

Matea KOCEVSKA*

Cultivating Clarity: A Macedonian Law Perspective on Agreements as to Succession and Their Distinction From the Lifetime Support Agreement and the Agreement on Assignment and Distribution of Property During Lifetime

ABSTRACT: *At the intersection of legal foresight and intricate tapestry of familial legacies, agreements as to succession emerge as pivotal instruments, charting a course for the seamless transfer of assets and responsibilities upon an individual's passing.*

The subject of this study is the approach of Macedonian law to the agreements as to succession, the reasons why they are not regulated in the governing legal system, as well as the efforts aimed at establishing their legal regulation through the legal reform expected with the drafting of the new Civil Code of the Republic of North Macedonia. To define agreements as to succession, as specific mortis causa agreements, the author distinguishes them from the lifetime support agreement and agreement on assignment and distribution of property during lifetime, as inter vivos agreements of great importance for inheritance law, through detailed legislative, theoretical, and practical analysis. Through this analysis, an in-depth delineation of the differences between these agreements is made, alongside an emphasis on their similarities, due to which Macedonian jurisprudence replaces agreements as to succession with the lifetime support agreement and the agreement on assignment and distribution of property during lifetime. Finally, this research concludes by presenting proposed solutions for the future reform of Macedonian inheritance law, concerning agreements as to succession, thereby encapsulating the overall aim of this study.

KEYWORDS: *Agreements as to Succession, Lifetime Support Agreement, Agreement on Assignment and Distribution of Property During Lifetime, Legal Reform.*

* LL.M, Researcher, Faculty of Law "Iustinianus Primus" – Skopje, Ss. Cyril and Methodius University, Skopje, North Macedonia, mateakocevska.pf.ukim@gmail.com, <https://orcid.org/0009-0001-6987-8319>.



1. Introduction

In many modern legal systems, *agreements as to succession* have traditionally provided a clear, contractual basis for determining the transfer of property upon death. These agreements, most broadly defined, are unilaterally irrevocable contracts that refer to the estate of the contracting party upon their death,¹ and they can appear in several forms, such as: 1. *Agreement as to succession – as a basis for universal succession* (agreement as to succession in the narrower sense), whereby the contracting parties usually determine that the one who outlives the other will be their heir, or possibly that the heir will be a third party;² 2. *Agreement as to succession – as a basis for singular succession* (contractual legatee), whereby the contracting parties stipulate that the object of the agreement will be a certain item or right from the inheritance;³ and 3. *Negative inheritance agreement*, whereby the legal heir renounces their share of the inheritance (future inheritance).⁴ However, as interesting as these contractual forms may sound, Macedonian legislation declares them null and void, which is why they are not the main subject of analysis of this research. Rather than focusing on these agreements directly, this study examines the specific agreements that are considered to be their presumed substitutes. Bearing this in mind, we are faced with the dilemma of whether Macedonian law's negative attitude towards the agreement as to succession is justified. To resolve this quandary, the study closely examines the agreement as to succession, analysing its characteristics and advantages in comparison to other related institutes, to evaluate whether this agreement should be reintroduced into Macedonian inheritance law.

Agreements as to succession are key components of inheritance law in many legal systems, often carrying more legal weight than wills or statutory laws of succession. However, in the Macedonian legal system, they have been void for nearly seven decades, leaving a gap in its inheritance law.⁵ The fact that every form of these agreements was once part of Macedonian inheritance law, and at one point all of their forms were legally declared null and void, raises an important question: *Why were the agreements as to succession abolished and what impact has their absence had on families and legal professionals dealing with inheritance matters today?*

1 Спировиќ Трпеновска, Мицковиќ и Ристов [Spirovic Trpenovska, Mickovic and Ristov], 2010, p. 24.

2 Ibid., pp. 24–25. <http://doi.org/10.62733/2025.2.5-15>

3 Ibid., p. 25.

4 Ibid.

5 Ристов [Ristov], 2011, pp. 91–92.

