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The Freedom of Testamentary Disposition in the Macedonian Succession Law

Abstract: *One of the basic characteristics of the continental law is the limited freedom of testamentary disposition. The Macedonian succession law belongs to the continental tradition that envisages the limited freedom of testamentary disposition. In this paper, the author analyses the freedom of testamentary disposition in the current Macedonian succession law with the aim to determine the limits of its application and the need for changes of the existing legislation by giving concrete proposals and solutions.*

Key words: *freedom of testamentary disposition, testamentary succession, will, forced share.*

The freedom of testamentary disposition in succession law is also known as the testamentary freedom or the principle of autonomy of will.[1] It is closely "related to the opportunity and the right of every individual to determine the disposition of his property after his death according to his will."[2] This means that the testator is free to dispose of his property in case of death according to his free will. The testamentary freedom is expressed through the free choice of the form of will, free determination of its content, revoking the will etc. The comparative law analysis shows that the concept of unlimited testamentary disposition is implemented in common law countries, as

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[1]The principle of autonomy of will, also known as the "principle of free initiative" or "principle of free disposition" is one of the most significant principles of civil law. In its essence, this principle means that civil law relationships arise, change and end based on the will of the subjects. For more information on the principle of the autonomy of will, see: Гале Галев, 'Некои теоретски сфаќања за природата на слободата на договорање' *Годишник на Правниот факултет во Скопје,* Скопје, 1994-1995; Гале Галев, 'Потеклото на слободата на договорите' *Зборник во чест на Александар Христов,* Универзитет „Св. Кирил и Методиј", Правен факултет, Скопје, 1996; Гале Галев, 'Слободата на договорање и нејзините општи граници', *Развиток на политичкиот и правниот систем на Република Македонија,* Универзитет „Св. Кирил и Методиј", Правен факултет, Скопје, 2000; Гале Галев, Јадранка Дабовиќ Анастасовска, *Облигационо право,* Универзитет „Св. Кирил и Методиј", Правен факултет „Јустинијан Први" – Скопје, 2008, p. 51-52; Димитар Поп Георгиев, *Облигационо право,* Универзитет „Кирил и Методиј", Скопје, 1990, p. 22; Душан Николић, *Увод у систем грађанског права,* Пето измењено и допуњено издање, Нови Сад, 2004, p.124-130. According to Asen Grupche, the freedom of testamentary disposition in other words means that "subjects are free to decide whether they will enter relationships governed by property law, with which other subjects, what type of relationships, under what conditions etc." See Асен Групче, *Имотно (Граѓанско) право Општ дел,* Второ изменето и дополнето издание, Култура, Скопје, 1983, p. 26.

[2]Миле Хаџи Василев, *Наследно право,* Култура, Скопје, 1983, p. 189.

a result of the inviolability of private property (USA, England, Wales etc.).[3] In civil law countries, as well as in many other countries in the world, the concepts of limited testamentary disposition and forced share are implemented.[4]

In Macedonian succession law, which belongs to the civil law systems, the freedom of testamentary disposition is limited on the basis of the concept of forced share. Forced share is part of the estate of which the testator may not dispose freely and according to his will.[5] Taking this into consideration, the main goal of this paper is to present the role of the principle of autonomy of will and its limits in applicable law, as well as to determine whether any amendments to current legislation are necessary. To this aim, the first section of this paper gives an overview of the current succession law and especially of the provisions reflecting the freedom of testamentary disposition. The second section of this paper offers recommendations for amendments to current legislation in connection with the limits of the freedom of testamentary disposition in the Macedonian succession law.

I. The Freedom of Testamentary Disposition in the Current Succession Law

The most important legislative act governing succession law in the Republic of Macedonia is the Succession law of 1996.[6] The Constitution of the Republic of Macedonia[7] of 1991, although being the highest legal act in the country, contains only few general

[3]For more information, see: Ronald J. Scalise, 'New Developements in United States Succession Law', *The American Journal of Comparative Law,* American Society of Comparative Law, Vol. 54, 2006; Parry&Kerridge, *The Law of Succession,* 12 edition, Sweet & Maxwell, London, 2009; K. Zweigart, H. Kotz, *Introduction to the Comparative Law,* Clarendon Press, Oxford, 1998; Будимир Кошутиќ, *Увод у велике правне системе данашњице,* Службани лист СРЈ, Београд, 2002.

