. There is a specific collision between written law and legal custom, leading to the creation of a unique legal system. Even after the restoration of the Bulgarian state, the opposition between written law and custom persisted. It is particularly pronounced in the area of inheritance law, due to the contradiction between the progressive regulation reciprocate from the Italian Civil Code and local custom. The main cause of conflict was the equality of the rights of heirs of both sexes, which was not accepted in Bulgarian society at that time. Overcoming these difficulties was linked to a specific penetration of custom into legislation, through the making of appropriate normative amendments, which in not a few cases had a regressive effect.

Finally, attention is paid to the changes based on socialist law on inheritance relations and the subsequent changes after the transition to democracy. This peculiar process of development leads to the formation of an eclectic regulation, reflecting the multiple influences on norm-making.

The importance of this chapter is revealed in several ways. By tracing the societal needs that led to the legal regulation of a particular institution, the basic guiding principles that served its development can be identified. The historical analysis shows the means of solving various problems in practice arising from the needs of the society within which the legal system is applied. The conclusion of this analysis can be summarised in the observation that most of the means of regulating testamentary dispositions have existed since antiquity and their implementation is not so much a matter of legal innovation as of expediency. It is necessary to identify the needs of the legal turnover at a particular time in

order to choose the right balance of legal means to optimize it. The scope for new solutions can be found primarily in injunctions in respect of new rights and bodies of law that are premised on the more complex social relations of the day.

2. Chapter Two " The Legal Nature of the testament. Characteristics and Distinctions "

On the basis of the proposed historical reading the derivation of the main features of the testament is based. Some of these emerged at its inception, while others crystallized as a result of the long development of the understanding of this institution. In chapter two, the subject of analysis is the completed concept at the present time, within the framework of Bulgarian legislation.

As a legal institution, the testament is inseparably linked to the right to property as a kind of means for its preservation and development. It may reasonably be argued that the inviolability of private property and testamentary freedom are logically linked and complementary. While inviolability protects property during lifetime, testamentary freedom allows an individual to secure the material well-being of his relatives and to guarantee fulfilment of obligations vis-à-vis his creditors. This possibility facilitates the satisfaction of the non-pecuniary (moral, ethical and spiritual) interests of the testator. They serve as a motive for the testamentary disposition *mortis causa*, without of course turning the will into a form of 'consideration'.

In the legislative effort to achieve this result, the testament appears to be a precise instrument provided by civil law. Unlike general testamentary dispositions, it provides a considerably greater degree of specificity as to the right or set of rights conferred. Moreover, through the application of the different varieties of testament, it is possible to modify both the right itself and the way in which it will pass into the testator's patrimony. Although as a rule private testamentary dispositions do not include a proportionate part of the obligations included in the succession mass, by means of modalities such as condition and burden, the testament may also be bound by a certain obligation (be it a part

of the testator's obligations or an additional requirement imposed by the testator himself).

A functional reading of the testament provides basic guidance about its social role, but also raises questions about the normative framework through which the goals of the institution should be achieved. In order to find a satisfactory answer, it is necessary to consider the legal nature of the testament as a legal act and also the special rules laid down in the Succession Act. This approach makes it possible to propose a definition of the legal phenomenon that is able to capture its complex nature. It is only after analysing these guidelines that it is possible to examine the operation of the legal institution itself, its practical manifestations and the controversial topics it provokes.

Paragraph one of chapter two focuses on the not easy task of arguing for an up-to-date definition of testament. To this end, its main legal characteristics as a type of unilateral transaction satisfying certain characteristics are firstly derived. Among these features, the main attention is paid to the qualities of a unilateral, formal, gratuitous and revocable transaction *mortis causa*. It is in view of the qualification of the testament as a type of transaction that the necessary content which the will must contain in order to qualify as a testament is also discussed, as well as the application of the general rules under Art. 44 of the Contracts and Obligations Act.

Next, are presented definitions proposed by various authors in the doctrine and discussed their similarities and differences, as well as possible reasons for their emergence. Finally, a definition derived through an eclectic approach is proposed, aiming to include the main defining characteristics of the legal institute.

Paragraph two presents the institute through the prism of the beneficiary, namely the legatee, by outlining the different powers that are tied to the capacity in question. Particular attention is paid to the principal power of the legatee, namely the binary option to accept or reject the testament. This power could be exercised explicitly or tacitly, and in the case of acceptance, the testament could be accepted outright or by inventory. Depending on the choice made, a variety of legal consequences could occur. In

addition to the basic right to accept or refuse a will, the law also provides for a number of ancillary rights which safeguard the interests of the legatee and provide him with the necessary legal instruments to protect them. Among them are the powers in relation to the declaration of the will, regulated in Article 27 of the Succession Act, the possibility to set a time limit for the heir to express his will whether he accepts or rejects the inheritance under Article 51 of the Succession Act, etc. In addition to rights, however, with a view to acceptance, there is also the risk of being held liable for inheritance obligations in connection with Article 66(2) and Article 68 of the Succession Act, of seeking a reduction of the testamentary disposition in connection with an impaired reserved portion under Article 30(1) of the Succession Act, obligation to fulfil certain conditions or burdens, etc.

