UDK 347.67/.68
347.672.05

JOINT WILL AS AN INSTRUMENT OF ESTATE PLANNING

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Abstract

Testament is traditionally represented instrument of mortis causa disposition. Depending on the legal system, there are also other instruments of estate planning as substitute to testament, such as inheritance contract, contract on future inheritance or legacy, contract on waving future inheritance rights etc. Beside them, some legal systems recognizes a special form of mortis causa bequests such as- joint which is specific by its legal nature, being between classic testament and inheritance agreement. The aim of this paper is to draw attention to the particularities of this legal instrument, which is not recognized in our legal system, and to point out its advantages and disadvantages through a comparative analysis with other related institutes (classic will, inheritance contract). The discussion is aimed to contribute the current reforming process of inheritance law, especially to the field of private autonomy mortis causa.

Keywords: *freedom of disposition mortis causa, last will, joint will, inheritance contract;*

Introduction

A contract of inheritance and a joint will are legal transactions that extend the freedom of disposing of property pertaining to the death, because they allow the manifestation of the last will through new forms of property disposition. At the same time, this type of disposition also restricts testamentary freedom, because of its binding effect.

Unlike some other restrictions imposed by the legal order (e.g. the right to a reserved portion), this is a voluntary restriction that an individual imposes to himself by committing to appoint certain persons as heirs. The obligation to appoint an heir can also be mutually constituted between the contracting parties in the case of an inheritance contract, or the co-testator in the case of a joint will, when it actually represents a reciprocal disposition. In addition, an obligation of guardianship or lifelong maintenance may be constituted, as consideration for acquiring the position of heir (which is often the case with inheritance contracts).

Inheritance contracts and bequests have their roots in family law and are aimed at achieving the same goal, which is the preservation of property within the family. However, these are two different legal institutions that differ between in a number of features. The reason for the introduction of joint will (testament) into modern inheritance law is the need for the spouses to secure the property law position of the surviving spouse and their children in the case of their death. For this purpose, the spouses make unilateral dispositions based on a joint decision regarding the manner of disposal of their property and create joint declarations of last will in the same document. [1] Joint will is usually made in the same document (deed), but formal legal unity is not a condition for its validity.

The legal systems that regulate joint will do not precisely define it. It is a legal transaction that combines two individual declarations of last will, two independent wills. It can be stated that its key feature is the unity of the testator's declared last wills. It implies the prior existence of the will (intention) of both testators to dispose jointly, so conditionally we can speak of a "joint last will".

[1] J.Hochmuth, G.Ubert, Erbrecht, Leitfadenverlag Südholt, 2003, p.184.

The legal nature of a joint will is complex, as it is a legal transaction that contains elements of a classic will as well as an inheritance contract. Therefore, it must be viewed in relation to both of the aforementioned institutions in order to define the place of joint bequest in the inheritance system, as well as its significance.

As with any legal transaction, a specific disposition is made with joint will in order to achieve a certain legal purpose of that legal transaction. The legal goal that is sought to be achieved by making a joint will is the same as in other forms of bequest, such as inheritance agreement, which is disposition of the property pertaining to the death (i.e. *mortis causa*). Since the will of the testator is based on this motive of appointing certain person to be a heir, the main motive for making joint will is approaching the *causa* of disposition by simple will.

Essential for a joint will is the last will of both testators to be disposed jointly, so conditionally speaking, it can be said that they have a joint last will. In the case that the joint will is not drawn up as a single document, the community of the dispositions of the testators must be manifested either explicitly or tacitly in testament.

1. Types of Joint Will

A common will appears in different modalities in legal systems where it is permitted. First of all, joint bequests can be divided according to the character of disposition, i.e. according to their content, into a simultaneous joint will (*testamentum mere simultaneum*), reciprocal joint will *(testamentum reciprocum)* and co-respective joint will *(testamentum corespectivum)*.[2]

In the case of *testamentum mere simultaneum*[3], testators make separate, independent bequests that are only formally linked, because they are contained in the same document. [4] In this type of joint will, the dispositions of the testators are completely independent of each other, i.e. each of the testators determines heirs completely independently. This form of will is used by the spouses because of the advantages of the form (formal facilitations) when disposing of them, especially when it comes to a handwritten will (in German law). Since these are two separate testamentary dispositions that are only formally combined, the question is whether this type of joint will would be allowed in our law?