Historically, *agreements as to succession* were introduced into Macedonian inheritance law through the *Serbian Civil Code*⁶ of 1844, which recognised them as a primary method of asset distribution. Yet, after World War II, these agreements were abolished as part of broader legal reforms that viewed them as outdated remnants of feudalism. The 1955 *Federal Inheritance Law*⁷ formally replaced them with certain *inter vivos* agreements that have some inheritance-related effects. The void created by the abolition of these agreements has been filled by the *lifetime support agreement* and the *agreement on assignment and distribution of property during lifetime*.⁸ Despite criticism, the same legal approach was adopted in the first *Macedonian Republican Law on Inheritance*⁹ in 1973 and continued in the 1996 *Law on Inheritance*.¹⁰ In the following years, one substantial modification concerning these agreements was made. In 2001, with the enactment of the *Law on obligations*,¹¹ the *lifetime support agreement* and the *agreement on assignment and distribution of property during lifetime* were incorporated into and remain regulated by it. However, as assumed substitutions for *agreements as to succession* in their classic form of contractual appointment of heirs and beneficiaries, these replacements fail to fully address the complexities of inheritance law, particularly in protecting necessary heirs and creditors.

Although *agreements as to succession* are not currently regulated under Macedonian law, there is a provision in the *Act on Private International Law*¹² of 2020 that allows such agreements to be valid if they conform to the laws of the country where each of the parties had their habitual residence at the time of concluding the agreement.¹³ This indicates the need for formal regulation, because, without decisive regulation of *agreements as to succession* in Macedonian law, this norm remains ineffective. In this context, the *preliminary draft of the Macedonian Civil Code*¹⁴ proposes the reintroduction of *agreements as to succession*, aligning Macedonian inheritance practices with modern European countries, where these agreements remain essential.

6 See more extensively at: Петковиќ [Petkovic], 1939.

7 „Службен лист на СФРЈ“ бр. 20/55, 12/65 и 42/65 [Official Gazette of the SFRY” No. 20/55, 12/65 and 42/65].

8 Хаџи Василев-Вардарски [Hadji Vasilev-Vardarski], 1983, p. 66.

9 „Службен весник на СРМ“ бр. 35/73 и 27/78 [Official Gazette of the Republic of Macedonia” No. 35/73 and 27/78].

10 „Службен весник на Република Македонија“ бр. 47/96 [Official Gazette of the Republic of Macedonia” No. 47/96].

11 „Службен весник на Република Македонија“ бр.18/2001; 4/2002; 5/2003; 84/2008; 81/2009 и 161/2009 [Official Gazette of the Republic of Macedonia” No. 18/2001; 4/2002; 5/2003; 84/2008; 81/2009 and 161/2009].

12 „Службен весник на Република Северна Македонија“ бр.32/2020 [Official Gazette of the Republic of Macedonia” No.32/2020].

13 *Act on Private International Law* (2020), Art. 55 para. 2.

14 Работна верзија на Македонскиот Граѓански Законик [Draft version of the Macedonian Civil Code](not published).

Ultimately, the study argues for the reintroduction of *agreements as to succession* in Macedonian law, arguing that such a reform would provide greater legal certainty, protect family legacies, and ensure creditor rights, thereby bringing Macedonian inheritance law in line with modern European legal standards. By reintroducing these agreements, Macedonian law can better meet the needs of its citizens in matters of inheritance, offering a more structured and transparent system for the future.

2.

Historical Context of the Agreements as to Succession in Macedonian Inheritance Law

Though *agreements as to succession* gained prominence in the Middle Ages, their origins date back even further. Some historical sources suggest that these agreements were present in ancient Sumerian,¹⁵ Egyptian, and Greek legal systems,¹⁶ while others point to their existence in ancient Babylon, where individuals could arrange the transfer of their assets upon death while still alive.¹⁷ Some scholars also believe that the exact origins of these agreements are unknown; what we do know is that Roman law strictly prohibited agreements related to future inheritance, whether made by the testator or the heirs.¹⁸ However, during the post-classical period, Emperor *Justinian I* allowed such agreements in the form of gifts in the event of death, provided they could be revoked until the testator's death.¹⁹ Despite differing views, it is widely accepted that modern *agreements as to succession* find their roots in medieval Germanic and Prussian law, particularly in agreements made between spouses to transfer property upon death.²⁰

As previously mentioned, under the Serbian Civil Code of 1844, Macedonian inheritance law formally recognised *agreements as to succession*, which remained part of its legal framework for over thirty years.²¹ According to this Code, priority in inheritance was given to the heir designated by the *agreement as to succession*, and only in the absence of such an agreement would the inheritance pass to the testamentary heir, or, in the absence of a will, to the legal heirs.²²

15 Гуриќ-Милошевиќ [Djuric-Milosevic], 2024, p. 9.

