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Nad'a Štachová
Masaryk University in Brno
Adriana Švecová
Trnava University in Trnava

From the Living to the Dead. The Principles of Testamentary Succession among Medieval Nobility in the Czech Lands and Hungary

Abstract

In the present paper, the authors attempt to give a basic explanation of one of the titles of inheritance, while they focus mainly on medieval noble testaments as documented in charters of Czech and Hungarian origin from the late 12th to the early 14th century. General observations on limitations of testamentary succession and specific features of medieval testaments are accompanied by the analysis of preserved documents. While in the Czech lands this refers mainly to a collection of mostly recipient charters, in Hungary the analysed documents are the charters produced in offices of quasi-public notaries, i.e. places of authentication that functioned from the beginning of their activities on the territory of Slovakia. The unique material going back to the origins of medieval written culture in both lands allows us to reconstruct the path and conditions leading to the issuing of testament and it also enables us to compare the developmental lines of the two neighboring Central European countries, which is a part of the final evaluation.

Key words: Middle Ages, law of succession, acts *mortis causa*, testament, the Czech lands, Hungary.

Słowa klucze: średniowiecze, prawo spadkowe, akty *mortis causa*, testament, Czechy, Węgry.

Introduction

The first thing that comes to our mind when discussing the issue of testaments in the Middle Ages is an immediate situation of a medieval man who, in the face of death, looks for a reliable way to ensure his eternal life and salvation. With his eyes turned to heaven, he shifts his mind back to the living, to those who remain to carry out his last will. This dual view, including transcendent and practical aspect, represented, especially in ancient times, an immensely important and individually experienced unity which the

current research can reconstruct only with great caution as a complex set of issues associated with dying.[1] In our paper, we attempt to clarify only those issues concerning formal-legal aspects of preserved dispositions *mortis causa* and their content and legal character.[2] The below presented legal-historical analysis emphasizes the development of these dispositions in the Czech lands and Hungary from the late 12th century, i.e. from the time when we come accross the oldest charters based on various dispositions in case of death. According to the traditional literature they are the following: testament, donation *mortis causa*, contract of succession and codicil.[3]

Due to the limited extent of this paper, which prevents us from covering all of the above-mentioned forms of dispositions *mortis causa*, and especially those that emerged in the later period of the development of law in the late Midle Ages and early Modern Times,[4] we decided to narrow the subject and period of our research. The chosen chronological framework, i.e. from the late 12th to the early 14th century,[5] corresponds to the preserved diplomatic charters, whether it be medieval charters issued by significant Bohemian and Moravian religious and secular institutions[6] or those issued by Hungarian

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[1] On history of death in Western Europe cf., e.g.: P. Ariés, *Dějiny smrti I: Doba ležících*, transl. D. Navrátilová, Praha 2000; *idem*, *Dějiny smrti II: Zdivočelá smrt*, transl. D. Navrátilová, Praha 2000; F.J. Bauer, *Von Tod und Bestattung in alter und neuer Zeit*, „Historische Zeitschrift" 1992, Bd. 251, H. 1, pp. 1–31; C. von Barloewen, *Der Tod in der Weltkulturen und Weltregionen*, München 1996, p. 9–91; D.J. Davies, *Stručné dějiny smrti*, transl. M.F. Havrdová, Praha 2007; J. Le Goff, J.C. Schmitt, *Encyklopedie středověku*, transl. L. Bosáková *et al.*, Praha 1999, p. 676–689; N. Ohler, *Umíraní a smrt ve středověku*, transl. V. Petkevič, Praha 2001.

[2] Based, inter alia, on our older published and unpublished studies cited in footnotes; for further literature, see the bibliographies in these studies.

[3] Š. Luby, *Dejiny súkromého práva na Slovensku*, reprint, Bratislava 2002, p. 522. On general characteristics of other types of dispositions in case of death as documented in the Bohemian and Moravian lands in the High Middle Ages, see R. Rauscher, *Přehled dějin soukromého práva ve střední Evropě: Nástin přednášek*, Bratislava 1934, p. 152–155 and M. Stieber, *Dějiny soukromého práva v střední Evropě: Nástin*, 2nd ed., Praha 1930, p. 112–114. For more details, see R. Rauscher, *Dědické právo podle českého práva zemského*, Bratislava 1922, p. 57–89.

[4] Typically, it was codicil and contract of succession – T. Saturník, *Přehled dějin soukromého práva ve střední Evropě: Nástin přednášek*, Praha 1945, p. 206–207. For modern noble testatements from the Czech lands cf. e.g. P. Král, *Mezi životem a smrtí. Testamenty české šlechty v letech 1550 až 1650,* České Budějovice 2002. Most recently on modern dispositions *mortis causa*, though studied primarily from municipal documents, cf. A. Švecová, *Trnavské meštianske závety (1700–1871) I*, Trnava 2014; *eadem*, *Formálno-právne premeny uhorského závetu v súvise s novovekým krajinským a mestským právom* [in:] *Městské právo ve střední Evropě*, eds. K. Malý, J. Šouša Jr., Praha 2013, p. 279–297.

[5] The natural turning point in the Czech lands was in 1306 when the Přemyslid dynasty died out.

[6] For the given period, see the following six volumes of the *Codex diplomaticus et epistolaris regni Bohemiae I–III/1*, ed. G. Friedrich, Pragae 1904–1942; *Codex diplomaticus et epistolaris regni Bohemiae III/2*, eds. G. Friedrich, Z. Kristen, Pragae 1942; *Codex diplomaticus et epistolaris regni Bohemiae III/3–III/4*, eds. G. Friedrich, Z. Kristen, J. Bistřický, Olomucii 2000–2002; *Codex diplomaticus et epistolaris regni Bohemiae IV/1–V/3*, eds. J. Šebánek, S. Dušková, Pragae 1962–1982; *Codex diplomaticus et epistolaris regni Bohemiae V/4*, eds. S. Dušková, V. Vašků, Pragae 1993; *Codex diplomaticus et epistolaris regni Bohemiae VI/1*, eds. Z. Sviták, H. Krmíčková, J. Krejčíková, Pragae 2006 (hereinafter just CDB) and also the following volumes of abstracts: *Regesta diplomatica nec non epistolaria Bohemiae et Moraviae II (1253–1310)*, ed. J. Emler, Pragae 1882 (hereinafter just RBM) and *Codex diplomaticus et epistolaris Moraviae V*, ed. A. Boček, Brunae 1850 (hereinafter just CDM). For the latest information from the period 1283–1297 in the form of brief abstracts with references to relevant editions, see: *Katalog listin a listů k VII. dílu Českého diplomatáře I.* (Zpracování diplomatického materiálu pro období květen 1283 – květen 1297), ed. D. Havel, Brno 2011 (hereinafter just Katalog I). Where necessary, we consulted the original charter.

