



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Special testaments

JUDr. P. Salák jr. Ph.D.

Zápatí prezentace



Why special?

- Different legal requirements, than at regular testament
 - Higher - in roman law - testament of an blind person (8 witness)
 - Lower - special situations (epidemy, testamentum ruri conditum,...)
- Reason
 - To give the possibility of last will in difficult situations, when the regular form of will is unusefull



Types of special wills in roman law

- Military will
 - - Augustus (Caesar), then Titus
- Testamentum pestis tempore conditum
 - 290 - Diocletian
 - Not all witness together
- „Quod si litteras testator ignoret vel subscribere nequeat“ (Cod. 6.23.21.1)
 - 439 - Theodosius II, Valentinianus III.
 - 8 witness
- -530 - Justinian - Testamentum ruri conditum
 - Only 5 witness



Types of testaments in ABGB

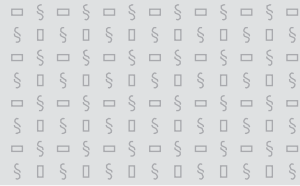
- Military testament - was not regulated in ABGB - special military law
 - In case of conflict - soldiers and persons accompanying troops (valid until the end of conflict)
 - In time of peace - only soldiers - valid until the end of their service
- Testament in case of Epidemy (Pests)
- Testament on the ship (on the sea)
 - Oral form, few witness, the witness may be also person of age 14 and more



Draft 1931 - 1937

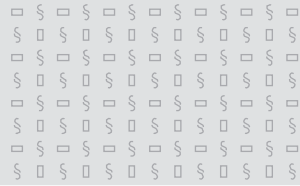
- Testament in the time of war
- Testament in the time of epidemy
- Testament in the case of disaster (natural or technological)

- No more ship or plane testament
 - sailing is safer
 - in the event of an airplane disaster, it is doubtful that it would survive not only the testator but also the witnesses



Communist time

- Obligatory regular form - written
- Not special form of testament or epidemy or time of war - the new code (1950) is a code for time of peace, therefor didn't need the military testament (in Poland and USSR it was)



Special form of testament in CC 2012

- Special form of the testaments in section 1542-1549
- 1542 - 3-witness testament (inspiration BGB) - like „general type“
- 1543 - Village testament (inspiration BGB)
- 1544 - Testament on board of the vessel or the plane (Inspiration - Italian? Netherland?)
- 1545 - Military testament (inspiration in Italian x moderated)
- 1546-1549 - „common provisions“



Section 1542

(1) A person who is under **imminent threat to life** due to a contingency has the right to make a testament orally before **three witnesses** present at the same time. A person in a **place where usual social intercourse is paralysed** as a result of a contingency and who cannot be reasonably required to make a disposition mortis causa in another form has the same right.

(2) If witnesses do not make a record of the decedent's last will, the succession of heirs will be based on a judicial protocol of the examination of witnesses.

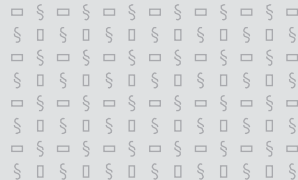
Sec. 1548

If a decedent is alive, a testament made under Section 1542 shall lose its validity after **two weeks**,.... months from the date on which it was made (inspiration of ZGB - originally was the same at the other forms - 3 month)



Section 1543

Where there is a reasonable concern that a decedent would die before he can make a testament in **the form of a public instrument**, his last will may be recorded, in the presence of two witnesses, **by a mayor of the municipality in whose territory the decedent is located**. A person entitled to exercise the powers of a mayor under another legal regulation may, under the same conditions, also record a decedent's last will.



Section 1544

(1) If a decedent has a serious reason, his last will may be recorded in the presence of two witnesses aboard a *naval vessel sailing under the national flag of the Czech Republic* or an *aircraft registered in the Czech Republic* by the commander of the naval vessels or aircraft, or by his representative, unless he is prevented from doing so due to considerations of safety of the voyage or flight. The validity of a testament may not be denied by claiming that the decedent had no serious reason to make the testament.

