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TESTAMENTAL INHERITANCE THEORETICAL AND PRACTICAL ASPECTS

Svajūnas Navickas, Dalia Perkumienė
Kazimieras Simonavičius University, Lithuania

Summary: The problems of inheritance law are still not popular among legal scholars. And here, like every year, one of the most interesting topics for citizens is inheritance law. This shows that this institute is relevant and important for a large part of society. People who encounter inheritance problems for the first time have no idea that it is a more complicated process than it might seem at first glance. A will has the higher power of law than an intestate succession. Therefore, in the absence of exceptions provided by law, the testator has the absolute right to deprive the heirs of the right of inheritance according to the law. And for the heirs according to the law and according to the will, if they inherit, it is important to challenge the will. Prove that it does not meet the requirements of the law and does not have any legal force. Proving all this is a difficult and tedious process, which often ends to the plaintiff's disadvantage. Unlike other interested parties, the testator seeks to protect his assets. Therefore, his will is especially respected, and invalidation of the will is possible only in exceptional cases. Making a will is encouraged and considered a positive basis for inheritance law. This article discusses the concept of a will and its meaning, conditions for the validity of a will and cases when it becomes disputable or invalid.

Key words: inheritance by will, validity, challenge, inheritance, heirs.

Introduction

Relevance of the topic. Since a person encounters inheritance at least once during his life, it is inheritance, its aspects are particularly relevant. In addition, knowledge about inheritance will prevent negative legal consequences or even litigation. Therefore, this topic is relevant not only for a professional lawyer, but also for those who have absolutely nothing to do with law.„At the end of October, the day of free legal consultations organized by the courts showed that, like every year, people mostly inquired about divorce, awarding child support or acceptance of inheritance„[1]. Some legal problems are very relevant, but rare. But inheritance and the problems arising from it are common. This frequency determines the relevance of this institute. Although looking at the changes in the articles of this institute, one gets the impression

1 A. Surblienė, Teisėja A., *Surblienė primena, kaip priimti palikimą, kad netektų bylinėtis teisme*, Vilnius 2021.

that it is one of the most stable institutes of civil law. Maybe stability is the reason for the problems of this institute? After all, legal norms need to be changed and improved in order to regulate opposing interests as much as possible.

It should be noted that it is through the will that the testator takes away the right of inheritance from one, several or all heirs. And then there is a dispute whether the testator properly expressed his will on the day of the census due to illness or other reasons. Society is changing, part of society is emigrating. Our citizens acquire one or another property in foreign countries. This shows that this topic is also relevant on an international scale. Inheritance according to the will is regulated by 1961. The Hague Convention on the Conflict of Laws Governing the Form of Testamentary Provisions. However, Lithuania has not ratified this Convention[2].

The aim. Analyze and evaluate the legal aspects of inheritance under a will.

The object of the research - the legal aspects of inheritance according to the will.

A problematic situation. When property is inherited under a will, only the persons or person named in the will inherit the property. Therefore, according to the law, the heirs are faced with the problem of disputing the will.

The novelty of the topic, researchability. In 2018 the publication of the scientific article „Applicable law in the case of international inheritance" was started and it clearly indicates that the problems of inheritance law are still not popular in Lithuania among legal scholars[3]. Apparently not only the legislator does not pay much attention to this institute, but also legal scholars.

Research tasks: 1) reveal the concept and meaning of inheritance according to the will; 2) to analyze the conditions of validity of the will; 3) examine the challenge of the will theoretically and in a practical aspect.

Research methodology: comparative method, historical method, scientific literature analysis method, generalization method.

The concept and meaning of a will

Regarding the will as one of the two bases of inheritance, it is necessary to clarify the concept of inheritance itself. „Inheritance is the transfer of property rights, duties and some personal non-property rights of a deceased natural person to his heirs by law or (and) heirs by will"[4]. Although the Civil Code first mentions inheritance by law, inheritance by law is carried out if there is no will or the will is invalid. Of course, the legislator has foreseen when the freedom of the testator is restricted when leaving his property. And in the event that there are no heirs either by law or by will, or not one heir accepts the inheritance, or the testator

2 Europos ekonomikos ir socialinių reikalų komitetas. 421-oji plenarinė sesija, įvykusioje 2005 m. spalio 26-27 d. Europos ekonomikos ir socialinių reikalų komiteto nuomonė dėl Žaliosios knygos dėl paveldėjimų ir testamentų, Europos Sąjungos oficialusis leidinys, 2006.