In legal theory, it is believed that there is no obstacle for two classical wills to be formally united in the same document, because in this form of will are not connected by content, and as two separate declarations of last will produce a legal effect completely independent of each other.

When it comes to *a reciprocal will,* the dispositions are related in the term of content, but are not mutually conditioned. Through this will, the testators appoint each other as heirs, so that their final legal status depends on who has outlived whom. The reciprocity of the disposition must be expressed in the will itself, either explicitly or implicitly (when it is obvious from the content of the will that the disposition of one testator would not have been made without the disposition of the other testator). [5]

The main characteristic of *a co-dependent will* is the mutual conditionality (dependence) of the disposal of the persons who made it. The nullity or revocation of the disposal of one of the testators in a co-dependent will implies the invalidity of the disposal of the other testator, and thus of the entire will. [6] Such interdependency of disposals is based on the assumption that none of the testators (spouses) would have disposed of in a specific way if the other testator had not made the corresponding disposition. Co-dependent provisions can only refer to the appointment of heirs, determination of legacies and settling other burdens.

[2] H. Brox, Erbrecht, 2004, p.115.
[3] S. Branković, *Joint* Testament, Bulletin of the Bar Association of Vojvodina, No. 4/53, p.4.
[4] M. Povlakić, D. Softić-Kadenić, *Da li je potrebno uvesti nove forme raspolaganja morts causa u nasljedno pravo u Bosni i Hercegovini?*, Zbornik radova Sveučilišta u Splitu, Neum, p. 197.
[5] S. Branković, *Joint Legacy...* p.4.
[6] Art. 2270 (1) BGB, German Civil Code, http://www.gesetze-im-internet.de/englisch_bgb/.

The provisions on the appointment of the executor of the will or descendants deprivation of the inheritance cannot be interdependent.

If it is not explicitly stated what kind of testamentary disposition is in question (simultaneous, reciprocal or interdependent), the interpretation of the will is used to determine the true will of the testator. If the real will of the testator cannot be established through the interpretation, legal presumptions that are precisely defined by law (Art. 2270, paragraph 2) apply. The disadvantage of these legal assumptions is that a surviving spouse can be bound by a will after the death of their spouse without this being their real intention.[7]

2. Forms of Joint Will

A joint will is created by two people as cotestators, whereby their common last will is usually contained in the same document. In German law, a joint will can be made in all forms as well as a classic bequest, which means as private and public, regular and extraordinary testamentary form, and certain forms are prescribed quite flexibly. A handwritten will may be made and signed by one testator and then signed by another testator of a joint will, provided that no longer period of time elapses between the two acts of signing and that the first testator must still be alive along this process of making the will.

In Austrian law, a joint will can be made as a private will (in person or before witnesses, or in the form of a public will, either before a court or notary public. In the case of a joint private will, it is necessary for the testators to make a joint statement that has the character of a last will (will) in front of three witnesses, and that the testators as well as witnesses sign in the end of the the document that represents the will (art. 579 AGB)-check. A handwritten will is valid only if each of the testators has written and signed his last declaration of will in his own hand. In the case of a judicial or notarial testament in Austrian law, a joint declaration must be signed by both testators, and handed over to the judge or notary, regardless of who wrote the text of the testament itself.

Although the form of a joint will have a constitutive significance, the testator's declarations of their last will can also be contained in different documents. This is often the case when it is made in the form of handwritten will, when the joint will has been made through separate declaration (as is the case in German law). [8] In fact, one of the testators may make and sign a will, which will then be signed by the other testator and agree to its contents, when the will acquires the character of a joint will. However, it is important that when making a joint will, there is an attachment between the testamentary dispositions of both testators, and that each of them is familiar with the content of his partner's disposition.

When drawing up a joint will, each of the testators has the right to choose the form of testament for his or her disposition, and the forms chosen may vary. In legal systems in which it is permissible to make a joint will as an extraordinary form of testament, it is sufficient that the requirements of the form of an extraordinary testament are fulfilled by one of the testators, while the other testator may opt for the ordinary testamentary form for making an order of his last will.[9]

In case of doubt as to which testamentary form parties had in mind, it will be determined by interpretation. In the case that through interpretation cannot be determined in which form the testators intended to disposed of, the legal presumption is that it is so called "Berlin will" (BGB 2269), in which that the surviving spouse has the position of the final, true heir *(Vollerbe).*

[7] M. Povlakić, D. Softić –Kadenić, *Da li je potrebno uvesti nove forme raspolaganja morts causa...*p. 299.

