

OPINION

**by Dr. Anna Svobodenova Cholakova - Associate Professor of Civil and Family Law at
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regarding

dissertation for the awarding of the degree **Doctor** of Education and Science

field of higher education "Social, economic and legal sciences"

Professional field 3.6. Law

Doctoral programme "Family and Succession Law"

Author *Nikola Petev Yovchev*

Subject: Effect of the Covenant under Bulgarian Succession Law

Scientific supervisor: Assoc. Prof. Dr. Velina Stancheva Todorova

1. General presentation of the procedure and the PhD student

By Order No. RD-21-932 of 07.05.2024 of the Rector of Plovdiv University "Paisii Hilendarski" I have been appointed as a member of the scientific jury for providing a procedure for the defense of a dissertation on the topic "Effect of the Covenant under Bulgarian Succession Law" for the acquisition of the educational and scientific degree "Doctor" in the field of higher education "Social, economic and legal sciences", professional field 3.6. Law, doctoral programme "Family and Succession Law". The author of the dissertation is Nikola Petev Yovchev - a doctoral student in the part-time form of study at the Department of Civil and Family Law at the Faculty of Law of the Plovdiv University with scientific supervisor Assoc. Prof. Dr. Velina Todorova from the same University.

The doctoral candidate has submitted the documents required under Article 36, paragraph 1 of the Regulations for the Development of the Academic Staff of the University of Plovdiv.

The candidate for the award of PhD Nikola Petev Yovchev was born on 20.03.1995 in the town of Sofia. He graduated from the Faculty of Law of the University of Plovdiv. From 2020 to 2024 he is a part-time PhD student at the Department of Civil Law at the same faculty, and from 2021 he also teaches seminars in civil law - general part and family and inheritance law at the same faculty. From May 2021 to the present Nikola Yovchev is also a legal expert at the Constitutional Court of the Republic of Bulgaria. He speaks Italian and English and has a basic knowledge of Russian.

2. Topical relevance

The covenant is a classical institution of inheritance law, originating in ancient Rome and well known to the Bulgarian legal system. At the same time, however, the testament is often unclear not only for the persons drawing up their private testamentary dispositions, but also for those possessing legal education with long experience in this field /lawyers, notaries, judges/. It should be noted that the difficulties are also caused by the dynamics observed with regard to the objects of subjective civil rights, which also raises the question of their suitability to be the subject of a will.

There are numerous doctrinal disputes and conflicting case law on a number of issues concerning the covenant and its legal effect. In some respects, the legal framework needs updating and synchronization. The proposed dissertation aims to cover all the controversial or unclear issues on the topic at hand, proposing for the first time in our doctrine a comprehensive, logically sound concept of covenant, with an emphasis on its legal effect. I definitely believe that the topic of the dissertation presented for discussion is and will be relevant given the growing importance of the law of succession.

3. Knowledge of the problem

In his thesis, the dissertant shows excellent knowledge of the issues under consideration in our legal literature and case law, as well as in the relevant foreign legislation - Italian and French. The problems of the covenant and its operation cannot be studied without in-depth knowledge of other areas of law - general theory of civil law, contract law, property law, commercial law and civil procedure law, which the dissertation undoubtedly shows in the analysis of opinions on various issues, in the argumentation of his theses and in the relevant comparison with similar legal figures.

4. Research methodology

The dissertator used a variety of methodologies to achieve his research goals. The historical method has been applied in the study of the genesis of the institute, and the comparative method in the comparison of the institute in the Romano-Germanic legal systems. The normative, normative-logical, teleological and systematic methods, as well as the various types of interpretation, have been skilfully employed at many points in the exposition.

5. Characteristics and evaluation of the thesis

The overall impression of the dissertation presented for discussion is that the dissertant has exhausted the problems outlined in the title and has achieved the goals set for his research. It clearly shows the excellent theoretical background of the dissertant, his ability to creatively discuss the literary material, to accurately analyse the legal issues, to search and analyse the relevant case law and to draw independent conclusions. The clear and concise language contributes to an excellent presentation and to an easy grasp of the dissertation's ideas.

The dissertation consists of an introduction, six chapters and a conclusion. In chapter one, after arguing the necessity of such a study, the historical development of the covenant is briefly presented - its genesis in Roman law and in the law of Bulgarian lands. The concise length of this chapter, with emphasis on the most relevant issues, makes a good impression.

