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The Dating of Last Wills in the Territory of the Czech Lands from the 19th to the 21st Century*

*Pavel Salák***

Abstract

The paper follows the development of the legal regulation of dating last wills as one of the essential elements required for a last will in the territory of the Czech lands from the 19th to 21st century. It focuses not only on applicable regulations but also on legislative proposals that finally never came into force. Similarly, tangential references have been made to the legislations playing their role as a source of inspiration – in particular the legislations of Austria, Germany and Hungary. In addition to the legal regulation, the paper also follows its interpretation and the reasons for different approaches to this issue. In substance, the liberal approach, which places the emphasis on the autonomy of will, alternates here with the approach preferring formality. These aspects had an impact on the provisions of Act No. 89/2012 Sb., the Civil Code, concerning dating last wills. As can be observed, the studied legal regulation is a compromise between the two trends, albeit not an entirely happy one.

Keywords: *Last Will; Date; Formal Requirement; ABGB; BGB; Czechoslovak and Czech Law of Sucession.*

I. Introduction

The issue of the indication of a date as one of the essential elements of last wills is quite closely related to the holographic will. The fact that a testator can make a holographic will himself or herself without any cooperation required from another[1] person poses a risk that the awareness of when a last will came into existence may be lacking.[2]

In its own way, the legal regulation of a date as one of the essential elements of last wills can illustrate a conflict between the two principles that meet here – the principle of formality and the principle of autonomy of will. Although the following text focuses on the Czech or rather Czechoslovak legal regulations, it is fitting to first pay attention to the Austrian, German and Hungarian legal regulations because they had their own respective impact on the subsequent development of law in the territory of Czechoslovakia and the Czech Republic.

II. German, Austrian and Hungarian Law

The above mentioned conflict, including its consequences, becomes clearly apparent when the respective holographic wills in the Austrian ABGB and the German BGB are compared, even though both legal codes nowadays regulate the dating of last wills in the form of a recommendation rather than an obligation. The legal courses for the two laws were however different, even if das Allgemeine Landrecht für die Preußischen Staaten (1794, hereinafter referred to as the ALR) was reflected in both of them in its respective manner.

The stand of the ALR on the holographic will as such was negative. Although the holographic will is very often perceived as one of the contributions of the Romans, reality is somewhat more complex. The holographic will originated in the times of ancient Rome; nevertheless it is a legal institute dating back to the later Post-Classical Era.[3] In a way, it may be said that, unlike the other institutes of the law of succession, the holo-

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1 This is the case in Czech, German, Austrian, Swiss and Polish law, and also the law of other countries. On the contrary, Hungarian law required two witnesses to be present also in the case of holographic wills.

2 With respect to notarial wills, it is possible to keep to a notarial record, while for allographic wills there must be witnesses present.

3 *Novella Valentiniani* 21.2 dated 26th December 446 in Ravenna. For details, including the outline of the later development in the Middle Ages, see: BÉRIER, Fr. Longchamps de, *Law of Succession. Roman Legal Framework and Comparative Law Perspective*. Warsaw: Wolters Kluwer Polska, 2011, p. 164an. For the details on the holographic will in the Roman law, including the text of the respective constitution, (in German) compare KURYŁOWICZ, M., Testamentum holographum. In: *Krytyka Prawa* vol. 7 Nr. 1, 2015, p. 219-227. [online] [accessed 2018. 01. 25], retrieved from: http://www.krytykaprawa.pl/api/files/view/59482.pdf.

graphic will played quite a marginal role. After all, this institute was not adopted by the Emperor Justinian's codification.[4] And so the Prussian ALR[5] recognized holographic codicils but not testaments.[6] In Martini's draft of the Civil Code of Austria, which resulted in Bürgerliches Gesetzbuch für Galizien (1797, hereinafter referred to as the GBGB) it was admitted that even a last will might be made in the holographic form,[7] however, according to the model of the ALR that it followed,[8] the draft subjected the holographic form of a last will to the obligation of marking the date on it.[9] The Austrian Civil Code of 1811 (hereinafter referred to as the ABGB) however derogated from this concept and the final form of the law transformed the requirement to mark last wills with a date – similarly to Codex Theresianus[10] – into the form of a mere recommendation.[11] The role of the main author, F. von Zeiller, in the genesis of the provisions of Section 578 is however somewhat inconsistent. As is evident from records, his stance on the holographic will was originally negative.[12] He took the view that there was a high risk of testament falsifications. However, he was alone in pursuing this view in the commission and so the holographic will remained in the ABGB, however the wording of the provision corresponded to the form stipulated in the GBGB and the indication of a date and place was an obligatory essential element. During the meeting on 17th August 1807, F. von Zeiller however, somewhat surprisingly, proposed transforming the date requirement to the level of a recommendation,[13] which was also finally reflected in the wording of Section 578 of the ABGB. This provision applied expressly both to last wills and codicils.[14]

The course taken in Germany was different. The original draft of the BGB was based on the concept that had already been pushed in the ALR – by its very nature, the holographic will was inadmissible and the preferred form was the notarial will.[15] A separate regulation of the holographic will was not included in the wording of the BGB until in the third draft of the bill.[16] However, the overall scepticism towards it did not disappear; therefore the legal regulation of the form of holographic will in the BGB was quite strict.[17] It was not only the date (day) of the last will and testament that was required to be stated but also the place of its dating. The fact itself would not have been so problematic, after all the ABGB also recommended the place to be specified but the problem was actually the fact that the date as well as the place had to be written in the testator's own hand. While the date was usually written in the testator's own hand, there were a lot of last wills for which testators used their own headed paper containing their address. However, a pre-printed address could not be considered as an indication of the place made in the testator's own hand, and so the last will was auto-

[4] This type of a last will was allowed only between parents and their children (as heirs) – so called *testamentum parentum (parentis) inter liberos*, BÉRIER, Fr. Longchamps de, *Law of Succession. Roman Legal Framework and Comparative Law Perspective*. Warsaw: Wolters Kluwer Polska, 2011, p. 169.

[5] Title XII, Section 162 of the ALR: *Zur Gültigkeit einer solchen Disposition ist jedoch die Beyfügung des Jahres und Tages, wo sie errichtet worden, nothwendig.* - So that such a disposition would be valid, it is necessary to also state the year, the date and the place where it was made.