[8] P. Breitschmid, *Testament und Erbvertrag-Formprobleme*, in: Testament und Erbvertrag-Praktische Probleme im Lichte aktuellen rechtsentwiklung, Verlag Paul Haupt ,Bern und Stütgart,1991, p.44-57.

[9] Such a solution is accepted in German law (Art. 2266 BGB). An extraordinary joint will may be made in front of the president of the municipality and two witnesses, if there is a fear that the testator's death will occur soon, and the circumstances make it impossible to make a notarial testamentary, or orally in front of three witnesses in extraordinary circumstances.

3. Models of inheritance division

As far as division models between cotestators are concerned, two of them are distinguished: **the unity model** and **the separation model** .

Between the creators of a joint will (which are usually the spouses), the estate to be inherited can be divided in different ways. The testators can agree that the property of the first deceased first belongs to the surviving partner, and that after his death it belongs to the heirs who were determined by the testators, who are usually their children. [10] In this case, the surviving spouse appears as the full heir of the deceased spouse without any restrictions on the acquired rights *(Vollerbe),* and the joint children who have the position of final heir *(Schlusserben)* appear as his/her heirs. [11]

Therefore, in this way of disposing of the deceased's estate, in accordance with the principle of unity, property to be inherited forms a unity with the personal property of the surviving spouse, which he can freely dispose of. His attachment to the joint will is reflected in the fact that the persons who will inherit are further predetermined. This form of joint will is referred as the Berlin will in German law, being often represented in practice. [12]

Another possibility of joint testamentary disposal is reflected in the term of limited rights of the surviving testator on the estate of the deceased partner. His estate is treated as separate property in relation to the property of the surviving spouse in whose favor the right of lifelong usufruct can be constituted, or a limited right of ownership if a fideimissory substitution is established.

When constituting lifelong usufruct, the surviving spouse has all the rights and obligations implied by the position of the usufructuary, and after his death, the property is inherited by the heirs appointed in the will. In this way, it is possible for the surviving spouse to maintain the economic position he or she had at the time of the death of his or her spouse.

In the case of successive inheritance (Vor/Naherbschaft), the surviving spouse has the position of the previous heir *(Vorerbe)* and in the case of the first succession, he inherits the estate of the deceased as separate property. He can dispose of it only within the legally set limits that determine the legal position of the previous heir, while he can freely dispose of his own property, because it is independent of the subsequent heir. When the death of a surviving spouse occurs, as a cause of substitution, a second succession occurs, and the third person previously jointly appointed by the testators as the heir inherits. As a rule, these are the children of the testator who inherit on two grounds: first, they receive the estate of the first deceased as the subsequent heirs *(Vorerbe),* while the property of the surviving spouse they inherit as direct heirs.

If the spouses were to mutually designate each other as an heir, in that case, and then designate a third to whom the joint property will go in the event of the death of the surviving spouse, half of the joint property is to be considered as the estate of one spouse and the other half as the estate of the other spouse. The property passes from the surviving spouse to the third party under two legal titles. Thus, the property of the previously deceased spouse (half of the joint property) is inherited by the person designated by the deceased spouse as the latter heir (because the surviving spouse has the position of the previous, first-appointed heir). On the other hand, the property of the surviving spouse (possibly half of the joint property)

[10] If the testators wish to make a Berlin will, they may bind their dispositions in such a way as to appoint each other as heir, and at the same time designate a third party who, upon the death of the other deceased spouse, will inherit the estate as his/her heir (Art. 2269 BGB)

[11] J.Hochmuth, G.Ubert, *op. cit.,*, 2003, str.187.

[12] This is a model of joint bequest which is referred to as a model of unity, given that the testator's assets are connected into a single whole (M. Povlakić, D. Softić-Kadenić, *Da li je potrebno uvesti nove forme raspolaganja morts causa u nasljedno pravo u Bosni i Hercegovini?,* Zbornik radova Sveučilišta u Splitu, Neum, p. 198).

is inherited by a third party who (according to him) is appointed as a substitute for him as the heir (because the heir would become the previously deceased spouse, who would have the position of an institute).[13]

If the will itself does not indicate which moment is taken as relevant for substitution, it will be considered that concerning the first decease it is the moment of his/her death, and concerning the second deceased, the moment of his/her death (this issue is of importance when his/her legal heirs are determined as the final heirs of each of the spouses, because this moment determines the legal heirs themselves who will be called to succession).