The third paragraph discusses the similarities and differences between testaments and other institutions within and outside the law of succession. In doing so, it creates important distinctions and highlights some of the key features of the institute that place it in its own category. Among the institutes in relation to which a comparison is made are general testamentary dispositions, private succession in favour of municipalities under Article 11 of the Law, rights in favour of heirs arising in the hypotheses of Article 12, para. (1) and (2) of the Law, and life insurance.

The last paragraph draws attention to the impact of modalities on private testamentary dispositions. Succession Act explicitly addresses the possibility that testamentary dispositions, as a form of unilateral transaction, may be bound by a modality. Modalities, or also conditional wills, are part of the optional content of legal transactions and have a wide application in private law, with the possibility of their establishment being revealed, in addition to civil law branches, also in labour and commercial law.

Succession law deals with this possibility explicitly, as Art. 17 (1) stipulates some specific features of testamentary disposition made under a starting or final term. In view of the length of the matter under consideration, paragraph four is divided into an introductory part and three sub-paragraphs, each of which devotes

attention to a different type of modality and its significance in relation to the effect of the testament.

The first part discusses the implications of the condition, as a type of modality that makes the consequences of the injunction contingent on the occurrence or non-occurrence of some future uncertain event. In view of the impact of the condition on the legal consequences of the testamentary disposition, two categories are distinguished - suspensive and terminative. In one case, the occurrence of the event will give effect to the testamentary disposition. Conversely, in the case of the condition precedent, its legal effects will be suspended. The lack of detailed regulation both in the general acts of civil law and in the special law makes it necessary to analyse the case-law and doctrine in order to arrive at the meaning intended by the legislator and its application to the exact will of the testator.

In addition to the classical division of conditions, attention is also drawn to the personal substitution, regulated in Art. 21(1). It is achievable by adding a positive condition, upon the fulfilment of which one successor will be replaced by another. In the present case, this condition is limited to the impossibility of a person to receive the testamentary succession due to death, renunciation of inheritance or lack of dignity. By this construction, the testator could ensure that the property subject to the disposition would not be distributed by operation of law. As far as the contingent legatee is concerned, no subjective right arises in his favour, but only a legal expectation, the realisation of which is possible pending the eventual acceptance of the testamentary disposition by the titular successor.

Other doctrinal divisions are also analysed in the light of the practical consequences they entail. Such are the divisions of positive and negative conditions, or in other words, the dependence of the disposition on the occurrence or non-occurrence of the identified uncertain event. The classification with regard to the time at which they came to pass - before or after the death of the testator - and the consequences of that circumstance are also considered. Finally, the consequences of conditions which are presupposed by the will of a third party are

discussed in the light of testamentary freedom and the prohibition against introducing third parties' wishes into testamentary instruments

Subsequently, attention is paid to the time limit. In a legal sense, the concept of term could be considered in different aspects. In the context of modalities, time limits are defined as a period of time or other certain event determining the moment of occurrence or termination of a legal effect, and based on this division they are again suspensive and terminative. In the case of testamentary dispositions, these two main categories have a specific application in view of the special provisions of the Law on Testaments. According to Article 17(2) *in fine of* the Succession Act, the initial period in respect of general testamentary dispositions is deemed to be unwritten. The first hypothesis of the same text, on the other hand, deals with the transformation of a general testamentary disposition under a final term into a private disposition for fruitful use. A linguistic interpretation of the first part of that provision and, *per argumentum a contrario*, of the second part, which invalidates the suspensive period, leads to the conclusion that those restrictions apply only to universal dispositions and do not apply to private dispositions. That provision constitutes a specific manifestation of the partial nullity which allows the injunction itself to be maintained and only the modality to be invalidated. On the other hand, a testament both suspensive and terminative is admissible. In the case of a testament under a suspensive term, the object will remain in the possession of the heirs until its occurrence. Only after the expiry of the period will the disposition produce its legal effects. Until that time, the subjective right exists in a dormant state which prevents its exercise. With a terminable term, on the other hand, the testamentary right would contain within itself a period of time (respectively, the occurrence of another certain event) at the expiration of which its effect is terminated and the right passes to the next successor in law or intestate. Thus, it can be summarised that in all cases both the suspensive and the terminative periods have a suspensive effect on some persons and a vesting effect on others. The division is based on the perspective of the successor against whom the term is -

when the action is terminative for the legatee we speak of a terminative term, and when it is suspensive we speak of a suspensive term.

The current regulation of this modality leads to legal uncertainty and provokes certain objections. In this sense, for example, the legislator transforms the fixed-term general testamentary dispositions into a testament of usufruct, qualitatively modifying the scope and nature of the disposition, but remains silent with regard to the fixed-term testament, neither modifying it into a right of usufruct, nor providing for any deterrent mechanism to protect the interests of the other successors.

