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## **Appointing of an Executor of a Will in Republic of Macedonia**

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### **Abstract**

In this paper is performed a study and analysis of the possibility the testator to appoint an executor of the will in the Republic of Macedonia. Namely, by appointing an executor of the will, the testator shows his concern regarding the execution of the will. Thus, the testator can, in the contents of the will introduce a provision for the execution of the will, or to determine a person who will appear in the role of the executor of the will, or to determine more people who will appear in the role of the executors of the will, with which the execution of the will is in accordance with the will of the testator, and of course in accordance with the law. Namely, on one hand, the testator can first determine how the testament will be executed, and on the other hand the testator can only determine how a specific provision of the testament will be performed, and not the entire will. Namely, the purpose of this paper is to carry out a scientific study of the possibility for the testator to appoint an executor of the will, and thus to comprehend the role of the executor of the will in the Republic of Macedonia.

**Keywords:** executor; estate; duties; giving account; law; person; revocation; testator; will.

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## **1. Introduction**

The testator is authorized in accordance with the Macedonian inheritance law with a will to be able to appoint an executor of the will. Namely, as a content of the will may also occur the order of the testator, for appointing a person as an executor of the will or for designating several persons to be executors of the will. In this case it is a provision of formal - legal nature. By appointing an executor of the will, the testator wants the person appointed for that purpose by the will, to take care that the will be executed in the manner specified by the testator.

However, whether a person will truly be in a particular case an executor of the will depends on him, because the acceptance of this duty is on a voluntary basis. Further on, in the paper, I first determine in more details the term executor of the will. I am giving an explanation about which person may appear in the role of the executor of the will, what if more people are appointed for executors of the will, as well as what are the duties of the executor of the will. It will also be discussed about the supervision of the performance of the executor of the will, the need for the executor to give account, for his right to reimbursement of costs and the right to a reward for the work done, but as well as for revocation of the executor of the will

Namely, the scientific study of the possibility of the testator to appoint an executor of the will, and therefore the cognition of the role of the executor of the will according to the Macedonian inheritance law, i.e. in the Republic of Macedonia, in fact represents the purpose of this paper.

## **2. Definition of the executor of the will**

As an executor of the will appears the person who in the will is appointed by the testator, in order to take care of the execution of the will to be as the testator wanted it to be, ie according to his will. Besides the possibility of appointing one person in the Macedonian inheritance law, there is also a possibility of appointing more executors of the will. The appointing of an executor or the appointing of several persons as executors of the will is a possibility that is left to the testator. Namely, in the Republic of Macedonia, in the Law on Succession from 1996 [1] (hereinafter referred to as: LS) in Article 113, paragraph 1 it is stated that: "The testator can appoint by will one or more persons as executors of the will." It is not that it is a duty of the testator that he has to appoint an executor or executors of the will. That is his right, which he can, but he does not have to use it. In each separate case the testator himself decides whether he will appoint one or more executors of the will, or he would decide not to appoint an executor of the will. Namely, it depends on the will of the testator as to whether as an integral part of the contents of the testament, there will be a provision regarding the determination of the executor of the will, and the order regarding this is of a formal character. Hence, an executor of the will cannot be determined by the court.

In the role of the executor of the will may appear any person having legal capacity. Namely, it follows from Article 113, paragraph 2 of the LS, which provides that: "An executor of a will can be any legally capable person". Thus, as an executor of the will may as well occur one of the heirs of the testator, independent of whether it is a legal heir or a testamentary heir and also independent of whether it is a universal or a singular heir. As an executor of the will can even occur a third person. Even as an executor of the will in accordance with

the law may also be a juridical person. In this regard, Prof. Hadzi Vasilev - Vardarski writes that: "A juridical person as an executor of the testament will be appointed, for example, in cases when a part of an estate or all of the estate is designed for establishing a foundation or for attaining a permissible goal" [2].