[4]For more information, see: Louis Garb, *International Succession,* Kluwer Law International, 2004; Place Marie Hélène Place, Le Miere Patrick Gauchois, *Guide pratique de la transmission du patrimoine en Europe,* Editions Litec, 1993.

[5]The right to a forced share was first established in Roman law as a result of the common phenomenon of "parents disinheriting their children without any cause" (Gai 2, 124). With the aim of ensuring the peaceful development of Roman families, but also in order to remedy violations of family interests, the centurion court, competent for succession disputes, required that the closest legal heirs in the will receive at least 1/4 of the share of the estate they would have received if the will had not existed. If the testator did not comply with this obligation, the interested parties were entitled to sue for revocation of the will. The centurion court then decided based on the assumption that the testator was mentally deranged and did not have testamentary capacity *(testementi factio activa)* when composing the will. For more information, see: Ivo Puhan, *Rimsko pravo,* Naučna knjiga, Beograd, 1969, p. 384-386.

[6]*Official Gazette of the Republic of Macedonia* no. 47/96.

[7]*Official Gazette of the Republic of Macedonia* no. 52/91, 1/92, 31/98, 91/01, 107/05, 3/09 and 13/09.

provisions concerning the succession law.[8] In this regard, an important provision is the one stating: "The right to ownership of property and the right of inheritance are guaranteed.“[9] Unlike the past period, the Constitution prefers private ownership and it does not foresee any legal limitations on the acquisition of the right to ownership.[10] However, regardless of the new social, legal and political system, the content of the Succession law of 1996 contains many regulations from the old legislative texts - the Federal succession law[11] of 1955 and the Succession law of the Socialist Republic of Macedonia of 1973.[12] Since the Law was adopted in 1996 until this day, the legislator has not foreseen any significant amendments to legislation in the area of succession, although the social context has changed significantly. This position of the legislator is also reflected on the freedom of the testamentary disposition. In the current Law, this freedom remains subject to the same limitations foreseen in the former legislative acts, in which a greater significance was given to legal succession at the expense of testamentary succession.

1. The Freedom of Testamentary Disposition

The freedom of testamentary disposition, although not explicitly named, is present in the general provisions of the Succession law (hereinafter referred to as: SL). Namely, Article 6 of SL, governing the bases for succession, states that: “Succession shall be possible on the basis of the law or on the basis of a will.“ The fact that a will is permissible as basis for succession is the prerequisite for testamentary succession based on the freedom of testamentary disposition. In this regard, the provision of Article 9 of SL is significant, as it stipulates that: "The testator may dispose of his estate through a will, in a manner determined in this law.“ Through this provision, the Macedonian legislator clearly states that the law contains the concept of limited testamentary disposition within the boundaries laid down in the Law, which is specific to the succession law systems of civil law countries. One of the most important limitations of testamentary freedom is the forced share.[13] However, there are also other limitations related to public order and moral.

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[8]For more information, see: Ангел Ристов, ‘Извори на Граѓанското право во Република Македонија’ *Зборник во чест на Миле Хаџи Василев,* Универзитет „Св. Кирил и Методиј“ Правен факултет „Јустинијан Први“ Скопје, 2004, p. 229-255.

[9]See Article 30 paragraph 1 of the Constitution of the Republic of Macedonia.

[10]On the numerous limitations on ownership in the previous legal system, see: Асен Групче, *Имотно (Граѓанско) право - втор дел Стварно право,* Второ изменето и дополнето издание, Култура, Скопје, 1985, p. 131-149.

[11]*Official Gazette of SFRY* no. 20/55, 12/65 and 42/65.

[12]*Official Gazette of SRM* no. 47/96.