3 S. Bronušienė, *Taikytina teisė tarptautinio paveldėjimo byloje. Vilniaus universiteto leidykla*, Vilnius 2018, p. 84.

4 Civil Code of the Republic of Lithuania: 2000 September 6 No. VIII-1864. Summary edition from 05/01/2023 to 04/30/2024.

deprived all heirs of the right to inherit by law, the testator assigns property rights to the state. So it will not happen that the property of the deceased will not be left to anyone after his death. It is interesting that the Civil Code of the Republic of Lithuania defines only the concept of joint will of spouses. And the concept of a will is not separated. It should be noted that the former Civil Code of 07.07.1964 did not have the concept of a will either[5]. So it is not entirely clear whether this is a loophole of the legislator or the lack of a unanimous opinion on the definition of this inheritance tool. It is also interesting that international conventions do not define the concept of a will: the Basel Convention „On the Creation of a System of Registration of Wills"[6], the Washington Convention „On a Uniform Law on the Form of an International Will"[7], the Hague Convention „On the International Administration of the Property of Deceased Persons"[8]. In addition, the civil codes of other countries do not have a legally established concept of a will or their concepts are abstract. Here, in Article 2191 of the Civil Code of the Republic of Moldova, we can find a formulated concrete and lear concept of a will[9]. Opinions are heard that it is not worth discussing the concept itself and it is better to start revealing the topic in its essence. But can we always understand what others are trying to say without getting to know some of the history or the roots of the word in order to understand the meaning of it all? Attention should be paid to the fact that not everyone can properly assess the signs of a will, which would fundamentally confuse the understanding of what a will is. A testament (Latin: *testamentum*) is a personal arrangement of property, or personal non-property rights, or obligations of the testator or the testator after his death, drawn up in the manner and form prescribed by law[10]. From this it can be seen that the will has the marks of a unilateral transaction. It has features of both objective and subjective law. The legislator has provided for two types of wills, namely the official will and the personal will. It should be emphasized that the common will of spouses is a separate type of will, regulated in the fifth chapter of the fifth book of the CC of the Republic of Lithuania. It is important to distinguish between these wills. Because „Personal will is a will written by the testator's hand, which indicates the testator's name, surname, date (year, month, day), place of making the will, and which expresses the will of the testator and is signed by him. A personal will can be written in any language". Official wills are considered to be „wills that are made in writing in two copies and certified by a notary or a consular officer of the Republic of Lithuania in the relevant country". It is always recommended to make an official will that is certified by a notary. This means that it has been vetted by a legal professional and is less likely to have negative legal consequences in the future.