Finally, the analysis focuses on the burden. By including the modality burden, a legal obligation is imputed to the successor against whom it is addressed. What is specific about encumbrance is that it applies only to gratuitous transactions, and its regulation is explicit in the context of both testamentary dispositions (Articles 17 and 18 of the Succession Act) and donation (Article 226(3) of the Obligations and Contracts Act). By accepting the testamentary disposition, the successor in title consents to its full content, thereby binding himself to the conduct (consideration) required of him. The specificity stems from the fact that, although the legal obligation thus created is binding and creates a contractual right to demand action by anyone concerned (Art. 18, first paragraph, of the Law), the absence of the required conduct does not entail the possibility of invalidating the disposition (Art. 18, second paragraph, of the Law). It should also be pointed out that an obligation in the substantive sense arises only when there is sufficient determination of the subject in whose favour the burden and of the consideration due. In other words, unlike other modalities, the burden is not binding as to the effect of the main content of the disposition, but only creates an additional and relatively independent element in the succession.

The particularities of the encumbrance thus established imply a variety of questions - who are the interested parties entitled to demand the enforcement of the encumbrance, what is the penalty

for non-performance, in which cases the defect of the encumbrance will lead to the invalidity of the entire order, etc.

Furthermore, the burden also reveals a particular significance in relation to private testamentary dispositions. As has been pointed out, in many hypotheses the indirect testament is established precisely by its application. The optional content of the testamentary instrument under consideration is often defined as an encumbrance through the prism of successor obligations and as a testament from the point of view of the person in whose favour it is made. Of course, this variation does not exhaust the scope of the burden, and whether it can be defined as correlative to an implied testament depends on various factors, the main one being the persons in whose favour it is established.

Finally, attention is drawn to the difference between condition and burden, as despite their proximity, the two institutions imply radically different legal consequences.

3. Chapter Three " Testament Types and Their Practicalities "

Chapter three is aimed at creating an internal distinction within the general concept of the testament. The object of this work is not mere purposeful differentiation, but the derivation of categories that are distinguished on the basis of easily identifiable legal features and lead to the occurrence of specific practical consequences. These consequences are apparent in view of the time of the passage of the right, the need for the heirs to perform certain acts, the scope of the right, the additional regulation applicable, etc.

The first paragraph discusses a division familiar from Roman law and leading to significant implications about the effects of the disposition. The category in question divides the testament into direct and indirect. It discusses situations in which the disposition has an immediate transferring effect or alternatively produces a contractual obligation directed to the heirs or to another legatee. In the case of a direct testament, the factual composition of the succession is completed by the expression of a valid will by the testator and the execution of an acceptance by the legatee. From

that moment, the object of the disposition (right or set) passes directly into the testator's patrimony. Conversely, in the case of an indirect testament, a contractual obligation is created for one or all of the heirs or legatees to carry out certain dispositive acts which result in the succession. These features are of interest because they provide the possible means of defence by which the legatee could exercise his right, the regime through which the liability for the legatee's obligations is realised in certain hypotheses and also other details, such as the moment at which the right passes to the successor.

Paragraph two is devoted to the particularities that arise in view of the type of right subject to the injunction. These peculiarities are related to the special legal regime of certain property rights, specifics in the transfer of bond rights, etc. In this part of the study the analysis is rather schematic, since the chapter devoted to the possible object of the testament deals with the issue in depth.

The third paragraph offers a statement of the meaning of the type of succession that is being established - constitutive or translational succession. The division of private testamentary dispositions into transferable and vesting dispositions is important because it determines the part of the subject matter and the extent of the powers that are transferred to the successor. These parameters are outlined by the testator himself within the limits established by law, and their effects and influence on the subject matter of the testament only occur after the death of the holder. In view of the presence or absence of such remodelling of *mortis causa* rights, two categories are observed. It should be stressed that some rights could only be subject to one type of succession - for example, the right of usufruct in favour of the heir is extinguished *ex lege* until his death and cannot be subject to translative succession. For this reason, a right of usufruct established only by the heir himself by constitutive succession could be the subject of the testament.

The fourth and final paragraph draws conclusions from the analysis proposed in the previous section. It seeks to highlight the importance and practicalities of the different categorisations.

Finally, it discusses the interrelationship between them and the combination, by necessity, of an injunction with each of the categories presented.

4. Chapter Four " Subject of the Testament "

Legal relations are legal connections that are created, modified and terminated on the basis of a legal norm with a view to satisfying given needs. The needs of the individual are the reason for undertaking a given behaviour and they give it a purposeful character. The object of the legal relationship is an important part of it, since it is the good through the exchange of which particular interests are satisfied.

Succession relationships are characterised by a particular variety of possible subjects. This is perfectly understandable in view of the objective to be attained - the expedient liquidation of the legally significant relationships to which the heir was a party. Some of those legal relationships continue to exist, the deceased being replaced by his successors in title. Others terminate automatically because of their strictly personal nature.