[13]More on the right to a forced share and concepts related thereto, see: Миле Хаџи Василев-Вардарски, *Наследно право..,* p. 152-155; Владислав Ђ. Ђорђевић, *Наследно право,* Правни факултет Ниш, Ниш, 1997, p. 277-278; Оливер Б. Антић, *Наследно право, пето издање,* Београд, 2004, p. 151-152; Borislav T. Blagojević, *Nasledno pravo u Jugoslaviji prava republika i pokraina,* Savremena administracija, Beograd, p. 205-207; Slavko

2. The Forced Heirship as a Limitation of the Freedom of Testamentary Disposition

The forced share is one of the most significant limitations to the freedom of testamentary disposition in the Macedonian succession law.[14] According to the forced heirship, a certain number of heirs, referred to as forced heirs, have a legal right to a certain share of the estate, which the decedent cannot dispose of freely by way of will or in the form of gift. Since the first appearance of this legal institute until this day, its role in succession law has remained unchanged - guaranteeing the property interests of the decedent's next of kin. Therefore, the right to a forced share is present in all modern succession law systems in civil law countries, not only in continental Europe, but globally (China, Japan etc.).[15]

In our Succession law, the forced share is defined from the aspect of the forced heirs. Namely, "forced heirs shall be entitled to a share of the estate, called the forced share, to which they shall be entitled in cases where the testator freely disposes of his estate."[16] The law defines the right to the forced share as a succession right. In this regards, Article 32 of SL stipulates that: "The forced heir shall be entitled to a certain share of every object and of the rights comprised in the estate; however, the testator may determine that the forced heir shall receive his forced share in certain objects, rights or in money." Having this in mind, it is clear that the right to forced share may, by way of exception, be treated as a right that is subject to obligations law, if the testator determines in his will, exercising the autonomy of will, that the forced heir shall receive his forced share of the estate in the form of certain objects, rights or in the form of money. The existing provision creates practical problems in enforcement, which is why the legal scholars recommend that the right to forced share should be accepted as a right that is subject to obligations law.[17]

In our legal system, as in other jurisdictions, the forced heirs stem from the ranks of the legal successors.[18] This is envisaged in the

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Marković, *Nasledno pravo u Jugoslaviji,* Savremena administracija, Beograd, 1978, p. 148-149.

[14]More information on the right to forced share in the Macedonian law in: Љиљана Спировиќ Трпеновска, *Наследно право,* 2 Август С, Скопје, 2008, p. 123-131.

[15]See in detail: Љиљана Спировиќ Трпеновска, Ангел Ристов, 'Правото на нужен дел во македонското и споредбеното наследно право', *Правник,* Здружение на правниците на Република Македонија, бр. 225, јануари 2011, p. 15-43.

[16]Article 31 paragraph 1 of SL.

[17]More information in: Љиљана Спировиќ Трпеновска, Дејан Мицковиќ, Ангел Ристов, *Наследното право во Република Македонија..,* p. 106-109.

[18]In the succession law theory there is a distinction between absolute and relative forced heirs. Namely, all persons laying claim to inheritance pursuant to the law are potential forced heirs, if they meet the requirements laid down in the law. Absolute forced heirs are the closest relatives of the decedent, namely the descendants (marital and extramarital), adoptees and the spouse. The category of relative forced heirs consists of persons who, in addition to having a specific family relationship to the decedent, must meet additional requirements laid down in the law. Although our Succession law does not mention the terms absolute and relative forced heirs, the categorization of

provision stipulating that "the persons... shall be forced heirs if, according to the legal order of succession, they are entitled to succession."[19] The first degree of succession comprises: a) the children, the adoptees and the decedent's spouse.[20] Since the Law does not stipulate any requirements other than the specific relationship of the persons to the decedent (objective criterion), these persons make-up the group of so-called absolute forced heirs. It should be noted here that the spouse is also entitled to a forced share in cases where he/she is an heir of the second degree of succession. b) Descendants of the decedent's children and adoptees are forced heirs if they meet the additional, so-called subjective criterion, namely, if at the moment of the decedent's death they lived in the same household with or were supported by the decedent or if they are permanently unfit for work and cannot secure their living.[21] The second degree of forced heirs are the decedent's parents and siblings, but only if they are permanently unfit for work and cannot secure their living.[22] The second degree of forced heirs may also include the decedent's spouse, if there are no representatives of the first degree of forced heirs – decedent's children and adoptees. The spouse belongs to the second degree of forced heirs on the basis of the objective criterion, while the decedent's parents and siblings must meet the subjective criterion – be permanently unfit for work and not be able to secure their living. According to our succession law, the group of forced heirs is completed with the second degree of forced heirs. This provision is in line with the generally adopted concept in most contemporary succession law systems, according to which the group of forced heirs is smaller than the group of legal heirs. The provisions of the SL stated above exclude the possibility of applying the principle of autonomy of will.