5 Civil Code of the Soviet Socialist Republic of Lithuania, 1964 July 10 No. CK.

6 Convention on the Establishment of a System for the Registration of Wills, 1972 May 8.

7 Convention providing a uniform law on the form of an international will, Washington 1973.

8 Convention of Concerning the International Administration of the Estates of Deceased Persons, 1973 january 7.

9 Civil code of the Republic of Moldova, 2002 june 6. as amended on 29-12-2022.

10 R. Varnienė, *Testamentas. Mokslo ir enciklopedijų leidybos centras*.

We found out that neither the previous nor the current Civil Code of 01.07.2001 defines the concept of a will. However, in the jurisprudence of civil law, „in continental law systems, the concept of „will" means a legal fact, a means of transferring property in the event of death, a unilateral, revocable transaction entered into at the time of death, concluded by one or more persons"[11]. In analyzing the concept of a will, the definition of a transaction is important. „Transactions are considered to be the actions of individuals that aim to create, change or abolish civil rights and obligations." A will is a unilateral transaction, as it is sufficient to conclude it by the will of one party. In Lithuania, the will is one of the two bases of inheritance law, on the basis of which the principle of freedom of ownership is ensured. This means that the testator can transfer any property he owns. It is true that the law provides an exception that limits the principle of freedom of ownership. Article 5.20 of the Civil Code. 1. d. the norm specifies that, „The testator's children (adopted children), spouse, parents (adoptive parents), who require maintenance on the day of the testator's death, inherit, regardless of the content of the will, half of the part that each of them would have to inherit according to the law (mandatory part), if no more has been assigned by the will." Only in the circumstances specified by law does inheritance by law prevail over inheritance by will. Therefore, the testator does not have the right to deprive the right to the inheritance if his children (adopted children), spouse, parents (adoptive parents) require maintenance on the day of the testator's death. Article 913 of the French Civil Code. 1 d. there is also a limitation of the principle of freedom of will, which provides for the right of children to a mandatory part of the inheritance[12]. This means that the testator cannot completely exclude children from his will. The law imperatively obliges to leave the part of the inheritance that must go to the children. Because of this, the testator can only express his true will through a will. Therefore, making a will should be viewed positively.

Thus, a will is a unilateral transaction that takes effect only after the death of the testator. After revealing the concept of a will and understanding what is considered a will and understanding the meaning of all this, the conditions for the validity of a will will be explained further.

Terms of validity of the will

Although the Civil Code of the Republic of Lithuania specifies conditions for the invalidity of a will or its parts, this in itself does not mean that this list is exhaustive. Because the guiding legal norm indicates that „the Will may be recognized as invalid on other grounds for recognizing transactions as invalid." In such a case, the developed judicial practice should be analyzed, which would also reveal the validity conditions of this institution. However, we will discuss the judicial practice related to violations of the terms of the will in the next chapter, „when interpreting

11 G. Sagaty, ir kiti., *Lietuvos Respublikos civilinis kodeksas. Pirmieji dešimt galiojimo metų. Mokslo studija - Mykolo Romerio universitetas*, Vilnius 2013, p. 669.

12 Code Civil de la République Française. Version en vigueur le 24 novembre 2023.

the terms of the will, the rule of interpretation of contracts is applied, according to which it is required to determine how reasonable persons would behave in a specific situation, it is necessary to take into account the fact that the will of the testator and its expression do not always correspond to that of a reasonable person standard of conduct. For transactions of this type, such as a will, subjective rather than common bjectively existing behavioral criteria are more significant"[13]. However, in order for a personal will to be valid, it must meet the requirements of the law:

1. The will must be written by the testator's hand;
2. In the will, it is mandatory to indicate the testator's name, surname, date, year, month, day, place of making the will;
3. The will of the testator must be expressed in the will;
4. The will must be signed by the testator. The specified conditions are necessary for a personal will to be valid. If even one requirement is not fulfilled, the will will be considered invalid. Therefore, it is worth looking at each condition in more detail.

The first condition is strict. The law does not provide an exception that would allow another person to write the will for the testator. Unless the testator chooses to make a formal will. In this case, the testator would indicate only the content of the will. Although the condition is strict, it is aimed at protecting the will of the testator and, if necessary, proving the authenticity of this important document.

The second condition obliges to specify the exact date, it is also valid in the case of an official will. It's not just about being clear about which will came first. If more than one of them was concluded, but also with the health condition of the testator. It is precisely because a person must be capable in order for a will to be valid. And this is because the testator would have complete freedom to choose whom to leave his property to. You can do this only by understanding the consequences of your actions. The testator can only make a will himself, he must be competent in this field, who understands the significance and consequences of his actions. Testamentary capacity was a necessary condition in Roman law as well, since it is one of the elements of private legal subjectivity - factio testamenti[14]. It is also interesting that in the Code of Theodosius one of the main conditions for the validity of the will was the signatures of the testator and seven witnesses[15]. As seen earlier, only testamentary capacity and legality was not enough, it was also necessary to collect witnesses who confirmed the officiality of this will. The place of making the will is an equally important factor. If a citizen of the Republic of Lithuania owns property in both Lithuania and Portugal and makes a will in Portugal. Such a will would be invalidated. Under Portuguese law, such personal wills are not permitted[16]. Therefore, the norms of international law should be followed. European Parliament and Council Regulation

13 Klaipėdos Apygardos Teismo civilinių bylų skyriaus teisėjos 2022 m. balandžio 21 d. nutartis civilinėje byloje Nr. e2S-404-618/2022.