[6] The provision of Title XII. Section 161 mentions only codicils – in one's own hand, it was possible to make only a bequest, through a codicil, but it was absolutely not possible to appoint somebody as an heir. When a testament is mentioned, this naturally means the ordinary testament, not the privileged testament.

[7] The holographic form as an ordinary form of a testament was also allowed in Codex Theresianus, although here for example Azzoni also took the view that it should be only a privileged testament. The essential requirements in this case were that a testament be handwritten in a testator's own hand, signed and sealed (Codex Theresianus Teil II., Caput XI., § VII.69-76). HARRASOWSKI P. Harras von, *Der Codex Theresianus und seine Umarbeitungen*. Vol. I-IV. Vienna, 1883-1886, retrieved from: http://repertorium.at/ns/codex_theresianus_inhalt.html.

[8] With respect to the ALR, Martini expressed his opinion metaphorically, saying that it was difficult to write Odyssey after Iliad.

[9] Section 373 of the GBGB: *"Wer schriflich und ohne Zeugen testiert will, der muß das Testament oder Codicill eigenhändig schrieben, den Tag, das Jahr, den Ort seines gegenwärtiggen Aufenthaltes darunter setzen, sich mit seinem Vor- und Geschlechtsnahmen unterzeichnen, und sein Petschast, Siegel oder anderes Zeichen beydrücken."*

[10] Codex Theresianus Teil II., Caput XI., § VII,100.

[11] As is evident from the provision, the date is not required, though is nevertheless expressly recommended. This paragraph may serve as an illustration of the fact that the ABGB is sometimes described as a law written in such a manner so that it could be understood by a common – legally uneducated – user.

[12] During the meeting on 23rd January 1803; see OFNER, J., *Der Ur-Entwurf und die Berathungs-Protokolle des oesterreichischen Allgemeinen bürgerlichen Gesetzbuches*. I. vol. Vienna: Alfred Hölder, 1889, p. 345-347.

[13] However, the genesis of Section 578 is more complicated. Not only did Haan, the chairman of the committee, agree with it, he even proposed that the holograph should be absolutely informal. Just to draw it up would suffice, not even a signature was to be required (after all, under Roman law a text written in one's own hand without a signature was considered to be a holograph). Only on 30th November 1809 did Pratobevera manage to push through, even against Haan, the wording that required a signature as an essential element. Svoboda p. 260, 261, note 19) OFNER, J., *Der Ur-Entwurf und die Berathungs-Protokolle des oesterreichischen Allgemeinen bürgerlichen Gesetzbuches*. II. vol. Vienna: Alfred Hölder, 1889, p. 538-539.

[14] The essence of the provision of Section 578 of the ABGB did not change, not even after ErbÄn 2015 (effective from 1st January 2017). However, the explicit references to a testament and codicil disappeared and were replaced with the term "letztwillige Verfügung!", which comprises both types of dispositions in itself.

[15] Interestingly, it was the Justinian law that was taken into account as an argument for refusing the holographic will in the BGB. See HELLER, Hans-Detlef. *Die Zivilrechtsgesetzgebung im Dritten Reich: die deutsche bürgerlich-rechtliche Gesetzgebung unter der Herrschaft des Nationalsozialismus. Anspruch und Wirklichkeit*. Münster: MV Wissenschaft, 2015, p. 300.

[16] MUGDAN, B. (ed.), *Die gesammten Materialien zum Bürgerlichen Gesetzbuch für das Deutsche Reich (Erbrecht)*. V. vol. Berlin: R. v. Decker's Verlag, 1899, p. 893 (at the very bottom) et seq. [accessed: 2018. 16. 10] Retrieved from: https://archive.thulb.uni-jena.de/collections/servlets/MCRFileNodeServlet/HisBest_derivate_00010712/Band%205.pdf

[17] The original wording of the provision of Section 2231 (2) of the BGB was: *"Ein Testament kann in ordentlicher Form errichtet werden… durch eine von dem Erblasser unter Angabe des Ortes und Tages eigenhändig geschriebene und unterschriebene Erklärung."*

matically invalidated subsequently.[18] Even Adolf Hitler, when he executed his first testament in the spring of 1938, made the same mistake.[19] This was perhaps the reason why he initiated the idea that the date and place in the amendment then being prepared, which was supposed to adapt the law of succession to Nazi requirements to a greater extent, should be (and finally were) regulated as optional essential components of a last will.[20] The different regulations of the BGB and the ABGB surely played their role and were likely to give rise to some problems after the Anschluss of Austria. In any case, a date also became an optional essential element of a last will after 1938 and it is still the case today. This can be considered to be one of the few effects that the ABGB had on the BGB.

Although Hungarian historical law was not substantially influenced by Roman law, it also preferred testaments in the form of deeds. The issue of essential elements of the last will in the law of Hungary, which was rather common law in its nature, was regulated in Law No. XVI/1876. Being true to its local tradition, the Law allowed for the holographic will, however its essential elements were determined in a manner that was even stricter than in the BGB as not only did it require the date and place to be indicated,[21] but also the signatures of two witnesses to be attached. Therefore, one of the main benefits of the holographic will – keeping a last will or its content confidential from anybody – could somewhat lack purpose.[22]

III. The Dating of Last Wills in the Interwar Period

With the establishment of Czechoslovakia in October 1918, the legal norms then valid in its individual constituent territories (Act No. 11/1918, Section 2) were adopted, although the role of the BGB was only marginal. It was applicable only within the small territory of the Hlučín region[23] and was very soon substituted by the ABGB there. From the beginning of the 1920 s, the differences between the Austrian and Hungarian laws led to efforts to concurrently unify and update the law.[24]

So that the new regulation could be completed as soon as possible, a decision was taken to amend the ABGB to some extent instead of new codification – the ABGB was to be translated into Czech,[25] everything out-dated was to be revoked, and the law applicable in Slovakia and Carpathian Ruthenia (Hungarian law) was to be taken into account. The work was divided among several subcommittees that gradually submitted their proposals by 1924.[26]

The subcommittee for the law of succession, which was headed by Emil Svoboda, adhered quite rigidly to the intention of revoking that which was out-dated, and in truth only oversaw the translation of the text of the ABGB into Czech. Nevertheless, they did introduce several amendments to the law. One of them was a new wording of the provision on formal essential elements of the holographic will. The equivalent to Section 578 of the ABGB as proposed by the subcommittee according to the Explanatory Memorandum *"in accordance with Hungarian law…"* introduced the date as an obligatory essential element.[27] Accordingly, it was proposed that any last will and testament comprising more than one sheet should have all the sheets affixed to each other or that each of the sheets should be signed.[28]