places of authentication ('*loca credibilia*').[7] The choice of a factual approach was intentional as well. The category of testaments belongs to the oldest preserved documents in the Czech lands. The same applies to Hungary, where the first documented testaments are from the mid-12th century.[8] We narrowed the subject to a noble environment due to the following two facts. The first aspect is a considerable predominance of noble testaments compared to documents related to clergy and burghers. Second, we are aware that changes in various institutions (including dispositions *mortis causa*) recorded in diplomatic charters could take place parallelly, however, with different dynamics in different orders of medieval society.[9] What is significant here are for example different extent of openness of various spheres of law (land and town) to Roman and canon laws as applied in the Bohemian and Moravian lands.[10] In Hungary it was the fact that nobility

[7] Places of authentication (lat. *loca credibilia, loca testimonialia*) were notary institutions in the early 13th and 14th century which performed, inter alia, public notarial acts. On principle, they were religious institutions of Hungarian chapter houses and selected convents. Their authorization to administer public notarial acts was based primarily on the royal authority through which the king granted them authentic seal and general authority to perform public notarial acts. The charter production and with it related setting-up of public archives of well-established places of authentication placed these institutions among the most significant Hungarian chanceries. Among the most important functions entrusted to them was the publication of authentic testimonies (i.e. *testimonium fidedignum*), which could also include testamentary declarations of testators or witnesses. For more details, cf. A. Švecová, *Osobitné miesto hodnoverných miest v systéme verejných orgánov Uhorského kráľovstva v 13. a počiatkom 14. storočia* [in:] *Naděje právní vědy, Býkov 2006*, *Sborník z mezinárodního setkání mladých vědeckých pracovníků konaného ve dnech 29.6.–1.7.2006 na Zámeckém statku Býkov*, eds. V. Knoll, V. Bednář, Plzeň 2006, p. 517–528. To analyze the activities of places of authentication we used the following Hungarian diplomatic edition: *Codex diplomaticus Hungariae ecclesiasticus ac civilis I–IX*, eds. G. Fejér, Budae 1829–1844 (hereinafter just CDH); *Rerum Hungaricarum monumenta Arpadiana I–II*, eds. S.L. Endlicher, Sangellen 1849 (hereinafter just Endlicher I.); *Hazai oklevéltár 1234–1536*, eds. I. Nagy, F. Deák, G. Nagy, Budapest 1879 (hereinafter just H.okl.); *Codex diplomaticus Arpadianus continuatus I–XII*, ed. G. Wenzel, Pest 1860–1874 (hereinafter just CAC); *Codex diplomaticus Hungaricus Andegavensis. Anjoukori okmanytár I–VII*, ed. I. Nagy, Budapest 1878–1920 (hereinafter just CDA); *Monumenta ecclesie Strigoniensis I–II*, ed. N. Knauz, Esztergom 1863 (hereinafter just MES). We also used the following Slovak diplomatic editions and editions of abstracts: *Codex diplomaticus et epistolaris Slovaciae I*, ed. R. Marsina, Bratislavae 1971 (hereinafter just CDSl I); *Regesta diplomatica nec non epistolaria Slovaciae I–II*, ed. V. Sedlák, Bratislavae 1980, 1986 (hereinafter just RDSl I–II). We used most of the originals from the collection of Hungarian medieval charters stored in Magyar országos levéltár, which is known by the abbreviation DL, available on http://www.mol.arkanum.hu (access: 10.11.2015).

[8] The testament of the archbishop Martyrius of Esztergom from 1158, published in *Monumenta ecclesiae Strigoniensis I*, ed. F. Knauz, Strigonii 1874, p. 112–113, might be considered the oldest known testament. On this issue in the 13th century, when this kind of testament became commonly used, cf. F. Eckhart, *Die glaubwürdigen Orte in Ungarn im Mittelalter*, "Mitteilungen des Instituts für österreichische Geschchitsforschung" Ergänzungsband 1915, Vol. IX, p. 531.

[9] J. Šebánek, *Česká listina doby přemyslovské 1. Listina nižších feudálů duchovních*, "Sborník archivních prací" 1956, Vol. 6, iss. 1, p. 136–166; S. Dušková, *Česká listina doby přemyslovské 2. Listina feudálů světských*, "Sborník archivních prací" 1956, Vol. 6, iss. 1, p. 167–211; J. Šebánek, *Česká listina doby přemyslovské 3. Listina měst a jejich obyvatel*, "Sborník archivních prací" 1956, Vol. 6, iss. 2, p. 99–160; a zejména pak S. Dušková, *Naše listiny z doby přemyslovské pro nižší světské feudály a otázka šlechtických archívů*, "Sborník prací Filozofické fakulty brněnské univerzity" 1956, C, Vol. 5, iss. 3, p. 56–78; J. Šebánek, *Testamenty našich nižších duchovních feudálů do roku 1310*, "Sborník prací Filozofické fakulty brněnské univerzity" 1965, E, Vol. 14, iss. 10.

[10] On this topic, cf. the following two inspiring lectures: J. Kejř, *Právní kultura českého středověku*, "Minulostí Západočeského kraje" 1996, Vol. 31, p. 7–25; *idem*, *Pronikání kanonického práva do českého státu ve středověku*, "Revue církevního práva" 1997, iss. 3, p. 137–155. However, when evaluating the extent of penetration of Roman and canon law in diplomatic texts, we should take into consideration that the existing

was governed by customary law which formed the base for other legal sources, mainly statutory law.[11]

Before proceeding to the actual analysis of the charters, we would like to draw the readers' attention to the character of diplomatic charters in relation to testaments, while leaving aside diplomatic and palaeographic analysis. The preserved corpus of medieval charters of Bohemian origin related to testaments includes mainly documents produced as recipient charters produced after some time had followed the oral declaration of the testament in front of witnesses. Frequently, they are in the form of confirmations of parts of testator's last will for the benefit of one (mostly religious) recipient. The charters drawn up at exactly the time when the testator declared his will are rather exceptional in the Czech lands. Testaments which we come across in disputes over part of the property between testator's heirs and religious institutions represent a special group of charters. References to testaments can be also found in the charters that concern them only marginally and indirectly. They are references to estates which were once transferred by will and this fact is mentioned in association with disposing of them etc.[12] However, it is very difficult to estimate from these references which kind of disposition *mortis causa* they originally referred to.[13]

The above-mentioned implies that a careful consideration of the relationship between an actual disposition – promulgation of the testator's will, and its publication is quite crucial for the assessment of testamentary practice. The same applies to the identification of who was in a position of a testator and who was in a position of a heir. It is undisputed that noble testators had different relation to these charters than religious institutions which, as potential donees, recorded the entire disposition.[14] Nevertheless, the vast majority of noble bequests and donations *mortis causa* in Bohemian diplomatic charters concerned religious institutions which differentiates them from the property dispositions *mortis causa* as made between particular representatives of nobility.

The basis of the production of Hungarian places of authentication became the so-called *litterae fassionales*, i.e. letters of record regarding dispositions made previously or directly at a place of authentication. They included also the dispositions *mortis causa*.[15] The declarations made before witnesses of the place of authentication thereby acquired

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form of a charter is always limited by the environment in which it originated. This methodical observation is emphasized in M. Boháček, *Římské právo v listinné praxi českých zemí 12.–15. století*, "Sborník archivních prací" 1974, Vol. 24, iss. 2, p. 465–466. More recently also in N. Štachová, *Šlechtické testamenty v listinné praxi českých zemí do roku 1306*, "Časopis pro právní vědu a praxi" 2012, Vol. 20, iss. 3, p. 246.