14 M. Jonaitis, *Romėnų privatinė teisė. Mykolo Romerio universitetas*, Vilnius 2014, p. 278.

15 R. Varnienė, *Supra note* 10.

16 S. Bronušienė, *Testatoriaus laisvė ir jos ribos tarptautinio paveldėjimo byloje. Vilniaus universiteto leidykla*, Vilnius 2019, p. 154.

(EU) No. 650/2012 also allows the application of the testator's citizenship law. So if the court approves the will will be valid[17].

The third condition, the will must be made of the person's free will. True, the legislator adds that the requests and persuasions of interested persons to make a will favorable to them are not considered coercion, so they do not affect the validity of the will. Of course, each situation should be evaluated individually. People's psychological states are different. A person whose psychological state is resistant to manipulation, pressure, etc. some tension can be induced. And this can influence a person's decision. Nevertheless, in the practice of the Court of Cassation, the respect of the will of the testator is particularly emphasized in the cases of inheritance according to the will, and the provision is followed that, when deciding inheritance issues, when the will of the testator is expressed in the will, it must be respected and implemented after the death of the testator (Lithuanian Supreme Court, February 2014 28, ruling in civil case No. 3K-3-54/2014)"[18]. Although minors in Lithuania have the right to acquire property, they do not have the right to write a will. Only persons who have reached the appropriate age have this right, i.e. 18 years. Or a person who has reached the age of 16, who has been emancipated by court order, according to Article 2.9 of the CC of the Republic of Lithuania. 1 d. Also, persons who are allowed to enter into marriage under the procedure established by law before reaching the age of 18 and thus gaining full capacity, Article 2.5 of the Civil Code of the Republic of Lithuania. 2 d. When comparing the legislation of other states, it can be seen that this personal will is not limited in this way. The German Civil Code (Article 2229 paragraphs 1 and 2) does not prohibit minors from making a will, and they can do so from the age of 16. Moreover, they can do so without a legal representative[19]. In Latvia, minors at the age of 16 also have the right to make a will[20]. In Estonia, even younger persons from the age of 15 have the right to make a will[21]. And here in Spain, a person acquires testamentary capacity from the age of 14[22]. Therefore, in Lithuania, the regulation of expressing one's will in a will is one of the strictest.

The fourth condition also relates to authentication. And in the event that the testator cannot do it himself, another person can sign for him. It is important to mention that there are additional conditions for a personal will to be valid. The will must be clear and legal, meet the requirements of the law. In fact, it can be written in any language. It is important that the content is clear, defined, unambiguous. Otherwise, there may be a dispute about the true will of the testator. It is true that such cases are also possible when the content of the will can be interpreted in various (differ-

17 EUR-Lex. Access to European Union law. in 2012 July 4 Regulation of the European Parliament and the Council (EU) No. 650/2012.

18 Vilniaus Regiono Apylinkės Teismo civilinių bylų skyriaus teisėjos 2023 m. spalio 3 d. sprendimas civilinėje byloje Nr. e2-5963-1194/2023.

19 German Civil Code: 2002 janury 2 last amended by Article 1 of the Act of 10 August 2021.

20 Eropea-justice. Paveldėjimas, Latvija 2023.

21 Riigi Teataja. General Part of the Civil Code Act: 2002 juillet 1.

22 V. Pakalniškis, ir kt., *Civilinė teisė. Bendroji dalis. Mykolo Riomerio universiteto Leidybos centras*, Vilnius 2008, p. 497.

ent) ways, or the essential parts of its content contradict each other and cancel each other at the same time, or it is impossible to determine the true will of the testator at all (unintelligible will - Article 5.16, Part 1, Clause 3 of the Civil Code). 2018 of the Civil Cases Division of the Supreme Court of Lithuania. February 14 ruling in civil case no. 3K-3-39-916/2018"[23]. However, in order to reflect the clearest will of the testator, the official will must be drawn up in writing in two copies, which are certified by a notary public or a consular officer of the Republic of Lithuania in the relevant country. If it is decided to write a personal will after all, it should be handed over to a notary public or a consular officer of the Republic of Lithuania in a foreign country for safekeeping. Otherwise, the will must be submitted to the court for approval no later than one year after the testator's death. Without court approval, the will would not be valid.

