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Conceptual and Ideological Changes in the Czechoslovak Inheritance Law After 1948 in the Broader Context of Changes in Property and Family Law[1]

Abstract

This article focuses on the development of Czechoslovak inheritance law in the period after the end of the World War II, with an emphasis on the years from 1945 to 1951. Inheritance law underwent a significant transformation during this period, which was a direct reflection of the radical political, economic and social changes in the post-war period, which ultimately resulted in the rise of the communist regime in Czechoslovakia in 1948. The inheritance law, which had been for the most part firmly established in the General Civil Law of 1811, was incorporated into the newly adopted so-called Middle Civil Code (No. 141/1950 Coll.). The model for this regulation was the Soviet inheritance law. The newly designed inheritance law thus already clearly reflected all the influences of the socialization of private law, often characterized by a significant departure from the traditional mechanisms and institutes of the regulation of the succession of inheritance known from the previous regulation. Inheritance law was newly linked to the concept of various categories of property – socialist property, personal property and private property. The stated aim was to make the objects of succession primarily objects of personal use and the fruits of one's own labour. As a whole, inheritance law was intended to be a set of rules aimed in particular at simplifying the transfer of property in the event of death within the immediate family, and should primarily serve the living, not the dead. This corresponded to a substantial restriction on the autonomy of the testator's will, which became even more pronounced in the following period.

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The main objective of the article is to focus on the most significant manifestations of the outlined conceptual changes and their real impact on the succession alongside the process of the unification of inheritance law in Czechoslovakia, which took place in the mentioned period.

Keywords: inheritance law, testator, will, socialism, communism, legitimacy, property, General Civil Code of 1811, Civil Code of 1950, Civil Law, 1948

1. Entry notes

A series of fundamental political, social, and economic changes in most European countries characterized the period closely following the end of the World War II. These changes were reflected, often with a certain delay, in the legal framework. This trend was also evident in the territory of the then Czechoslovakia. Changes in the legal sphere often first took the form of non-standard legislative measures in response to the wartime situation or rather the immediate post-war situation characterized by the temporary dysfunction of the usual mechanisms of the legislative process and the need to find solutions that reacted to the often very specific conditions at the time of the end of the World War II and the immediate post-war period. From the legislative point of view, these were mainly constitutional decrees and decrees of the President of the Republic, and in the territory of Slovakia in particular decrees of the Slovak National Council.[2] These legislative acts, which often resulted in major transfers of property, had a clear impact on private law, including inheritance law.[3]

[2] These were decrees issued from 1940 until 1945. They aimed to replace the normative work of the standard Czechoslovak authorities at the time of the World War II (respectively in the period immediately after its end). The decrees could amend, abolish, or replace laws or constitutional laws. The conditions for their creation were laid down in the Constitutional Decree of the President of the Republic No. 2/1940, Official Gazette of the Czechoslovak Republic, on the Provisional Exercise of Legislative Power (republished under No. 20/1945 Coll.). The enacting power of the Slovak National Council derived from its first decree (No. 1/1944 Coll. of the Slovak National Council of 1. 9. 1944). According to the Košice Government Program, the Slovak National Council was the authorized representative of the self-governing Slovak nation and the bearer of state power on the territory of Slovakia – i.e. legislative, governmental, and executive power. The denial of the classical separation of powers was connected with the revolutionary character of its functioning related to the persistent war conditions on the territory of the-then Czechoslovakia. This position corresponded to a special agreement between the Slovak National Council, the President of the Republic Edvard Beneš, and the Czechoslovak Government in London. On the legislative powers of the Slovak National Council. Cf. Vojáček, "SNR jako tvůrce," 2797.

[3] In this context, in particular see Decree of the President of the Republic No. 5/1945 Coll., on the Nullity of Certain Property Law Acts from the Period of Non-Freedom and on the National Administration of the Property Values of Germans, Hungarians, Traitors and Collaborators and Certain Organizations and Institutions, and the subsequent Act No. 128/1946 Coll, on the Nullity of Certain Property Law Acts from the Period of Non-Freedom and on Claims Arising from Such Nullity and Other Interference with Property; Decree of the President of the Republic No. 12/1945 Coll, on the Confiscation and Expeditious Distribution of the Agricultural Property of Germans, Hungarians and Traitors and Enemies of the Czech and Slovak Nation; Decree of the President of the Republic No. 28/1945 Coll, on the Settlement of Agricultural Land of Germans, Hungarians and Other Enemies of the State by Czech, Slovak and Other Slavic Farmers; Decree of the President of the Republic No. 100/1945 Coll., on the Nationalization of Mines and Certain Industrial Enterprises, or Decree of the President of the Republic No. 108/1945 Coll., on the Confiscation of Enemy

This phase was replaced quite soon in Czechoslovakia by targeted legislative activity in response to the fundamental changes in the political system after the communist takeover in 1948. In the field of private law, these changes aimed to establish a legislative bridge between the regulation that was valid and effective in the period of the capitalist economy based on unity and freedom of property, the free market and freedom of enterprise on the one hand, and the controlled socialist economy based on the declared revolutionary victory of the working class and based primarily on the idea of nationalization, collectivization − i.e. the deliberate limitation (even liquidation) of private property − on the other. This change was reflected in all areas of private law. Inheritance law, which is the subject of closer examination in this paper, is one of the areas where the conceptual and ideological shift in the regulation of property relations is particularly quite evident.

At the same time, it should be noted that the regulation of inheritance law in Czechoslovakia was also significantly affected by the completion of the unification of the legal order throughout the whole territory of Czechoslovakia. This process had deeper roots and was not directly related to the war or the subsequent political changes. The cause of the persistent disunity must be traced back to the establishment of the Czechoslovak state. It was brought about by the merging of territorial parts belonging to different parts of the former Habsburg monarchy. At the time of the establishment of Czechoslovakia, the then-existing legal order in force in the territory of the newly established state was adopted. Thus, while in the territory of the Czech lands (or, to put it more simply, the territory of the present-day Czech Republic) the basis of the law of succession was contained in the General Civil Code of 1811 (hereinafter also referred to as the ABGB), in the territory of Slovakia and Subcarpathian Ruthenia the old Hungarian law of succession was in force, consisting basically of the Temporary Judicial Rules of the Judex-Curial Conference and partial laws.[4] Even during the First Republic, an imaginary division of private law into Cisleithanian and Transleithanian law persisted in Czechoslovakia. Although the long-term efforts to unify civil law during the First Czechoslovak Republic culminated in the preparation of a government draft of the Czechoslovak Civil Code and its submission to the National Assembly in 1937, this draft was never adopted due to the fundamental political changes associated with the conclusion of the Munich Agreement, the subsequent occupation of Bohemia, Moravia,

Property and on the National Restoration Funds. As a result of these processes, two-thirds of industrial enterprises, banks, and private insurance companies, among others, gradually fell into the hands of the State.