[11] Š. Luby, *Dejiny...*, p. 522.

[12] N. Štachová, *Šlechtické testamenty...*, p. 246.

[13] It need not necessarily be testament, but e.g. donation in case of death.

[14] J. Šebánek, *Das Verhältnis zur Urkunde als methodischer Faktor der diplomatischen Arbeit*, "Sborník prací Filozofické fakulty brněnské univerzity" 1959, C, Vol. 8, iss. 6, p. 5–19.

[15] The term *fassio* means a testimony, declaration, confession, in the narrow sense a testament, from which originated the following phrase '*confessus (confessi) est (sunt), quod...* ', introducing this particular kind of disposition. At places of authentication people declared their decision of a legally binding nature, however, this declaration took place somewhere else, or they declared it at notaries to ensure greater legal security. Cf. A. Švecová, *Litterae fassionales v listinách locorum credibilium vydaných na území Slovenska do roku 1350*, Trnava 2005, p. 53 (unpublished dissertation thesis). Currently, the term *litterare fassionales* refers to all testimonies initiated by private parties leading to issuing of a charter. A different view was formerly presented by Š. Luby, *Dejiny...*, p. 385.

a written form of a notarial instrument with full legal effects. Of course, declarations could also be drawn up by other institutions (royal chancery, royal officials, towns, etc.), similarly as in the Czech lands. However, unlike in the Czech lands, in Hungary the law provided for a general ban on publication of documents in one's own affairs. Therefore, charters in favor of religious recipients in cases of *inter vivos* and *mortis causa* acts, which were so common in the Czech lands, were unacceptable in Hungary.

We hope that this introduction clearly illustrates the aim of our study, which is to outline the issue of testamentary succession in the Czech lands and Hungary on the basis of analysis of preserved diplomatic charters and to attempt a mutual comparison of testamentary practice in the given period. Before proceeding to this task, we must point out, at least in general terms, the limitations imposed on testamentary succession and describe the specific features of medieval noble testaments.

Limitations of testamentary succession

Even though succession *ex testamento* represents one of titles of succession, we must always be aware of its strong relation to intestate succession, especially when we realize that in the early Middle Ages the original Czech and Hungarian inheritance law probably did not know testamentary succession.[16] The development of testamentary succession in Europe was undoubtedly conditioned by the existence of individual ownership and was also strongly affected by the influence of the church that sought to promote freedom of testation.[17] By supporting testamentary succession, the church looked for a way to facilitate *pro anima* dispositions for the benefit of existing churches and new foundations of religious institutions.[18] Since the religious doctrine was based on the social function of property, which was used for the benefit of the whole and also for the salvation of the soul of a testator, his family and church community, the church began to proclaim the duty to bequeath part of testator's property in the form of so-called pious bequests ('*pia legata*') for the sake of salvation of his soul ('*pro remedio animae*') to some religious institution. With a slight exaggeration it can be said that with dispositions *mortis causa* the church "joined" the family as a legitimate heir.[19]

This statement is fairly important. It was the strong position of legal heirs, mostly descendants of a deceased person, which often complicated an extreme life situation of a testator, who needed their consent. This was particularly evident especially in noble medieval law, which was closely linked to the institution of family co-ownership.[20] The

[16] T. Saturník, *Přehled…*, p. 188, 198, 200–203; Š. Luby, *Dejiny…*, p. 511.

[17] S. Płaza, *Historia prawa w Polsce na tle porównawczym*, cz. I. *X–XVIII w.*, Kraków 2002, p. 302, also: K. Korányi, *Najdawniejsze polskie prawo spadkowe*, Poznań 1939, p. 171 ff. See also M. Mikuła, *Zakres przedmiotowy spadkobrania testamentowego w Statutach Litewskich*, „Krakowskie Studia z Historii Państwa i Prawa" 2010, t. 3, s. 131–143.

[18] M. Boháček, *Římské právo…*, p. 480.

[19] A. Timon, *Ungarische Verfassungs- und Rechtsgeschichte mit Bezug auf die Rechtsentwicklung der westlichen Staaten*, Berlin 1904, p. 395–396; K. Korányi, *Najdawniejsze…*, p. 171.

[20] The basic literature on family co-ownership is still represented by older writings. K. Kadlec, *Rodinný nedíl čili zádruha v právu slovanském*, Praha 1898; *idem*, *Rodinný nedíl ve světle dat srovnávacích dějin*

latter could be characterized as a property partnership of blood relatives.[21] Due to the institution of family co-ownership, the Czech and Hungarian law of succession, which was initially developing as part of family property law, had a specific character.[22] Over the few centuries, under joint influence of customary law and regulations of Bohemian and Hungarian monarchs, particular groups of legal heirs emerged, whose inheritance rights could not be violated by dispositions *mortis causa*.[23]

Apart from the family co-ownership, there was another significant fact influencing the form of law of succession. It was the royal right of escheat that concerned property with no heirs.[24] The character of property which could be subject to inheritance (especially in testamentary succession) or right of escheat, played the key role in Hungarian law. Division of property into inherited (‘*bona aviticita’*) and acquired (‘*bona aquistica*’) significantly influenced rules of both intestate and testamentary succession.[25] While in the Czech lands, the issue of testamentary freedom of nobility was not subject of royal regulations and the particular testamentary practice was determined by customary law, which was gradually influenced by Roman and canon law,[26] in Hungary in the given period the general conditions of testamentary succession were determined by the laws of the last Árpáds, which were in particulars amended by customary law. The decrees of Andrew II

právních, Brno 1901; R. Rauscher, *Dědické právo…*, p. 9–29; *idem*, *O rodinném nedílu v českém a uherském právu zemském před Tripartitem*, Bratislava 1928; V. Vaněček, *Právní problematika českého nedílu jako středověkého bezpodílového spoluvlastnictví* [in:] V. Vaněček, *Dějiny státu a práva v Československu do roku 1945*, 3rd ed., Praha 1975, p. 508–518.

[21] *Ibidem*, p. 105.

[22] R. Rauscher, *Dědické právo…*, p. 29–30.

[23] Generally, there were no major differences between the Czech lands and Hungary since both lands recognized succession through the descending line: of descendants, ascendants, collateral relatives and the monarch (the royal chamber). The Czech lands also recognized the fourth group of married couples – K. Adamová, A. Sýkora, *Dědické zemské právo v české historii. K obsahu českého zemského hmotného dědického práva od patrimoniálního státu do poloviny 17. století se zvláštním zřetelem k Obnovenému zřízení zemskému, Deklaratoriím a Novelám*, Ostrava 2013, p. 115.