According to Article 16 of the Succession Act, the object of succession is the property of the heir. Within the framework of the said provision, the term property is considered in two ways. The first paragraph defines the term in a broad sense, as the aggregate of all pecuniarily assessable rights and obligations. Art. 16(2) of the Succession Act on the other hand refers to 'specific property' or, in other words, a specific monetarily assessable right or set of rights and obligations. The conclusion to be drawn from the interpretation of the language thus applied is that, according to the text of the law, rights and obligations of a non-pecuniary nature and also factual relationships are excluded as the subject of testamentary disposition. This understanding is obviously too extreme and does not correspond to the social needs which the succession relationship seeks to satisfy. The considerably wider limits of testamentary freedom are evidenced by explicit statutory texts. For example, Article 17 of the Copyright and Related Rights Act defines which non-pecuniary rights pass to the author's heirs. Another hypothesis is the inheritance of a commercial enterprise.

Although the explicit regulation on the succession of a sole proprietorship is laconic, the practice of the Supreme Court of Cassation has held that it is permissible. However, a commercial enterprise is a set of rights, obligations and factual relations (argument derived from Article 15 of the Commercial Code), which shows that, under certain conditions, the latter may also be subject to succession. It should also be pointed out here that there is not a complete coincidence between rights which are transferable *inter vivos* and those which are inheritable *mortis causa*, specific examples of which will be considered in the context of the individual objects of the testament. In addition, often, the transfer of the main right also transfers the non-self-contained rights which are of necessity linked - for example, when an apartment is inherited, the adjoining common parts pass with it.

The above is intended to demonstrate that the outdated and in some ways irrelevant terminology used in the Succession Act should not necessarily limit its scope. Each specific situation must be analysed in the light of the meaning of the law and the social justification for its application, the main tool in this respect being evolutionary interpretation. Chapter Four is structured to address this issue. It contains an introduction and is divided into eight paragraphs, each of which analyses a distinct group of rights or bodies of law that could be the subject of the testament. The purpose of the exposition is to discuss the suitability of particular goods to be the subject of private testamentary dispositions and also the particular rules and special legal regulation that would apply. For these reasons, the subject matter of the testament reveals a fundamental importance for its generation and the specific dimensions of its effect.

Personal and family rights are discussed first. In view of their fundamentally non-inheritable nature, attention is paid in particular to the issues related to the procedural succession and its relation to the heir's or legatee's capacity, with an emphasis on the differentiation of rights arising directly for the successor and those which are part of the estate. It also emphasises the modification of the results to which the successful prosecution of the action leads.

Paragraph two deals with the testament of property rights. As a hypothesis of great practical importance, attention is drawn to the practical peculiarities provoked by the way in which the property is defined - individually or generically and the scope of the property right - ownership or limited property right.

The next paragraph analyses bond rights. Problems arising from the laconic statutory regulation are outlined, the testament of bond rights reveals a number of difficulties related to the manner of notifying the debtor under the bond relationship, the time of transfer of the right to the testamentor, the scope of the transferred right, etc. In discussing these issues, a parallel is drawn with the institute of assignment and the possibility of applying by analogy some of the established solutions in doctrine and practice.

Paragraph four pays attention to labour and social security rights as a special category of contractual relations tied to the preposition of labour power. It discusses the different hypotheses of claims arising from employment and social security relationships and their inheritable nature. Furthermore, this part of the study again raises the question of the difference between rights that become part of the heritable estate and rights that arise as their own in the legal sphere of the successors in title in view of their merits.

Paragraph five focuses on intellectual property rights, with the first part of the exposition on copyright and related rights and the second on industrial property rights. The specificity of this category of rights stems from their complex nature, linked to proprietary and non-proprietary powers, and also from the special regulation providing for specific rules in a number of hypotheses (e.g. Articles 15 to 16 with regard to non-proprietary powers and Articles 18 to 22 of the Copyright and Related Rights Act with regard to proprietary powers).

Paragraph six discusses the possibility of establishing a testament in respect of different types of legal sets and the legal consequences of such dispositions. Aggregates are complex collections of relationships of a predominantly proprietary nature within which the subject participates in a particular capacity and are relatively distinct with respect to a particular feature. More

specifically, the content of aggregates consists of a complex of rights, obligations and factual relations, and the individual types may contain only rights or rights and some of the other elements. The existence of such a complex is always regulated by law, which gives them a certain distinctness. Specific examples are drawn from the spheres of family, succession and commercial law. The testament of a commercial enterprise and the activity of a sole trader, a partnership share and membership in a cooperative, the testament of a heritable share and the testament of a share of matrimonial property are discussed in turn.