Fideicommissary provisions are common in this model of joint bequest, the so-called separation model, where the assets of the deceased and the surviving testator are treated separately during the testamentary disposition.[14] In this case, the unity is not reflected in the unity of the property of both testators, but in the common intention that each of them disposes of their property in the way previously agreed in the will. The specificity of this way of distributing the inheritance is reflected in successive inheritance i.e. fideicommissary substitution, where the surviving partner *(Vorerbe)* and subsequent heirs *(Nacherbe)* are actually the heirs of the first deceased testator.

If we compare these two ways of joint disposal of property, it can be seen that the advantage of the Berlin will, viewed through the prism of the interests of the surviving spouse, is that he can freely and unlimitedly manage and dispose of the inheritance gained from the deceased partner, while in the case of subsequent inheritance he is limited in property rights. Such disposal, however, may result in the property interests of the children as final heirs being played out, because there is a possibility that one of the spouses will spend the entire inheritance. In this case, the children would be able to exercise their right to the reserved portion by demanding payment from the surviving spouse *(Phlichtteilsforderung).*

At the same time, the assertion of these claims on the basis of the right to the reserved share may call into question the realization of the real will of the testator, because it may happen that his last will not be respected, which is that the only heir is the latter (surviving) spouse. As a means of protection against such requests, the testators have available the so-called *A clause on reserved portion (Phlichtteilsklauseln)* that can be of different contents.[15]

4. The content of joint will

When it comes to the content of joint will, general rules as for a classic testament apply. If joint will consists of only unilaterally binding provisions, then it would not be much different from standard testament. The peculiarity of the joint will are reciprocal and conditional provisions by which unilateral but dependent dispositions are provided.

In a joint will are often present clauses on remarrying *(Wiederheiratungklauzeln),* no matter if it is about model of unity or model of separation. This clause should ensure that descendants receive their part of inheritance from surviving parent during his/her life, in the case he re-marriages.[16]

In the separation model surviving spouse has a legal position of previous successor *(Vorerbe),* while children have the position of a latter successor *(Nacherbe).* It can be provided that in case of remarriage latter successor enters into the legal position of the heir, not in the moment of death of first died spouse, but at the time of remarriage of surviving spouse. [17]

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[13] S. Branković, *op. cit.,* p. 5 .

[14] This model of a joint will is referred to as the separation model, which means that the property of the deceased spouse is inherited as a separate property in relation to the property of the surviving partner, M. Povlakić, D. Softić – Kadenić, *Da li je potrebno uvesti nove forme raspolaganja morts causa* .....p.197).

[15] By entering into this clause, the testators can anticipate, e.g. A joint will does not bind the surviving spouse in the event that the reserved heirs assert their right to the reserved portion.

[16] H. Lange, K. Kuchinke, *Erbrecht,* C.H. Beck, München, 2001, p. 425, 426.

[17] F. Reiner, *Erbrecht,* München, Beck, 2000, p. 159.

In the model of unity or, so called, Berliner testament, in the case of remarriage, surviving spouse would share his inheritance with children, under the rules of intestate succession. Entering into marriage represents subsequent condition for previous and latter testamentary succession. Children become latter heirs and inherit to the amount of their share, and surviving spouse becomes the later successor with the proper intestate share. If the surviving spouse doesn't enter into marriage again, he remains in that case a complete successor.

Such provisions are often immoral, because they condition the acquisition or loss of inheritance to certain facts that might occur or not (e.g. if the spouse remarries loses inherited property). Since they are not in compliance the moral principles, generally they do not produce any effects, no matter if they are part of the contents of classic or joint bequest or inheritance contracts.

5. Legal effects of joint will

Unilateral character is one of the key characteristics of classic testament, and any impact on the will of the testator by third parties leads to its voidances. This feature is particularly emphasized in the domestic succession law in which is prohibited to attach a testamentary disposition of one person with the last will of the other, which has been particularly manifested through the prohibition of making the joint will.[18]

In contrast to standard will, joint will is characterized by mutuality and sometime by interdependence between dispositions, thus derogating from the unilateral character of testamentary disposition. Joint legal effect of the joint will is reflected in the unity of the declared wills by which each of cotestators disposes of his own inheritance in an agreed manner, which represents a point of distinction in relation to the classical testament.