[24] On the right of escheat of Czech monarchs, cf. J. Čelakovský, *Právo odúmrtné k zpupným statkům v Čechách*, „Právník” 1882, Vol. 21, p. 1–16, 73–89, 109–128; J. Kalousek, *O staročeském právě dědickém a královském právě odúmrtném na statcích svobodných v Čechách i v Moravě*, „Rozpravy České akademie císaře Františka Josefa pro vědy, slovesnost a umění v Praze” 1894, Vol. 3, cl. 1, iss. 1, p. 1–62; F. Bloch, *Die Entwicklung des königlichen Heimfallrechtes im böhmisch-mährischen Landrecht*, Prag 1909. For Hungary, cf. Š. Luby, *Dejiny…*, p. 514, 522.

[25] The term ‘*bona aviticita*’ was understood as a joint property of all legal heirs, living and expectant. It included movable and immovable property and rights related thereto, while succession preferred male heirs to female ones. According to the negative definition, ‘*bona acquistica*’ included all property that was not part of *bona avicita*. It regarded mainly the property alienated on the basis of a contract (or royal donation as donation *sui generis*), or acquired through intestate succession, or in other ways – Š. Luby, *Dejiny…*, p. 224–225, 301. Although charters from the Czech lands before 1306 contain references to various types of estates, there is no evidence of a strict distinction between inherited estates of Bohemian and Moravian nobles and those acquired in other ways. Determining the quality (not just testamentary) of alienated estates or those acquired by a monarch through the right of escheat thus represents in many regards a fairly complex matter.

[26] M. Boháček, *Einflüsse des Römischen Rechts in Böhmen und Mähren*, Mediolani 1975, p. 100–105.

from 1222[27] and 1231,[28] Béla IV from 1267[29] and Andrew III from 1290,[30] established important changes that nevertheless did not affect the king's right to property of a testator who deceased without heirs and testament. On the contrary, the Anjou dynasty tried to reverse the negative trend for the monarch and his right to escheat. The most radical intervention in testamentary freedom of nobility was made by Ludwig I in his decree from 1351, where he revoked any independent disposing of property by nobles without male heirs (in case of both *inter vivos* and *mortis causa*). The king assigned the property only to the closest male relatives – descendants and their descendants, and if there were none, then to collateral relatives (brothers and their descendants).[31]

Medieval noble testament and its specific features

If we continue to discuss testaments[32] as found in preserved documents from the late 12th century, we must observe that by these we do not mean Roman law testaments, which are usually defined as unilateral disposition of one's property, in whole or in part, that takes effect on the individual' s death. It is generally revocable based on the appointment of heir ('*heredis institutio*').[33] In fact, medieval noble testaments show clear signs of testaments in which the testator bequeathed particular items of property.[34] As they do not contain the appointment of heir, they are based on singular and not universal succession. Therefore testators could divide their whole property through individual bequests, while they often supported charitable activities of the church through bequests for salvation of their soul and souls of their relatives ('*pro remedio animae*').

If individuals during their life thought of salvation of their soul, they had another opportunity to declare their will and contribute to pious purposes. They could bequeath part of their property to a particular religious institution through a donation in case of death, either with effects coming into force after the death of a donor – in this case we talk about

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[27] CDSl I, no. 270.

[28] CDSl I, no. 375.

[29] *Regesta regum stirpis Arpadianae critico-diplomatica I*, ed. I. Szentpétery, Budapest 1961, no. 1547, translation of the charter published by R. Marsina, *V kráľovstve svätého Štefana*, Bratislava 2003, iss. 107, p. 218–219.

[30] Endlicher I, p. 619.

[31] DRH I, p. 129–130.

[32] According to R. Rauscher, *Dědické právo…*, p. 61, the term '*testamentum*' could not only mean a last will ('*ultima voluntas*') but also a charter as such or an endowment for the benefit of some religious institution. Ambiguity and inconsistencies in terminology seen in particular cases of noble testaments were also acknowledged by a recent analysis of Bohemian charters. On this topic, cf. N. Štachová, *Šlechtické testamenty…*, p. 253–256, especially the chart with dispositive verbs and terms related to last will. A great caution is therefore desirable when evaluating and categorizing dispositions in case of death. For now, we leave aside the question of how much the change in terminology reflects the change in content and to what extent spreading of new terminology indicates penetration of Roman and canon law to the Czech and Hungarian environment, respectively to the Transalpine lands.

[33] L. Heyrovský, O. Sommer, J. Vážný, *Dějiny a systém soukromého práva římského*, 6th ed., Bratislava 1927, p. 539.

[34] M. Boháček, *Římské právo…*, p. 483.

donation *mortis causa*, or with the effects that came into force immediately and donors at most reserved lifelong usufruct of a donated property or the right to receive lifetime annuity etc. for themselves and their relatives (usually the wife). This type of donation is thus known as donation with reservation of usufruct.[35] Donation in case of death bore clear signs of a classic donation or contract of succession.[36] The aspects of these dispositions in case of death show that they were not unilaterally revocable. In addition, transfer of property to the church required approval of relatives, who were thus losing part of their estate.[37] As donations in case of death were relatively frequent transactions in the given period, we consider it appropriate to highlight here their characteristics by which they differ from testaments.[38]

Testament, as outlined above and termed in charters, could be described as legally relevant means of confirming a declaration of testator's will. However, the path leading to its issuing and ultimately to its execution was not always easy. What was the testamentary freedom like in a situation where testators intended to express and enforce their will? What were the formal and content requirements that the preserved testaments complied with? These issues will be developed in our further discussion.

The path leading to the issuing of testament

If we turn our attention from general considerations to practical cases documented in the corpus of Bohemian charters from the given period, we may now say that reconstruction of testamentary production of some of Bohemian and Moravian nobles is much more complicated, as opposed to the one developed in the Hungarian environment, since preserved charters of Bohemian origin do not reflect the usual testamentary practice when compared with the one taking place at *loca credibilia* in Hungary. On the basis of some generalization it can be said that testators usually declared their last will orally before a particular religious or secular authority that could witness these declarations.[39] In the

[35] In this paper we applied terminology used by R. Rauscher, *Dědické právo…*, p. 57–60. Rauscher, however, based his work on older studies: G. Beseler, *Die Lehre von den Erbverträgen. 1. T. Die Vergabungen von Todes wegen nach dem älteren deutschen Rechte*, Göttingen 1835; and R. Hübner, *Die donationes post obitum und die Schenkungen mit Vorbehalt des Niessbrauchs im älteren deutschen Recht*, Breslau 1888. This terminology was critisized by the more recent research – see, e.g. A. Schmidt-Recla, *Kalte oder warme Hand? Verfügungen von Todes wegen in mittelalterlichen Referenzrechtsquellen*, Köln–Weimar–Wien 2011, esp. p. 75–118. However, the critical assessment of theoretical benefits of this "reviewed" terminology for the above analyzed charters would require a separate analysis.

[36] More details on contract of succession and donation *mortis causa*, cf. A. Švecová, *Formálno-právna stránka zriadenia úkonov posledného poriadku na Slovensku do roku 1950*, Bratislava 2010, p. 47–50.