With respect to the aggregates governed by the commercial law of the partnerships and cooperatives under consideration, a true succession of membership, including by testament, arises only in the case of the joint stock company and the limited partnership with shares. In all other cases, however, a testamentary disposition is possible in respect of the property element of the rights of the successor, which are again retained in the form of an aggregate, but excluding the membership rights relating to the trader.

It is also argued that the testamentary succession and the community of property are admissible. In the former case, the possibility of transferring a heritable share is established by Article 213 of the Obligations and Contracts Act, which expressly regulates the sale of an inheritance. Through this regulation, the legislator explicitly recognises the heritable share as a possible subject of transaction, and the contractual autonomy provided for in Article 9 of the Obligations and Contracts Act gives rise to the conclusion that this transferability may also be exercised by means of *mortis causa* transactions. The designation of the subject-matter as a heritable share serves only as an identifying feature of the complex of rights and obligations being transferred.

With regard to rights in rem forming part of the matrimonial property community, a similar logic should apply. Although the heir may not dispose of that community of property, in view of its nature as a non-partial community of property, each spouse acquires ½ of it on the dissolution of the marriage. The death of the testator automatically produces that consequence and that is

the moment at which the testamentary disposition produces its effects.

Paragraph seven analyses separately from other property rights the testament of usufruct. The reason for this is tied to the special rules laid down in the Succession Act. In particular, Article 17(2) of the Law governing the transformation of a general testamentary disposition into a private one and Article 35 of the Law providing for the possibility *ex lege* of a change in the subject matter of the testament which is presupposed by the will of the heirs with a reserved share.

Finally, in the last paragraph, number eighth, discusses the possibility of a testament of factual states. The question is of interest because of the possibility in principle for certain states of fact to pass to legatees on the basis of a private testamentary disposition of an aggregate. On the other hand, however, the state of facts could hardly be accommodated within the definition of Article 16(2) of the Law on the subject matter of private testamentary dispositions. Particular attention is paid to the possibility of testamentary possession, due to the principle legal possibility that the possession of the grantor may be joined to the possession of the successor, the broad statutory regulation and the variety of practical difficulties that provoke the discussion. However, it has been argued that in view of the possibility of disposing of possession as part of an aggregate, its linkage to certain property rights and its legal regulation in various normative acts, the testament of possession is admissible. Finally, the possibility of a testament of other states of affairs is discussed, the view being taken that the law does not currently provide for states of affairs to which similar considerations can be applied.

The conclusion that can be drawn from the observations made in this chapter is that the subject of the testament is in fact an extremely dynamic concept. While the strict statutory definition under Art. 16(2) expresses a certain conservatism, it should be borne in mind that the Succession Act has been in force since 1949 and was designed to serve a considerably more limited civil turnover. In the light of economic and social developments and the emergence of new rights and sets of rights, the provision should

be interpreted in an evolutionary manner in order to serve the needs of society without unduly restricting the rights of citizens.

5. Chapter Five "Circumstances Preventing the Operation of the Testament"

The generic characteristics of the testament, as a unilateral transaction on the one hand and a will on the occasion of death on the other, are the reason why this institute reveals peculiarities in its operation, inherent in the respective legal categories. This correlation is also evident in the circumstances which prevent the effects of the testament. Chapter five traces the influence of the rules on the invalidity of unilateral transactions in general and the special regulation relating to the invalidity of testamentary dispositions. The same algorithm is followed concerning revocation. Lastly, the specific features of the testament inherent to it alone are analysed.

Paragraph one focuses on the grounds for invalidity, which act as an important negative precondition for the testament to take effect. As a unilateral transaction, the general rules on nullity under the Obligations and Contracts Act apply in the alternative to the testament (argument from Article 44 in conjunction with Articles 26-33 Obligations and Contracts Act). Among these are the grounds of nullity for lack of intent (consent), including for reasons of violence under Art. 26 para. 2 preamble 2 Obligations and Contracts Act and the prohibition of circumvention under Art. 26(1) of the Obligations and Contracts Act.

Next, the question of the nullity of the testamentary disposition due to one of the special grounds provided for in Article 42 of the Succession Act is raised. Each of the hypotheses referred to in the law is examined individually through the prism of case-law and theory in order to clarify and take a position on the points at issue. It is necessary to emphasise the significant similarity with the general grounds of nullity under the Obligations and Contracts Act, against which the Succession act takes precedence. A particularity is revealed by the disposition in favour of a person who is not entitled to inherit. In order to clarify it, the hypothesis must be interpreted systematically in the context

of the general and special incapacity established in Article 2 and Article 3 of the Succession act respectively. Article 2 of the Law lays down the minimum requirement that the successor must be conceived and viable, albeit unborn. This provision regulates passive hereditary capacity, temporally prior to the civil capacity, through the established fiction. The condition for its occurrence is the viability of the newborn, which is presumed until proven otherwise. The defect under consideration will also be present in cases where the testament is in favour of an unworthy person who has committed any of the acts within the meaning of section 3 of the Act.