[4] It is worth noting that the General Civil Code, known as the ABGB, applied to the entire territory forming the imaginary Czech part of the newly established Czechoslovak state (i.e. the territory of Bohemia, Moravia, and Silesia). A partial exception was the Hlučín region, on whose territory the General Civil Code was not brought into force until 1. 5. 1920 as a result of Government Decree No 152/1920 Coll., which regulated the judiciary and extended the scope of the laws and regulations in the field of private law and judicial administration in the territories that had been ceded to the Czechoslovak Republic under the peace treaties. Until then, the German Civil Code had been in force in that territory. Among such partial laws was, for example, Law XVI/1876, on the Formalities of Wills, Contracts of Inheritance and Donations in the Case of Death. For more details on the development of inheritance law in Slovakia. Cf. in particular Luby, *Dejiny súkromného práva*, 425. On the Temporary Judicial Rules of the Judex-curial Conference, cf. especially Gábriš, *Dočasné soudne pravidlá.*

and Silesia and the establishment of the Slovak State.[5, 6] As a result, in the period after the war, a schism persisted in Czechoslovakia in regulating the civil law and thus the inheritance law. The aim of the legislative process after 1948 was therefore, in addition to reflecting the above-outlined fundamental political, social, and economic changes, to unify the law throughout Czechoslovakia. When drafting the new civil law, the legislator adopted a rather negative attitude towards the General Civil Code of 1811. This original Austrian civil law, as the only codified form of civil law on Czechoslovak territory, was already taken as a prototype for future regulation in the context of the drafting of the Czechoslovak Civil Code in the period of the First Czechoslovak Republic. This was also the case in connection with the preparation of the new Civil Code after 1948. However, compared to the legislative efforts of the 1920s and 1930s, which were based on a predominant continuity with the General civil code in force until then, we encounter the opposite after 1948. The legislator, on the contrary, was strongly opposed to the hitherto in force Civil Code and aimed at a predominantly discontinuous approach to its regulation. In light of this background, the following interpretation will also focus, for the most part, on selected conceptual and substantive changes in the 1950 Civil Code as compared to the General Civil Code.

2. Conceptual and ideological changes in inheritance law after 1945

The rise of the communist regime in Czechoslovakia was directly related to the course of the World War II, especially the Soviet army's liberation of most of the country.[7] The future rapprochement with the Soviet Union was already evident from the Treaty of Friendship and Post-War Cooperation between the Soviet Union and the Czechoslovak Republic signed on December 12, 1942. The clear inclination towards the Soviet Union was then clearly proclaimed in the so-called Košice Government Programme.[8] The influence of the Soviet Union and communist ideology continued to grow in the post-war

[5] For more details on this proposal, see Kober, *Osnova československého*.

[6] However, the importance of this proposal from a theoretical and scientific point of view, as well as from the point of view of future legislation, cannot be neglected. In this context, it should be noted that the government's draft Civil Code of 1937 became the main ideological source for the recodification of civil law in the Czech Republic, which resulted in the adoption of the Civil Code of 2012 (No. 89/2012 Coll. – hereinafter referred to as OZ2012). Cf. Eliáš, *Nový občanský zákoník*, 47. In particular, as a result of this extensive inspiration by the government's draft Civil Code of 1937, which closely followed the General Code of 1811 and in many respects was only a modernized version of it, Czech civil law today, after more than sixty years, has restored continuity with the civil law in force in our territory before 1950. It may be noted that this phenomenon is probably the most obvious of the entire 2012 CC in the area of inheritance law.

[7] In this regard, we can mention, for example, the statement of the Minister of Justice at the Manifestation Congress of Czechoslovak Lawyers in 1949, according to which: "[…] without the victorious march of the Soviet army there would be no freedom, and there would be no government of the working people in Czechoslovakia, there could be no people's democratic law in our countr." Cf. Čepička,"Budování nového čs.," 33.

[8] It can only be added that the Košice Government Programme already foresaw extensive transfers of property from private ownership to the sphere of national property, or to property under national administration.

period, as reflected in the 1946 elections. However, the real turning point was the communist coup of February 25, 1948, and the major political changes that followed.

From the legal point of view, the new constitution adopted in May 1948 (Constitutional Act No. 150/1948 Coll. − hereinafter also referred to as the "Constitution of 9 May") was of fundamental importance, declaring a firm determination to build Czechoslovakia as a people's democracy that would ensure a peaceful path to socialism. Shortly thereafter, the Ministry of Justice was instructed by a government resolution to submit proposals for new codifications in all major branches of law by September 1, 1950. The fundamental aim was both a declared departure from the former so-called bourgeois law and the adaptation of the legal system to the needs of communist ideology. Soviet law and its doctrine became the model and support for these rapid legislative efforts, also referred to as the "legal biennial." Among the major conceptual changes that affected the entire legal system in this process was the denial of legal dualism. The then Minister of Justice Alexej Čepička justified this change in connection with the definition of the legislative objectives of the legal biennial by saying that the division into private and public law was necessary:

> […] in the interest of the ruling class, in times when the minority controlled the majority, to be able to better deceive the exploited man, it was argued to him that public law, which represents the interest of the whole, is there to counteract the excessive scope of the rights of individuals and private individuals […]. In a state in which the majority of the nation rules against a tiny handful of old exploiters, all norms of law, whether they concern the nation as a whole, or individual citizens, are norms of public authority, i.e. of the state.[9]

This approach led to the construction of the new Czechoslovak legal order as a complex of separate legal regulations. Civil law itself ceased to be perceived as a general branch of private law and became just one of many branches of law.[10] Only property relations were to be the subject of its regulation. The consequence of this new view of private law was, among other things, the removal of family law from civil law and its incorporation in a separate Act on Family Law (No. 265/1949 Coll.).[11]

These changes have necessarily affected inheritance law as well. It also began to be conceived ideologically, and like the rest of civil law (respectively law as such) was to be subordinated to Marxist doctrine in the future. The basis was the class differentiation of society.[12] Unified law in a people's democracy was seen as the will of the ruling working

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[9] Cf. Čepička, "Budování nového čs.," 41. This attitude is reflected in legal doctrine. We can mention e.g. the statement of Viktor Knapp: "If we are to understand theoretically this new law and apply it correctly, we must necessarily throw off the spectacles of legal dualism for practice, and in solving every question we must remember that just as the state power in our people's democratic republic is single and unified, so is our people's democratic law […]. "Cf. Knapp, "Právo veřejné," 98.

[10] Nevertheless, the proximity of civil law to other branches of law that are usually classified as private law (e.g. labour law or family law) was also perceived by the doctrine of the time. However, other justifications for this correlation were sought rather than just the subordination of these branches to private law. Cf. Knapp, *Předmět a systém*, 72.

[11] The return of family law to the Civil Code in the Czech Republic only occurred in connection with the adoption of Civil Code No. 89/2012 Coll.

[12] It is therefore not surprising that even in the outputs of legal doctrine relating closely to inheritance law, numerous references can be found to the works of Karl Marx, Friedrich Engels, Vladimir Lenin, and Joseph Stalin.

class and all working people.[13] Inheritance law, too, was thus to become an instrument by which the ruling class, i.e. the working class, governs and regulates social relations with the aim of suppressing the exploiting classes and, at the same time, an instrument aimed at liquidating the remnants of capitalism. It was not, therefore, a mere set of legal provisions aimed at regulating the transfer and individual rights and obligations of a deceased person to their heirs or legatees, as was perceived in the period before 1948.