16 Антић [Antic], 1986, pp. 512–513.

17 Barton, 1904, pp. 256–276.

18 Гуриќ-Милошевиќ [Djuric-Milosevic], 2024, p. 14.

19 Ibid., p. 15.

20 Ристов [Ristov], 2011, p. 84.

21 Read more about the impact of The Serbian Civil Code on Macedonian Inheritance Law at: Спиоровиќ Трпеновска, Мицковиќ и Ристов [Spirovic Trpenovska, Mickovic and Ristov], 2011, pp. 44–47.

22 Видић [Vidic], 2004, cited in Ристов [Ristov], 2011, p. 85.

Following World War II, significant shifts in social, legal, and political structures influenced changes in inheritance law on the Balkans. The 1946 *Law on the Nullity of Legal Provisions, enacted before 6 April 1941 and during enemy occupation*,²³ declared many legal acts null and void, including the *Serbian Civil Code*, which resulted in the formal abolition of agreements as to succession. Subsequently, following the recommendations of the Federal Supreme Court – according to which only those who are called to inherit according to a statement of last will or by law can be considered heirs²⁴ – the judiciary began rejecting these agreements, viewing them as relics of a feudal past designed to preserve the wealth and power of the nobility.²⁵

Then, in 1955, the *Federal Inheritance Law* further reinforced this position, rendering agreements on future inheritance, legacies, and even testamentary content agreements null and void.²⁶ This marked the end of *agreements as to succession* as a legal basis for inheritance in Macedonia. In their place, new *inter vivos* contracts were introduced – the *lifetime support agreement* and the *agreement on assignment and distribution of property during lifetime* – carrying certain inheritance-related implications. Although these agreements have faced ongoing academic criticism, they continue to exist in Macedonian law today, without any significant amendments. The legal stance regarding the removal of *agreements as to succession* was maintained in the first *Republic Law on Inheritance* (1973), and the same principles were adopted in the current *Law on Inheritance* (1996).²⁷

The core distinction in the historical development of these agreements, since the independence of the Republic of Macedonia, lies in their shift after 2001, when the *lifetime support agreement* and the *agreement on assignment and distribution of property during lifetime* were brought under the regulation of the Macedonian *Law on Obligations*.²⁸ This move has raised questions about their nature, as it places their inheritance law characteristics in doubt. By embedding these agreements within the framework of obligations law, this development has sparked ongoing debates in legal theory and practice.²⁹ Scholars and practitioners alike are divided on whether these agreements can still be viewed as having succession-like qualities, or if they should be considered strictly as *inter vivos* contracts under obligations law, devoid of genuine inheritance implications. This ambiguity underscores the need for clearer

23 „Службен лист на ФНРЈ“ бр. 86 од [“Official Gazette of the FPRJ” No. 86], 25.10.1946.

24 Хаџи Василев-Вардарски [Hadji Vasilev-Vardarski], 1982, p. 215.

25 Blagojević, 1955, p. 60.

26 Ристов [Ristov], 2011, p. 85.

27 *Law on inheritance* (1996), Art. 7, 8, 10 and 132.

28 *Law on Obligations* (2001), Art. 1022–1028 and Art. 1029–1035.

29 See more at: Спиоровиќ Трпеновска, Мицковиќ и Ристов [Spirovic Trpenovska, Mickovic and Ristov], 2010, pp. 37–41; Хаџи Василев-Вардарски [Hadji Vasilev-Vardarski], 1983, p. 219; Манчев [Manchev], 1997, pp. 22–26.

legal definitions and potential reform in Macedonian inheritance law to address these concerns.

3.

Lifetime Support Agreement

The *lifetime support agreement* was, as previously noted, formally recognised and categorised as a named contract in the legal framework of the former Socialist Federal Republic of Yugoslavia, with the enactment of the 1955 Federal *Law on Inheritance* and subsequently reinforced in the 1973 *Law on Inheritance*. Prior to 1955, it was considered an unnamed contract, with the parties exclusively determining its name and substance.³⁰ However, by including a special section entitled '*Lifetime Support Agreement*', the contract acquired a distinct legal character and well-defined requirements. This formal recognition signalled the move from a flexible, informal arrangement to a standardised legal agreement that is commonly recognised in legal transactions and regulations.