Unfortunately, it is not possible to discover the underlying reasons for this decision taken by the subcommittee from the subcommittee's documents as the subcommittee for the law of succession was the only one that did not take minutes of their

[18] It is reported that the formal deficiencies concerning the date and place of a last will and testament caused that in the first half of the 20th century up to 30% of holographic testaments in Germany were declared invalid. This is also reported by J. F. Stagl at the end of his study, see STAGL, J. F., Das "testamentum militare" in seiner Eigenschaft als "ius singulare". In: *Rev. estud. hist.-juríd*. [online]. Valparaíso, 2014, vol. 36, p. 129-157 [accessed 2015. 06. 10]. Retrieved from: http://www.scielo.cl/scielo.php?script=sci_arttext&pid=S0716-45520140001000004&lng=es&nrm=iso

[19] HELLER, H. D., *Die Zivilrechtsgesetzgebung im Dritten Reich: die deutsche bürgerlich-rechtliche Gesetzgebung unter der Herrschaft des Nationalsozialismus. Anspruch und Wirklichkeit*. Münster: MV Wissenschaft, 2015, p. 301.

[20] Interestingly, although the stances of the Ministry of the Interior, the Ministry of Culture, and also of SS-Reichsführer Himmler were sceptical as regards the holographic will, the legal regulation was enacted. In addition, it was explicitly expressed in connection with it that it is the *"Führerswunsch"* (Führer's wish). HELLER, H. D., *Die Zivilrechtsgesetzgebung im Dritten Reich: die deutsche bürgerlich-rechtliche Gesetzgebung unter der Herrschaft des Nationalsozialismus. Anspruch und Wirklichkeit*. Münster: MV Wissenschaft, 2015, p. 303.

[21] It is worth noting that the above mentioned law used the term *"időpont"*, and this term can be translated as a date or a certain moment of time. However, the truth is that Hungarian courts construed the term *"időpont"* in the manner that the day, month and year (or the year, month and day in the Hungarian usage) should be indicated, for example 1892. augusztus 5. I would like to express my thanks for this piece of knowledge to prof. Sáry.

[22] It was Zeiller who presented the fact that the holographic will best enabled keeping its content in confidence as one of the arguments for the holographic will. ZEILLER, F. von, *Commentar über das allgemeine bürgerliche Gesetzbuch für die gesammten Deutschen Erbländer der Oesterreichischen Monarchie. Part II.* Head 8. Vienna: Geistingers Verlagshandlung, 1812, p. 384-385, p. 452-453. Although it is true that the Hungarian regulation did not require the wording of a last will to be known to witnesses, the fact that there were witnesses meant that there was at least some awareness that a testator had written a last will and testament.

[23] A part of Czechoslovakia from 4th February 1920 (The Treaty of Versailles).

[24] Consideration had already been given to the updating of the ABGB before the First World War, nevertheless the war led to a cessation of these efforts.

[25] It must be noted that the text of the ABGB was first translated into Czech in 1812, with several more translations following, nevertheless none of the translations were official, and so the German wording remained the only official wording of the law until the termination of the effect of the last provisions of the ABGB in the territory of Czechoslovakia (repealed by the Labour Code – Act No. 65/1965 Sb.).

[26] For the most recent paper (in German) on the subject of unification of the civil law see SALÁK, P., Tschechoslowakei: Rekodifizierung des Bürgerlichen Rechts. In: Martin Löhnig, Stephan Wagner. *"Nichtgeborene Kinder des Liberalismus"? Zivilgesetzgebung im Mitteleuropa der Zwischenkriegszeit.* Tübingen: Mohr Siebeck, 2018. p. 91-147.

[27] SVOBODA, E. (the committee reporter), *Dědické právo. Návrh subkomitétu pro revisi občanského zákoníka pro Československou republiku*. [The Law of Succession. The Proposal Submitted by the Subcommittee for the Review of the Civil Code for the Czechoslovak Republic.] 2nd Edition, Prague: Ministerstvo spravedlnosti, 1924, p. 21.

[28] This also was based on Hungarian law.

meetings.[29] However, the papers written by Emil Svoboda, who headed the whole committee, can furnish some clues because he quite clearly expressed his opinions[30] against the existing Section 578 of the ABGB, the weak formal essential requirements of which he said posed a risk. However, his negative stance focused not only on the holographic will but also the allographic will, where he perceived both of them to be prone to forgery.[31] It can be expected that the notaries among the members of the subcommittee took his side because they were materially interested in the matter to some extent, and so perhaps were the judges for whom a higher level of essential elements would make decision making easier. Accordingly, the above mentioned approximation to the Slovak law may more be considered to have been a suitable pretence.[32] Svoboda himself had previously been forthcoming[33] about his inspiration gained from Swiss law.[34] Nevertheless, the wording of the proposed paragraph is clearly based on the original wording of the ABGB,[35] only the form of recommendation is transferred to the obligatory level.[36]

In the second half of the 1920 s, the proposals submitted by individual subcommittees were passed to the supra-revision committee,[37] which was assigned the task of consolidating the whole text.[38] As part of their discussions, the supra-revision committee abandoned the subcommittee's proposal or more precisely returned the date requirement back to the level of a mere recommendation as was provided for in the ABGB. Following the example of law applicable in Slovakia, the idea that individual sheets of a last will should be affixed to each other was also adopted, however also in the form of a recommendation. This was the form that the provision on the holographic will had in the drafts of the Civil Code both in 1931 and 1937, when the bill was finally put before Parliament. The text of the Explanatory Memorandum is basically the same for both bills, starting with the following sentence: "Taking into account the previously taken stand, the committee hereby returns to…"[39] This previously taken stand was directed towards the idea of the whole recodification – as a matter of fact, only to amend the ABGB. Not only here but also in other parts, it is apparent that the wording of Draft 1931 and Draft 1937 returned to the original wording of the ABGB.[40] As in the ABGB, also here the provision was common for the last will and codicil, which it expressly stated.