However by the very appointing of the person as executor of the will by the testator in the will, it does not mean that this person is obliged to accept that duty executor of the will. Namely, the person who is appointed as executor in the Macedonian inheritance law does not have to accept the office of executor of the will (Article 113, paragraph 3 of LS). When the testator appointed an executor of the will, the court is obliged to inform him about it. Namely, the Law on non-contentious procedure (hereinafter referred to as: LNCP) [3], in Article 163 expressly states that: "If the deceased has appointed an executor of the will, the court is obliged to inform him of it, giving him a deadline in which he is obliged to declare whether he accepts that duty." Hence, there is a duty of notification by the court, but also the duty of declaring by the person specified in the will as an executor, whether he accepts that duty.

In this regard, the acceptance of the duty executor of the will is voluntary. Only the person specified in the will as an executor of the will decides whether to accept this duty. With it, this duty comes to be relative, allowing the person specified in the will as an executor of the will, to decide whether in the particular case he will accept the duty executor of the will. If he accepts this duty, i.e. to be the executor of the will, then he should perform that duty conscientiously and precisely, according to the will of the testator and in accordance with the law. If the person that is appointed to be the executor of the will, does not accept this duty, and that exactly is what we said above is legally allowed, then there is also an absence of criminal or civil liability for that person. Namely, and in this case that person acts pursuant to the law, hence he does not do anything illegal. Yet, here we have to mention that the moral sanction is not excluded. For example, if the testator in the will stated: "as an executor of the will I appoint my son Peter," then his son Peter does not have to accept this duty, and for it he will not have criminal or civil responsibility. However as mentioned before the moral sanction is not excluded. If the person appointed as an executor of the will does not accept this duty, the court cannot appoint another executor, but it can certainly for example in particular case put a temporary trustee.

### **3. Duties of the executor of the will**

The testator by appointing a person as an executor of the will can regulate his duties as well. Namely, the testator can determine which tasks the executor of the will needs to make. It is a possibility, but not an obligation of the testator. Otherwise when the testator does not determine the duties of the executor, the legislator determined in the law for what duties are in question. Hence, first it is left to the testator to determine the content of those duties, but if the testator did not determine the duties, the law is applied, where the legislator has already determined those duties. In this context, the testator is not required to determine the execution of the will to be in full, i.e. the executor of the will has to fully carry out the will. Namely, the testator can determine the person appointed as executor to carry out certain order of the will. Hence, in theory given the scope of duties of the executor, a conceptual distinction is made to a special and general executor. Thus, a person is a general executor when there is a task for him to execute the will in its entirety, while a person is a special executor when he has been appointed by the testator to execute certain provisions of the will.

In the Republic of Macedonia, when it comes to the duties of the executor of the will in Article 114, paragraph 1 of the LS it is stated that: "If the testator has not determined otherwise, the duty of the executor of the will is to take care especially for keeping the estate, to manage it, to care for the payment of debts and bequests and generally to care that the will be executed as the testator wanted." Namely, it is about the duties of the executor of the will, which in the law in the above mentioned provision are prescribed, and are in connection with the transfer of the inheritance. So these duties have its application if the testator has not determined otherwise. It is important the executor to take care that the execution of the will be in accordance with the will of the testator.