Chapter two is devoted to the specifics of the covenant. It highlights the author's aim to bring out its main characteristics in relation to the social function of the institution. The legal characteristics of the covenant are analytically and thoroughly clarified, and case law is aptly cited. Comparisons with similar legal figures are relevant, comprehensive and thorough. The completeness of the exposition is enhanced by the detailed analysis of the modalities, and I would single out the section on burden. This chapter also discusses the rights of the testator, which I do not consider particularly relevant / I take up this point in para 8 /.

Chapter three discusses in detail the two main types of covenant - direct and indirect, clearly highlighting the differences between them and their legal effect with a view to their practical application. The legal protection of the indirect testator is critically analysed and valid criticisms of the current legal framework are made. The analysis of a covenant on rights of the heir not present in the succession mass is highlighted /p.123 and p.126/.

Chapter Four is devoted to the types of rights that may be subject to a covenant. Despite the constant emergence of new objects in the civil turnover, respectively of new subjective rights, it can be said that the exposition exhausts the issues. The author's views on the covenant of family rights /p. 4.1./ are original, although I find some of them difficult to defend. The analysis of the covenant of taking and the issues concerning the debtor's notice /p. 150/, as the covenant of employment and insurance rights /p. 151/. The conclusions on the covenant of membership in a commercial company or cooperative are well argued - /p. 162 - 171/. The dissertator's reasoning on the fruit-use covenant under Article 17, paragraph 2 of the Succession Law is worthy of positive evaluation /p. 176/, which I find to be one of the contributions of the dissertation. The systematic and critical analysis of the covenant of usufruct can also be pointed out as a contributory point /p. 4.8./.

Chapter Five is devoted to the circumstances preventing the covenant from taking effect - the grounds for nullity and annulment. The grounds are dealt with fully, analytically and systematically. The dissertation's criticism of the imprecise legal regulation of the grounds for nullity and voidability of a will in general and in relation to the testator's capacity in particular should be appreciated. The analysis of the grounds for revocation are well systematised and divided into general grounds - for the revocation of the will as the legal instrument in which the covenants are contained - and special grounds - which relate only to covenants as private testamentary dispositions.

The sixth chapter logically concludes the dissertation by analysing the liability of the legatees, which is subsidiary to the liability of the heirs as general successors, but has an important practical significance because it gives rise to a number of complications both between the heirs and vis-à-vis third parties - the creditors of the estate. This chapter is rightly divided into liability to creditors and

liability to heirs entitled to a reserved part of the estate. The criticism of the current rules and the bold proposal *de lege ferenda* in relation to the rule of Article 37 of the Law on Succession (pp. 242-247) are of a contributory nature.

6. Assessment of publications and personal contribution of the PhD student

For participation in this procedure, in addition to the dissertation, 4 articles related to the topic of the dissertation and published in reputable scientific journals were submitted. Two of the articles have the same title and somewhat overlapping content. They confirm the overall positive impression of the candidate's qualities, which fully meet the requirements for the award of the PhD.

The scientific contributions of the PhD student are outlined in the Abstract, although outlined quite generally. Along with the specific contributions on individual legal issues mentioned in the previous section, the following scientific and scientific-applied achievements of the dissertation submitted for discussion stand out:

- This is the first comprehensive, systematically presented study of the effects of the covenant that fully reflects and analyzes the state of our legal doctrine on the subject, trends in relevant case law, and relevant foreign law;
- the historical and comparative legal analysis is presented with a view to proposals for future improvement of the national legislation and more accurate interpretation and enforcement of the existing legal norms;
- systematization of the subject of the covenant;
- all aspects of the legal effect of the covenant under Bulgarian law are systematically, comprehensively and analytically presented;
- an attempt is made to differentiate and delineate the covenant, drawing out its features as a legal institution and proposing a definition encompassing the observations made.

7. Abstract

The presented Abstract fully and accurately reflects the content of the dissertation, is made in accordance with all regulatory requirements and correctly reflects the main results achieved in the scientific research.

8. Recommendations for future use of the dissertation contributions and results

Undoubtedly, the dissertation submitted for consideration meets high scientific and applied standards, having achieved the objectives set by the dissertator. However, it is quite natural that some criticisms and recommendations should be addressed to the author.