IV. Developments after 1948

Due to the events of February 1948 Czechoslovakian society embarked on a different path. For a society that was supposed to head towards communism, the bill based on the ABGB was completely unsuitable. During 1949-1950, the Communists accomplished what had never been successfully achieved during the whole era of the First Republic – law in the territory of Czechoslovakia was finally unified. However, this unification corresponded to the requirements of the Communist Party. The new legal regulation of the civil law – Act No. 141/1950 Sb. (Civil Code, hereinafter referred to as the CC 1950) – was drafted in the manner enabling transformation of the capitalist society into a socialist society.[41]

[29] Národní archiv Praha, fond Ministerstvo spravedlnosti v Praze 1918-1953, sign Oz11, box 303, file 1924-1926. Only the minutes of the first meeting, where a resolution was passed not to take any further minutes, are contained here.

[30] SVOBODA, E., Problém vůle v rakouském právu dědickém. [The Matter of Will in the Austrian Law of Succession.] In: *Právník* vol. LI, 1912, predominantly on p. 261-262., SVOBODA, E., *Právo dědické*. [The Law of Succession.] Prague: Vesmír, 1921, passim.

[31] SVOBODA, E., *Právo dědické*. [The Law of Succession.] Prague: Vesmír, 1921, p. 32-35.

[32] Ibid.

[33] SVOBODA, E., Problém vůle v rakouském právu dědickém. [The Matter of Will in the Austrian Law of Succession.] In: *Právník* vol. LI, 1912, p. 261.

[34] Art.505 ZGB (the original wording of 1907): The holographic last will and testament must be written by a testator in his or her own hand from beginning to end, with the location, year, month, and day marked and the testator's signature attached at the end of the last will and testament… The amendment of 1995 (effective from 1996) revoked the obligation to indicate the location.

[35] It is obvious in particular from the German translation of the proposal submitted by the subcommittee. See *Das bürgerliches Gesetzbuch für die Čechoslovakische Republik: Übersetzung des Entwurfes der Komission für die Revision des ABGB Herausgegeben vom Justizministerium der Čechoslovakischen Republik.* Reichenberg: Gebrüder Stiepel, 1925, p. 147.

[36] Cf. Art.505 ZGB (the original wording of 1907): "Die eigenhändige letztwillige Verfügung ist vom Erblasser von Anfang bis zu Ende mit Einschluss der Angabe von Ort, Jahr, Monat und Tag der Errichtung von Hand niederzuschreiben, sowie mit seiner Unterschrift zu versehen.
Section 578 of the ABGB (the wording of 1811): Wer schriftlich und ohne Zeugen testieren will, der muss das Testament oder Kodizill eingenhändig schreiben und eingenhändig mit seinem Namen unterfertigen. Die Beisetzung des Tages, des Jahres und des Ortes, wo der letze Wille errichtet wird, ist zwar nicht notwendig, aber zu Verřmeindung der Streitigkeiten rätlich.
The proposal submitted by the subcommittee (German translation – Section 585): "Wer schriftlich ohne Zeugen verfügen will, muss das Testament oder Kodizill eingenhändig schreiben, das SChriftstück eingenhähndig mit der Angabe des Ortes, Tages, MOnates und Jahres der Niederschrift wie auch am Ende mit seiner Unterschrift verseen. Besteht die Anorderung aus mehreren Blättern, müssen sie entweder so verbiunden sein, dass keine Gefahr einer Unterschiebung bestheht, oder muss jedes Blatt besonders unteschrieben sein."

[37] The supra-revision committee was formed from the reporters of all the subcommittees

[38] Because, among other things, some of the subcommittees (in particular the subcommittee for the rights in rem) interpreted the phrase "to revoke what was out-dated" in a very extensive manner and the resulting respective parts of the code were considerably different.

[39] *Zákon, kterým se vydává všeobecný zákoník občanský. Návrh superrevisní komise. Díl I. (Tekst zákona), Díl II. (Důvodová zpráva)*. [The Act Enacting the General Civil Code. The Draft Proposed by the Supra-revision Committee. Part I (The Text of the Act), Part II. (The Explanatory Memorandum).] Prague: Ministerstvo spravedlnosti, 1931, p. 163, *Sněmovní tisk 844. Vládní návrh zákona, kterým se vydává občanský zákoník*. [Document 844 for Discussion at a Sitting. The Government Bill of the Act Enacting the General Civil Code.] (The Explanatory Memorandum) Prague: Státní tiskárna, 1937, p. 289.

[40] This line was followed up also in Draft 1946, which was based on Draft 1937, incorporating the comments arising from the legislative procedure.

[41] BLÁHOVÁ, I. et al. *Právnická dvouletka: rekodifikace právního řádu, justice a správy v 50. letech 20. století.* [The Juridical Two-Year Plan: Recodification of the Body of Laws, Judiciary and Administration in the 1950 s.] Prague: Auditorium, 2014, passim.

Therefore, although the law retained a number of classical institutes, their form was however adapted to the new conditions, and so a number of institutes disappeared – in the law of succession this was for example the inheritance contract and also the codicil.[42] Although the bequest was retained, it was significantly confined. The last will remained in its public notarial form and also in the private, holographic or allographic, form. In the CC 1950, the holographic will was regulated in Section 542, which however stipulated only a testator's obligation to write and undersign a last will in his or her own hand. The matters related to the marking of wills with a date were regulated in Section 541 (2), which applied to all last wills: "The day, month and year when a last will was written shall be obvious from every last will." The law therefore stipulated the date as an obligatory essential element of any last will – the holographic, allographic (Section 543, 544) last will and the last will made in the public notarial form (Section 545). The explanatory note to that stated the following: *"The other formality, that is the indication of the place where the last will was written, was abandoned because it suffices that there is an exact date stated in a last will in order for disputes to be prevented."*[43] Therefore, at first sight it seems that simplification was achieved through abandoning the necessity of indicating the place where a last will and testament was made. However, this applied only to Slovakia. The reasons why the obligatory date was enforced may be pursued in two directions. Primarily, the effort to protect "ordinary citizens"[44] is reflected in the law, on the other hand, a similar form could equally well serve another interest, specifically the effort to limit as much as possible the freedom of testation. The attitude of the communist ideology to the law of succession as such must be taken into consideration. The intended goal of the law of succession was not to accumulate properties but to strengthen family ties. This circumstance was manifested both in the structure of the code[45] and in the concept of the law of succession, which clearly preferred intestate succession.[46] Although the legislator did not express this intention directly, efforts were exerted to somewhat complicate the making of last wills.