A peculiarity is also revealed by the vice established in Art. 42, section "в" of the Law, as it extends the requirement of compliance with the law, good morals and public order to the only motive explicitly expressed in the injunction, the condition and the burden. The rule thus outlined should be interpreted narrowly, its application to the burden being limited to the extent that it also proved to be the sole motive for the testamentary disposition, that fact being subject to proof by interpretation of the testator's will.

Finally, the paragraph discusses Article 43 of the Law of Succession, which establishes the special grounds for the voidability of testamentary dispositions. Although for the most part the grounds for voidability overlap with the general grounds under Articles 27-33 of the Obligations and Contracts Act, there are some specific features. The first of these is common to all hypotheses and relates to the fact that the will to annul the testament can only be executed by the successors in title. This category includes heirs at law and intestate, legatees, and also heirs not called to the succession who would be called upon in the event of the annulment of the disposition. Furthermore, the *de facto* annulment takes effect not from the moment when the will is codified, but from the discovery of the succession.

The first part of the section discusses the ground for invalidity under letter "a" revealing certain similarities with the hypothesis of Art. 31 (1) of the Obligations and Contracts Act in view of the factual criterion which is set out. At the same time, however, it incorporates two abstract criteria (positive and negative) arising

from testamentary capacity - the attainment of the age of 18 years and the absence of total incapacity, which derive from the provision of Article 13 of the Law. By referring to the testamentary capacity regime, the legislator departs from the general rules and creates some specific authorisations adapted to the needs of succession

As another specificity, the scope of the error should be considered. In particular, Article 43(2) of the Succession Act expressly extends the scope of the hypothesis in question by giving legal significance to a mistake in the reasoning under certain conditions, and here again the importance which the legislator attaches to them in view of the specific features of *mortis causa* transactions is evident.

Paragraph two of chapter six discusses the various means of revocation of a testament, first addressing the general grounds for revocation of testamentary dispositions and then addressing the grounds applicable only to testaments.

In the context of the general grounds, two main categories are distinguished. The first is explicit revocation, which may be effected by a new testamentary disposition expressly revoking the previous one or, alternatively, by an explicit will in notarial form directed to revocation.

Furthermore, attention is drawn to the problems linked to the implied revocation which the legislation allows in the presence of successive testamentary dispositions which are incompatible with each other. Another method of tacit revocation of a will, which, although not expressly established, is accepted as uncontroversial both in doctrine and in practice, is revocation by consent. It takes place upon the physical destruction of the material medium on which the will is recorded, the specific feature being that it can only be validly performed by the testator - similar acts by a third party would not have the same effect. Acts which resemble a consensual revocation but do not have the same legal effects are also considered. Issues relating to partial revocation, which can be derived as a possibility from Article 39 of the Law, are also discussed. Finally, the discussion in the section on the general

means of revocation focuses on what is provided for in Art. 54 par. 1 of the Succession Act.

The last part of the second paragraph is devoted to Article 41 of the Law regulating a special hypothesis of revocation applicable only to the testament. According to this provision, the alienation in whole or in part of a testamentary object revokes the testament in respect of the alienated part. Paragraph 2 states that the same effects occur in the case of a transformation of the property to the extent that it has lost its former form and purpose. The regulation in question is based on the revocable nature of testamentary dispositions. On that basis, an irrebuttable presumption of the implied revocation of the preceding will has been established. A subsequent re-acquisition of the property by the testator is irrelevant to the effect of the testament. The same applies to a possible rescission of the contract in so far as the ground is not related to a defect in the will. The arrangement thus outlined involves many practical and debatable issues as to the meaning of the various defects of the will, the conclusion of a prior contract for the alienation of the property, the meaning of the provision concerning claims and aggregates, etc., discussed within the paragraph.

6. Chapter Six " Responsibility of the legatee "

In view of the task of the study, it is examined how the question of liability for the testator's inheritance debts is resolved. As a rule, it is the deceased's universal successors who are liable for the deceased's debts. They receive all or part of the estate, which includes the inheritable rights and obligations of the testator. Conversely, legatees receive only specific rights expressly set out in the testamentary disposition. This construction could easily be abused, for example by bequeathing the bulk of the heritable assets by private dispositions, thus leaving debts unpaid. Moreover, the damage could be entirely unintentional, as wills are often made long before the inheritance of the estate and are not tailored to subsequent changes in the estate balance.

In order to protect the certainty of the turnover and to prevent possible damage to creditors, the legislator has introduced

protective mechanisms in their interest. In view of the fact that they could be regarded as a kind of limitation of testamentary freedom, prerequisites for their application have been laid down. The conditions and characteristics of these institutes are examined in turn in an effort to outline the limits, nature and peculiarities of the legatee's liability. Three paragraphs are set out in Chapter six on the action under Article 66(2) of the Law, the right of survivorship under Article 68 of the Law and the liability of legatees for the recovery of reserved portions.