In Macedonian law, the *lifetime support agreement* is defined as an agreement involving a provider who offers lifelong care to a recipient in exchange for the recipient's property or a portion of it, transferred only after the recipient's death.³¹ In accordance with its characteristics, this is a consensual, bilaterally binding, burdensome, aleatory, causal, strictly formal, and mixed-nature agreement.³² It is bilateral because it creates mutual rights and obligations for both the provider and recipient. The provider's obligations begin during the recipient's lifetime, but their rights to the property take effect only after the recipient's death. This makes the agreement reciprocal, as both parties provide something in exchange.³³ It is also aleatory because the support depends on unpredictable elements, such as the recipient's lifespan.³⁴ Legally, it has a mixed nature because the obligations of support are effective *inter vivos*, while property transfer occurs *mortis causa*.³⁵ It is strictly formal, requiring adherence to a legal procedure, and is causal, as each party enters it with specific goals – lifelong support and property acquisition. In that sense, according to the *Law on Obligations*, this agreement must be executed in written form and verified by either a court or a notary, with the presence of both parties and two witnesses.³⁶ However, the *Law on*

30 Манчев [Manchev], 1997, p. 21.

31 *Law on Obligations* (2001), Art. 1029.

32 Галев и Дабовиќ Анастасовска [Galev and Dabovic Anastasovska], 2021, pp. 451–452.

33 Мицковиќ и Ристов [Mickovic and Ristov], 2016a, p. 254.

34 *Ibid.*, p. 255.

35 Ѓуриќ-Милошевиќ [Djuric-Milosevic], 2024, p. 85.

36 *Law on Obligations* (2001), Art. 1030.

*Notaries*³⁷ states that even where a legal matter is not required to be executed in the form of a notarial deed, legal transactions involving the acquisition, transfer, or limitation of property rights, particularly for real estate, or rights for which public books are kept, must be solemnised by a notary.³⁸ Furthermore, the Law emphasises the need to comply with the form of a public deed (*notarial deed* or *private deed solemnised by a notary*) for legal matters involving the transfer of ownership rights.³⁹ These rules emphasise the significance of formalising the *lifetime support agreement* through a notarised act to ensure it is legally enforceable and in accordance with existing property laws. The meticulous formality in question resembles that required for a *notarial testament*,⁴⁰ emphasising its vital and binding nature. In contrast to traditional agreements as to succession, it does not provide a legal basis for inheritance. Instead, it is categorised as an *inter vivos* (during lifetime) agreement under the Law on Obligations, meaning it functions primarily as a contractual arrangement rather than a traditional inheritance instrument.

The reason why this *inter vivos* agreement is considered a substitute for *agreements as to succession* is because the *lifetime support agreement* has an inheritance law aspect, as the property that is the subject of the agreement is transferred after the death of the disposing party and does not enter their estate upon death.⁴¹

However, despite having some inheritance-related implications, the *lifetime support agreement* is fundamentally different from *agreements as to succession*, and this distinction is critical in understanding its role in the Macedonian legal system. First, the most fundamental distinction is that *agreements as to succession* serve as a direct legal basis for inheritance. In contrast, the *lifetime support agreement*, while having some indirect inheritance-related effects, does not serve as a legal basis for invoking inheritance. Second, with *agreements as to succession*, the mandatory heirs' compulsory share is protected (they can exercise their right to a reserved part of the inheritance), while the *lifetime support agreement* can exclude the rights of mandatory heirs entirely,⁴² leading to disputes over the validity and intentions of the agreement. Another key difference is that *agreements as to succession* ensure that not only the rights but also the obligations of the deceased are passed on to the heirs, thereby protecting the rights of creditors.⁴³ In the *lifetime support agreement*, the provider of support is not liable for the debts of the recipient after their death, unless

37 „Службен весник на Република Македонија“ бр.55/2007; 86/2008; 139/2009; 135/2011; 72/2016; 142/2016 и 233/2018 [“Official Gazette of the Republic of Macedonia” No.55/2007; 86/2008; 139/2009; 135/2011; 72/2016; 142/2016 и 233/2018].

38 *Law on Notaries* (2016), Art. 55 para. 1.

39 *Ibid.*, Art. 55 para. 1.

40 *Law on Notaries* (2016), Art. 67.

41 Мицковиќ и Ристов [Mickovic and Ristov], 2016a, p. 267.

42 *Ibid.*, p. 266.