Upon the first acquaintance with the presented scholarly work, the title "Effect of the Covenant under the Bulgarian Law of Succession" makes an impression, which raises the question why the topic is limited only to the effect of the covenant, since the content devotes a significant place to the

institution itself, its subject, the different types of covenant. I find that a title such as "The covenant and its legal effect / under Bulgarian inheritance law" would correspond more closely to the content thus proposed and would represent the present study more appropriately when published.

Chapter Two examines the legal nature of covenants through the prism of the doctrine of legal transactions, with a detailed analysis of the "rights of the legatee" in Section 2.2. Although the dissertation has tried to argue that a person acquires the status of a "covenantor" whether or not he has expressed a will to accept the covenant / p. 55 / and to build on the thesis the part concerning the rights of the legatee, I consider such a thesis to be insufficiently proven. Such a postulate inevitably leads to terminological confusion, to confusion of concepts and of their legal implications. It is evident already in the contents of the thesis that section 2.2 of chapter two is entitled "legatee's rights". It is here that the author argues that the capacity of covenantor is acquired before the covenant is accepted. Chapter Six, devoted to "The Responsibility of Covenanters," focuses on the responsibility of only those who accept the covenant - the actual "legatees." Obviously, the legal status of the persons in the two parts of the treatise referred to is not identical. The mixing of the two qualities inevitably leads to a repetition in Chapter 6 of certain hypotheses already discussed in section 2.2. Therefore, it is necessary to make a clear distinction between the legal position of a person who is named in a private testamentary disposition as a possible private successor /future legatee/ and the person who has accepted the testament - a real /or consolidated/ legatee. The distinction is not only terminological, but determines the essential difference precisely in the legal consequences, which are the main subject of the present study. As to the terminological designation of the persons to achieve the necessary distinction between them, it is most appropriate for the dissertator himself to think in terms of the overall concept of covenant and its legal effect.

In Chapter 5, when analysing the grounds for the nullity of the covenant due to incapacity, in relation to the specific hypotheses of emancipation occurring after the conclusion of a civil marriage, it is necessary to update the text in accordance with the amendments to Article 6 of the Family Code promulgated in December 2023.

The dissertation would have benefited if in the conclusion, instead of the justified but too general wishful recommendations to the normative process, the specific scientific conclusions and results of the research were stated in a synthesized form. This recommendation could also be applied to the conclusions after each of the six chapters, a positive approach that could be improved by bringing more specificity to the results reached. In this sense, I would point to the conclusions to chapter three of the thesis as a good example.

CONCLUSION

THE DISSERTATION SUBMITTED FOR CONSIDERATION CONTAINS SCIENTIFIC AND SCIENTIFICALLY APPLICABLE RESULTS THAT MAKE AN ORIGINAL CONTRIBUTION TO SCIENCE

AND MEET THE REQUIREMENTS OF THE ACADEMIC DEVELOPMENT ACT IN THE REPUBLIC OF BULGARIA, OF THE REGULATIONS FOR ITS IMPLEMENTATION AND THE REGULATIONS OF THE PAISHI HILENDARSKI UNIVERSITY FOR THE DEVELOPMENT OF ACADEMIC STAFF.

THE DISSERTATION WORK SHOWS THAT THE PHD STUDENT **POSSESSES** IN-DEPTH THEORETICAL KNOWLEDGE AND SKILLS IN THE SCIENTIFIC SPECIALTY "CIVIL AND FAMILY LAW", **DEMONSTRATING** QUALITIES AND SKILLS FOR INDEPENDENT SCIENTIFIC RESEARCH.

BASED ON THE ABOVE, I GIVE MY **POSITIVE EVALUATION** FOR THE SUBMITTED DISSERTATION, THE RESULTS OBTAINED FROM THE RESEARCH AND THE CONTRIBUTIONS AND **I PROPOSE THAT THE HONORABLE JURY AWARD THE EDUCATIONAL AND SCIENTIFIC DEGREE OF DOCTOR TO NIKOLA PETEV YOVCHEV** IN THE FIELD OF HIGHER EDUCATION "SOCIAL, ECONOMIC AND LEGAL SCIENCES", PROFESSIONAL FIELD "LAW", DOCTORAL PROGRAMME "FAMILY AND INHERITANCE LAW".

10.06.2024

Prepared by:

(signature)

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