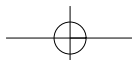


GENERAL PRINCIPLES OF  
INHERITANCE LAW IN

# *Czech Republic*



# Inheritance Law in Czech Republic

## General overview

Inheritance law in the Czech Republic is part of a legal system within the continental system, originally developed from Austrian law prior to WWII. However, inheritance law is influenced, to an extent, by the suspension of law during the Communist period and this has had the effect of making the provisions somewhat inflexible.

In the Czech Republic, inheritance law is regulated by Section 7 of the Civil Code, in particular. Although recently several amendments have been made, the regulation is still subject to criticism because it places too many restrictions on the testator's powers. A new Civil Code is being prepared at the moment and substantial liberalization of inheritance law is being planned.

## Power to authorize a valid will

An heir becomes entitled to his inheritance on the death of a testator.

According to Czech law, inheritance can be acquired either by:

1. testament
2. statute

If there is no heir, in the final resort property automatically goes to the State. The first to inherit is the heir under a testament; but if the testament only deals with part of the estate, the remaining part will be dealt with in accordance with the provisions of statute.

## Formalities concerning wills

There are the following types of testament:

- 1) Written and signed by the testator.  
It must include the date on which the testament was signed
- 2) Not written in the testator's own hand.  
It must be signed by two witnesses present at the same time and the testator has to state, explicitly, that the signed document is his last will
- 3) Certified by a public notary.  
One of the advantages (besides the increased credibility of the document) is that the testament is registered and kept in the Central Register, i.e. it won't be lost.

Special procedures are provided for cases where the testator is unable to read or write. The testament has to be made before three witnesses who are present at the same

time, and the document has to be read out aloud and signed by them. The document will need to include a statement that the testator cannot read or write.

## Witnesses:

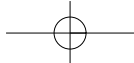
Witnesses should not be heirs under a testament; otherwise the testament will be invalid. Witnesses must also have the legal capacity to act. They cannot be individuals who are blind, deaf, or mute, and they must understand the language in which the last will is made.

## Right to refuse inheritance

An heir has the right to refuse an inheritance. However, he cannot refuse part of his inheritance. An heir has 30 days in which to give notice to the court, either in person or in writing, that he will not accept his share of the inheritance. After the 30 days have elapsed, his inheritance will go to the other heirs (or to the State if there are no other heirs). The same happens when there is no one in a position to inherit. An heir who has not been found or who does not have a registered address and who was served notice of his right to an inheritance, but who has not attempted to contact the court within a set time limit does not have the right to be included in inheritance proceedings at a later date.

An heir should always make an informed judgment about whether to accept or refuse his inheritance, because there may be circumstances when it might be more beneficial for him to refuse. This could be because he might incur liability for obligations or debts, the amount of which might





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equal or exceed the value of the inheritance.

If an heir is considering accepting an inheritance under any of the above circumstances, there are important things to bear in mind:

- Pursuant to Section 471 of the Civil Code, creditors may choose how they prefer to be repaid. If a creditor refuses to be paid in part or in full by money from the inheritance, the State can apply other assets comprised in the inheritance of equal value to the amount of the debt. In the event that the creditor refuses such assets, the State may suggest liquidation.
- There is a possibility of endangering his own assets, when a creditor chooses to be repaid not with inherited money or property but by the heir's other assets.
- If an heir accepts a partly encumbered inheritance, he may be left with the obligation of paying additional costs such as abandonment or court costs.

#### Incapacity to inherit

Individuals who have intentionally committed a crime to acquire an inheritance are automatically excluded from any right to it, unless the testator clearly indicates he has forgiven them.

#### Disinheritance

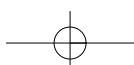
Notwithstanding the above, a testator has the right to exclude persons when drawing up a will. The power to exclude a descendant is substantially limited. A descendant is always entitled to one-half (if he is over 18) or the entire estate, which he would receive by law if there were no testament (i.e. on the intestacy of the deceased).

The only way to exclude an heir is through disinheritance, which is only permissible in the cases prescribed by the Civil Code. An heir can be disinherited if he:

- has been imprisoned for over a year
- is constantly living a profligate life
- neither cares for or shows any selfless interest in the testator as he should, being his descendant
- contrary to normal expectations, he does not provide the testator with necessary help during illness, old age or other serious circumstances

In practice, it can be difficult to prove such behaviour and treatment, and in the majority of cases the disinherited person rebuts such accusations.

The testator has to state explicitly (if that is his wish) that the consequences of the disinheritance will also apply to the



descendants of the disinherited heir, as otherwise the right to the inheritance will automatically pass to the children of the disinherited person.

### The division of inheritance by statute

An inheritance is divided in full or in part, according to the last will of the deceased. In the absence of a testament, the dependants with the legal capacity to inherit are divided by statute into categories, as stated below.

