

The possibilities of a joint matrimonial testament in the Czech, Austrian and German legal systems

Abstract

The institute of a joint testament of spouses is not included in the Czech legal system, although the closest legal regulation that is the inspiration for our codification, i.e. the German regulation (BGB) and the Austrian regulation (ABGB), include this institute. The thesis relies mainly on commentary and specialist literature in the German language, due to the frequency of use of the institution of joint matrimonial testament in the Federal Republic of Germany, the sources related to the regulation under this legal system prevail. The author aims to answer the question of whether the Czech legislation should be inspired by foreign legislation and allow for joint matrimonial wills following the example of Austrian or German legislation. This institution's use depends on the quality and clarity of the legal regulation, which, as the sources show, is significantly higher in the German legal regulation. The adoption of the Austrian legal regulations, which are neither sufficiently comprehensive nor understandable to the general public, would probably bring an institution that is not used in practice into the Czech legal system. On the other hand, the adoption of a complex regulation based on the model of the German legal system would allow for greater autonomy of the will and thus fulfill the objective of the explanatory memorandum on the Civil Code. German legal theory provides ample literature and case law on the subject, which shows that it is a widely used and popular institution among the general public, which would certainly find its application in the Czech legal system. The most suitable option for possible future Czech legislation is the Berlin Testament, which is sufficiently variable to satisfy the needs of testators. Because of the possible abuse and pressure of one of the spouses in the compilation of the Berlin Testament in the simplified form, where one of the spouses only adds his or her signature, I am inclined to the Berlin Testament variant in the form of a notarial record. The thesis aimed to recommend to the Czech lawmakers a possible legal regulation of the joint testament of spouses, and partners. The German legislation seems in many respects to be the right way to increase the autonomy of the will of the testators and to enable joint testaments.

Key words: Joint matrimonial testament, testament, disposition mortis causa, marriage