In summary, we see that the Civil Code of the Republic of Lithuania does not provide a specific list of conditions for the validity of a will. In addition, when making a will, you should not only follow the norms of the fifth book of the Civil Code of the Republic of Lithuania, but also the first book, which regulates the grounds for invalidity of transactions.

Invalidation of a will (challenge)

It can be said that a will is valid until it is contested. „In the practice of the Supreme Court of Lithuania, it is emphasized that the will expressed in the will of a deceased person must be especially respected, therefore the invalidation of the will is possible only in exceptional cases"[24]. Only the heirs according to the law or according to the will, if they inherit, can file a lawsuit to challenge the will. The law provides for cases where a will is invalid:

1. The will was made by a person incapable in this field;
2. The will was made by a person with limited capacity in this field;
3. The content of the will is illegal or incomprehensible;
4. The will may be declared invalid on other grounds for invalidating transactions;
5. A will that has not survived has no effect.

The content of such a will cannot be determined by court procedure. It is taken into account that it may happen that due to certain circumstances, for example, a fire, the will does not remain and it cannot be restored in other ways. The first and second part of the article are related to a person's poor health. However, not every mental disorder of a person is a basis for considering a person incapacitated. Especially since since 2016 January 1 Amendments have entered into force in the Civil Procedure Code of Lithuania and the Civil Code of the Republic of Lithuania[25]. Which aim to implement

23 Vilniaus Apygardos Teismo civilinių bylų skyriaus teisėjų kolegijos 2022 m. spalio 11 d. nutartis civilinėje byloje Nr. e2A-1971-577/2022.

24 Plungės Apylinkės Teismo civilinių bylų skyriaus teisėjos 2019 m. rugpjūčio 26 d. sprendimas civilinėje byloje Nr. 2-41-1081/2019.

25 Šilutės rajono savivaldybė. Keičiasi neveiksnumo nustatymo asmeniui tvarka. Biudžetinė įstaiga Šilutės rajono savivaldybės administracija, Šilutė 2016.

the 2006 requirements of the United Nations Convention on the Rights of Persons with Disabilities[26]. This means that declaring a person incapacitated is even more limited and used as a last resort. The law provides for the possibility of contesting the enabling will in accordance with the general principles of invalidity of transactions of the first book of the Civil Code of the Republic of Lithuania. According to Article 1.89 of the CC of the Republic of Lithuania. 1 d. even if a person is capable, but at the time of concluding the transaction was in such a state that he could not understand the significance of his actions, the transaction may be declared invalid by the court. In the case of the Supreme Court of Lithuania, it was established that the convicted N.G. convinced the doctor S.J. to record untrue information about the health condition of the testator A.L. Although he knew that A.L. in civil case no. 2-17286-800/2015 was recognized as unable to understand the essence of his actions and control them. In addition, he convinced the notary that A. L. wanted to leave all the property to N. G. The court found that the testator could not express his will in any way, as he was in a coma at the time[27]. Therefore, N.G. fraudulently acquired the property specified in the will, violated not only the rights of the testator, but also with such actions deprived the heirs of the right of inheritance according to the law. In other states, heirs apply by law to challenge a will, based on the general rule accepted by society that the testator was unlikely to have intended to leave his family members without any property. However, this „American" legal model is not common in all US states[28]. In Lithuania, regardless of the content of the will, children, adopted children, spouse, parents, adoptive parents, who require maintenance on the day of the testator's death, have the right to half of the part of the property that would be inherited according to the law. Comparing the model of the English system, it can be seen that persons who have the right to claim maintenance can do so, but the size of the property is not linked to inheritance according to the law[29]. In cases of international inheritance, heirs may face difficulties. In cases where persons have declared their departure from Lithuania, the inheritance law of the state where they are staying may be applied[30]. It should be noted that according to the established practice of the Court of Justice, Regulation no. 650/2012 applicable inheritance law is determined according to the testator's last permanent place of residence[31].