As with any legal transaction, so with a joint will a specific disposal is made in order to achieve a certain legal goal that represents the *causa* of that legal transaction. The legal aim that is sought to be achieved by making a joint bequest is division of property pertaining to death. Since the will of the testator is based on this motive of appointing a heir, the motive of joint bequest is approaching the causa of this legal transaction.

Reciprocal effect in a co-dependent type of joint will is defined in theory as a correlation of motives, since one disposition is motivated by another disposition. This specifically means that one of the testators would not have decided to dispose of the property through a joint will in a certain way if his partner in the joint will had not committed himself to it. In this sense, we can speak of a reciprocal effect that is reflected in the conditional relationship between the dispositions of cotestators (conditionality of disposition) rather than the connection of motives in a co-dependent will.

In the opposite situation, when the declarations of the last wills of the testators in the joint testament are not contained in the same act, the question arises as to how the interconnection of the last wills will to be provided? For the full effect of the testamentary disposition, it is necessary the last will to be manifested in one of the forms prescribed by law. The same principle applies in the term "unity", which, as an essential feature of a joint bequest, must be evident from the content of the bequest. This will be especially the case in reciprocal dispositions, where the testator's declarations of will are mutually interconnected, which is more emphasized in the case of co-dependent testamentary dispositions that are mutually conditioned.[19]

In German law, a joint will can be made between spouses, as well as between partners from registered partnerships, [20] and upon the dissolution of the marriage/partnership between the cotestators, the joint will ceases to be valid. [21] Spouses usually appoint each other as an heir, and upon the death of a surviving partner, the estate belongs to their children or another close person whom they have jointly

[18] О. Антић, З. Балиновац, *Коментар закона о наслеђивању,* Номос, Београд, 1996, p.306.
[19] M. Povlakić, D. Softić –Kadenić, *Is It Necessary to Introduce New Forms...* str. 197.
[20] Art. 2265 BGB.
[21] Art. 2268 и 2077 BGB.

determined. In Austrian law, in addition to the spouses, a joint will can be made by future spouses (fiancés, provided that the marriage takes place). Since a joint will is mostly concluded by the spouses, it is often referred to as the will of the spouses. [22]

The limitation of the circle of persons who are entitled to make a joint will is prescribed in order to prevent a successor's influence over the will of the testator by third persons. [23] It is interesting to note that a joint will was allowed in the Serbian Civil Code and regulated by the provisions governing marital relations, allowing it to be made only between spouses.

6. Revocation of joint will

A joint will may be revoked at any time, with the consent of the testator, or unilaterally (even without informing the other testator) if the content of the will consists of non-binding provisions (*nicht wechselbezüglicher Verfügungen*), which include unilateral and reciprocal provisions. [24] In the case of mutually conditional provisions, they can be revoked jointly by both spouses during the testator's lifetime, e.g. by making a new joint will. The possibility of unilateral revocation of these provisions exists only if the form prescribed by law is fulfilled. This means that the statement of the party making the revocation must be certified by a notary and delivered to the spouse. In this way, the spouse as a cotetstator is informed of the revocation of the disposal of the other party. This is very important in mutualy conditional dispositions, because the revocation of one entails the invalidity of the other disposition. [25] With this formal method of revoking the will, it is impossible for the act of revocation to be done secretly, and thus the abuse of this power is prevented.

The revocation of a joint testament is subject to the provisions governing the revocation of an inheritance contract, which leads to the conclusion that in the domain of revocation these legal instruments coincide, while at the same time deviates from the principle of informal revocation of a classic testament. The attachment to disposition, whether in the form of a joint will or a contract of succession, does not limit the testator's right to dispose of the property during his lifetime. [26] In the case that after the death of one of the spouses, the surviving spouse makes a gift with the intention of worsening the position of the heir, after the acquisition of the inheritance, the heir shall be entitled to demand the return of the gift from the recipient of the gift in accordance with the rules on unjust enrichment. [27]

It is also important to note that during the lifetime of the spouses, the revocation of the original disposal of property cannot be done unilaterally by a new disposition *mortis causa ,* but only by a legal transaction *inter vivos.*

7. Joint Will in Comparative Law

While German law allows for a wide range of joint dispositions, Austrian law takes a critical view of binding disposition pertaining to death, and Swiss law does not explicitly regulate this institute.[28] In German law, there is a presumption that the dispositions made by the spouses in the form of a joint will are mutually dependent, i.e. that the disposition of one spouse would not have been made without the disposal of the other (2270, paragraph 1 BGB). In Austrian law, the binding effect of a joint will is limited, since conditional dispositions can be revoked at any time, even after the death of the first deceased, while some