[37] R. Rauscher, *O zvolené posloupnosti v českém právu zemském*, Praha 1921, p. 3, 5.

[38] Cf. the attempt to characterize noble testaments of the Czech origin in N. Štachová, *K povaze testamentů šlechtické obce ve 12. a 13. století* [in:] *Proměny soukromého práva: sborník příspěvků z konference ke 200. výročí vydání ABGB*, eds. L. Vojáček, J. Tauchen, K. Schelle, Brno 2011, p. 36–44.

[39] The charter CDB IV/1, no. 128, documenting the testament of a knight Jan witnessed by Alram, the mayor ('*iudex*') of Brno, represents a unique evidence of a noble testament witnessed before a municipal authority. The presence of the mayor is understandable as Jan disposed of possessions falling under town law. He also owned some property in town as his testamentary declaration took place at his house in Brno.

earlier period of the second half of the 12th and in the early 13th century, declarations of testators were sometimes made in the presence of the Bohemian monarch or the Bishop of Prague and other witnesses,[40] whose exact number or "quality" were not prescribed by domestic land law. The monarch and other witnesses could also attach their seal to the testament.[41] The testament was often drawn up after some time following the oral declaration made by a testator,[42] which could be confirmed by the monarch.[43] A written version of the testament could also be created at a gathering of local nobles – colloquium.[44] An example of orally declared testament might be the charter of Oldřich, the son of Držislav. Before leaving for the Holy Land in 1192, he personally declared his will before a certain Markvard, whom Oldřich appointed as an executor of his will. Markvard, probably delegated by Oldřich, presented contents of Oldřich's will to his relatives, who heard him out and thereafter attested to it along with other witnesses before the Bohemian duke Přemysl Ottokar I of Bohemia and the bishop of Prague Henry Bretislaus. We are almost certain that later on Přemysl had a charter drawn up under his seal at the request of the Cistercian monastery in Plasy, which received the village Lomany.[45]

Another originally oral testament declared before witnesses is the testament of Roman of Týnec from October 1230.[46] Despite being childless, he feared that there might be disputes over his property among other relatives ('*Romanus de Teintz iam per egritudinis molestiam vicinam esse mortem cerneret, metuens, ne vel uxor seu propinqui, cum liberos non habebat, pro iustis hereditatibus suis post eius obitum iniuste contenderent*'). A certain Přibyslav appeared at the colloquium before Přemysl Ottokar I, clergy and barons in a position of a witness and perhaps also an executor of Roman's testament. His task was to acquaint the present parties with the will. He also asked for the confirmation and the issuing of the testament ('*ore facundissimo peroravit, devote supplicans, ut testamentum,* [...] *nostro et baronum nostrorum iudicio complaceret*'). His request was complied with, which is documented in the preserved charter. The Cistercian monastery in Plasy, as one of the donees, undoubtedly benefited materially from this testament as it was stated there that Plasy should acquire the named estates after the death of Roman's wife, respectively if she remarried.

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[40] The presence of the monarch is mentioned e.g. in CDB I, no. 100. The king and the bishop of Moravia were present at the declaration of Hroznata' s testament, which the king also confirmed. The seal was attached to both charters by the testator and the king – CDB I, no. 357 and no. 358. In case of a noble Miroslav, the foundation of the Sedlec monastery was approved by the Bohemian duke and the bishops of Prague and Moravia – CDB I, no. 155. In order to increase credibility of dispositions, testators could ask the monarch and other present witnesses to confirm them – CDB III/1, no. 181st.

[41] For example, the Bohemian nobleman Kojata asked the bishop of Prague to attach seal to his testament – CDB II, no. 303.

[42] CDB I, no. 336 or CDB II, no. 342.

[43] As it was in case of Ratmír – CDB III/1, no. 22, or in case of confirmation of the testament of Boček of Pernegg by Přemysl Ottokar I – CDB V/1, no. 67.

[44] CDB I, no. 357 (issuing of the testament probably took place at the same time as its oral declaration); CDB II, no. 342.

[45] The original charter is stored in NA Praha, AZK, inv. no. 583, pressmark ŘC Plasy 8; published in CDB I, no. 336.

[46] CDB II, no. 342.

Both above-mentioned charters provide some evidence of testament executors ('*executores*'),[47] who acquainted the present relatives with the will of a testator. Their role, however, consisted primarily in the execution of the testament. The executors were usually respectable people, whose social status and authority should guarantee that the testament would actually be executed.[48] By force of canon law and educated notaries the charters also started to contain references to health and mental condition of testators and their free will, which should be expressed voluntarily and without any coercion. An interesting example documenting the influence of canon law on the land law is the charter of sons of Hartleb of Dubno from 1294, which mentions his testament only marginally.[49] According to this charter, Harteb of Dubno bequeathed ('*ultime voluntatis legitimum condidit testamentum*') some of his property to the Cistercian monastery in Velehrad ('*libere contulit possidendam*'). Unlike childless testators, Hartleb declared his will in a situation when he evidently had living descendants, whose approval he referred to in his testament.[50] We assume that after Hartleb's death his sons probably contested their father's will. In fact, the core of the above-mentioned charter from 1294 is a dispute between his sons and the abbot of Velehrad, who managed to prove that Hartleb's will was carried out fully in accordance with customary law ('*iuxta morem terre*'). Thanks to details recorded by the scribe of the charter, we can reconstruct the execution of Hartleb's testament. The introductory part of the charter mentions the state of health of the testator, who – in spite of his physical illness – was of sound mind, *sui juris* and legally capable to declare his will ('*sane tamen mentis suique iuris et rerum suarum liberam habens administracionem*'). The will was declared before a sufficient number of witnesses and in compliance with all the conditions prescribed by law ('*sub presencia et qualitate testium et numero a lege diffinitorum sub universis etiam condicionibus et circumstanciis ad testandum pertinentibus*').[51] The estates that Hartleb bequeathed to Velehrad were transferred into possession of the monastery before local officials at the provincial court in Přerov. We can assume that part of this transfer involved the tradition of walking around the land borders of alienated immovables, which at that time already had a con-

[47] On their position in canon law, cf. J. Kaps, *Das Testamentsrecht der Weltgeistlichen und Ordenspersonen in Rechtsgeschichte, Kirchenrecht und Bürgerlichem Recht Deutschlands, Österreichs und der Schweiz*, Buchenhain vor München 1958, p. 64–67.

[48] Executors could also be Bohemian monarchs. In Ratmír' s testament it was supposed to be Wenceslaus I (CDB III/1, no. 22), in the testament of Oldřich of Jidřichův Hradec (ger. Neuhaus, lat. Nova Domus) it was probably Wenceslaus II (Catalog, no. 796; RBM II, no. 1656 and CDM V, no. 11).

[49] CDM V, no. 19.

