

## Questions on a form of a testament

Thank you for your answers – I have used the best of them to formulate this exemplar solution. The biggest issue was the question on a mystic testament, so I do hope you find following explanation understandable.

### **I. In which of the following codifications is it obligatory to include a date in a testament?**

**BGB – Germany** – it was obligatory until 1938, today Is only facultative “soll-Form” no “muss-Form”

**KC – Poland** – here it is obligatory, but in some situation the lack of the date has no influence on the validity of the will (art. 949 s. 2 of the KC)

**ABGB – Austria** – here it was never obligatory, facultative only

### **II. Explain the difference between a rule saying „a day, month and a year of the acquisition of the testament must be apparent“ and „a testament must contain a day, month and a year of its acquisition“.**

In the first sentence the date is understood by any method whereas in the second sentence the date must be determined with the day, month and year

Example: In the first sentence the date has to be understood by any method (for example: this testament was written when the Spanish Civil War ended (1. 4. 1939)) and in the second sentence the date must be determined with the day month and year (in this case the example has to be a day in this time period for example 01/01/1939).

### **III. What does „a holographic testament“ mean? And what are its advantages?**

The will written by a testator hand – not on type machine, but only in hand written form. It is the easiest variant of a will, usually the testator doesn't need witness. This type of a will was in roman law atypical (in Codex Theodosianus in post classical era), but today it is a very often utilised form.

### **IV. What are the advantages and disadvantages of a public testament (testament prepared by a civil-law notary)?**

#### Advantages:

- Higher legal certainty
- No risk of theft, loss or destruction
- Certainty of correct content

#### Disadvantages:

- Costs

- Not easy to make. The testator can't do it at home, he has to go to the notary. It takes a certain time to do it.
- The witnesses aren't held by professional secret. So, there is a risk that they will make some inappropriate confidences.

#### V. What is the difference between a mystical testament in French and Italian law and a mystical testament in CzCC 2012?

There are two types of mystic wills:

**“French” type:** in French and Italian law the mystical testament is signed by the testator and sealed in an envelope in the presence of a notary and two witnesses and the content of the mystical testament remains secret until it is opened on the death of the testator. In other words, in French and Italian law the concept of secrecy stems from the ignorance of the entire content of the will before the eyes of a notary and a witness. **So here is one document – only one will**

CZCC2012 is like **“Austrian” type:** Like in Roman law, there are two documents. The first one in which is made reference to another document (another will, often codicil in Roman law). It is not a condition that both documents be in the same form (one can be notarial, the other holographic), but both must meet the formal requirements of the law. In this way, among other things, a previously cancelled will can be renewed. This type is also in Austrian law. In CzCC2012 is in sec. 1495: *If, in his testament, a decedent refers to the content of another instrument, such other instrument has the same legal effects if it meets the requirements for a testament. If it does not meet such requirements, its contents may only be used to explain the decedent's will.*

#### VI. Does the Law of your country provide a possibility to conduct a testament orally?

Because you are from different countries, here are all your responses:

**Austria:** There was the oral form possible from the beginning of the code (1812) as an type of ordinary form x from 2005 it is possible only in case of danger of the death as an extraordinary form.

**Belgium:** Belgian Law doesn't accept oral testament. The necessity to have a written document isn't a question of proof. It's a condition of validity of the testament.

**Cyprus:** In Cyprus, according to the Article 23 of the Wills and Succession Law (Chapter 195) there is not the possibility to conduct a testament orally. The testament must be written. In fact, this article provides that: *«No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, ...»*

[http://www.cylaw.org/nomoi/enop/non-ind/0\\_195/full.html](http://www.cylaw.org/nomoi/enop/non-ind/0_195/full.html)

<http://www.cylaw.org/nomoi/arith/CAP195.pdf> (English translate)

**Czech Republic:** There was no possibility of oral form in CzCC1950 and 1964, in the CzCC2012 is possible the oral form in case of extraordinary wills.

**Slovakia:** There is no possibility of oral form (like in the Czech republic) – CzCC1964

**Spain:** Militars could be done orally before two witnesses and will be once the danger has finished.