There are four groups entitled to the deceased's property, in the following order of priority:

- (1) The first group includes the spouse, children and registered partners (recently altered to deal with homosexual relationships). If any children do not inherit, the right to inherit is automatically passed on to their children. They all share proportionately.
- (2) If there are no children to inherit, the right passes to the wife/husband or partner, failing which the inheritance goes to the parents or companions. For the purpose of inheritance law, the concept of companion is defined as someone who has shared a household with the deceased for more than one year and shared the costs of its upkeep. All members of the second group share proportionately: only a partner or spouse has the right to a half.
- (3) If no one from the second group inherits, the next in line are siblings. They always divide the inheritance proportionately.
- (4) If no one from the third group inherits, the fourth group to inherit is grandparents, and ultimately their children.

As mentioned above, Czech law does not allow a testator to avoid leaving an inheritance to his descendants, except in the case of a disinherited person. Furthermore, there is always the issue of the compulsory heir. Minors are entitled to succeed to a part of

The State can also refuse an inheritance, just like any other heir, but it does not have to pay tax



the estate of the deceased, by law. If the descendant is over 18, he has the right to receive at least half of the estate, by law.

### Last will

A testament is always superseded by a new one insofar as they cannot coexist, particularly if they cover the same property. Testaments may include the testator's entire estate or only a part of it (even just one tangible thing). A testator may always revoke his testament by destroying it.

An important factor that should be kept in mind is that there is no ability for a testator to add special conditions or qualifications to the will. Therefore as a testator, you cannot add instructions about how you would prefer the inheritance to be managed and you cannot forbid an heir to sell the inheritance. Any such condition would be null and void and would not be binding on the heirs.

A possible solution may be a testament establishing a foundation or a trust.

### Court proceedings

If there is more than one possible heir, the issue of inheritance must be decided by the court. The court certifies the title to inheritance on the basis of equity, also taking into account what the claimant has received during the deceased's lifetime. It is also for the court to determine what form of inheri-

tance each heir will receive. If an heir receives something to which he is not legally entitled, he must return it to the rightful heir. The latter, however, must cover any costs that the unentitled heir paid in connection with his unauthorized acquisition. Czech law provides that a person who has acquired something in good faith from an heir who was not entitled to it but whose inheritance was confirmed, may recover it from the rightful heir. If the value of an inheritance is barely sufficient to cover the court costs, the court will automatically stop the proceedings.

### Administrator of the property of the deceased

An executor can be appointed to maintain control over and safeguard an estate during court proceedings, but only until the heirs are designated. The executor assumes all the rights and obligations of the deceased, but any decisions beyond the scope of basic management require the consents of the heirs and the court. The heirs will not be competent to manage or deal with ownership whilst the executor has control over the estate.

### Inheritance tax and measures to reduce it

Inheritance Tax falls under the provisions of the Inheritance, Donation and Real

Estate Transfer Tax Act No. 357/1992 Coll.

Inheritance tax is levied on an estate after the death of a natural person. It is like a gift tax - a tax where an heir acquires an estate from the deceased without providing anything in return. Personal property, stocks and bonds, Czech financial instruments, foreign currency, liabilities, estate rights, as well as real estate, including flats and non-residential premises are all subject to tax. Details of assets subject to tax are to be found in Sect. 3 of the Inheritance, Donation and Real Estate Transfer Tax Act No. 357/1992 Coll.

An heir acquires the proceeds of an estate immediately following the death of the testator (unless court proceedings for the reasons stated above take place). Anyone who gains ownership by operation of law is automatically liable for taxes. A taxpayer can therefore be an individual, a corporate body, or the State. The State can also refuse an inheritance, just like any other heir, but it does not have to pay tax. Further exceptions to the liability to pay inheritance tax will be explained below.

### Division into groups for calculation of inheritance tax

For the purpose of calculation of inheritance tax, heirs are classified into three groups according to their relationship to the testator.

### Groups:

- I. Relatives in the direct ancestral line and spouses
- II. Spouses with children, children of the spouse, parents of the spouse and persons who lived with the heir for more than a year before the death of the testator in the same household and who therefore managed the household or relied on the heir for subsistence
- III. Third parties and corporate bodies

### Tax/exemptions conditions

The State is not the only body exempted from paying inheritance tax. There are other tax-exemptions pursuant to Sect. 19 and 20.

- 1) Persons, who are classified as belonging to Groups I. and II.
- 2) Heirs of real estate, if these were not part of a business entity for one year beforehand.
- 3) Bank account deposits in foreign banks operating in the Czech Republic; income in Czech and/or foreign currency; local stocks and bonds; the share of an heir paid from the estate or the share derived upon the death of a spouse in a common property marital agreement, if the total amount for Group III. does not exceed CZK 20,000 per individual payer.

The amount of tax to be paid by Group III. varies from 3% to 20%.