This line was followed up also in Act No. 40/1964 Sb., the Civil Code (hereinafter referred to as the CC 1964).[47] The objective of this paper however, is not to describe this legal regulation in detail. Suffice it to say that with its "socialist" attitude it surpassed in many respects even the model of the Civil Code used for individual republics of the USSR. Its passing also aroused quite negative reactions in neighbouring countries. The provisions that seemed to be the most problematic from the point of view of practice of law (but by no means all of them) were finally revoked by the major amendment of 1982 (Act No. 131/1982 Sb.).[48] This amendment however did not bring any changes as regards matters related to the law of succession. Neither did the transformation after 1989 much change the concept of the law of succession. In comparison with the CzCC 1950, after having been amended, the CC 1964 knew only the holographic will and the notarially recorded will.

The law newly related the dating only to holographic wills; in Section 476 (2) of the CC 1964 (in its original wording) the requirement of the obligatory indication of a date was expressed in the following words: *"The validity of a last will and testament made in a testator's own hand requires the testator to sign it and state the day, month and year when he or she signed it."* In comparison with the wording of the CC 1950, there were two major amendments to the CC 1964. The text of the CzCC 1964 was not content with the requirement that the date should be evident; it expressly required the date to be indicated. The second change was the fact that the date was not bound to the drawing up of a last will, but to its undersigning.

The change in the political circumstances in 1989, the abandonment of the idea of socialism and the return to a market economy naturally triggered changes also in the system of law. The most significant among the amendments of the civil law was the amendment by Act No. 509/1991 Sb., when the requirement of a date was extended to all last wills and testaments. This was a response to the fact that the allographic will was reintroduced in addition to the holographic and notarial will. Among other things, here it is also apparent that it was in particular the CzCC 1950 that served as a source of inspiration for this amendment.[49] The law was valid in this form in the territory of the Czech Republic until the end of 2013, while in the territory of the Slovak Republic it is still valid basically in this form to this day.

[42] The CzCC 1950, the following civil code, cancelled the institute of codicil and this institute did not appear in law again until the civil code of 2012 was enacted. Here, the form of an addendum (codicil) is not expressly regulated, nevertheless the provision of Section 1498 says: *"…provisions on testaments shall apply to testamentary clauses on legacy as appropriate."*

[43] See the Explanatory Memorandum to Section 541 of the CzCC 1950. *Občanský zákoník*. [The Civil Code.] Prague: Orbis. 1950, p. 304.

[44] This attribute is also apparent in the subsequent CC 1964, also after 1989.

[45] Within the structure, the law of succession was already not behind the rights in rem (as in the ABGB), but at the end of the code. This was also a way how to express the separation of the law of succession from the rights in rem.

[46] It is also expressed in Section 512 of the CC 1950: A person is entitled to inherit by law, by last will and testament or for both reasons (a contrario the Roman law (Gai II.99) or the ABGB (Section 533) that put the last will before the intestate succession. For details see for example SALÁK, P., HORÁK, O. et al., *Law of succession in the Middle-European area*. Cracow: Spolok Slovákov v Poľsku - Towarzystwo Słowaków w Polsce, 2015.

[47] For this law cf. in English for example ELISCHER, D. et al., Recodification of Private Law in the Czech Republic. In: Rivera Julio César (ed.) *The Scope and Structure of Civil Codes*. Dordrecht: Springer Netherlands, 2013, p. 118an. Or RUDZINSKI, Aleksander W., New Communist Civil Codes of Czechoslovakia and Poland: A General Appraisal, *Indiana Law Journal*. Vol. 41 (1965), Iss. 1, n. 3, p. 37-47. Retrieved from: https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3619&context=ilj

[48] The objective of this paper is not to describe this legal regulation in detail. As a matter of interest, it can be stated that it was not before this amendment when for example the institutes of possession and acquisitive prescription returned to the text of the CzCC 1964.

[49] Originally, even the amendment proposal contained the word "written" as in the CzCC 1950, which was substituted later during the amendment procedure.

There is a legal regulation on the one hand, and its interpretation on the other. Like the amendment of the legal regulation itself, which did not go through any major changes even after the change of the political conditions in 1989, the interpretation of these provisions basically continued as well. The considerable rigidity of courts was manifested in a number of cases. A last will with a date stated in the form of a stamp was judged invalid. The argument of the legatee was that the amended Act No. 509/1991 Sb. required only that a last will should be written and signed in a testator's own hand (Section 476a CzCC 1964 as amended by Act No. 509/1991 Sb.) and the requirement for a date to be identified is set forth for all last wills and testaments in the provision of Section 476 (2) CzCC 1964 as amended by Act No. 509/1991 Sb., where the requirement for a last will to be written in a testator's own hand is already missing. The court therefore ruled to the contrary. *"Also after the amendment of the Civil Code by Act No. 509/1991 Sb., it is still stipulated that the form of a last will written in a testator's own hand has been adhered to only when the date of the last will as its integral content component within the meaning of Section 476 (2) of the Civil Code has also been added in the testator's own hand. It is not possible to infer from the provisions of Section 476a of the Civil Code that the sufficient requirement for a last will to be valid is that its text and the signature be written in a testator's own hand, while the date can be indicated in another manner."*[50] Just for comparison, the Polish law (Kodex Cywilny 1964 – hereinafter referred to as the KC), the provisions of which will be discussed herein under,[51] allows for the possibility of using mechanical means for the indication of the date in the holographic will.[52] It is true that the wording of the provision is not entirely identical with the wording of the CzCC 1964 after its amendment of 1991, nevertheless the date is mentioned here (contrary to the Czech regulation) together with writing in one's own hand under one provision. The formulation of the text of Art. 949 § 1 of the KC would also rather suggest otherwise.[53] Additionally, it seems that the Slovak judiciary practice admits an interpretation for the same regulation that the date can also be written using other technical means.[54]

Another example may also be stated when an allographic will that was signed, with a date that was indicated as part of the authentication of a testator's signature, was declared invalid.[55]