The basic ideological shift in the regulation of inheritance law was connected with general changes in the concept of property law. It is a logical consequence of the fact that inheritance is in its very essence one of the ways of acquiring ownership provided for by law, the specifics of which are the effects of *mortis causa* (of course with the proviso that not only assets but also debts are transferred to the legal successor). Inheritance law must therefore always necessarily reflect the regulation of the property law.[14] Therefore, the concept of divided ownership, enshrined at the highest level in the Constitution of 9 May, also fully manifested itself in the inheritance law after 1948. The origins of this concept are to be sought in Soviet law, which became a model enthusiastically adopted by the Czechoslovak legislators after 1948. Thus, even in the Constitution of 9 May, it is possible to trace a clear inspiration from the so-called Stalinist Constitution of the USSR issued on 5 December 1936. According to Article 5, socialist property in the Soviet Union was to take either the form of state property (i.e. property of all the people) or the form of kolkhoz property (i.e. property of kolkhozes or cooperative associations). Selected objects, in particular land, mineral wealth, water, forests, factories, plants, coal and ore mines, rail, water and air transport, as well as banks, means of communication, agricultural enterprises, but also the basic housing stock in towns, could only be owned by the state, i.e. be the common property of all the people (Art. 6). According to Article 10 of this Constitution, the objects of personal property included pensions and savings acquired through work, the residential house, auxiliary home farm, household items, household goods, items of personal consumption and personal comfort. Personal property so defined was protected by law.[15] The Constitution of 9 May adopted this concept in its foundation. The basic distinction was between national property, i.e. state property, which was essentially in the hands of the state (Art. 149(1)), private property (Art. 158(1)) and personal property (Art. 158(2)).

This layout became the basis for the concept of property law regulation in the Civil Code of 1950. This envisaged three types of ownership: socialist ownership, personal ownership, and private ownership. Socialist ownership was clearly at the top of the list.[16] Socialist property was seen as "[…] the basis and backbone of the new civil law […],"[17] the inviolable foundation of the social order of the then Czechoslovak Republic and the "inviolable source of the wealth and strength of the republic and the welfare of the working people" (§100 CC1950). Socialist property itself was divided into state socialist property and cooperative property. State socialist ownership was considered the high-

[13] Cf. Knapp, "Právo veřejné," 98.

[14] Cf. Hanes, Plank, *Občianske právo*, 438.

[15] For a closer look at the declared ideological foundations of this constitution, we can recall from contemporary literature, e.g. Šmeral, *Nejdemokratičtější*, or Průša, *Stalinská ústava*.

[16] Cf. Knapp, *Hlavní zásady*, 26.

[17] Cf. General part of the explanatory note to OZ1950 in Rais, Parma, Čapek, *Občanský zákoník*, 47.

est form of ownership, which formed the basic prerequisite for both cooperative and personal ownership. The sole subject of state socialist ownership was the Czechoslovak Republic, which administered socialist ownership through budgetary and economic organizations. According to Article 149(1) of the Constitution of 9 May and Article 102 of the CC1950, national property was exclusively reserved for State socialist ownership.[18] According to Article 148 of the Constitution of 9 May, the latter consisted in particular of mineral wealth and its extraction; energy sources and energy enterprises; mines and smelters; natural medicinal resources; production of objects serving the health of the people; enterprises with at least 50 employees or persons active in them (unless they were enterprises of people's cooperatives); banks and insurance companies; rail public transport and regular road and air transport; post office, public telegraph and telephone; radio, television and film. Economic assets nationalized under the provisions of special laws were also national property, as were any public assets serving the general good (Art. 147 of the Constitution of 9 May).

If we disregard the difficulties with the theoretical classification of some property values of the national property under the term *res*, respectively "rights" as the foreseen types of property right objects (for example, the aforementioned radio or film), it is evident that the aforementioned allocation of the given objects to the national property resulted in a considerable narrowing of the range of property values that could have been in other forms of the ownership right. These included the aforementioned personal and private property. The difference between these two types of ownership was considerable. Personal ownership was the second desired category of ownership, next to socialist ownership. Its definition was also based on Soviet models. Personal property included mainly household and personal items, family houses and savings acquired through work (Art. 105 CC1950). Means of production, as possible instruments of exploitation of other persons, were in principle excluded from personal ownership, except for means of production that were needed directly to satisfy the personal needs of the citizen and his family (e.g. a sewing machine in the household for the production and repair of personal clothing, tools needed to cultivate a private garden, etc.). The possibility of owning personal property was considered an inalienable right of the citizens of the Czechoslovak Republic. Personal property could not belong to anyone other than citizens.

Private property, on the other hand, was perceived only as a residual form of property right that was not very desirable for the future, compared to socialist property and personal property. It was the ownership of the means of production and therefore a relic of the persistence of capitalist relations of production. In the course of the future development of socialist society, this remnant of bourgeois law was to be gradually displaced and ideally to disappear altogether.[19] The basis of its definition in the Civil Code was giv-

[18] It can only be noted that according to Article 149(2) of the Constitution of 9 May, it was admitted that parts of the national property which did not have national importance and which mostly or entirely served the population of an administrative unit (municipality, district, region) were allowed to be in the hands of associations of the people's administration (i.e. so-called communal property).

[19] In this regard, we can quote the idea expressed by Knapp: "The root of the problem lies where Lenin has pointed out: namely, that the petty-bourgeois sector, and the private-property sector in general, still breeds capitalism every day and every hour; for it is precisely private property that pulls the petty-owner towards the bourgeois ideal and forces him constantly to turn his back on the working class at decisive moments." Knapp, *Vlastnictví*, 382. Private property was therefore incompatible with the idea of building socialism. However,

en only by a general formulation according to which private property was to be governed by the provisions given for property law, unless it follows from them that they apply only to socialist or personal property (§106 CC1950). Private property included values that did not fall under personal property nor were explicitly excluded to socialist property only. Although this was not very desirable from the point of view of the ideology of the time, the need to legally capture them led to the fact that private property included, for example, land (i.e. estates) and, to a partial extent, means of production.[20]

In relation to the changes in the structure of ownership just outlined, inheritance law ceased to be perceived as a mere set of legal regulations aimed at regulating the transfer of property rights and obligations of a deceased person to heirs or legatees. Even the transfer of property after the death of a natural person had to reflect the broader concept of the various categories of property, so that even in the case of inheritance there was no acquisition of property values contrary to the ideological foundations of Marxism-Leninism. The owner of socialist property could not be a human being; socialist property was thus conceptually excluded from inheritance. Thus, only personal and private property could be the object of inheritance. In view of the aforesaid, it is then evident that the preferred object of inheritance was personal property.[21] Given that individual private property was generally viewed as the basis for human exploitation, its inheritance was seen as a means of undesirably conferring on the legal successor of the exploiter the same social status as his predecessors – that is, the power of exploitation using inherited means of production originating in foreign labour.[22] Nevertheless, private ownership remained generally subject to inheritance, although this possibility was allowed only as a transitional solution to be curtailed by further subsequent regulation.[23] At this stage of the transition to socialist law, however, including the vast majority of the means of production in socialist ownership was seen as a sufficient solution to ensure that inheritance law ceased to be an instrument of exploitation.[24]

As a direct consequence of these changes, the scope of the applicability of inheritance law was necessarily limited after 1948. The subject of inheritance became only a limited section of objects serving basically to satisfy the personal needs of a natural person. Although it was still possible to inherit immovable property, the importance of this pos-

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doomed to extinction in the future, it was at the same time perceived in the early 1950s as a necessary and persistent form of ownership. Knapp remarks that it would be "[…] wrong to overlook the fact that private property still exists in our country and that its sudden, on-paper liquidation would be a mistake that would not benefit our road to socialism." *Ibid*., 386.