Tax-exemption further applies to certain groups, such as:

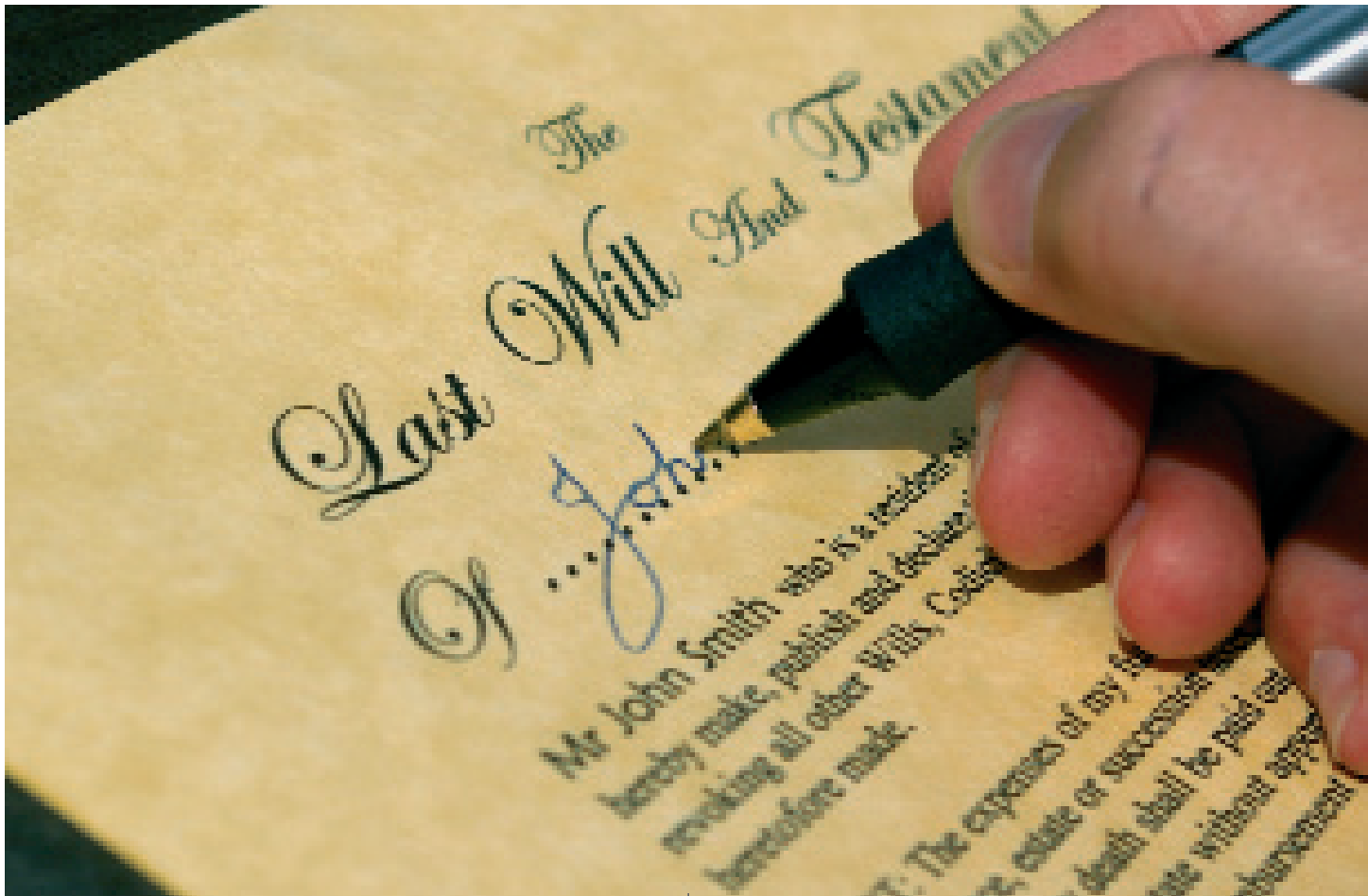
1. Diplomats working in the Czech Republic as a representatives of a foreign country
2. State universities
3. Public research institutions
4. Public not-for-profit health institutions and others

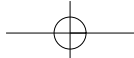
In a case where an inheritance is acquired by more than one person, the amount of tax is determined according to the value of their shares. Thus, an individual who is not a direct heir, but has the right to be paid a share of the inheritance by another heir, will be liable for inheritance tax. Minors and individuals who are not legally competent will need representatives for any necessary negotiations.

### Taxation system

The basis of liability for inheritance tax is the value of the property acquired by an individual heir. If there is more than one heir, they each file a separate tax return.

The tax return is completed and sent to the Tax Office no more than 30 days from the conclusion of the court proceedings. The heir then receives a tax demand, which has to be paid no later than 30 days from the date of receipt.







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