The Macedonian Succession law does not contain the concept of *a priori* categorisation of the estate in a forced and a disposable portion. Although the law does govern the right to a forced share for a certain group of persons, this is done by laying down the individual forced share for each forced heir, depending on the share of the estate that heir would be entitled to on the basis of his degree in the order of legal succession. Namely, the law stipulates that the forced heirs shall be entitled to a share of the estate, "called the forced share, to which they shall be entitled in cases where the testator freely disposes of his estate."[23]

The size of the forced share for the various forced heirs is different in the Macedonian succession law. The descendants,

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forced heirs and the manner in which they can exercise their right to a forced share of the estate is not far from the theoretical concept mentioned above.

[19]Article 30 paragraph 4 of SL.

[20]Article 30 paragraph 1 of SL.

[21]Article 30 paragraph 2 of SL.

[22]Article 30 paragraph 3 of SL.

[23]Article 31 paragraph 1 of SL. The estate does not include goods that the decedent disposed of through an agreement for lifetime support, the transfer of which to the support provider has been postponed until the support recipient's death. For details on determining the value of the estate, on what is considered a gift and on determining the value of gifts, see: Articles 33-36 of SL.

adoptees and their descendants and the spouse each have the right to one half, while all other forced heirs individually have the right to one third of the share they would be entitled to based on their degree of legal succession.[24] When determining the size of the forced share, the fact that a forced heir does not claim his share of the estate, is excluded from succession or is an unworthy heir is not taken into consideration. The provisions on increasing or decreasing the share of the estate belonging to the spouse or to the parents are also not taken into consideration when determining the size of the forced share.[25]

Although the legal provisions governing forced heirship are dominated by imperative legal norms, the principle of autonomy of will does find its application in the area of forced heirship. Namely, in cases of infringement of the right to a forced share,[26] the request to reduce testamentary disposition and return gifts depends solely on the free disposition of forced heirs. The court does not evaluate *ex officio* whether provisions on forced share have been violated, unless this is requested by the forced heirs. In this regard, the law stipulates that "reductions to testamentary dispositions and the returning of gifts made in the last 90 days of the decedent's life may be requested only by the forced heirs."[27] Comparative law analysis shows no other case of such a short period for returning of gifts as the one pursuant to the Macedonian law, which represents an instrument of possible abuse and leads to legal uncertainty! In cases where the right to a forced share has been violated, the first measure is the reduction of testamentary dispositions, and then, if this is not sufficient, gifts made in the last 90 days of the decedent's life are returned.[28] Having in mind the practical problems arising in enforcement and the solutions offered by comparative law, the domestic legal scholars recommend a longer period for the returning of gifts.[29]

[24]Article 31 paragraph 2 of SL.

[25]The decedent's estate does not include household appliances belonging to the persons who lived in a common household with the decedent. See Article 37 of SL.

[26]"The right to forced share shall be deemed violated if the forced heir, during the lifetime of the decedent and through testamentary disposition, does not receive gifts and share of the decedent's estate in the amount of his/her forced share." Article 38 paragraph 2 of SL.

[27]Article 44 paragraph 1 of SL.

[28]Article 39 of SL. More information on the order in which gifts are returned and on the position of the beneficiary returning the gift in: Articles 42-43 of SL.

[29]For more information, see: Љиљана Спировиќ Трпеновска, Дејан Мицковиќ, Ангел Ристов, *Наследното право во Република Македонија..,* p. 109-112.

3. The Limits of The Freedom of Testamentary Disposition in The Testamentary Succession

A. Requirements for the validity of a will

In the Macedonian succession law, the principle of autonomy of will has the widest scope of application in the provisions governing testamentary disposition.[30] Making a valid will is a condition without which testamentary succession is impossible. The will is by definition a unilateral legal act and an expression of the testator's free will to dispose of his estate in the case of death. Hence, the making of a will, as a strictly personal right, is directly related to the freedom of testamentary disposition, since its making, alteration and revocation depend exclusively on the testator's free will. However, in order to realise the freedom of testamentary disposition within the scope of testamentary disposition, the general and special requirements for validity of the will must be met. These requirements are limitations of the principle of autonomy of will, established in favour of the principle of legal certainty.