[20] Although the means of production enjoyed special protection and could in principle only be national property or the property of people's cooperatives, the means of production used for small-scale business based on personal labour (i.e. not for exploitation) were admitted to private ownership. Two forms of private ownership were distinguished in this respect. Private ownership by small producers (small and medium-sized farmers and artisans), which was allowed, and private ownership by capitalists, which by the mid-1950s was only found in agriculture and in-house ownership and was destined to disappear in the future. Cf. Knapp, *Hlavní zásady*, 34.

[21] The preference of personal property over private property had clear origins in Soviet law – cf. Bratus [*et al.*], *Sovětské občanské právo*, 480.

[22] Cf. Knapp, Petrželka, Škundin, *K otázkám nového*, 48.

[23] This approach was very clearly manifested in the changes to the legislation relating to land, i.e. agricultural and forest land.

[24] Cf. Knapp, Petrželka, Škundin, *K otázkám nového*, 47.

sibility was considerably reduced by the fact that a significant proportion of immovable property was under socialist ownership following the significant property transfers after 1945. Ownership of agricultural land was then progressively restricted fundamentally, particularly in connection with the ongoing collectivization of agriculture. This also reduced its importance. The range of property values that could be passed on by inheritance was thus drastically reduced compared to the period before the World War II.

This shift in the object of inheritance also affected the perception of the purpose of the whole inheritance law. Inheritance law was newly intended to serve socialist society and workers. It was therefore to change its "class content" and its social function. According to u, the inheritance law was to be concentrated "[…] primarily in the family sphere to the objects of personal use and the fruits of one's labour."[25] Inheritance law was no longer to express the unlimited nature of private property and was not to pursue and protect property interests at the expense of family relations. It was intended to enforce the mutual relations between the members of the family, while at the same time not interfering with their emotional relations.[26] Inheritance law should thus have been functionally focused on family law and not on property law, respectively property rights.[27] Its aim was not to support property relations and the accumulation of property, but to provide for and satisfy the needs of the family and to stabilize family relations.[28] In this context, the previous regulation was reproached with the link of inheritance law to the capitalist order, in which inheritance law had completely lost its proper family connection according to the conclusions of the doctrine of the time. The new inheritance law was therefore intended to strengthen the mutual relations established by marriage and the family instead of increasing class exploitation and undeservedly enriching the heir.[29]

Given the different purposes of inheritance law, the autonomy of the testator's should also have been substantially restricted. Here, too, the ideological basis was firmly linked to the new division of property law. It has already been stated that personal property was the preferred object of succession. According to the view of the time, this was generally based on the cooperation of family members and was, moreover, of the nature of objects used primarily to satisfy a person's individual needs. For this reason, socialist inheritance law supported the surviving family members in particular, even at the expense of the testator. Its primary objective was that personal property should continue to serve the personal needs after the death of the deceased, not, however, of the deceased per se, but of their family, respectively its members. These premises necessarily led to the need to suppress the possibility of excessive broadening of the existing owner's freedom of disposal beyond the limits of his physical life.[30] If the testator was given unreasonable means to influence and limit the position of his legal successors, the newly inherited

[25] Cf. Čepička, "Budování nového čs.," 47.

[26] Cf. Knapp [*et al.*], *Učebnice*, 8.

[27] Cf. Rais, Parma, Čapek, *Občanský zákoník*, 53; or the decision of the Supreme Court, No. Cz 87/52 (Rc 99/1952), of 28. 3. 1952. However, it can be noted that some in the doctrine relativized inheritance law's excessive link to family law and its importance for the socialist family. It has been rightly pointed out that inheritance law remains, at its very core, aimed at changing property ownership, and thus, the clear fundamental link between inheritance and property law cannot be denied. Cf. Knapp, *Předmět a systém*, 134.

[28] Cf. Knapp, Petrželka, Škundin, *K otázkám nového*, 49.

[29] Cf. *ibid*., 57.

[30] Cf. Rais, Parma, Čapek, *Občanský zákoník*, 58.

property could not effectively serve them as the object of their personal property, which was in stark contradiction with the basic conceptual grasp of this type of property.

The aforementioned premises led to the conclusion that inheritance law was to be perceived as a law of its kind, which only builds on the property relations of citizens. Inheritance law was thus to lose its previous significance and the nature of a special property right.[31] It was to become a kind of link between civil law and family law. This was also reflected in its placement at the end of the Civil Code.[32] Taking into account all the above-mentioned premises, the new regulation of inheritance law was aimed at the overall simplification of the transfer of the inheritance to the heirs, both on the substantive and procedural level.[33]

3. Manifestations of the ideological and conceptual shift in the perception of inheritance law in the regulation of selected institutes

One of the main changes in the regulation of inheritance law was a **change in the definition of inheritance titles** [emphasis added by author]. The General Civil Code envisaged a hereditary succession based on a will, a law, and a contract of succession. The 1950 Civil Code allowed only for succession by law and by will. The possibility of negotiating a contract of succession was thus omitted. Whether this case was a strengthening or weakening of the autonomy of the testator's can be seen from two different perspectives. The reasoning expressed by the legislator in the explanatory note to the Civil Code of 1950 was based on the idea of extending the autonomy of the testator's will when he justified the non-adoption of the contract of succession precisely because the contract of succession "[…] unduly undermines the future testator's freedom of acquisition."[34] The contractual arrangement on hereditary succession must necessarily reflect the principle of *pacta sunt servanda*. The testator cannot continue to dispose of his property in the event of his death completely freely, independently of the will of the other contracting party. At the same time, however, it is apparent that, by omitting the contract of succession, the testator has lost one of the possibilities of projecting his will in the event of his death. It is the form of an agreement with another person, typically a potential future heir, which gives the testator increased certainty that his will be duly reflected after his death. Unlike in a will, here the other party agrees to the arrangement in the event of death from the outset. It can only be noted that the contract of succession was not reinstated in the

[31] This is a debatable idea even from the point of view of the doctrine of the time, because it is obvious that inheritance right was not even according to the earlier doctrine commonly classified among the property rights. Cf. *ibid*., 53.

[32] Knapp, Petrželka, Škundin, *K otázkám nového*, 58.

[33] Cf. Čepička, "Budování nového čs.," 47.

[34] Cf. Rais, Parma, Čapek, *Občanský zákoník*, 296.