Thus, the executor is obliged to take care of keeping the estate. Namely, with the death of the testator there is a possibility that the estate of the deceased to become a subject of robbery. Hence the executor is required to take care that the estate remains overall, to preserve it, or physically secure it. The care for keeping the estate is perceived in the undertaking of the activities for inventory and valuation of the estate, or other temporary measures for securing the estate. Furthermore, the executor under the law, is obliged to manage the estate. Namely, it is a regular management of the estate, for example: the executor of the will takes actions for recovery of rent arising from a rent agreement. In this regard, Prof. Trpenovska – Spirović, writes that: "The management means taking all measures that are common in the regular management with one property" [4]. So the executor of the will cannot for self-satisfaction, contrary to the will of the testator and against the law, sell any object of the inheritance. Regarding this here we will point out that the Law on Ownership and Other Real Rights [5] (hereinafter referred to as: LOORR) regulates the setting of a governor of the estate. Namely, until a decision on the inheritance is made, the heirs together, use and manage the heritage and if there is no executor of the will, and the heirs do not agree in terms of managing the heritage, the court at the request of one of them, will appoint a manager who will manage the heritage for all of them or will determine a part of the heritage to each heir that he will manage (Article 85, paragraph 1 and 2 of LOORR). Furthermore, the executor of the will is obliged to care for the payment of debts and bequests of the testator. In this context, there is a priority in the payment of creditors regarding legatees or before the legatees the creditors of the testator have the right to charge (Article 105 of LS). In relation to the duties of the executor of the will, as seen from the above stated legal provision, at the end the executor of the will is generally obliged to take care that the will be executed as the testator wanted. In this context, through a broader formulation represented at the end of the legal provisions of Article 114, paragraph 1 of the LS, among other things, recognizes the importance of the will of the testator for the executor of the testament. The executor takes care that the execution of the will be according to the will of the testator. Namely, if the deceased appointed an executor of the will, then at the hearing for discussion of the estate the court will call him (Article 167, paragraph 6 of LNCP). Here it should be considered as already discussed, that the acceptance of the duty executor of the will of the person appointed as executor of the will is voluntary. In legal theory it is stated that, "it is, furthermore, a person who appears as an assistant to the court in the implementation of the probate dispute, taking care of the estate and the realization of the order of the last will, and primarily by pointing out to the court of the circumstances relevant for the will of the testator to be respected and accomplished" [6]. If the testator has not determined the content of the duties of the executor of the will, here the law fills that gap, prescribing a solution for what duties are in question, as described above. But if there is a case where there are more executors of the will, the question is how they act? In this case if there are more executors, then the entrusted duties they perform together, unless the testator chose otherwise

(Article 114, paragraph 2 of LS). Hence, here as well the will of the testator is in advantage. If the testator in this context, in the will chose something else, then is respected the order of the testator. Thus, the testator can appoint an executor to carry out a certain order of the will, someone else another, i.e. the testator to determine their tasks in the will which they will fulfill independently. In jurisprudence it is stated that, "one can be appointed of one part of the estate, other for another part, etc., or in order - first one then another, or if someone cannot - another to replace him, or all together, and if one does not want to, or drop out by any reasons, then the others together will perform that duty and etc." [7]. Namely; it is important that which the testator has determined in the will.

#### **4. Giving account, the right to reimbursement of the costs and reward for the executor of the will**

In the inheritance law of the Republic of Macedonia, another duty for the executor of the will is considered. Namely, for his work the executor is obliged to give account to the court (Article 115, paragraph 1 of LS). This is a duty which the law provides. Namely, the executor of the will takes care of the performance to be made under the will of the testator and of course in accordance with the law. He always gives account of his work when he in fact ceases to perform the duty, or when he actually finishes with the fulfillment of the duty executor of the will. The executor should hand over all the documents, that he has, which are in the context of the realization of the duty. If the executor of the will is revoked, which will be discussed further on, the executor is obliged to give account to the court of his work. Also, when is brought a effective decision on inheritance, the executor of the will gives account of his work. During the execution of the will, the executor of the will is not free from giving account of his work. During the execution, the executor is obliged to give account to the court of his work when the court asks it or when such a request will be asked by the interested participants in the proceedings. There is a continuous inspection and supervision by the court, interested heirs, but and the other participants in the procedure [8]. It is not unimportant whether the executor has a duty to give account of his work or not. Thus, the court supervises and controls the work of the executor of the will, in the carrying out of his duty, which should be performed in accordance with law, within their authorities or competences.

The executor of the will is responsible for his work. He is doing the work as an executor of the will conscientiously and properly. If the executor acts recklessly and disorderly, there is a responsibility in respect of the damage under the rules of the civil law. It will be for example a case when the executor of the will has done damage, by failing to act on a certain order in the will of the testator, but for which he was in charge of enforcement.

The executor of the will is entitled to a reward for his work, but also he has the right to recover the costs incurred regarding the fulfillment of the duty executor of the will. Thus, in the Republic of Macedonia, the executor of the will is entitled to reimbursement of the costs and reward for his labor, which are paid according to a court decision, on the burden of the estate (Article 115, paragraph 2 of LS). Namely, the executor of the will can not take a reward and reimbursement of the costs from the estate as much as he himself considers. Thus, the court decides in each case particularly, of how much will be the reward for the executor of the will and of how high will be his costs.