The following are the general requirements for a valid will: 1) testamentary capacity; 2) free and deliberate expression of the will to make a will and 3) form of the will. Testamentary capacity *(testamenti factio activa)* is the mental state of the testator, where he is capable of understanding the actual and legal significance and the consequences of his/her actions. Pursuant to the Macedonian succession law, "a testament may be made by any person capable of sound judgment over the age of fifteen."[31] In contrast, if at the moment when the will was made the testator was not at least fifteen or was not capable of sound judgment, the will is null and void.[32]

The second condition for the validity of will is free and deliberate expression of will. The will is null and void if the testator was threatened or forced to make the will or decided to make the will by way of fraud or misleading.[33] In this regard, the use of threat, force or fraud results in the will being null and void even if stemming from a third person.[34] In cases where there are grounds for declaring the will as null and void, the autonomy of will is limited by the statute of limitation governing the period in which a lawsuit for declaring the will null and void due to the testator's incapacity or due to the lack of free will on his part may be lodged.[35] The declaration of the will as null and void may only be requested by a person having legal interest within one year after becoming aware of the existence of the reason for nullity (subjective deadline) and at the latest within ten years of execution of the will (objective deadline). The absolute deadline, in which a declaration of the will as null and void may be requested is 20 years after the execution of the will.

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[30]Articles 62-119 of SL. For more information on testamentary succession, see: Ристо Ристески, *Наследување врз основа на тестамент,* Друштво за наука и уметност, Прилеп, 1995.
[31]Article 62 paragraph 1 of SL.
[32]Article 62 paragraph 2 of SL.
[33]Article 63 paragraph 1 of SL.
[34]Article 63 paragraph 2 of SL.
[35]Article 64 of SL.

The third general requirement for the validity of will is its form. In this regard, the Law governs that: "Only a will made in the form and under the conditions laid down in law shall be valid."[36] The form of the will laid down in law is a significant limitation to the principle of the autonomy of will. Namely, while in the area of contract law the parties are free to govern the relationships between them and formulate new (unnamed) contracts,[37] in the area of testamentary succession the testator's free disposition is limited to the decision to make a will and to the selection of one of the forms of the will laid down in the Law. The reason for this position of the legislator is the fact that, unlike contracts, the will produces legal consequences *mortis causa* and the execution of the testator's last will and testament is a matter of public interest. Therefore, since its appearance until this day, the will was characterised by strict formality. Due to this reason, there is no option in succession law for the testator to compile a new form of will other that the forms laid down in the law, to which the rule *numerus clausus* applies.

B. Types of will

The applicable succession law predicts six forms of wills: 1) holographic will;[38] 2) testament compiled by a judge;[39] 3) testament compiled by a diplomatic or a consular representative;[40] 4) testament compiled in time of war;[41] 5) international testament[42] and 6) oral testament.[43] Unlike previous legislation, the current law significantly limits the freedom of testamentary disposition regarding the choice of the form of will, since it no longer foresees the written testament in front of two witnesses and the testament compiled on board a vessel. The rationale behind the exclusion of the written will in front of two witnesses from current legislation is that this type of will was frequently misused in the past, which was difficult to prove in court proceedings. The testament on board a vessel was left out of the law because out country is landlocked. The freedom of testamentary disposition has been significantly limited through these provisions, because the free choice of the form of will has been limited. In addition to the aforementioned types of testament, the succession law also recognises the will compiled by a notary public. However, this type of will is not stipulated in the Succession law, but in the Law on

[36]Article 65 of SL.
[37]According to professor Gale Galev, the freedom of contract "is expressed in the following forms: a) parties may decide (freely) whether they will enter a contractual relationship; b) when and with whom; c) in which form and how the content will be expressed; d) whether and when to change this relationship, in regards to the parties, the scope or the content; e) how long the contractual relationship lasts and how it ends." *Потекло на слободата на договорање..,* p. 33.
[38]Article 66 of SL.
[39]Articles 67-71 of SL.
[40]Article 72 of SL.
[41]Article 73 of SL.
[42]Articles 74-89 of SL.
[43]Article 90 of SL.