[50] If a disposition concerned immovable property, the validity of a disposition required the approval of relatives – R. Rauscher, *Dědické právo…*, p. 59 ff. with evidence. As documented by J. Kincl, *Dva testamenty šlechtice Kojaty*, "Acta universitatis Carolinae – Iuridica" 1978, Vol. 24, iss. 3, p. 306–307, at the time of Kojata´s life (died 1228) testaments were drawn up independently and did not require approval of relatives or preliminary approval of a monarch, who was the only person (unlike in case of subsequent confirmations) to influence the validity of a testament. Therefore, royal confirmations of the oldest testaments are not a proof that the monarch actually approved of them, they are rather a consequence of the fact that the execution of a testament was not at all easy and could be enforced only by a person who was in a strong enough social and legal position.

[51] The law here could only mean regulations of canon law related to the form of a testament – see, M. Boháček, *Římské právo…*, p. 481.

stitutive character.[52] The monastery remained in possession of the realty peacefully for several years until the outbreak of the conflict. The above-mentioned implies that the testament of Hartleb of Dubno was originally executed without any objections from the direct heirs of the testator and fully in accordance with domestic land law. After all, the above-mentioned document shows that the testament was approved by Hartleb's sons, who promised to protect their father's will in favor of the Velehrad Monastery.

The attitude of testator's relatives towards the testament was crucial. Their agreement indicated that they accepted such dispositions of property that were unfavourable for them. On the other hand, it was most often relatives whom the testator wanted to furnish with something for the future. An example of this might be the testament of a prominent Bohemian nobleman Vok of Rosenberg.[53] As one of the few testaments it was drawn up shortly after his death and in addition at Rosenberg' s chancery.[54] According to the text of the testament, the Cistercian order of Vyšehrad acquired considerable part of immovable property. However, we are more interested in how Vok disposed of the property designated for his wife and children. Unlike many other charters that cover only a particular part of the estate, mostly the property bequeathed for the benefit of some religious institution,[55] Vok in his testament clearly disposed of his entire property ('*disposui et plane dedi universa bona mea*').[56] He bequeathed his estate, i.e. any movable and immovable property and income arising therefrom to his wife to use it together with their children. The condition was that she should remain a widow. Then she could continue living with her children or separate from them. If she re-married, she was allowed to keep only part of the estates.[57] Material provisions, however, might not relate only to close relatives, but also to the extended family, which included servants,[58] officials or dependent orphans, who a testator thought of before his death in the form of small financial sums or other allowances.[59] How testators decided to divide their property was reflected not only by individual bequests constituting the very essence of the will. It was also obvious in

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[52] Cf. J. Kincl, *Dva testamenty...*, p. 305, who points out that the tradition of walking around the land borders of alienated immovables (the so-called 'ochoz') was a constitutive part of contracts of purchases and sales, and he assumes the same preliminary acts existed in case of donations and bequests. This is also confirmed by N. Štachová, *Ke sporu hradišťského opata Budiše s Albertem z Lešan 26.11.1279. Úvaha o zemském právu v období tzv. prvního interregna* [in:] *Naděje právní vědy. Býkov 2007*, eds. V. Knoll, M. Karhanová, Plzeň 2008, p. 178.

[53] CDB V/1, no. 335; most recently on Vok's testament (including a copy of the original testament) V. Vaníček, *Vok I. z Rožmberka († 1262)* [in:] *Rožmberkové. Rod českých velmožů a jejich cesta dějinami*, ed. P. Balog, České Budějovice 2011, not paged.

[54] References to problems with dating of the testament of Vok of Rosenberg in S. Dušková, *Rudigerus notarius. (Ein Versuch um die diplomatische Erfassung einer Urkundengruppe)*, "Folia diplomatica" 1971, Vol. 1, p. 63–74.

[55] E.g. CDB I, no. 336; CDB II, no. 302 and no. 303; CDB III/1, no. 22; CDB IV/1, no. 128.

[56] In other cases, we can only read between the lines that testator's oral declaration regarded all his estates. For example, CDB IV/1, no. 128 ('*intereram ultimo testamento domini Johannis militis,* [...] *quod ante mortem suam condidit, et inter alia, que testatus est, tale testamentum fecit*').

[57] Similarly, e.g. CDB I, no. 100; CDB II, no. 342; CDB V/2, no. 632; Catalog, no. 796 (RBM II, no. 1656 and CDM V, no. 11).

[58] Hartleb of Myslibořice endowed his teacher („*scolarus*") in case he decided not to continue to serve his wife. Hartleb's servants were also allowed to leave freely – CDB V/2, no. 632.

[59] Vok endowed not only his notary Rudiger, who drawn up the testament, his wife and heirs, but also orphans from his estate – CDB V/1, no. 335.

the recapitulation of their assets and liabilities and the willingness to settle their existing debts through specifically designated individuals, most often close relatives.[60]

There is probably no definite answer to the question why medieval people resorted to the issuing of testament. The preserved noble testaments emphasize health and mental condition of the person in question prior to his or her death. Testaments were usually created by nobles who remained childless or assumed that they would not have any children.[61] However, it could also be in the situations when a noble was in imminent danger of death or when it was highly likely that death would occur. By this we mean for example a pilgrimage to the Holy Land or to another remote destination where a possibility of sudden death was anticipated.[62] Also a long-term illness made the weakened individual consider what to do with his possessions.[63] The chances that a testator might father a male child represented a truly crucial factor. After all, many testators counted on the possibility of birth of a male heir until the last moment and with this in mind they approached the formulation of their last will.[64] In case the awaited child was born, in the will it was guaranteed major part of the property. Otherwise the property (all or parts) was assigned to the closest relatives, usually with reservation of lifelong usufruct.[65] The ultimate donee, however, was a religious institution chosen by the testator, for instance as his or her last resting place.[66] As was discussed above, bequests to religious institutions were a common part of all preserved noble testaments which could be termed as *pro anima* bequests. Through such testaments, testators pursued salvation of their soul and souls of their ancestors or descendants. Testamentary *pro anima* bequests could also be preceded by the foundation of one of major monasteries and again, in their will testators could support its development in the form of pious bequests.[67] The newly created foundations also received promise of support from the monarch, who arranged patronage and confirmation of some of the preserved testaments. In addition to targeted financial contributions to selected religious institutions, there was another way how testators could ensure salvation of their soul. It was in the form of support to those who planned to leave for the Holy Land, make a pilgrimage to Compostella in the footsteps of St. Jacob[68] or travel with a cross to Prussia.[69] On the initiative of a testator and through a chosen per-

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[60] E.g. in CDB III/1, no. 181 the debt was to be settled by the wife and brother of a testator; in CDB I, no. 357 it was the abbot of the Teplá Abbey.

[61] CDB I, no. 100; CDB I, no. 155; CDB II, no. 302, p. 300: "*ego Coiata* [...]*, considerans carnalem mihi prolem divinitus esse negatam, que mihi in meis bonis succedere posset, volensque Christum heredem habere et in bonis meis successorem*"; CDB II, no. 303, p. 301: "*ego Coiata,* [...] *cum filios non habeam, Christum heredem faciens*"; CDB II, no. 342; CDB III/1, no. 181; Catalog, no. 796 (RBM II, no. 1656 and CDM V, no. 11).