The will can also be sought to be challenged in accordance with Article 1.91 of the CC of the Republic of Lithuania. on the basis that the testator makes the will under psychological pressure. Of course, the plaintiff has to prove these circumstances, which is quite difficult. The court evaluates the conditions of the will's validity and the grounds for its invalidity only *ex post*[32]. Notaries have the duty to ensure the

26 Convention on the Rights of Persons with Disabilities and Optional Protocol, 2006.

27 Lietuvos Aukščiausiojo Teismo civilnių bylų skyriaus išplėstinės septynių teisėjų kolegijos 2020 m. lapkričio 25 d. nutartis civilinėje byloje Nr. 2K-7-25-495/2020.

28 S. Bronušienė. *supra note 16*, p. 166.

29 Ibid.

30 Lietuvos Aukščiausiojo Teismo civilnių bylų skyriaus teisėjų kolegijos 2019 m. sausio 17 d. nutartis civilinėje byloje Nr. e3K-3-90-378/2019.

31 Judgment of the court (Second Chamber) 21 June 2018. In Case C-20/17.

32 Verslo žinios. Ex post [lot.].

secrecy of the will until it takes effect[33]. Therefore, in order to recognize the will as invalid according to Article 1.91 of the CC of the Republic of Lithuania. completely different factual circumstances than Art. 1.89 of the CC of the Republic of Lithuania must be proven. the plaintiffs' duty to prove the circumstances related to the illegal coercion of the testator by other persons or his deliberate misrepresentation due to certain circumstances[34]. And although the Supreme Court of Lithuania notes that the will of the testator must be respected in accordance with the rule of good morals[35]. But this does not mean that the testator can knowingly or unknowingly abuse it. There are cases when the testator leaves his property in the will and includes the part of the property that does not belong to him. The testator G. B. included in the official will a part of the property that did not belong to him by right of ownership, i.e. 3/8 of the apartment[36]. And this means that the content of such a will is illegal. The will is recognized as invalid even when its content is incomprehensible, undefined, imprecise or even non-existent[37]. Therefore, the will of the testator is unclear, which violates the interests of the heirs, „the court of cassation has stated in the cases regarding the invalidation of wills that in the case of disputing the will, the element of the transaction is extremely significant - the will of the testator, i.e. i.e. whether the content of the will is in accordance with the will of the testator. When considering cases regarding the invalidation of wills, the courts, taking into account the circumstances stated in the basis of the claim, must investigate and assess whether the will of the testator expressed in a certain form required by law corresponds to his true will (ruling of the Lithuanian Supreme Court of February 14, 2018 in civil case no. 3K-3-39-916/2018)"[38].

It can be seen that the regulation of national legal acts in Lithuania differs from the „American" and „English" model of inheritance law. Nevertheless, in order to protect the will of the testator, it is necessary to follow international law. And national courts cannot resolve certain questions of inheritance without the conclusions of the Court of Justice.

Conclusions

In the civil codes of many states, including the Civil Code of the Republic of Lithuania, the concept of a will is not established. After analyzing the jurisprudence of

33 Notary Law of the Republic of Lithuania: 1992 October 1 No. I-2882. Summary version from 10/01/2023 to 12/31/2023.

34 Vilniaus Apygardos Teismo civilnių bylų skyriaus teisėjų kolegijos 2023 m. rugsėjo 26 d. nutartis civilinėje byloje Nr. e2A-1720-803/2023.

35 Klaipėdos Apygardos Teismo civilnių bylų skyriaus teisėjų kolegijos 2018 m. gruodžio 20 d. nutartis civilinėje byloje Nr. e2A-1133-513/2018.