Civil Code of 1964 (Act No. 40/1964 Coll.) and was only reintroduced into the legal system of the Czech Republic with the adoption of Civil Code No. 89/2012 Coll.[35]

The second significant change in the definition of succession titles was the **strengthening of the legal succession** [emphasis added by author] at the expense of the testamentary succession. This change aimed to limit the acquisition discretion which could conflict with the fundamental objectives of the inheritance law. This was primarily the aforementioned need to strengthen the family unit as the basis for the development of the nation.[36] Succession by operation of the law expressed the will of the whole embodied in the statutory text, which fully adhered to this fundamental objective of inheritance law.[37] A will, on the other hand, made it possible to reflect the testator's free will, which may not always be consistent with the stated purpose of the inheritance law. Nevertheless, the possibility of creating a will was retained.[38] In the explanatory note, the will was described as a means of permissible personal interference with the inheritance law. However, the possibility of making a will has been limited in terms of form and content compared to the previous legislation (see below). The preference for intestate succession was also deliberately emphasized by the preference for its regulation in the structure of the Civil Code for succession by the operation of law.[39]

The legal succession itself has undergone fundamental changes. Here, too, a clear effort was made to strengthen the link between inheritance law and family law and to focus the hereditary succession on strengthening family ties. To fulfill this purpose, the regulation of intestate succession was considerably simplified compared to the previous regulation in the General Civil Code, while at the same time limiting the scope of potential legal heirs. Newly, only persons who, according to the legislator, could be presumed to have "[…] a close family relationship to the testator and thus a working relationship to his property, justifying its acquisition" were to inherit.[40] The number of inheritance groups was limited to only two (see below). A major conceptual simplification was the end of the distinction between children, respectively other spousal and illegitimate descendants. This was a reflection of the rule expressed in general terms in section 11(2) of the Constitution of 9 May, according to which the origin of a child must not be detrimental to their rights. Thus, in contrast to the regulation of the General Civil Code, no distinction was made between whether the heirs were related to the testator by marriage or whether the relationship was established by legitimation, adoption, or as a result of an extramarital relationship. The only decisive factor was whether the parent-child relationship had been established by statutory provision. Thus, the woman who gave birth to the child was always considered the child's mother. The father of the child was considered

[35] In particular, the possibility of drawing up a contract of succession is regulated in Sections 1582 to 1593 CC2012. For more on the succession contract in the current regulation see Bednář, *Dědická smlouva*, 17.

[36] Cf. Rais, Parma, Čapek, *Občanský zákoník*, 296.

[37] The doctrine stated: "Preference is given to the heirs at law in an attempt to prefer a title requiring the individual to submit to the will of the whole and the general principles laid down for succession by society as a whole, and to restrict freedom of acquisition where it would conflict with the fundamental principles governing inheritance law." Cf. Kizlinková, Petrželka, "O kodifikaci občanského práva," 92.

[38] In this context, references can be found in the literature to the Soviet legislation, which also allowed wills, albeit in a very limited scope. Cf. Knapp, Petrželka, Škundin, *K otázkám nového*, 58.

[39] Cf. Kizlinková, Petrželka, "O kodifikaci občanského práva," 83.

[40] Holub [*et al.*], *Komentář*, 96.

to be the mother's husband (section 47 of the Act on Family Law), a man who acknowledged his paternity, or a man whose paternity was established by a court (section 48 of the Act on Family Law). Adoption was placed on the same level. All options for the possible establishment of paternity were given equal weight. Thus, children born in wedlock and children to whom the testator's paternity had been recognized or established by the court could inherit on the same level. This approach represented a modern solution for its time, greatly enhancing the equality and protection of all children (whether minors or adults).[41] At the same time, however, it was a solution that diminished the importance and thus the cohesion of marriage.

The position of the spouse himself in the hereditary succession was strengthened compared to the previous regulation. According to §757 ABGB, the spouse could inherit as a legal heir in several forms and different proportions concerning the other heirs. In particular, he could inherit a quarter of the inheritance in addition to the testator's children and their descendants. He could inherit half of the inheritance if he inherited alongside the testator's parents and their descendants or the testator's grandfather and grandmother.[42] The spouse could receive the whole inheritance as a legal heir if there were no legal heirs of the first and second generation, nor grandfather and grandmother. In the CC1950, the spouse was placed on an equal level with the deceased's children without further delay. According to §526 CC1950, he inherited in the first group equally with the testator's children or other descendants of the testator if the child did not survive the death of the testator.[43] If there were no descendants of the deceased, respectively none of them inherited, the spouse could not inherit in the first group of legal heirs alone. However, he was assigned to the second group of legal heirs, in which he had a preferred position. Here, he was always to inherit at least half of the inheritance, while the other heirs divided the remaining half equally among themselves. Only if there were no other heirs in the second group of heirs could the surviving spouse inherit the entire inheritance himself.[44]

The definition of additional heirs of the second statutory succession group represents in several respects a further significant shift in the regulation of the statutory succession compared to the previous regulation of the General Civil Code. Together with the

[41] It can only be noted that all subsequent regulations of family and inheritance law in the territory of Czechoslovakia, respectively the independent Czech Republic, also followed this solution.

[42] If, in addition to the grandfather and grandmother, there were descendants of the deceased grandfather and grandmother, the spouse was to receive, in addition to the above-mentioned portion, the share of the other half of the inheritance which would have gone to these descendants of the deceased grandfather and grandmother according to §739 and §740 of the General Civil Code. This rule may have further increased the share of the inherited property concerning the other heirs. Cf. Krčmář, *Právo občanské V*, 62.

[43] The inheritance share of a deceased child of the testator was acquired equally by his children. If they or some of them did not live to see the death of the testator, their descendants inherited equally, without limitation of degrees of relationship. The same effects as death for the children, respectively other descendants were also due to their refusal or renunciation of the inheritance, disinheritance, or incapacity to inherit. Thus, the legal regulation provided for the principle of the so-called unlimited representation of descendants in the first inheritance group. It also became traditional for all other Czech legislations.

[44] In addition to his share of the inheritance, the surviving spouse, who was living in the same household with the deceased at the time of his death, also inherited separately the deceased's arrears of remuneration for work and pensions up to one month's income, as well as the deceased's usual household furnishings according to §531 CC1950.

spouse, the parents of the deceased always inherited and, in addition to them, on the same level, also persons who had lived with the deceased in the same household as members of the family for at least one year prior to the death and who, for that reason, took care of the joint household or were dependent on the deceased for maintenance (§528 CC1950). If one of the parents did not survive the death of the testator, the children (i.e. the siblings of the testator) and, if there were none, the parents (i.e. the grandparents of the testator) of the deceased parent acquired an equal share of the inheritance. This enumeration ended not only the succession within the second group of legal heirs, but the succession of legal heirs in general. If there were no legal heirs and if no valid will was made, the estate fell to the state as an escheat.