Paragraph one discusses the provision of Article 66(2) of the Succession Act establishing a right in favour of creditors to claim a corresponding reduction of the wills in case of insufficiency of the heritable assets. The right is exercised through a recourse (incorrectly qualified by the legislator as "reverse") action by the creditors of the estate against the satisfied legatees. An analysis of the provision leads to several main conclusions. First, the claim is only enforceable once the estate's assets have been exhausted. Since the latter is acquired by the universal successors, it follows that the liability of the legatees is of a secondary nature and applies to the extent that what the heirs have received is insufficient and their liability is limited by acceptance by inventory. Otherwise, the unlimited liability of the heirs would prevent any liability of the legatees.

Furthermore, Article 66(2) creates a kind of preference of creditors over legatees, consisting in their right to direct their claim against the latter, up to the amount of the receipt. There is a systematic link, with Art. 66 para. 1, establishing the possibility for the legatees and the creditors of the estate to request a judicial determination of the order of satisfaction when the estate has been accepted by inventory. For this reason, it is held that Article 66(2) of the Law is applicable only by way of judicial procedure in the event that the estate has been accepted by inventory, where the district court has determined the order and manner of satisfaction.

The last condition is that the claim must be made within three years of the last payment. The exclusivity period encourages timely settlement. This strikes a balance between the enhanced protection of the public interest and that of creditors on the one

hand and the less intense protection of legatees combined with legal certainty.

From the right of action thus delineated, certain observations can also be made as to its scope. Article 66(2) of the Law is applicable only to indirect testaments which create an obligation to transfer a certain right to the legatee. Their effect is obligatory and does not give rise to a translative effect directly by acceptance - active conduct on the part of the heirs is necessary. For this reason, the effect of the right established in Article 66(2) is to create a preference in favour of the other creditors of the estate under the conditions set out.

Paragraph two focuses on the right of caveat under Article 68 of the Law. As in the case of Article 66(2) of the Law on Succession, the law establishes the right of creditors to request a corresponding reduction of the wills in case of insufficiency of the heritable assets. Here, too, the liability is subsidiary in nature and constitutes an express departure from the rule laid down in Article 60(1) of the Law. A linguistic analysis of the provision leads to several important conclusions. The expression *'the residue of the estate'* again implies a limited liability of the heirs pursuant to Article 61(1) of the Law of Succession.

There are also some significant differences. The right enshrined in Article 68 of the Law is transformative (cognate) and not mandatory - it could be exercised out of court by a unilateral will and is not conditioned by the procedure under Article 66, par. (1) OF THE LAW. There are also different situations in which Article 68 of the Civil Code could apply. It is aimed at wills with direct proprietary effect. Succession occurs on the basis of the testamentary disposition itself, in respect of an individually defined right in rem and the acceptance by the testator. In view of the fact that no time-limit has been laid down for the exercise of the right under Article 68 of the Law, it is held that the general limitation period of 5 years applies.

The last paragraph of Chapter 6 deals with the relationship between the heirs with a reserved portion and the legatees. Unlike the previous two hypotheses, which discuss the relationship between creditors of the estate and legatees, reserved portions

discuss the statutory protection of the necessary heirs and the guaranteed portion of the estate that they should receive. The institution of the reserved portion and the means of its recovery constitute a statutory limitation of testamentary freedom, provided for the benefit of the immediate family members. It should be stressed that testamentary dispositions (general and private) which contravene the restrictions imposed by reserved portions are perfectly valid to begin with. They produce all the legal effects intended and, in the event that the necessary heirs do not exercise their rights, no *ex lege* change will occur. The institution of the reserved portion in its various manifestations only creates various successory rights in favour of a certain group of heirs.

The current Succession Act provides for several separate mechanisms guaranteeing the rights of necessary heirs, with provisions starting from general provisions (Art. 30 - Art. 34 of the Succession Act) and moving on to special provisions (Art. 35 - Art. 37 of the Succession Act). These rules constitute a guarantee of the family law obligations of mutual care, assistance and, in some cases, alimony. In view of the applicability of the general protection to private testamentary dispositions and its impact on the effect of the testament, it is examined in the first part of the paragraph. Subsequently, the hypotheses directed specifically to succession on the basis of a testament or a donation are analysed.

The first form of defence discussed is the claim for restitution of a reserved part under Art. 30 (1) of the Law. A characteristic feature is that in the recovery of reserved portions the heirs, other than the necessary ones, and the legatees are treated alike, whereas the liability of the legatees is subsidiary and in reverse chronological order. With a view to applying this institute to legatees and receivers of donations, a property estate should be created under Article 31 of the Succession Act, the procedure entailing peculiarities which are discussed in the context of existing case law and doctrinal developments.