notaries public,[44] which governs that a notary public may also compile a will pursuant to the provisions on the will compiled by a judge. The will compiled by a notary public is not different from the will compiled by a judge regarding its content and essence; the only difference is that it is compiled by a notary public, instead of a judge.[45]

Except through the general requirements for the validity of a will, the testamentary freedom is also limited by the special requirements that must be met for every individual type of will; these are also known as essential requirements for validity of will. These requirements are strictly laid down in the law and specific to each individual type of will. If the special requirements are not withheld, this leads to nullity of the will.[46] In order for a holographic will to be valid, for example, it must be entirely handwritten and signed by the testator. Otherwise, the holographic will is invalid.

From the aspect of the free choice of the form of will by the testator, the freedom of testamentary disposition is also limited by the circumstances in which the will is compiled. In this regard, under normal circumstances the testator may only compile a will in one of the regular forms of wills (holographic, compiled by a judge or a diplomatic or consular representative, international), while extraordinary wills may be compiled only under extraordinary circumstances (in case of war, oral testament).[47]

C. Content of the will

In the areas of testamentary succession, the freedom of testamentary disposition finds its widest application in the SL within the provisions governing the content of the will. This principle finds its widest application when the testator designates his testamentary heirs.[48] In this regard, the testator is free to name one or multiple heirs in his will. These may be universal successors, but also singular successors, in cases where the testator leaves these persons one or several objects or rights in his will. Therefore, the law governs that "testamentary heir shall mean any person that the testator designated as heir to his whole estate or to part of his estate."[49] In order for these persons to be heirs, they must be identified. In this regard, heirs, legatees and other persons receiving benefits through a will are deemed to be identified sufficiently if the will contains sufficient data for their identity to be determined. Within these provisions, the testator's free disposition is also expressed through his capacity to decide according to his own free will on the size of the share of the

[44] *Official Gazette of the Republic of Macedonia* no. 55/07, 86/08 and 139/08.
[45] More on the need to regulate the will composed by a notary public in the Succession law in: Дејан Мицковиќ, Ангел Ристов, 'Реформите во наследното и семејното право и ингеренциите на нотарите', *Нотариус,* Нотарска комора на Република Македонија, Сопје, 19 декември 2011, p.73-74.
[46] More on the essential elements of different types of wills in: Љиљана Спировиќ Трпеновска, *Наследно право..,* p. 154-186.
[47] More on the classification and forms of will in: *Ibid*, pp. 154-155.
[48] See Article 96 of SL.
[49] Article 96 paragraph 2 of SL.

estate of each heir. The law does not expressly stipulate the manner in which the testator may freely determine the share to be inherited by each heir. The share may comprise the whole disposable portion of the estate or parts thereof. The manner in which the size of the share is expressed may vary; it may be expressed in percentages, as fractions, in objects etc.

Except in the designation of successors, the principle of autonomy of will is also expressed in the testator's capacity to designate substitutes – persons to whom the estate should be transferred if the designated heir dies before the testator renounces succession or is unworthy.[50] This possibility is also stipulated in the law regarding the legatees.[51] However, the law foresees that the testator may not determine his successor's or his legatee's successor. The testator may leave, under his testamentary capacity, one or multiple bequests.[52] Furthermore, the testator may dispose of his estate after his death for the purposes of realising lawful objectives, as well as establish a foundation.[53] In this regard, the testator may order in his will that an object or a right or part of the estate or the whole estate should be used to realise a lawful objective. If the testator ordered in his will the establishment of a foundation and designated the resources to be used to that aim, the foundation will be established upon approval from the relevant authority. Since the will is a legal act giving benefits to the beneficiaries, the testator may also stipulate legal requirements in his will (orders, conditions and deadlines).[54] In this regard, the testator may burden a person receiving a benefit from the estate with an obligation. In addition, he may also stipulate conditions and deadlines. This free disposition of the testator is limited in the law through the formulation that "impossible, unlawful and immoral conditions and burdens, as well as those that are incomprehensible or contradictory shall be deemed not to exist."[55]