Compared to the basic distribution of inheritance groups (classes) in the General Civil Code, the number of groups (classes) was reduced from four to two.[45] In part, this was merely a change in the design of the regulation. While the General Civil Code provided for the possible inheritance of the siblings and grandparents of the testator in separate classes (cf. Class 2: Parents and their descendants − §735 to §737 ABGB; Class 3: Grandfathers and grandmothers and their descendants − §738 to §740 ABGB), the 1950 Civil Code addressed the succession of the testator's siblings and grandparents by establishing the right of representation within the second statutory class of heirs. In their capacity as substitute heirs, these persons thus only ever entered into the right of inheritance of the deceased's parents and only to the extent of their share of the inheritance.[46] Compared to the previous regulation, the inheritance of distant relatives in the direct line of descent (great-grandparents of the testator) and in the collateral line (descendants of siblings and descendants of the parents of the testator) was not envisaged. The limitation of the scope of inheritance was justified by the fact that, in the case of distant relatives,

[45] It should be recalled that the General Civil Code contained, in its original wording, even six classes of legal heirs. This wide range of inheritance classes was reduced by the amendment made by Imperial Decree No. 276/1914, which issued a partial amendment to the General Civil Code.

[46] It can only be noted that this solution was not successful. It led to considerable problems of interpretation, particularly in cases where the sibling or grandparent of the deceased fulfilled the conditions for inheritance in the position of representatives (i.e. persons entitled to the released share) and at the same time, within the second statutory group of inheritance, in the position of independent heirs by virtue of the status of the person living in the same household as the deceased. The statutory text did not give a clear answer to the question of competing inheritance claims. Case-law has concluded that in cases of conflict of inheritance claims under §528 and §530 CC1950, the heir who would otherwise have an inheritance claim under § 530 must be granted a more favourable claim under §528. At the same time, the Supreme Court in its decision ruled out that an heir who has already fulfilled the conditions for a statutory right of inheritance under §528 (i.e., by living in the testator's household) should receive, in addition to the share under this provision, a portion of the share that could be attributed to him in view of §530 (i.e., e.g. as a sibling of the testator). Cf. the Supreme Court's decision of 28.03.1952, No. Cz 87/52 (Rc 99/1952). This solution was not uniformly accepted by the practice and doctrine of the time. Cf. Holub [*et al.*], *Komentář*, 109. In the 1964 Civil Code, this solution was no longer applicable, since the siblings of the deceased, as direct heirs, were separated into a single inheritance group, with the result that their possible inheritance as persons sharing the same household in the second inheritance group precluded their inheritance in the third inheritance class. In contrast to the CC1950, the CC1964 omitted grandparents from the succession, whose inclusion among the legal heirs was considered impractical and did not reflect the functional focus of the succession by operation of law. Cf. Kratochvíl [*et al.*], *Nové občanské právo*, 629). It can only be noted that the grandparents were reinstated among the legal heirs by a later amendment (Act No. 509/1991 Coll.), when they were included in a separate fourth class of heirs. The current regulation of the statutory succession in the Czech Republic has as many as six classes of heirs.

there was no longer a living family relationship to the testator justifying an interest-free acquisition of property.[47] A breakthrough in the existing concept of the legal succession of inheritance was the departure from the kinship group system, in particular by establishing the right of inheritance of the aforementioned person who had lived in the same household as a family member for at least one year before the testator's death and who, for this reason, took care of the common household or was dependent on the testator for maintenance (alternatively more of such persons). This was a solution which equated blood relationship and marriage on one hand and *de facto* family relationship on the other. The significance of the change was reinforced by the fact that the person in question inherited not only on an equal level with the testator's parents but also equally with them. Even the adoption of this solution was motivated above all by the already stated need to simplify and narrow the legal succession, which the inclusion of cohabitants among the legal heirs covertly modified. A cohabitant could be either a person unrelated to the deceased or a person more distantly related to the deceased. The above-mentioned exclusion of the testator's great-grandparents, nieces, nephews, or uncles and aunts was mitigated by this solution. All these persons could legally inherit from the deceased, but not by virtue of their kinship, but only if they had lived in close connection with the deceased in the same household. This is a clear reflection of the desire to suppress the function of inheritance law as a means of preserving family property and, on the contrary, a clear manifestation of the desire to strengthen the function of inheritance law as a means of securing the property of immediate family members, where the real closeness of the relationship is to prevail, and not merely the legally recognized relationship. It is clear, however, that this approach necessarily undermined the traditional family ties of blood kinship and relativized the traditional concept of the family in the future. It can only be noted that some of the consequences of the legal construction in question could be described as revolutionary, since the cohabitants of the deceased could inherit on the same level as the deceased's spouse and parents.[48]

The underlying idea of simplifying the regulation and thus making it accessible to the ordinary working person was also reflected in the **definition of the will** [emphasis added by author]. A will has been redefined as a unilateral expression of the testator's will by which the testator personally makes a disposition of his or her property (§534 CC1950). The explicit condition of the will was thus not the calling of a certain person as heir to the succession. Thus, the will could also include the calling of a person as legatee or, conversely, the revocation of an earlier will, etc. This broader conception of the will as a general statement in the event of death led to the elimination of the need to continue to distinguish between a will and a codicil. In future, joint wills, including joint wills of spouses, were excluded. In the present case, as in the case of the contract of succession, it was argued that the future free will of the testator, independent of any other person, was unduly undermined.

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[47] Cf. Rais, Parma, Čapek, *Občanský zákoník*, 300. It can only be added that subsequent legislation has corrected this approach. A significant departure from this approach is represented in the Czech legislation of the CC2012.

[48] It is worth noting that this is a solution that has become established in Czech legislation. It was adopted not only in the 1964 Civil Code (§474) but also in the current Civil Code (§1636 and §1637 CC2012).

Significant differences have also been made in the context of establishing the **testamentary capacity** (*testamenti factio activa*) [emphasis added by author]. The capacity to make a will was generally linked to the full legal capacity. A minor under the age of 18 was not completely excluded from the possibility of making a will. The condition was that the person must have attained the age of 15 years, provided that he or she could make a will only in respect of property acquired by his or her own labour (Art. 540(2) CC1950). The will had to take the form of an official record before a court or a notary, at the time of making which the minor had to prove how he had acquired the property.[49] It was a solution reflecting the fact that the minor was, according to §12(2) CC1950, competent to conclude an employment contract and handle the remuneration for his own work.[50] On the other hand, a will could never be made by a person deprived of legal capacity, even partially. According to the Explanatory Note to §540 CC1950, this restriction seemed to be a suitable means of supporting the preferred succession by the operation of law.[51]

Significant limitations on the testator's autonomy have occurred in regulating the **will's formal requirements** [emphasis added by author]. Only written wills were allowed. The reason for abandoning the previously permitted oral will was primarily to prevent disputes between heirs, who, in the legislator's view, should most often be members of the testator's family.[52] In the case of written wills, the formal requirements have been simplified. Both a handwritten will (holographic) and a will with two witnesses (as a general form of a will made in a form other than by one's hand), or with three witnesses (as variants foreseen for the testator who cannot read or write) were allowed. The law also provided for a will in the form of an official record before a court or notary as the will's safest form.[53] In some cases, the form of the official record was made mandatory (typically for those under 18 years of age, for the blind and deaf who cannot read, for the dumb who cannot write). The privileged wills known from the previous regulation of the General Civil Code were not included.[54]

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[49] Cf. Holub [*et al.*], *Komentář*, 149.

[50] Compared to the ABGB regulation, the solution narrowed the testability both in terms of age (originally it was possible to make a will as early as 14 years) and the scope of the values bequeathed. Cf. Rouček, Sedláček [*et al.*], *Komentář k československému*, 100.