43 Мицковиќ и Ристов [Mickovic and Ristov], 2016b, p. 71.

specifically agreed upon.⁴⁴ This lack of responsibility for outstanding debts can create complexities for creditors seeking to settle claims. Finally, unlike *agreements as to succession*, the *lifetime support agreement* can be unilaterally terminated or revoked, especially if the relationship between the provider and the recipient deteriorates to the point where cohabitation becomes unbearable.⁴⁵ This revocability adds a layer of flexibility but also legal uncertainty.

While the *lifetime support agreement* continues to be utilised for providing care to individuals, particularly the elderly, it has received widespread criticism. Legal academics say that it is frequently used to dodge inheritance laws, thus selecting a 'de facto' successor, while failing to comply with the formalities and safeguards involved with formal succession procedures.⁴⁶ This has given rise to ongoing discussions in legal theory and practice over whether these agreements, given their consequences, should be regarded as *agreements as to succession* or fall exclusively under the purview of obligation law.

Moreover, there are calls for reform, arguing that the reintroduction of defined *agreements as to succession* would provide a clearer legal framework that balances the needs of the deceased, heirs, and creditors while reducing the possibility of estate disputes, thereby addressing the shortcomings that the *lifetime support agreement* currently has. Until such reforms are implemented, the debate regarding the true nature of these agreements persists, emphasising the need for statutory clarity to prevent misuse and promote fairness in inheritance matters.

4.

Agreement on Assignment and Distribution of Property During Lifetime

The *agreement on assignment and distribution of property during lifetime* has been a consistent aspect in the legal systems of the former Yugoslav republics, tracing its roots to the principles established by the Federal *Law on Inheritance* of 1955, which were later included in each of the republics' inheritance legislations.⁴⁷ This specific agreement has undergone several changes throughout the years. The adaptations range from minor adjustments of certain provisions to more significant changes,

44 Law on Obligations (2001), Art. 1032.

45 *Law on Obligations* (2001), Art. 1033 para. 2.

46 Ристов [Ristov], 2011, p. 94.

47 Крстић [Krstić], 2021, p. 159.

including the reclassification of the agreement from inheritance law to obligations law, accompanied by further revisions to its legal framework.⁴⁸

Macedonian law defines the *agreement on assignment and distribution of property during lifetime* as a legal contract in which a grantor decides to transfer all or part of their property to their descendants during their lifetime.⁴⁹ This agreement originates from a long-standing tradition rooted in everyday practices where elders who could no longer work their land would distribute it among their descendants during their lifetime, ensuring its upkeep and continuity within the family.⁵⁰ Once an informal practice based on customary norms, it was later formalised into legal provisions to bring clarity and structure to property transfers that occur before the owner's death.⁵¹ Through the *Law on Obligations* in Macedonian law, the *agreement on assignment and distribution of property during lifetime* is now recognised as an *inter vivos* agreement, meaning it takes legal effect while the grantor is still alive, and it must meet several strict legal requirements to be valid.

The *agreement on assignment and distribution of property during lifetime* is consensual because it concludes when the contracting parties agree on its essential elements; is formal because it is concluded in writing in the form of a public deed with the participation of a competent authority; is unilaterally binding or, in some cases, bilaterally binding; can be in a form of a gift or a burden, depending on whether the ancestor did or did not ask for anything in return from the descendants; and is a causal contract because the purpose for which it is concluded is visible, which is the distribution of the transferor's property to his descendants during his lifetime.⁵²

This agreement must be executed in writing and duly notarised,⁵³ satisfying the form of a public deed, that is, a notarial deed or a private deed solemnised by a notary,⁵⁴ and it must be agreed upon by all descendants and spouse of the grantor, who will be called to inherit their estate by law.⁵⁵ This consent requirement ensures that all parties who could potentially inherit the property in the future have the opportunity

48 In Croatia, the Federation of BiH, and Republika Srpska, the agreement on assignment and distribution of property during lifetime is regulated by the laws governing inheritance within the special chapter entitled 'Inheritance Contracts'. Meanwhile, the legislation of Serbia, Slovenia, Montenegro, and North Macedonia went in a different direction and regulate this agreement under the regulations governing obligation relations within the framework of a special chapter of the law determined only for this contract. Read more on the regulation of the agreement on assignment and distribution of property during lifetime in the former Yugoslav republics at: Крстић, 2021, pp. 159–175.

49 *Law on Obligations* (2001), Art. 1022.

50 Мицковиќ и Ристов [Mickovic and Ristov,], 2016a, p. 246.