D. Content of bequests

The freedom of testamentary disposition is broadly applied in the provisions governing the content of bequests. In this regard, the testator may bequeath in his/her will one or multiple specific objects or rights to a certain person. Furthermore, the testator may order an heir or another beneficiary of the will to give, from the estate transferred to him/her, a certain object to another person, pay another person an amount of money, forgive a debt of another person or maintain and support another person. In addition, he may order him, in general, to undertake an action, refrain from an action and tolerate an action or a situation in favour of another person. This legacy is referred to in the law as a bequest and the person to whom the bequest is directed is referred to as a legatee and does not have the capacity of heir. The right to request execution of bequests is also based on the

[50]Article 97 paragraph 1 of SL.
[51]Article 97 paragraph 2 of SL.
[52]Article 98 of SL.
[53]Article 99 of SL.
[54]Article 100 of SL.
[55]Article 100 paragraph 3 of SL.

principle of autonomy of will,[56] as is the right of creditors to demand payment before legatees.[57] The legatee is not liable for the testator's debts. However, the testator may order a legatee to be liable for all or for some of his debts or for a part of a debt, but only up to the amount of the bequest.[58] The right to request execution of a bequest is limited by the statute of limitations and is only possible within one year of the day on which the existence of the bequest became known, but no later than ten years after the day on which the decision on succession became valid. The absolute deadline is 20 years of the decedent's death.

E. Executor of a will

The testator's freedom of testamentary disposition is also expressed in the provisions governing the executor of the will.[59] In this regard, the testator may designate one or several persons to act as executors of the will. However, only a person with legal capacity may be executor of the will. The acceptance of the capacity of executor is also based on the person's free disposition. Namely, the person named as executor is not obliged to accept this capacity, if he/she does not want to be an executor; the person may also renounce this capacity if he/she previously accepted to be the executor.

F. Revoking a will

Due to the fact that the will is a unilaterally binding legal act giving benefits to the beneficiaries in case of the testator's death, the testator may revoke the will based on his free disposition at any time.[60] The revocation may be explicit or implied. The testator may revoke the will in its entirety or parts thereof at any time. However, the statement on revoking the will must be given in one of the forms laid down in the provisions of the law governing the composition of the will. The testator may also revoke a written will by destroying the document. The will may also be revoked through a subsequent will, if the testator disposes of the same estate. Namely, any subsequent disposition by the testator of an object previously left in a will to a certain person has the effect of revoking the previous testamentary disposition of that specific object.[61] However, if the subsequent will does not specifically revoke the previous will, the provisions of the previous will remain in force, insofar as they are not contradictory to the provisions of the subsequent will. If the testator destroys the subsequent will, the previous will becomes valid, unless it is proven that the destruction of the subsequent will was not the intention of the testator.

[56] Article 104 of SL.
[57] Article 105 of SL.
[58] Article 110 of SL.
[59] Article 113 of SL.
[60] Article 117 of SL.
[61] Article 90 of SL.

G. Keeping the will

The manner in which the will is kept is also based on the testator's freedom of testamentary disposition. In this regard, pursuant to our succession law the testator may decide that the will is kept: 1) by himself/herself; 2) by a third person; 3) in an institution specialised for such services (post office, bank) or 4) in a court of law.[62] Having this in mind, contrary to the situation in other legal systems, the publication of the fact that a will exists and of the place where it is kept depends solely on the testator's free will.[63] This fact creates practical problems in enforcement, which jeopardise the execution of the testator's last will and testament; therefore, domestic legal scholars recommend the introduction of a registry of wills.[64]

II. The Freedom of Testamentary Disposition in the Macedonian Succession Law

de lege ferenda

The analysis of the current legislation leads to the conclusion that the principle of autonomy of will is widely applied in the Macedonian succession law. In its essence, the principle of autonomy of will is expressed through the testator's right to: 1) freely decide on leaving a will; 2) choose one of the forms of the will laid down in the law; 3) determine the content of the will; 4) designate heirs and their substitutes; 5) determine the shares of the estate; 5) leave bequests; 6) foresee conditions, deadlines and orders to his heirs; 7) dispose of the estate for legal aims; 8) establish a foundation; 9) designate the executor; 10) revoke the will etc. Furthermore, the principle of freedom of testamentary disposition is not represented in the Macedonian legislation only in the area of testamentary succession, where it is most widely applied, but also in the area of legal succession, forced heirship, legal protection and in other areas of legislation. This freedom is not absolute, having in mind that our legal system is part of the civil law (continental law) systems, in which the concept of limited testamentary disposition is implemented. In addition, the principle of autonomy of will is limited by public order, law and morality.