While it is possible to agree with the arguments of the court in both of the above mentioned cases, the text of the Extensive Academic Commentary on the Civil Code from 2008 gives a somewhat absurd impression: *"The manner of how these data* (the author's note: i.e. the day, month and year) *will be stated in a last will, is not prescribed. The requirement is met when the data are stated for example in the following forms: "23. leden 1998" (23rd January 1998), "23. 1. 1998" (23/1/1998), "23. 01. 1998" (23/01/1998), "dvacátého třetího ledna roku tísícího devítistého devadesátého osmého" (the twenty-third of January, 1998), and also "23. 1. 98" (23/1/98). However, it must be insisted on that a day (in a month), month and year be always indicated. It is necessary to consider the provision of Section 476 (2) to be so rigorous that the identification of the date of a last will by means of another piece of information from which it would be possible to establish the day, month and year when the last will was written (for example "I wrote this last will on the day of my sixtieth birthday", "on Christmas Eve of 1999", etc.) is insufficient and would lead to the annulment of the last will."*[56] This Czech attitude sounds somewhat ludicrous, as if it got stuck in the period before 1989. Suffice it to compare how the older legal regulations that considered the date to be obligatory addressed similar issues. Both the interpretation of the BGB,[57] and the construction of the Hungarian law[58] admitted such dating as valid. After all, in Slovakia, where the same provision has been in force to this day, the interpretation is not so rigid, and such identification of a date would most probably be allowed.[59]

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[50] Městský soud v Praze, 24 Co 181/97. In: *Ad Notam*, Nr. 5, 1997 p. 114.

[51] The Polish Civil Code is also from 1964

[52] PIETRZYKOWSKI, K.(red.), *Kodeks cywilny. Tom II. komentarz. Art. 450–1088*, Warsaw, C. H. Beck, 2015, comments on Art. 949, Para. 27

[53] Art. 949 § 1 KC § 1. *Spadkodawca może sporządzić testament w ten sposób, że napisze go w całości pismem ręcznym, podpisze i opatrzy datą.*
– The testator can make a last will by writing and signing it in his or her own hand and marking it with a date.

[54] The ruling of the Supreme Court of the Slovak Republic of 25 November 2008, file ref. 5 Cdo 264/2007: *"…The indication of the day, month and year of the signing of a last will in a manner (technique) different from the manner (technique) in which the last will is executed could be of importance for validity only if there are any doubts of whether it is the date when the last will was signed or a different date.*

[55] The Supreme Court, 30 Cdo 1190/2004, In: *Ad Notam* Nr. 6 vol. 2005, p. 210.:
"1. In the allographic will, the date (i.e. the day, month and year) when the last will was undersigned must be stated in the text of the last will in such a manner that the whole text would make up a logical whole.
2. Also in the case when a notary authenticated that a testator undersigned a last will before him or her, the details of the date when the last will was undersigned as they are stated in the signature authentication deed cannot substitute the date missing in the text of the last will or correct the date in the text of the last will that is not the date when the last will was really written."

[56] MUZIKÁŘ, L., in: ELIÁŠ, K. (ed). *Občanský zákoník: velký akademický komentář : úplný text zákona s komentářem, judikaturou a literaturou podle stavu k 1. 4. 2008*. [The Civil Code: The Extensive Academic Commentary: The Full Text of the Law with Comments, Judicature and Literature According to the State as of 1 April 2008.] Volume 1, Sections 1-487. Prague: Linde, 2008, p. 1238.

[57] STAUDINGER, 2nd edition, S. 533 (§ 2231 BGB V C.4)

[58] *The date of a last will does not necessarily always have to be a calendar date; it is sufficient to state the year and an identification such as «on Easter Sunday», on «St. Michael's Day»"* (Kúria No. 1492/1908) see FAJNOR, V., ZÁTURECKÝ, A. in: Rouček, Fr., Sedláček, J. (edd.). *Komentář k československému obecnému zákoníku občanskému a občanské právo platné na Slovensku a v Podkarpatské Rusi*. [The Comments on the Czechoslovak General Civil Code and the Civil Law in Force in Slovakia and Carpathian Ruthenia.] Vol. III. Prague: V. Linhart, 1935, p. 121.

[59] One of the comments says that a rigorous interpretation is inappropriate and the date can be indicated in a manner allowing the date to be inferred from it – which means also for example "Easter Monday in 2014". A reference is made, among others, also to the above specified Kúria ruling 5527/1905. FEKETE, I., *Občiansky zákonník: veľký komentár*. [The Civil Code: The Extensive Commentary.] 3. zväzok, Dedenie, záväzkové právo - všeobecná časť: (§ 460 to § 587). [Volume 3, Inheritance, the Obligation Law - The General Part: (Section 460 to Section 587).] 2nd updated and extended edition. Bratislava: Eurokódex, 2015., p. 138. The other commentaries that the author was able to work with do not explicitly deal with this issue, nevertheless, no interpretation as rigid as in Czech commentaries appears in them either.

V. The Dating of Last Wills in the New Civil Code (No. 89/2012 Sb.)

Domestic circumstances changed fundamentally in 1989. However, not even all of the amendments of CzCC 1964 were sufficient to revoke the residues of the period before 1989. Therefore, the law remained rooted with its concept in the previous period. From the 1990 s there had already been several initiatives to create a completely new codification, nevertheless, they all failed until success was finally achieved by the team of professor K. Eliáš.[60] The result of their work is Act No. 89/2012 Sb. (hereinafter referred to as the CzCC 2012) with effect from 1st January 2014. Its objective was to return the law back to the family of traditional European codes (CC, ABGB, BGB) and thus fully accentuate the contractual freedom, autonomy of will and private ownership. It was the Austrian ABGB that served as the main source of inspiration, besides the inter-war bills.[61]

Despite this fact, the first draft bills still provided for the obligatory indication of the day, month and year, as had been the case until then in Section 476 of the CzCC 1964 as later amended, however not to the full extent.

The legislator first had to cope with the fact that the CzCC 2012 allowed also for verbal forms of a last will. In this case, the requirement to indicate the date was naturally meaningless, which means that only the last wills in written form were subject to the requirement. As in CzCC 1964, this was required for all types of written last wills. On the contrary, as in CzCC 1950, the date was to be related to the time of the making of a last will, not to its signing. Additionally, the bill did not require the date to be written, nevertheless the date of the day, month and year had to be "unquestionable". This wording occurs in the individual versions of the law, while these versions vary only in the section number.[62] The fact that the change occurred at the last minute is illustrated, among other things, also by the failure of the "consolidated" Explanatory Memorandum for CzCC 2012 to reflect this change. While there is no mention of the matter of the date with respect to the provision of Section 1494 (1) of CzCC 2012, although it was this Section where the date of a last will was mentioned, it is with respect to Section 1532 where the Explanatory Memorandum refers to it,[63] however the Section does not contain anything about the date.[64] This is not the only error in the "consolidated version" and this fact certainly cannot be considered to be the legislator's intention, as one of the comments tried to conclude.[65] It is the duel between the two different concepts, two different ideas that gave rise to the chaos. The wordings of all the drafts of the bill were not in accordance with the concept that the authors of the bill made efforts to push through. The cited provision was a concession made to legal practitioners – in particular notaries and the judges of the Supreme Court. Although the authors of the law had been aiming towards the optional date from the beginning, they did not manage to push it through over the long term. Finally, they managed to do so at the very last moment by convincing some of the deputies from the Constitutional Committee[66] to propose the change.[67]