(2) If a testament has been made under Subsection (1) on board of: a) a naval vessel, the commander *shall record the testament in the logbook* and hand it over without undue delay to an embassy of the Czech Republic closest to the port to which the naval vessel arrives, or to the public body which maintains the naval register in which the naval vessel is registered, or b) an aircraft, the commander shall record the testament in the logbook and hand it over without undue delay to the embassy of the Czech Republic closest to the place abroad where the plane landed, or to the public body which maintains the aircraft register in which the aircraft is registered



Section 1545

1) When participating in an armed conflict or military operations, the last will of a soldier or another member of the armed forces may be recorded in the presence of **two witnesses by a commander of a military unit of the Czech Republic or another soldier at the rank of officer or higher**. If a testament is made in this manner, its validity is not to be denied.

(2) A commander shall, without undue delay, deliver the testament made under Subsection (1) to a commander of superior command, who shall, without undue delay, hand it over to the Ministry of Defence of the Czech Republic.



Section 1546 and 1547

1546

If a testament was made under Section 1543, the municipality shall, without undue delay, ensure that the testament is deposited with a notary. If a testament was made under Sections 1544 or 1545, the same is provided for by the authority to which the testament was handed over.

1547

(1) If a decedent has made a disposition mortis causa under Sections 1543, 1544 or 1545, the person making the record must also sign it together with both witnesses and read it to the decedent in the presence of both witnesses, and the decedent must confirm that the record constitutes the expression of his last will. A testament so made is to be considered a public instrument.

(2) Where a testament is made under Sections 1543, 1544 or 1545 and the prescribed formalities are not adhered to, in particular where the instrument lacks the signatures of the witnesses present, although they are required, but it is nevertheless certain that the instrument reliably records the decedent's last will, it does not cause the testament to be invalid; however, such an instrument is not to be considered a public instrument.



Section 1547

1547

(1) If a decedent has made a disposition mortis causa under Sections 1543, 1544 or 1545, the person making the record must also sign it together with both witnesses and read it to the decedent in the presence of both witnesses, and the decedent must confirm that the record constitutes the expression of his last will. **A testament so made is to be considered a public instrument.**

(2) Where a testament is made under Sections 1543, 1544 or 1545 and the prescribed formalities are not adhered to, **in particular where** the instrument lacks the signatures of the witnesses present, although they are required, but it is nevertheless certain that the instrument reliably records the decedent's last will, it does not cause the testament to be invalid; however, such an instrument is not to be considered a public instrument.

Inspiration in sec. 2249 (6) of BGB

In BGB is it only for village testament

only about the formal requirements of the record of the will

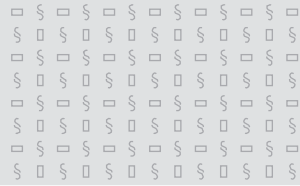
Only valid/invalid - not „but it is nevertheless certain that the instrument reliably records the decedent's last will, it does not cause the testament to be invalid“



Section 1548 - witness

(1) Where a testament with relief is made, persons who have reached the age of fifteen and persons whose legal capacity has been limited may also be witnesses if they have the capacity to credibly describe facts relevant to the validity of the testament.

(2) Where a testament with concessions is made, its validity shall remain unaffected if it is not signed by the decedent or a witness because he could not write or due to another serious obstacle provided **that it is explicitly stated in the instrument**



Section 1549 - time limitation

If a decedent is alive, a testament made under [Section 1542](#) shall lose its validity [after two weeks](#), and a [testament made under Section 1543, 1544 or 1545](#) shall lose its validity [after three months](#) from the date on which it was made. However, these periods neither commence nor run until the decedent can make a testament in the form of a public instrument.

2 weeks - originally was not - inspiration by ZGB

3 months - BGB (ABGB § 597 after novelization in 2005, § 584 after novelization in 2015)

X

ABGB (1811) - six months



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Thank You for Your attention

P. Salák jr.