51 *Ibid.*, Art. 1022–1028.

52 Галев и Дабовиќ Анастасовска [Galev and Dabovic Anastasovska], 2021, pp. 431–432.

53 *Law on Obligations* (2001), Art. 1023 para. 2.

54 *Law on Notaries* (2016), Art. 67.

55 *Ibid.*, Art. 1023 para. 1.

to agree or disagree with its assignment before the grantor's death. If any descendant does not initially provide their consent to the agreement, they have the option to do so later using the same legal form.⁵⁶ This feature attempts to prevent disagreements and ensure that property distribution is transparent and mutually accepted by all family members concerned.

Although the *agreement on assignment and distribution of property during lifetime* does not share many similarities with *agreements as to succession*, there is one significant similarity. Under both types of agreements, the property transferred does not form part of the grantor's estate upon their death.⁵⁷ In other words, the property assigned through the agreement is not subjected to the usual probate process that governs the remaining assets of the estate.⁵⁸ This can result in a more efficient and rapid transfer of assets to the intended recipients, avoiding the delays that frequently accompany probate proceedings.

However, despite this similarity, the *agreement on assignment and distribution of property during lifetime* fundamentally differs from a classic agreement as to succession in terms of its legal nature and effects. One of the primary differences is that the *agreement on assignment and distribution of property during lifetime* is an *inter vivos* agreement that takes effect during the grantor's life, while the *agreement as to succession* is designed to come into force only after the grantor's death (*mortis causa*).⁵⁹ This discrepancy has important legal implications. The *agreement as to succession* provides a binding legal basis for exercising inheritance rights and specifies how the grantor's estate will be allocated following their death. However, the *agreement on assignment and distribution of property during lifetime* enables the transfer of property ownership during the grantor's life, essentially getting around the statutory rules of inheritance law.⁶⁰ Another important difference is the level of protection for mandatory heirs' rights. Under Macedonian inheritance law, mandatory heirs – such as the spouse, children, and other close family members – are entitled to a compulsory share of the estate, which cannot be freely disposed of by the deceased through a will or other legal instruments.⁶¹ Under the *agreement as to succession*, these heirs' rights are preserved and protected, ensuring that they receive their rightful share. However, the *agreement on assignment and distribution of property during lifetime* does not safeguard this compulsory share, meaning the grantor could potentially use this agreement to exclude mandatory heirs entirely from receiving property.⁶²

56 Ibid., Art.1023 para. 4.

57 Крстић [Krstić], 2021, p. 13.

58 Мицковиќ и Ристов [Mickovic and Ristov], 2016a, p. 267.

59 Ристов [Ristov], 2011, p. 89.

60 Крстић [Krstić], 2021, p. 103.

61 *Law on Inheritance* (1996), Art. 30–49.

62 Ѓуриќ-Милошевиќ [Djuric-Milosevic], 2024, p. 88.

This flexibility can lead to situations where the property is distributed in a manner that disregards the rights of mandatory heirs, which can lead to disputes and claims after the grantor's death. Moreover, the *agreement as to succession* provides a more comprehensive transfer of rights and obligations. It not only outlines who will inherit the property but also ensures that any obligations or debts associated with the estate are transferred along with the assets. This means that the contractual heirs are responsible for the debts of the deceased, which provides a measure of protection for creditors. In contrast, the *agreement on assignment and distribution of property during lifetime* does not transfer such obligations, and descendants who receive property through this agreement are not liable for any debts of the grantor, which can limit creditors' ability to recover debts from the estate.⁶³ The rules surrounding the revocability of these agreements further highlight their differences. *Agreements as to succession* are binding and cannot be unilaterally revoked or dissolved. This rigidity ensures that the arrangements made by the grantor are honoured after their death, offering peace of mind to both the grantor and beneficiaries. Conversely, the *agreement on assignment and distribution of property during lifetime* is more flexible. It can be unilaterally revoked by the grantor, particularly in cases of 'extreme ingratitude' from the recipient.⁶⁴ This provision allows the grantor to retract the agreement if the beneficiary behaves in a manner that is deemed disrespectful or harmful, but it also introduces a level of legal uncertainty, which does not exist in the case of *agreements as to succession*.