[51] Cf. Rais, Parma, Čapek, *Občanský zákoník*, 304. In this case, too, the solution was a departure from the previous General Civil Code, which considered lack of common sense to be the cause of incapacity to make a will. According to §566 ABGB, a will made in a state of rage, insanity, imbecility or drunkenness was thus considered invalid (§566 ABGB). The decisive factor was factual capacity. The burden of proving that the person was incapable of making a will was generally on the one who claimed that the testator was incapable (§567 CCP). However, if someone was completely deprived of capacity, such proof was no longer required, but it was possible to prove that the person was sufficiently sane to make a valid will at the time of making. Persons who were only partially incapacitated could make a will under similar conditions as persons under the age of 14, i.e. by means of an oral declaration on the record before the court. For more details on the issue cf. Krčmář, *Právo občanské V*, 16.

[52] Cf. Rais, Parma, Čapek, *Občanský zákoník*, 304.

[53] From 1. 1. 1955, Act No. 52/1954 Coll. restricted the possibility of making a will by official record to making a will by official record before a notary.

[54] In this respect, it can only be recalled that the Czech legislation returned to oral wills and other forms of privileged wills only after the adoption of the Civil Code No. 89/2012 Coll. (cf. Sections 1542 to 1549 CC2012).

A fundamental intervention limiting the testator's autonomy of can be traced in the provisions on the **permissible content of the will** [emphasis added by author]. This limitation is already apparent from the basic construction of the regulation. Whereas the General Civil Code defined the content of a will positively by specifying what could be regulated in a will, the 1950 Civil Code focused, with partial exceptions, only on the definition of prohibitions. In particular, the rule laid down in §548 of the CC1950, according to which any provision of a will that was contrary to the law or the general interest was invalid, was essential for the new functions of inheritance law. The prohibition of substantive conflict with the law generally meant that a will was invalid for conflict with other related statutory provisions (i.e. in particular §549 to §551 CC1950), but also with other rules defining the hereditary succession.[55] From an ideological point of view, the rule prohibiting the provision of a will contrary to the general interest was fundamental. This general interest was in particular the interest in building "a socialist establishment, socialist property, and socialist morality."[56] Any provision of the will could thus be considered invalid from the outset simply because it was contrary to the idea of socialism.

Among the specific limitations was the prohibition of imposing a condition by which the testator limited the calling of someone as heir (§550 CC1950). It was not a complete exclusion of testamentary conditions as such. Only the condition limiting the heir's (or legatee's) calling was invalid. It is clear, however, that most of the conditions made in a will are of such a nature, whether they are conditions postponing the acquisition of the right of inheritance or, on the contrary, conditions terminating the right of inheritance. Only the condition was deemed invalid. The mere calling of a person as an heir remained valid but was unconditional. Nor was it permissible to call a person to be an heir only for a certain time, or to call an heir so that he should acquire the inheritance later than the date of the testator's death. The provision in the will specifying the person to whom the inheritance was to pass on to on the death of the original heir was also expressly excluded. This eliminated the possibility of establishing a remainderman, as one of the most significant possibilities of projecting the testator's will into the future.[57] In general, the legislator only allowed the possibility of appointing a substitute in cases where the first established heir would not inherit (§539 CC1950). However, if this substitute did not inherit either, the inheritance was to go to the heirs at law without further delay. This ruled out the possibility of calling a substitute for the substitute or further linking of substitutes. Last but not least, the testator's order that the heir should use the inheritance or parts of it in a certain way or do something after the testator's death was also deemed invalid.

The possibility of bequest was retained among the additional testamentary clauses in the broader sense. According to the explanatory note, this concept was retained because bequests are common and well-established among the working masses.[58] However, he-

[55] The explanatory note to §538 CC1950 recalls, for example, the prohibition on imposing on the heir the obligation to pay the deceased's debts to a greater extent than he acquired through the assets of the inheritance.

[56] Cf. Holub [*et al.*], *Komentář*, 171.

[57] However, according to the transitional provisions [§562(2) CC1950], the succession to the remainderman was also allowed in the future if the testator died before the entry into force of the CC1950 – i.e. at the time when the establishment of the remainderman succession was possible.

[58] Cf. Rais, Parma, Čapek, *Občanský zákoník*, 302.

reditary succession was preferred over bequest. It was now possible to pass on all or a proportionate part of the property to the heir, as well as individual items or rights (§511 CC1950). Thus, a particular thing or right did not have to be the subject of a bequest, as was foreseen in the ABGB, but could be directly inherited. Their acquirer thus received as heir not only the specific property value but also a proportionate share of the deceased's debts. This solution was perceived as fairer concerning persons to whom all or a proportionate part of the inheritance was transferred by will.[59] However, it also limited the testator's ability to influence the situation after his death, as he was severely restricted in his ability to leave a part of his property unencumbered by debts to selected persons. The bequest regulation itself was very brief.[60] The need for a more detailed legal definition of the bequest was overridden by the rule that the provisions on inheritance and heir were to apply appropriately to the bequeather and the bequest. As a result of this rule, the bequest passed to the testator at the same time as the inheritance to the heir (i.e. at the time of the testator's death). The bequeather was also generally jointly liable for the testator's debts, given his approximation to the position of heir. The only exception was where the property bequeathed to him was of only a small value concerning the value of the total property remaining and, at the same time, the aggregate of all the bequests did not amount to more than a quarter of what remained of the property left after deduction of the debt. Thus, in any major testamentary disposition in the form of a bequest, the bequeather was liable for the testator's debts in the same way as heirs.

In terms of content, the possibility of making a bequest was limited by the fact that the object of the bequest could only be a movable object or a sum of money. Thus, neither claims nor immovable property could be the subject of a bequest. A testamentary provision calling a person as heir or bequeather of resnot included in the property to be left was also invalid [§549(1) CC1950]. An exception was made in cases where someone was called as an heir to a sum of money not included in the property left behind or funds for education, maintenance, or provision. The priority of hereditary succession over bequests was also due to the clear requirement for the wording of the testamentary will, which should ideally always indicate whether or not the beneficiary of the bequest should be liable for the testator's debts. In the absence of such a clear statement, the devise in question was to be regarded as a call for an heir. The preservation of the bequest was thus intended primarily to allow the bequeathing of small items of memorabilia or small sums of money, the acquisition of which by the bequeather, without the concomitant obligation to share in the debts of the deceased, was not intended to affect the position of the heirs to any great extent.[61]

The abolition of the institute of the legitime (or forced share) also constituted a significant limitation of the testamentary will. According to the General Civil Code, the legitime belonged to the so-called irrevocable heirs. These were a relatively narrow group of legal heirs, generally the testator's children (including, in turn, his grandchildren and great-grandchildren) and, in their absence, his parents (including, in turn, his

[59] Cf. Knapp [*et al.*], *Učebnice*, 13.

[60] While the regulation in the General Civil Code included §647–§694, the CC1950 included only §537.