These circumstances most likely also contributed to the fact that the final wording of Section 1494 (1) is a compromise. (1) A testament is a revocable expression of will whereby a decedent personally leaves to one or several persons at least a share in the decedent's estate and also legacy, where appropriate, to be received upon his death. If the day, month and year the testament was made is not clear and if the decedent made several contradictory testaments, or if its legal effects otherwise depend on the determination of the time it was made, the testament is invalid.[68]

Therefore, despite the fact that the website established to provide information about the new Civil Code pretends that

[60] The work on this project started in 2000 and the draft bill was approved by the Government in April 2001. There were two of the previous proposals – one of them dating as far back as to the period of Czechoslovakia. It was supposed to become a basis for recodification in Slovakia after 1993, but was refused there in 1997. In 1996, the second proposal appeared in the Czech Republic, but it was not successful either. The reasons for the refusal lay in particular in the political plane. There were no connections between the proposal submitted by professor Eliáš and both previous projects. For more details on this see the Explanatory Memorandum for the new Civil Code.
ELISCHER, D. et al., Recodification of Private Law in the Czech Republic In: Rivera Julio César (ed.) *The Scope and Structure of Civil Codes*. Dordrecht: Springer Netherlands, 2013, s. 128an.

[61] In the area of the law of succession, about 70% was inspired by it. However, it must be noted that these had been the inspirations by the wording of the ABGB before it was recently amended and it was the very area of the law of succession that the amendments applied to. It is Familien-und Erbrechts-Änderungsgesetz (2004), in particular Erbrechts-Änderungsgesetz (2015)

[62] For the original Section 1391 of the bill see ELIÁŠ, K., HAVEL, B., *Osnova občanského zákoníku, osnova zákona o obchodních korporacích*. [The Bill of the Civil Code, the Bill of the Business Corporations Act.] Plzeň: Aleš Čeněk, 2009, p. 124. It was submitted (April 2011) to the Legislative Council of the Government under Section 1502; in the last version, it was intended to be Section 1532. For the individual versions see the Laws and Opinions, Legislative Process [online]. 2012 [accessed 2018. 10. 25].: http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/texty-zakonu

[63] *"The provision of Section 1532 is common for all forms of a last will. The existing wording of Section 476 (2) of the current Civil Code is adopted here, although the traditional regulation understood the essential elements of the dating of the signature (equally with the indication of the place of signing) only as a non-essential element of the last will and testament)."* The Explanatory Memorandum to CzCC 2012 (the consolidated version) dated 3rd February 2012 [online]. 2012 [accessed 2018. 1. 12]. Retrieved from: http://obcanskyzakonik.justice.cz/tinymce-storage/files/Duvodova-zprava-NOZ-konsolidovanaverze.pdf. For the older versions of the wordings of the laws and explanatory memorandums see: http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/texty-zakonu

[64] Section 1532 of the CzCC 2012: The last will requires written form unless it has been made with reliefs.

[65] The goal was to use this as an argument explaining why the date should be an obligatory part of all last wills also in CzCC 2012, see FIALA and BEEROVÁ In: FIALA, R., DRÁPAL, L. et al. *Občanský zákoník: komentář IV., Dědické právo (§ 1475–1720).* [The Civil Code: Comment IV., The Law of Succession (Sections 1475–1720)]. 1st edition. Prague: C. H., 2015, p. 94.

[66] This happened during joint discussions before the bill was submitted to the Chamber of Deputies.

[67] This information was given to the author by one of the authors of the codification, who however did not wish to be named.

[68] For the English text of the provision see http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf

the dating of a last will is optional,[69] this is not entirely true. It is apparent that in a case when there are more last wills that are mutually incompatible or if this could be of importance for the consequences of a last will, the testament must contain the date. This also led to differing attitudes in the comments. One of them started to enforce the point that the date remained as an obligatory essential element despite this wording of the law.[70] Although the other comments adopted a negative attitude to this,[71] this fact also shows that the formulation of the wording of the law has not been selected entirely appropriately, because among other things, it appears at first glance that the date is not an essential element, however if the circumstances expected in Section 1494 (1) of the CzCC 2012 arise, a non-dated last will (or last wills) is (are) nullified. From this point of view, the wording of the Polish Civil Code seems to be much more favourable. Although it understands the date to be an obligatory essential element of a last will (art. 949 s. 1 of the KC), Section 2 of the same article concurrently sets forth that the absence of the date will lead to annulment only when there are doubts about whether a testator was legally capable at the time of the making of a last will or doubts about the content of the last will and if there is more than one last will.[72]

However, the provision of Section 1494 (1) led to one more question – whether the date is an essential formal or content requirement for a last will.[73] In so far as it was a formal requirement, any rules of interpretation would have to be laid aside and they could not be applied. Fortunately, all the comments concur on this matter, concluding that the marking of wills with a date is not a formal, but content requirement for a last will.[74] Because Section 1494 (1) of the CzCC 2012 also stipulates that the day, month and year should be "obvious", it can be expected that it will no longer be possible to apply the above mentioned judicial decisions with this wording.[75] Also the comments are inclined to the interpretation that with respect to this wording there should be no more problems with the dating that uses anniversaries (on the day of the 60th birthday) or with the dating according to religious holidays – "on Christmas Eve…".[76] The question is what stand the judicature would take on the dating in the form of "in the autumn of 2018" when the law does not use the summarizing and also polysemous word "date", but the traditional formulation "day, month and year". Certainly, the dating when only the month and year or the period of a year is indicated could be sufficient. The law definitely does not require "unitas actu" when a last will is made, and so it is quite possible that a last will would be made gradually over a longer period of time. Then, it would not be surprising if a testator dated it not as of a specific day, but as of a longer period of time.[77] None of the comments addresses this issue, nevertheless, taking into account the concept and the interpretation provision in Section 2 (2) of the CzCC 2012, it can be expected that this dating should also be in accordance with this legal regulation.