[62] CDB I, no. 336; CDB I, no. 357; CDB V/2, no. 632. See also: W. Szymborski, *Testamenty mieszczańskie jako źródła do dziejów badań nad ruchem pielgrzymkowym w średniowiecznej Polsce* [w:] *Prawo blisko człowieka. Z dziejów prawa rodzinnego i spadkowego*, red. M. Mikuła, Kraków 2008, s. 153–163.

[63] CDB II, no. 342; CDB III/1, no. 22; CDB V/1, no. 60.

[64] CDB I, no. 155; CDB I, no. 358; Catalog, no. 796 (RBM II, no. 1656 and CDM V, no. 11).

[65] CDB II, no. 303.

[66] CDB V/2, no. 630; CDB II, no. 302; Catalog, no. 796 (RBM II, no. 1656 and CDM V, no. 11).

[67] CDB I, no. 79; CDB I, no. 155; CDB I, no. 357; CDB II, no. 302; CDB V/1, no. 60.

[68] CDB III/1, no. 181. See also: J. Žemlička, *Královský číšník Zbraslav a jeho dědictví (Vznik a rozklad jednoho feudálního dominia z první poloviny 13. stol.)*, "Historická geografie" 1983, Vol. 21, p. 117–132.

[69] CDB V/1, no. 335.

son (usually an executor of the testament) they were to be paid a set amount of money as a reward for their pilgrimage, which they declared to make for the salvation of the deceased person's soul.

Like the above-mentioned charters from the Czech lands, Hungarian charters also document pious intentions of testators and their efforts to settle their financial situation before they died. However, in Hungarian environment we must once again emphasize a specific position of *loca credibilia*, which also produced the analysed testamentary declarations. If we abstract away from the details, we may get a general idea of how these unique legal documents were produced: first a close relative (e.g. a spouse) came to a place of authentication where he or she declared that a certain person was unable to attend and declare the testimony and asked for a representative of the place of authentication[70] to be sent out as a witness to record the public declaration of the testament.[71] The announcement of the fact that a testator was, despite illness, physical weakness and old age, fully conscious and of sound mind ('*in lecto iaceret egritudinis et diem extremum sibi sensisset imminere compos tamen sue mentis*')[72] became a very important part of the final written testimony since a general custom and requirement that the party in question is a bearer of legal capacity and is of full mental health was respected. The representative of a particular chapter house or convent came to the house of a testator and heard out his will. Upon return he reported on the contents of the will and the process of the act[73] with the participation of witnesses of the testament. The place of authentication subsequently issued a charter documenting the whole declaration. It happened only rarely that testators came in person and declared their testimony.[74] Places of authentication could also draw up testaments in matters of members of their own religious institutions at their own offices.[75]

As on principle a will required the form of personal testimony of the testator, albeit made through a delegated representative of a place of authentication, a legal representative was never present during the process of testation. The personal presence of a place of authentication that recorded private declarations of the parties was thus transferred to

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[70] It was usually church dignitaries, such as canons or members of chapter houses (MES II, no. 487, p. 472; RDSl I, no. 547, p. 251) or convents (CDH V/2, p. 138), local parsons, who knew a testator as their parishioner (CAC IV, no. 171, p. 274; RDSl I, no. 540, p. 248), abbots of monasteries (CDH V/2, p. 138.) and the like, who were sent as representatives of places of authentication.

[71] We noted different wordings of requests for representatives and notices of requests to make a testamentary declaration, for example: '*quod nobilis domina Katherina* [...]*, in lecto iacens egritudinis, compos tamen sue mentis, nuncios suos ad ipsum capitulum rogans eos diligenter, quatenus unum ex capitulo ad audiendum ipsius ultimum testamentum ad ipsam transmitterent*' – RDSl I, no. 736*, p. 322. Other cases: DL – 87 784; CAC IV, no. 177, p. 280; CDH VII/5, no. 252, p. 396.

[72] RDSl I, no. 559. Also, e.g. DL – 84 784: '*Quod sepedictus Thomas dissoluta habitacione corporis sui in lecto egritudinis recumbens, licet eger, corpore tamen sana mente*'.

[73] E.g.: '*Nos vero ipsorum peticionibus annuentes missimus* [...] *sacerdotem* [...] *ad audiendum et videndum ordinacionem testamenti domine supradicte, qui postmodum ad nos reversus nobis exposuit oraculo vive vocis*' – CAC IV, no. 171, p. 274, similarly in other testaments carried out outside of places of authentication.

[74] Private archives of the Spiš Chapter house, pressmark Scr. 8, fasc. VII, no. 7: '*quod constitutis coram nobis personaliter nobili domina Iohanna* [...] *est per testimonio vive vocis et relatum*'.

[75] It was documented in the charter of the chapter house in Nitra, in which magister Bricius, despite being weary due to his illness, declared his will: '*quod cum magister Briccius,* [...] *in gravi egritudine infirmitatis iaceret articulo, et tamen compos sui mentis esset, disponens suum testamentum coram nobis*' – CAC VIII, no. 96, p. 138.

the residence of a testator via a representative of a place of authentication. An exception from this practice was recorded in the charters of the Bratislava Chapter House from 6th May, 1308 and 12th September, 1323, in which a representative of a place of authentication was replaced by local clergy, who apparently acted simultaneously as witnesses acting in the capacity of the actual testators. The clergy then declared contents of the testament before a place of authentication.[76]

One of the specific features of Hungarian testamentary declarations, by which they differed from other dispositions, was associated with the mandatory requirement of publicity of the testament in order to make it legally valid. It was guaranteed by the presence of witnesses from the widest possible range of people close to the testator, local clergy and family members and their testimonies. The presence of witnesses required by customary law guaranteed transparency of an act in accordance with the law. In case of doubts and disputes, witnesses confirmed the true and genuine will of a testator.[77] More than ten witnesses, who were apparently relatives and neighbours of the testator, were recorded by the Bratislava Chapter House in the charter from 20th March, 1320, whereby the childless Jakub, son of Tomáš of Kundurusy bequeathed his hereditary land to a local church and the present witnesses confirmed and approved his decision by acclamation, since the property belonged to hereditary estates ('*bona aviticita*'). They also promised to protect the donee church from possible future disputes.[78]

However, the freedom of testators to decide to whom they bequeath their property, was in practice implemented only to some extent, since inheritance was almost exclusively bequeathed for the benefit of the church (as donations for salvation of the soul), or relatives (spouse, children, distant relatives). The reasons for this were prosaic. Inheritance was seen as a compensation for care, kindness and mutual affection of relatives. The motive for the issuing of a testament was therefore a concern for close relatives, and testators also regularly thought of salvation of their soul and souls of their ancestors or descendants.[79] A common reason for making a will was a situation when testator lacked legal heirs (son or daughter).[80] In case testators were women, their estate in the form of dowry, trousseau and dower was most often bequeathed to their children and husband,[81] in case of men, recipients of property were usually their male relatives.[82] Recipients of a bequest could also be churches and monasteries, which usually received the exactly defined estates, nevertheless, only in compliance with the acclamation act of

[76] RDSl I, no. 559, p. 255: '*quod* [...] *plebanus* [...] *coram nobis personaliter constitutus est confessus viva voces, quod Peter* [...] *unus de parochialibus suis,* [...] *inter cetere ordinanda sue ultime voluntatis*', similarly RDSl II, p. 1040, p. 452.