In practice, these disparities have sparked arguments regarding whether it is appropriate to use agreements such as the *agreement on assignment and distribution of property during lifetime* to fulfil succession planning purposes.⁶⁵ While these agreements are officially regarded as obligation law contracts rather than inheritance instruments, they have significant implications for the distribution of one's assets after their death. Critics argue that this practice undermines the principles of inheritance law, as it allows property to be transferred in a way that can circumvent the protections offered to mandatory heirs. Supporters, however, see these agreements as a method that provides property owners a greater degree of autonomy to handle their assets as they see fit.⁶⁶

Given the limitations of the *agreement on assignment and distribution of property during lifetime*, there are clear advantages to regulating *agreements as to succession*, particularly if it is to be reintroduced into Macedonian law. *Agreements as to succession* would provide greater legal certainty, as they cannot be revoked or altered unilaterally, reducing the likelihood of disputes after the grantor's death.

63 Ibid.

64 *Law on Obligations* (2001), Art. 1028.

65 Ѓурик-Милошевиќу [Djuric-Milosevic], 2024, p. 88.

66 Ibid.

They would also more effectively safeguard the interests of both family members and creditors, by ensuring that mandatory heirs receive their estimated share and that the payment of debts is properly managed. Additionally, *agreements as to succession* would provide greater control to individuals over how their assets are managed and distributed, without the need to seek consent of all descendants, providing an appropriate and straightforward method of estate planning that is more closely aligned with the grantor's intentions.

5.

Legal Reform: Reintroduction of Agreements as to Succession in the First Macedonian Civil Code

Even though *agreements as to succession* have been absent from Macedonian inheritance law for nearly 70 years, scholarly opinion remains divided as to their justification. In this context, it is stressed that these agreements prevent potential disagreements regarding the allocation of the estate following the disposing party's death and allow for the conservation of entire agricultural land.⁶⁷ The scholarly viewing of these agreements as inherently feudal is outdated and has no place in current legislation. This assertion is confirmed by the legal practice of several European countries, such as the legislations of France, Austria, Germany, and Switzerland, all of which support the claim that inheritance agreements are a legal foundation for invoking inheritance rights.⁶⁸ Taking into consideration the specifics of the *lifetime support agreement* and the *agreement on assignment and distribution of property during lifetime*, as well as their practical application so far, it cannot be ignored that they are used as an indirect way of determining contractual heirs.⁶⁹ Precisely because of that, reintroducing and decisively regulating *agreements as to succession* in Macedonian law would address the gaps in our inheritance law, which the previously mentioned *inter vivos* agreements have been unsuccessfully trying to fill for decades. In that sense, the jurisprudence believes that the acknowledgement of *agreements as to succession* as legally binding inheritance law instruments allows for greater freedom in the organisation of legal relationships, simultaneously enabling a higher level of legal certainty and, most importantly, meeting the needs and capabilities of the parties involved.⁷⁰

In the upcoming inheritance law reforms, it is crucial that *agreements as to succession*, in their classic form of contractual appointment of heirs and beneficiaries,

67 Мицковиќ и Ристов [Mickovic and Ristov], 2016b, pp. 70–71.

68 Мицковиќ и Ристов [Mickovic and Ristov], 2016b, pp. 57–60.

69 Ibid., p. 72.

70 Stojanović, 2003, pp. 176–177.

be introduced as a legal basis for invoking inheritance and be regulated in detail, following the example of many modern legal systems. In accordance with this statement, the *preliminary draft of the Macedonian Civil Code (Book Four: Inheritance Law)*⁷¹ proposes the reintroduction of *agreements as to succession*, aligning Macedonian inheritance practices with numerous European countries where these agreements remain essential.⁷²

The proposed Civil Code defines *agreements as to succession* as contracts through which married or cohabiting partners agree to transfer all or part of their property upon death (*mortis causa*) and can either designate one partner as the sole heir or establish mutual inheritance between both partners.⁷³ This agreement would be designed to represent a form of commitment only between married couples or registered cohabiting partners,⁷⁴ enabling them to create reciprocal inheritance rights or designate one of them as the heir to all or a portion of their estate. This limitation in relation to the contractual parties highlights the intention of the legislator to align succession arrangements with the safeguards of family law, aiming to maintain *agreements as to succession* as a tool to uphold long-standing familial ties and obligations.

To meet the strict requirements for its legal form, *agreements as to succession* must be concluded in the form of a notarial deed in the presence of married or cohabiting partners.⁷⁵ This formal requirement for notarisation emphasises the significance of the agreement by ensuring that both parties fully comprehend the agreement's contents and effects. In this process, the notary plays an important role in providing oversight and ensuring that the agreement's legal obligations are met. This method not only validates the partners' intentions but also prevents future disputes or challenges to the agreement's legitimacy.