VII. Conclusion

In 1918, two concepts of attitudes towards the law of succession conflicted in the territory of the newly established Czechoslovakia. The difference can be very well demonstrated by the question of whether the date and place of a last will should or should not be its obligatory essential element. The Austrian liberal concept (adopted in Bohemia and Moravia) preferred more the autonomy of will and so the formal essentials of last wills and testaments were minor – for the holographic will, it was sufficient when it was written in a testator's own hand and signed by him or her. On the contrary, the Hungarian law adopted in Slovakia and Carpathian Ruthenia had more formal essentials, which were intended to ensure the seriousness of such last wills on the one hand, and a higher legal safeguard on the other hand. Therefore, this legal regulation required that the holographic will be written in a testator's own hand and signed by him or her, but also dated, and in addition signed by two witnesses.

Although in the 1920 s, as part of the then recodifications, considerations were given to the possibility of adopting in the

[69] "According to the regulation of the new Civil Code, the dating of last will is not an essential element of a last will." See Specific changes – the last will [accessed 30/ 9/ 2018]. Retrieved from: http://obcanskyzakonik.justice.cz/index.php/dedicke-pravo/konkretni-zmeny/zavet

[70] FIALA and BEEROVÁ In: FIALA, R., DRÁPAL, L. et al. *Občanský zákoník: komentář IV., Dědické právo (§ 1475–1720).* [The Civil Code: Comment IV., The Law of Succession (Sections 1475–1720)]. 1st edition. Prague: C. H. Beck, 2015, p. 94, Para. 16.

[71] For the most comprehensive among the arguments see MUZIKÁŘ, In: PETROV, J. et al. *Občanský zákoník*. [The Civil Code: Comments.] Prague: C.H. Beck, 2017, p. 1473-75, briefly nevertheless similarly ŠEŠINA-WAWERKA In: ŠVESTKA, J., DVOŘÁK, J., FILALA, J., *Občanský zákoník: komentář*. [The Civil Code: Comments.] Volume IV, The Law of Succession (Sections 1475 to 1720), including the interpretation of succession proceedings. Prague: Wolters Kluwer, 2014, p. 75.

[72] Art. 949 s. 2 of the KC: *"Jednakże brak daty nie pociąga za sobą nieważności testamentu własnoręcznego, jeżeli nie wywołuje wątpliwości co do zdolności spadkodawcy do sporządzenia testamentu, co do treści testamentu lub co do wzajemnego stosunku kilku testamentów."*

[73] NĚMCOVÁ, D., Závěť a její datace. [The Last Will and Its Dating.] In: *Časopis pro právní vědu a praxi*. Nr. 4, 2017, p. 717-737.

[74] Although it must be noted that one of the commentaries mentions this fact in the chapter titled "Formal Essential Requirements of the Last Will" – see FIALA and BEEROVÁ In: FIALA, R., DRÁPAL, L. et al. *Občanský zákoník: komentář IV., Dědické právo (§ 1475–1720).* [The Civil Code: Comment IV., The Law of Succession (Sections 1475–1720)]. 1st edition. Prague: C. H. Beck, 2015, p. 94.

[75] It is necessary to mention here that in a number of cases the provisions of the CzCC 2012 were directly aimed at the established case-law of the Supreme Court. In response to this, the Supreme Court tries to interpret these provisions also within the meaning of its established case-law.

[76] ŠEŠINA-WAWERKA In: ŠVESTKA, J., DVOŘÁK, J., FILALA, J., *Občanský zákoník: komentář*. [The Civil Code: Comments.] Volume IV, The Law of Succession (Sections 1475 to 1720), including the interpretation of succession proceedings. Prague: Wolters Kluwer, 2014, p. 75.

[77] As a matter of interest, at the time when the date was an obligatory essential element of the BGB, it was required (with respect to the wording of Section 2231 of the BGB, which used the word "Tag" – day) that the date be legally related to the respective day, that is the period of 24 hours at most. When it was dated with more than one day (even if it was a last will written at night from one day to the next, such a date was considered invalid. HIPPEL, F. von. *Formalismus und Rechtsdogmatik: dargestellt am Beispiel der „Errichtung" des zeugenlosen Schrifttestaments (eigenhändiges Testament; testament olographe)*. Hamburg: Hanseatische Verlagsanstalt, 1935, p. 48.

new Civil Code the requirement for obligatory indication of the place and time of the writing down of a last will, finally the committee accepted the Austrian concept during their suprarevision meetings and left the addition of the date and place only at the level of a recommendation, however not as an obligatory essential element of a last will.

After the communists came to power in 1948, domestic political and social circumstances changed fundamentally. The law of succession was no longer supposed to serve for the accumulation of properties, but in particular to strengthen family ties. The last will was therefore a possible, but not preferred disposition mortis causa. The legislator therefore enforced in CzCC 1950 that the date be an obligatory element of every last will – not only the holographic will, but also allographic and notarial wills.

Also the next law – CzCC 1964 – insisted that the date be the obligatory essential element, albeit only for the holographic will. Not even the change of domestic circumstances after 1989, or when the Civil Code was considerably amended in 1991, brought about any changes to this situation. The date remained an obligatory essential element, and once again not only for the holographic, but also other types of last wills. In this form, the Civil Code was still valid in the territory of Slovakia. As the CzCC 1964 stipulates that the "day, month and year" must be written in the text of a last will, the case law settled on not only the date being obligatorily indicated directly in the text of a last will and being written in a testator's own hand, but also on being indicated exactly in this form, and the date in the form of "on Christmas Eve of 1999" being an invalid dating taking into account the text of the law.

This rigid interpretation, among other things, led the authors of the new Civil Code to strive for the return to the date as an optional essential element. However, this was opposed by notaries and the judges of the Supreme Court who required the existing state to be preserved. At the last moment, a compromise solution was finally successfully pushed through by politicians. According to this solution, the date is not required in testaments (last wills or codicils). However, if there is more than one last will that is contradictory or if the date is decisive for the validity of the respective last will and the last will is not dated, such a last will shall be deemed invalid. Unfortunately, the wording of the provision is not formulated really intelligibly for a common user who is not educated in law. Compared to the CzCC 1964, the date does not any more have to be "written". It will be sufficient if it is "obvious". Taking into account this wording and the rules of interpretation for the CzCC 2012, it can be expected that the existing rigid interpretation of the case law regarding the dating of last wills will be abandoned.