A special hypothesis of reduction of a private testamentary disposition or donation is provided for in Art. 36 of the Law. The criterion for its application is the right subject to the testament, its severability and the extent to which the disposition affects the

reserved part. According to Article 36 para. 1 of the Law, in cases where the subject of the disposition is immovable property, the separation of a part of which cannot be conveniently effected, if the reserved part exceeds the value of the reserved part by more than ¼, the legatee receives only the value of the reserved part, and if it exceeds the value of the reserved part by less, he may compensate the necessary heir for the difference. In both cases, the said text refers only to private dispositions of the subject immovable property. In the first case, the legislator in fact provides for a transformation of the testamentary disposition, transforming it from a testament of a right in rem into a testament of a claim equivalent to the value of the disposable part. In cases where more than one testamentary disposition in favour of different persons affect the reserved part, with a view to the proportional reduction (irrespective of the type of disposition - argument from Art. 32 of the Law) it will first be determined the fractional part by which each of the dispositions is subject to reduction and only then it will be assessed which of the authorisations of Art. 36 para. 1 of the Act shall be applied. Art. 36 para. (1) represents a peculiar effort of the legislator to strike a balance between divergent interests and at the same time to facilitate the final settlement of the relationship. However, in its essence, the provision does not in any way affect the value to be received by the legatee or the necessary heirs - it is proportionally determined in Article 29 of the Law.

The provision of Art. 37 para. 1 of the Law constitutes another guarantee for the interests of the necessary heirs. According to the text under consideration, alienations or the creation of rights in rem over donated or bequeathed immovable property made by legatees or donees may be revoked by an action brought by the necessary heirs. It should be emphasised that the alienation itself is not vitiated by defects and, in that sense, has all the intended legal consequences. An action under Article 37 para. 1 of the Succession Act, however, provides the heir with a reserved action with the possibility to cancel the consequences, thus returning the property to the patrimonial mass to serve for the restoration of the reserved part. It is evident that Article 37 of the Law constitutes a sound mechanism guaranteeing the interests of

the necessary heirs even in cases where the bequeathed asset has been alienated and the personal property of the legatee cannot ensure the completion of the reserved portion. The aim is thus, albeit with some uncertainty and prejudice to the interests of third parties, to guarantee the needs of the heir's next of kin.

This solution, although effective, can hardly be seen as fair and consistent with legal logic. Leaving aside the fact that the shares of the necessary heirs were affected by the will of the heir himself, evidence that their *de facto* relationship was not as close as the family law relationship suggests, another question arises. Why did the legislator decide to give primacy to the interests of the gratuitous successors, in this case the heirs, at the expense of the third-party transferees, who in the general hypothesis would be party to a non-gratuitous relationship?

Conclusion

The conclusion is aimed at a summary analysis of the conclusions reached within the study. Observations on the emergence of the institute, its current situation and opportunities for future development and optimization are drawn. To this end, some of the key theses advocated within the dissertation, comparative legal analyses, views on the interpretation and application of the legal framework, and also some suggestions for *de lege ferenda* changes are highlighted.

3. Contribution of the monographic study

1. The subject of the operation of the testament has not yet been fully developed in Bulgarian. Within the framework of the study, various issues are discussed, some of which, although addressed in the doctrine, have not been addressed in their systematic relation.

2. With a view to the analysis of the questions raised, relevant case-law reflecting the perspective of the higher courts on the interpretation and application of the legal norms governing the institution of testament is referenced.

3. A historical reading is offered to trace the conceptual development of inheritance relations and the testament in

particular. This part of the exposition seeks to highlight the basic social needs that led to the emergence of the legal institution and the changes that it has undergone in the light of the needs of civil circulation in the context of different societies and degrees of economic and normative development.

4. A comparative legal analysis is carried out, referencing the authorisations found in the French and Italian civil codes. On the basis of the essential relationship between the laws of succession of the three countries, suggestions are made concerning the interpretation and application of the legal rules and also possible future *de lege ferenda* optimizations.

5. In view of the possibility of an evolutionary interpretation of the outdated conceptual apparatus and the laconic normative framework, a variety of provisions are examined through the prism of contemporary societal needs. These include the regulation of the rights of legatees, their liability for obligations to the estate and the share of necessary heirs, the possible objects of the will, the impact of the optional content of the will on dispositions, and others.

6. An attempt is made to differentiate and delineate the testament. For this purpose, its main features as a legal institute are outlined, a definition is proposed, summarizing the observations made, and a distinction is made with other private law institutes, revealing certain similarities.

4. Publications related to the dissertation

1. **Yovchev, N.** *Protection of Creditors in the Special Succession under Article 11 of the Law on Succession*. " Правна мисъл ", issue No. 4/2020, pp. 23-41;
2. **Yovchev, N.** *Types of testaments and their practical features*. "Правна мисъл", issue No. 4/2022, pp. 78-94.
3. **Yovchev, N. The** *types of testament and their practical features* published in "Collection of scientific

research in honour of prof. Tsanka Tsankova", UI "Sv. Kliment Ohridski", Sofia, 2023, pp. 312-324;
4. **Yovchev, N.** *A special subject of the testament.* Sp. " Правна мисъл″ *vol. 1 of 2024;*