[77] F. Eckhart, *Die glaubwürdigen Orte…*, p. 530.

[78] CDA I, no. 499.

[79] CAC IV, no. 171, p. 274: '*idem Johannes cum omni honore semper ipsam dominam tractaverit et favore et maxime pro salutate anime sue*', similarly: RDSl I, no. 822; DL – 84 784; H.okl., no. 127; MES II, no. 487.

[80] RDSl I, no. 547, p. 251: '*relicta comitis* [...] *propter carenciam heredum suorum*'.

[81] RDSl I, no. 736* and no. 547; CDH VII/5, p. 252 and p. 396; CAC IV, no. 171; RDSl II, no. 1040.

[82] RDSl I, no. 540; DL – 84 784; RDSl I, no. 822.

relatives.[83] In case of hereditary property, it was always necessary to gain the consent of all relatives and neighbors.[84]

In cases of extinction of heirs, testators could also solve the problem of succession in their will, like some Tomáš in the charter of the Jasov Monastery from 23rd December, 1334, when he appointed the monastery in Jasov as his consecutive heir.[85] The same problem was dealt with in the testament issued by the Jasov Monastery and the provost Pavel on 17th June, 1340, according to which in case of prospective extinction of the family of Michael, his son Mikuláš and his wife Anna, the designated property should be assigned to canons of the Spiš Chapter House, to which the couple primarily bequeathed only annuity from the estates worth three grivnas of silver.[86] The testament confirmed by the Spiš Chapter House in 1274 also dealt with the determining of hereditary succession when a testatrix bequested the whole estate to her husband. After his death, their daughter was to inherit it as a subsidiary heiress together with her husband.[87]

Freedom of testation meant not only free and independent choice of heirs and inheritance shares, but it also gave testators the opportunity to determine conditions under which heirs could receive the estate. These conditions were seen particularly as restrictions of private law. They are preserved in typologically clearly defined form in the charter of the Jasov Monastery from 23rd December, 1334, in which the testator imposed a ban on his wife to receive the inheritance. If she remarried, she was obliged to transfer it to her son, a sole heir.[88]

Final comparison

The few above-mentioned examples from the Czech and Hungarian environment should document sometimes complicated journey crowned by the issuing of a testament, and through a short excursus outline the predominant character of medieval noble testaments. If we attempt to summarize the commonly accepted features of testaments, we may point primarily to formal similarities among which there may be classified the mainly oral

[83] For example, the monastery in Hronský Svatý Beňadik acquired in this way two hides with a wood (CAC VIII, no. 96) from Briccius, the sublector of Nitra, in 1265. For further evidence see MES II, no. 487; H.okl., no. 127; CDH V/2, p. 138–139; RDSl II, no. 530. According to the testimonies declared personally before certain nobles at the Jasov Monastery in 1340 and 1349, the Spiš Chapter house received permanent right to annuity from their property, to which it was entitled after death of the named parties.

[84] RDSl II, no. 530, p. 247: '*Predicti... cum omnibus memoratis cognatis et vicinis dicti Jacobi* [testator] *testamentum predictum ratificando admiserunt*', similarly CDH V/2, p. 138; RDSl I, no. 540; RDSl II, no. 1040.

[85] DL – 84 784: '*Et si ipsum Demetrium sine posteritatibus decedere contingetur, omnes possessiones, allodia et vinee quidem existentes pro testimonio monasteriis sive ecclesiis remaneret possidenda*'.

[86] Private archives of the Spiš Chapter house, Scr. 7, fasc. 4, num. 5: '*Preterea, quod si predictos Mychaelis et domine Anne predictorum absque heredibus, quos absit ab hoc seculo migrando decedere contingetur, premisse possessiones predictis canonicis seu capitulo ecclesie sepedicte iure hereditarie successionis et perpetuo possidende et habende* [...] *debeant et debent remanere et pertinere* [...]'.

[87] CDH VII/5, p. 396: '*quod supradicta coniunx* [...] *relinquit antedicto viro suo* [...] *usque ad obitum eiusdem post decessum eius relinquit praedictam hereditatem filie sue* [...] *cum marito suo*'.

[88] DL – 84 784.

form of the testament which was declared at the presence of witnesses. As documented by charters from the Czech environment, the intention of a testator to settle his or her temporal affairs acquired a written form at the time of the issuing of a testament, which could take place even after a long time following its declaration. The appointment of executors, whom we come across both in Bohemian and Hungarian charters, was not without a purpose. They were the people whom the testators trusted and who were entrusted with the task of executing the will.

The element of publicity guaranteed by the presence of witnesses, who could confirm the disposition of a testator, was not the only specific feature of testaments. Another specific thing was a subjective manner of the form in which the issuer acted as a testator as well as a subject of the disposition *mortis causa* (testaments were not issued in a common impersonal third person but in *Ego* or *Nos* forms). As shown by the above-cited examples, the crucial requirement for the issuing of a testament was the legal capacity of a testator, who was required to be of sound mind (not physically healthy) and express his free will with absence of any coercion.

Testators could not freely decide on how to dispose of their property. By this we refer to limitations prescribed by the law of succession, the existence of family co-ownership and the right of escheat that could be exercised by the monarch, who could claim part (or whole) of the inheritance if certain conditions were fulfilled. In addition to this, documents on Hungarian practice show a different mode of succession of inherited and acquired property, which influenced the form of the Hungarian law of succession. Unlike in Hungary, in the Czech noble environment there were no regulations of testamentary freedom that was in both countries limited by the consent of close relatives or the monarch when someone disposed of his *mortis causa*. The preserved testaments, however, suggest that these dispositions were tolerated, especially in cases of bequests for the benefit of religious institutions. It was the church that predominated in both countries as the heir and from the late 12th century it was a recipient of bequeathed movable and immovable property and annuity for the salvation of souls of testators and their relatives. The church thus not only expanded its wealth but also used these donations for pious purposes for the benefit of lay society, e.g. through memorial services, etc.

Medieval testament, as defined above, bears a resemblance to Roman testament only terminologically. In fact, throughout the Middle Ages this testament was a testament that was exhausted by individual bequests and did not require the appointment of universal heir. The preserved charters clearly refer to singular succession, which could also include potential suspensive or resolutive conditions. We also have documentation that testifies to vulgar substitution or sanctions for the breach of testamentary disposition. The character of the above-mentioned medieval testaments exhausted by individual bequests, or other dispositions *mortis causa*, leads us to a clear conclusion that the testamentary practice in the Czech lands and Hungary was based on European practice, in which dispositions *mortis causa* performed not only distributive function but they also extended beyond the borders of this fleeting world to link the Christian *civitas Dei* on earth and in heaven.

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