36 Vilniaus Regiono Apylinkės Teismo Trakų rūmų teisėjo 2023 m. gegužės 15 d. sprendimas civilinėje byloje Nr. e2-1075-920/2023.

37 Vilniaus Regiono Apylinkės Teismo Trakų rūmų teisėjos 2022 m. gegužės 12 d. sprendimas civilinėje byloje Nr. Nr.e2-259-424/202.

38 Panevėžio Apygardos Teismo civilnių bylų skyriaus teisėjų kolegijos 2021 m. gruodžio 9 d. nutartis civilinėje byloje Nr. e2A-603-739/2021.

civil law, we can conclude that a will is a unilateral transaction by which the testator transfers his property rights, duties and some personal non-property rights to the heirs specified in the will after his death. A will is one of the two bases of inheritance law. Superiority of law over intestate succession. The will ensures the principle of freedom of ownership and this freedom is limited only in the case of exceptions provided by law.

The Civil Code of the Republic of Lithuania contains a list of conditions for the validity of a will. The will must also meet the requirements of a unilateral transaction. However, when interpreting the terms of validity of a will, you must also follow the rules of interpretation of contracts. Therefore, not only the general criteria of validity conditions are significant, but also subjective ones. It should be noted that the rules established in national law are not always applied, it is necessary to follow the rules of international private law as well. Therefore, regulation no. is significant in international inheritance cases. 650/2012.

When making a will, you need to look more broadly, to assess whether all the conditions will be fulfilled. In the absence of even one condition, if the deadlines are missed, the will would become invalid. Because wills are subject not only to the special requirements of inheritance law norms, but also to the general requirements for concluding transactions. However, a will made for this reason is valid until it is declared invalid. And it can only be contested ex post after the death of the testator. The practice formulated by the Supreme Court of Lithuania shows that the will must be declared invalid only in exceptional cases. And the will of the testator must be especially respected. However, the practice of national courts differs from the „American" and „English" model of law, when and in the presence of all the grounds for the validity of the will, wills are disputed according to the general rules of society. It should be noted that in order to challenge the will, one of the essential elements of the transaction must be assessed - the will of the testator. And it must be respected according to the rule of good morals.

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DZIEDZICZENIE TESTAMENTALNE ASPEKTY TEORETYCZNE I PRAKTYCZNE

Streszczenie: Problematyka prawa spadkowego nadal nie jest popularna wśród prawników. I tutaj, jak co roku, jednym z najciekawszych tematów dla obywateli jest prawo spadkowe. To pokazuje, że ten instytut jest istotny i ważny dla dużej części społeczeństwa. Osoby, które po raz pierwszy spotykają się z problemami spadkowymi, nie mają pojęcia, że jest to proces bardziej skomplikowany, niż mogłoby się wydawać na pierwszy rzut oka. Testament ma wyższą moc prawną niż spadek ustawowy. Zatem w braku wyjątków przewidzianych przez prawo spadkodawca ma bezwzględne prawo do pozbawienia spadkobierców prawa do dziedziczenia zgodnie z przepisami prawa. A dla spadkobierców zgodnie z prawem i zgodnie z testamentem, jeśli dziedziczą, ważne jest zaskarżenie testamentu. Udowodnić, że nie spełnia wymogów prawa i nie ma mocy prawnej. Udowodnienie tego wszystkiego jest procesem trudnym i żmudnym, który często kończy się na niekorzyść powoda. W odróżnieniu od innych zainteresowanych stron, spadkodawca dąży do ochrony swojego majątku. Dlatego jego wolę należy szczególnie szanować, a unieważnienie testamentu możliwe jest jedynie w wyjątkowych przypadkach. Zaleca się sporządzanie testamentu i uważa się je za pozytywną podstawę prawa spadkowego. W artykule omówiono pojęcie testamentu i jego znaczenie, przesłanki ważności testamentu oraz przypadki, gdy staje się on sporny lub nieważny.

Słowa kluczowe: dziedziczenie testamentowe, ważność, zaskarżenie, dziedziczenie, spadkobiercy.