[22] Art. 583. и 1248 BGB.
[23] S. Ferrari, Erbrecht-Ein *Handbuch für die Praxis*, Manzshe Verlags –und Universitätsbuchhandlung, Wien, 2007, p.177.
[24] Art. 2253 BGB.
[25] Art.2271 (1) BGB.
[26] Art. 2286. BGB.
[27] Art. 2287. BGB.
[28] H. Bartholomeyczik, W. Schlüter, Erbrecht, C.H.Beck´sche Verlagsbuchhandlung, München0, 1975, p.161.

corresponding reciprocal disposals are losing their effect (1248 ABGB).[29] In contrast to German law, mutual dependence in Austrian law must be expressly indicated (contracted), even when it comes to the mutual appointment of testators for heirs and no presumption of interdependence is permitted (1248 ABGB, para. 2). In Switzerland, joint will is not regulated, but it is not expressly prohibited either. However, in Serbian legal practice, last will is consider to be a unilateral legal disposition and can be manifested only in the form of testament. Therefore it is not possible for more than one person to be creator of the will.

In recent times, there has been an increasing criticism of the binding effect of private joint bequests in German legal literature. The biggest disadvantage is that in most cases the testator is not aware of the effects that a will can produce. When concluding it, there is no warning role of the notary about the effects that this legal transaction can produce, as is the case with inheritance contracts. Therefore, in theory, the need to limit the binding effect of a joint will by prescribing stricter formal conditions for its drafting is emphasized, in a way that it should be valid only if it is made in the form of a public did before notaries. Nevertheless, comparative legal doctrine holds that the private form of a joint will should not be abolished entirely, but should be allowed when the joint will does not produce binding effect. As an argument in favor of this attitude are stipulated formal legal facilitations implied by art. 2267 BGB for handwritten form of bequests.

Justification of joint will is disputable in legal theory. On one hand, formal simplification regarding joint will are stated in favor of its existence, since it can be performed in more simplify forms, such as handwritten. On the other hand, if only the public form of a joint will would be permitted hypothetically, its practical significance for inheritance law system would be disputable. Namely, the inheritance contract has public form, and is aimed to achieve the same goal as with a joint bequest, which is the mutual appointment of heirs (the so-called reciprocal inheritance contract).

In the legal systems that do not recognize these two forms of binding disposition pertaining to death (as is the case with our law), the discussion on their justification is ongoing. In order to find an answer about their necessity, important is to define similar instruments of estate planning, such as inheritance agreement, and to do comparative analyses.

Conclusion

From the previous analyze we can come to the conclusion that the joint will is a specific form of joint testamentary dispositions that has significant similarities with clasical testament, but with the inheritance agreement as well. Its specific binding effect is a key point of distinction between all these institutes. While the classic testament has no binding effect, in contract of inheritance the binding effect has the primary character, and in joint will secondary. Binding effect of these legal affairs is aimed to protect the interests of the deceased spouse, ensuring the realization of his last will, since the surviving spouse is disabled to change testamentary disposition of his death partner.

Recently, in the German legal doctrine a growing criticism over the binding effects of private joint will is dominant. As the biggest disadvantage it is pointed out that in most cases the testator is not aware of the effect that joint will might produce. Since notaries are not involved in the creation process, testators are not introduced in all legal effects of making the will, as is the case with the agreement on inheritance. Therefore, there are suggestions to limit the binding effect of private joint will, or to allow its creation only in the public form. However, there are some opposite views in comparative legal doctrine that private form of joint will should not be completely abolished. An argument in favor of this attitude some formal benefits are mentioned, as it is the case with the handwritten bequest *mere simultaneum*.

If only public form of joint will would be permitted, its legal purpose would be disputable, since the contract of inheritance is concluded only in the public form, and it is possible to achieve the same

[29] Austrian civil code http://www.ris.bka.gv.at/.

purpose as it is with the joint will (mutual appointment of a heir). In the legal systems that are not familiar with these two forms of binding disposal in case of death (as is the case with our law), it is clear that the joint will is not in compliance with the fundamental principles of testamentary disposition. The issue of contractual disposal *mortis causa* remained open, since it should be considered from the broaden perspective – autonomy of *mortis causa* disposition.

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