In determining the amount, as for the reward for the labor, and as well as for the reimbursement of the costs, the court should take into account of what tasks had the executor of the will have for the execution of the will. Furthermore, in terms of costs, the court should also take into account of the justification for them. In any case the court decides of the reward and costs, which shall be paid on the burden of the estate.

## **5. Revocation of the executor of the will**

There is a possibility that the work performed by the executor of the will not to be by the will of the testator or in accordance with the law. In this context, in the Republic of Macedonia that there is a provision for revocation of the executor of the will. Namely, according to Article 116 of the LS: "The court can, upon proposal or official duty, revoke the executor of the will, if his work is not in accordance with the will of the testator or the law." The meaning of this solution was present in the two former regulations applicable in the Republic of Macedonia, which were made during the existence of the Federal Republic of Yugoslavia, where the Republic of Macedonia was part of it and the first Macedonian Law on Succession of 1973 [9] (Article 102) and the federal Law on Succession of 1955 [10] (Article 104).

Under the positive law of the Republic of Macedonia in the initiation of revocation both the principle of disposition and the principle of formality have their application. Namely, revocation is possible by both proposal, and official duty. A proposal could be made by a legally interested person. Thus, the proposal could be given by the heirs, regardless whether they are legal or testamentary heirs. A proposal to revoke the executor of the will can be given by the legatees, creditors of the deceased, etc., if, as we have already discussed, it is a legally interested persons. It is not excluded a proposal to be given by the executor of the will. Namely, he has voluntarily accepted the duty, and for that he certainly has the right to a reward and a right to reimbursement of the costs paid by the estate by the court decision. Also, the court by official duty may revoke the executor of the will. In any case only the court may revoke the executor of the will, whether at a proposal, or any official duty. The revocation is because the work of the executor is not in accordance with the will of the testator or the law. In legal theory it is stated that, "the revoking of the executor of the will is done, not because his work is not in accordance with the will of the heirs, but if it is not in accordance with the will of the testator or by law" [11]. Of course there is a possibility some heirs to be happy and other to be unhappy by the received inherent part, but it is of no importance for the executor of the will to be revoked, if he acts, or his work is in accordance with the will of the testator or the law. The court cannot put another executor of the will. In the science it is stated that, "the court has no authority in place of the revoked executor of the will to put another executor of the will, but it may take other measures to ensure the estate if it considers that there is such a need" [12]. As we already explained, only the testator can appoint an executor of the will.

## **6. Concluding remarks**

In the role of an executor of the will, there is a person who in the will is appointed by the testator, to look after the execution of the will to be as the testator wanted, ie according to the will of the testator. In the Macedonian inheritance law, as an executor of the will can appear to be any person having legal capacity, and the testator has the opportunity to appoint one or more persons to be executors of the will. The accepting of the duty executor of

the will is voluntary, hence if the person does not accept the duty, there will be no criminal or civil liability.

In the Republic of Macedonia, the testator can determine which duties will the executor of the testament have. Thus, the testator is the one that determines whether the executor of the will needs to execute the will in its entirety, or only some orders of the will. A possibility is given for the testator to determine the content. However, if the testator has not defined the duties of the executor of the will, then the law is applied, where the legislator indicates what are the concerned duties, or what are those duties. Thus, in the Republic of Macedonia, if the testator has not chosen otherwise, the executor has a duty to take care especially for keeping the estate, to manage the estate, to care for the payment of debts, to care about paying the bequests, and generally to care that the will be executed as the testator wanted.

In the Macedonian inheritance law, the executor of the will is obliged to give account to the court for all his work. This is a duty that is prescribed by law. Furthermore, according to the Macedonian law, the executor of the will has the right to a reward and the right to reimbursement of the cost regarding the execution of the will, whereby he may be revoked by the court upon a proposal or upon official duty, when his work is not in accordance with the will of the testator or in accordance with the law.

In this paper, I have conducted a scientific study of the possibility of the testator to appoint an executor of the will, and thus it was performed a cognition of the role of the executor of the will in the Republic of Macedonia, which was the purpose of this paper. Hence I think that the purpose of the paper is fully accomplished.

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