[61] Cf. Knapp [*et al.*], *Učebnice*, 14; or in greater detail Blažke, "Odkaz v novém dědickém."

grandparents).[62] For each child, the legitime was half of what would have accrued to them in the succession according to the law. In the case of irrevocable ancestral heirs, each irrevocable heir was entitled to a compulsory share of one-third of what they would have received in the legal succession. Neither the surviving spouse nor, for example, siblings were irrevocable heirs. The legitime could go directly to the irrevocable heirs in the form of a share of the inheritance. Thus, if an irrevocable heir inherited from the deceased, whether by will or by operation of law, they were entitled to a share directly as an heir. The forced share could also take the form of a bequest, in which case the irrevocable heir had the status of bequeather. If the legitime was not left to the irrevocable heir either in the form of an inheritance share or in the form of a bequest, the irrevocable heir was not entitled to a share in the estate but only to the payment or replenishment of the legitime in money. In such a case, the irrevocable heir was a creditor and the legitime took the form of a financial claim against the heirs and/or bequeathers.[63]

The Civil Code took a different approach to the protection of irrevocable heirs.[64] In §551 CC1950, a similar range of protected persons was retained, as the protection continued to be only to the descendants and ancestors of the testator. Significant differences can be noted in the provisions of CC1950 and ABGB. At first sight, the increase in the scope of protection is apparent. According to the 1950CC, the testator had to leave the minor descendants at least as much as the value of their entire legal share.[65] The minor descendants (again, direct children and distant descendants of the testator) were always to receive a value corresponding to three-quarters of their potential legal share of the inheritance. To the same extent, the testator's parents (or grandparents instead) were protected.[66] The fundamental difference, however, was primarily the form of protection of the non-negligible heir. The legislator newly envisaged that if the testator makes a will that contradicts the protection of the non-negligible heirs, the will would be invalid to that extent.[67] Thus, if the non-negligible heir was omitted from the will, he remained in the position of a legal heir as a result of its invalidity. He was thus not only entitled to

[62] Of course, the right to the legitime belonged only to persons who had the capacity to inherit, not to persons who had renounced the right of inheritance, had been disinherited or had renounced the right to the legitime, etc.

[63] For more details on the nature of the legitime, its calculation and possible forms of its enforcement, cf. Krčmář, *Právo občanské V*, 124.

[64] According to the terminology used in connection with the interpretation of the CC1950, these were non-negligible, not irrevocable heirs.

[65] The minor descendants were both the direct children of the testator and the distant minor descendants (grandchildren, great-grandchildren), who, however, were entitled to protection as non-negligible heirs without issue only if they were entitled to the legal succession in the particular case – i.e. the right of representation of a close descendant who would otherwise have inherited before them in the first succession group.

[66] It is only necessary to recall that the parents or grandparents were entitled to the protection in question only if, in the absence of a will, they would have inherited by operation of law. Thus, if any of the descendants were there, as heirs of the first class of inheritance, parents would not have inherited even if no will had been made and could not claim protection against such a will. The protection of parents or grandparents was also limited by the condition that they were destitute and incapable of work at the time of the testator's death.

[67] In this context, it is possible to leave aside the intense debate of the time as to whether the will in the present case is void absolutely without further consideration, or whether it is a case of relative invalidity, where the will remains valid until the invalidity is invoked by the intestate heir. It can only be stated that even under the influence of case law (cf. e.g. the Supreme Court's decision in No. Cz 153/54 /Rc 107/1954/ of 28. 5.1954, or the Supreme Court's decision No. Cz 128/54 /Rc 139/1954/ of 6.09.1954), the conclusion

the right to the legitime known from the previous legislation and could therefore not be only in the position of a creditor vis-à-vis the heirs (or bequeathors) but was always in the position of a direct heir of the testator. The chosen solution limited the testator's testamentary will in several ways. Firstly, the increase in the protected shares resulted in a much greater proportional limitation of the free disposal of his property. In some cases, the increased protection suppressed the testator's testamentary will altogether (e.g. in a situation were, at the time of the testator's death, only one minor child would have been among the potential heirs of the first succession group). At the same time, the testator lost the possibility to exclude the non-negligible heirs completely from acquiring the assets that constituted his estate during his lifetime. A non-negligible heir in the position of a legal heir could not, by the testator's will, be disposed of only by paying the value of the legitime.

Both elements limiting the testator's freedom of devise were justified by the need to protect the fundamental principles and purpose of the inheritance law, in particular, the need to protect the family at the expense of the testator's individual will. In this respect, it should be noted that the abolition of the legitime was also possible given the introduction of a limited obligation on the heirs to pay the testator's debts. Whereas the General Code provided, in principle, that the entirety of the deceased's property and all his debts would pass to the heirs in the context of universal succession, under the 1950 Civil Code the heir, and thus any irreplaceable heir, acquired debts only to the extent of the property acquired. The need for potential protection of the non-negligible heirs against the testator's debts by establishing their position as mere creditors vis-à-vis the other heirs thus become obsolete. It can only be added that the subsequent legislation of the CC1964 preserved the basic concept of protection of the non-negligible heirs but narrowed their scope so that they consisted only of the descendants of the testator. A fundamental shift towards the original concept of the protection of the irrevocable heir was brought about by the OZ2012.[68]

Conclusion

It can be concluded that the regulation of inheritance law introduced with effect from 1 January 1951 fully reflected the change in its nature and importance in the conditions of the socialist society. Above all, the purpose of the inheritance law was different. It was not primarily aimed at preserving property values in a family based on kinship. The basic declared aim of the inheritance law was to provide for the family. The freedom and autonomy of the testator necessarily had to give way to this general, society-wide interest. This trend pervaded the entire system. However, it was probably most evident

of relative invalidity prevailed, where it was *de facto* left solely to the will of the protected non-negligible heir whether or not the testator's will remained valid.

[68] Although only the descendants of the deceased remained the irrevocable heirs, the institute of the legitime was reintroduced with all the basic features known from the provisions of the General Civil Code. At the same time, to strengthen the testator's testamentary autonomy, the value of the legitime was reduced to 3/4 of the potential legal share of inheritance for minor irrevocable heirs and 1/4 for adult irrevocable heirs.

in the regulation of supplementary testamentary clauses. Only a few were retained from the previous regulation of the General Civil Code, and those that were retained were in a much-reduced form. The legislator was firmly guided by the idea that the law of succession is determined by life and is intended for the living, not the dead.[69] The heir should not be unduly restricted in the free disposal of the inherited property to the detriment of its most efficient economic use. This was also directly related to the already mentioned fact that the object of inheritance was to be primarily personal property, i.e. items primarily serving to satisfy the personal needs of their owner. It was not desirable to limit the possibility of such personal use by the will of another person, even that of the previous owner. A concomitant of the changes in question was the reduction and simplification of the regulation of the inheritance law. The basic aim of the legislator in formulating the new regulation was, as far as possible, an uncomplicated transfer of the deceased's property to the heirs. This degradation of the regulation of inheritance law was deepened by the adoption of the 1964 Civil Code. It was only with the adoption of Civil Code No. 89/2012 Coll. that this situation was rectified and most of the traditional institutes of inheritance law were restored in the Czech Republic.

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[69] Petrželka, "Nové občanské právo dědické," 48.

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