The Macedonian succession law has not undergone significant changes in the past two decades; having in mind the fact that it contains, to a large extent, provisions from the previous legislative documents governing this matter, the question arises of whether amendments and reforms to legislation are required.[65] This also

[62]The procedure governing the keeping of official documents (Articles 286-294) is laid down in the Law on Non-Contentious Procedures, *Official Gazette of the Republic of Macedonia* 9/08.

[63]See more in: Angel Ristov, 'Harmonizacija naslednog prava u Evropskoj uniji', *Revija za Evropsko pravo,* Udruženje za Evropsko pravo, 1/2012, p. 53-71.

[64]See more in: Љиљана Спировиќ Трпеновска, Дејан Мицковиќ, Ангел Ристов, *Наследното право во Република Македонија..,* p. 123-126.

[65]See more in: Љиљана Спировиќ Трпеновска, Дејан Мицковиќ, Ангел Ристов, 'Дали се потребни промени во наследното право на Република Македонија', *Зборник на Правниот факултет „Јустинијан Први" во*

applies to the presence of the freedom of testamentary disposition and its limitations in the Macedonian succession law. Taking into consideration the European legislation in this field, as well as the reform of succession law in other countries that were formerly part of Yugoslavia,[66] we may conclude that some areas of our legislation do not correspond to the contemporary development and legal provisions of contemporary succession law systems.[67] In this regard, the position of domestic legal scholars in succession law, which for some time now have been recommending amendments to legislation, is completely justified.[68]

Having in mind the aspects stated above, we believe that certain amendments to legislation are necessary, in order to broaden the application of the freedom of testamentary disposition and to improve existing provisions by expanding the scope of its application. Therefore, in the area of testamentary succession, the legislator must include in the SL the notary will. Certain changes are necessary with regard to the elements of the holographic will predicting the date of composing the will as a crucial element. Furthermore, in order to protect the testator's interests and to ensure the execution of his/her last will, the introduction of a register of wills is necessary. In the register of wills, the persons would have the option of entering information on whether they have a will and where that will is located. Finally, it should be emphasised that the testamentary succession is practiced very rarely in the Macedonian society, in contrast to legal succession. However, taking in consideration the changes in the social and economic environment and the citizens' awareness, one can expect a certain increase in the number of cases of testamentary succession.

Скопје во чест на проф. Ганзовски, Правен факултет „Јустинијан Први" во Скопје, 2010.

[66] Nataša Stojanović, Novak Krstić, 'Neka zapažanja o zakonskom i nužnom nasleđivanju u Republici Srbiji de lege lata de lege ferenda' *Aktuelna pitanja građanske kodifikacije, zbornik radova,* Pravni fakultet u Nišu, Niš, 2008; Дејан Ѓурѓевиќ, 'Актуелна реформа наследног права у Црној Гори', *Анали Правног факултета у Београду,* бр. 1/2009, Београд, 2009; Ljiljana Kadić, 'Osvrt Predlog Zakona o nasleđivanju Crne Gore' *Zbornik Pravnog fakulteta u Podgorici, In memoriam prof. d-r Branislav Tomković,* no. 38, Podgorica, 2008.

[67] Љиљана Спировиќ Трпеновска, Дејан Мицковиќ, Ангел Ристов, 'Современите тенденции во наследното право',*Зборник на Правниот факултет „Јустинијан Први" во Скопје во чест на проф. Никола Матовски,* Правен факултет „Јустинијан Први" во Скопје, 2010.

[68] Љиљана Спировиќ Трпеновска, Дејан Мицковиќ, Ангел Ристов, 'Дали се потребни промени во наследното право на Република Македонија', *Зборник на Правниот факултет „Јустинијан Први" во Скопје во чест на проф. Ганзовски,* Правен факултет „Јустинијан Први" во Скопје, 2010.