As a typical *mortis causa* legal tool, the legal effect of *agreements as to succession* occurs at the time of the death of the contractual testator,⁷⁶ activating the transfer of property rights as outlined in the agreement. However, for the purpose of ensuring that close family members still retain their statutory inheritance rights to a portion of the estate, as well as creditors' rights to recover their debt, this agreement would protect the rights of mandatory heirs to a compulsory share of the inheritance⁷⁷ and enable the protection of the rights of creditors. *Agreements as to succession* would

71 Работна верзија на Македонскиот Граѓански Законик, Книга 4, *Наследноправни односи [Draft version of the Macedonian Civil Code, Book 4, Inheritance Law Relations]*, (not published), Art. 5:150–5:156.

72 Ристов [Ristov], 2011, p. 94.

73 *Preliminary draft version of the Macedonian Civil Code* (not published), Art. 5:150.

74 *Ibid.*, Art. 5:151.

75 *Ibid.*, Art. 5:152.

76 *Ibid.*, Art. 5:153 para. 1.

77 *Ibid.*, Art. 5:153 para. 2.

also leave room for flexibility, allowing the contractual testator to dispose of the property that is the subject of the agreement during their lifetime, unless otherwise stipulated in the agreement.⁷⁸

The terms established in *agreements as to succession* may only be modified with the consent of both contracting parties, and any changes or modifications must be made in the same legal form as the agreement itself.⁷⁹ This demand for consensus emphasises the parties' equilibrium of rights and obligations, guaranteeing that none of them can unilaterally change the agreement to their benefit. However, by requiring modifications to be made in the same form as the original agreement, the law preserves the agreement's integrity and protects both parties.

The agreement as to succession, stipulated as an agreement concluded only between married couples or registered cohabiting partners, naturally ends with the divorce of the marriage or its annulment, as well as the termination of the extramarital union.⁸⁰ However, one of the married or cohabiting partners could unilaterally revoke and terminate the agreement if the contractual heir has violated a moral or legal norm with his behaviour, which is the legal basis for exclusion from inheritance⁸¹ in accordance with statutory inheritance norms.⁸² In these situations, the agreement as to succession permits the aggrieved party to unilaterally revoke the agreement, preventing them from having to leave their estate to a partner who has harmed their partnership.

Finally, the *preliminary draft of the Macedonian Civil Code* proposes establishing a *Register of Agreements as to Succession*, becoming a part of the existing *Register of Wills*, which will subsequently become the *Register of Agreements as to Succession and Wills*.⁸³ To ensure clarity and accountability, Macedonian law requires that *agreements as to succession* and *wills* be recorded in a public registry run by the Notary Chamber of North Macedonia.⁸⁴ The Register is a public record maintained by the Notary Chamber in accordance with the law,⁸⁵ which provides an official record of all *agreements as to succession* and *wills*. Data regarding the Register is submitted at the (contractual) testator's request by competent courts, notaries, lawyers, and persons who drew up the *agreement as to succession* or will.⁸⁶ However, the data from the Register cannot be made available to anyone before the (contractual) testator's death, except for the testator, the persons who drew up the *agreement as to succession*,

78 Ibid., Art. 5:153 para. 3.

79 Ibid., Art. 5:154.

80 Ibid., Art. 5:156.

81 Ibid., Art. 5:155.

82 Law on inheritance (1996), Art. 46–48.

83 *Preliminary draft version of the Macedonian Civil Code* (not published), Art. 5:149.

84 Ibid., Art. 5:149 para. 1.

85 Ibid., Art. 5:149 para. 2.

86 Ibid., Art. 5:149 para. 3.

or a person specially authorised by them.⁸⁷ The registration requirement is intended to avoid future disputes about the agreement's legitimacy or conditions. However, registration, while suggested, is not mandatory for the agreement's legal validity; therefore, an unregistered agreement is nonetheless legally binding.⁸⁸

To conclude, the idea grounded in the essence of the *preliminary draft of the Macedonian Civil Code* to restore *agreements as to succession* is an important step towards modernising the country's inheritance law. Macedonian legal system stands to benefit from harmonising with European legal frameworks, in which such agreements play an important role in estate planning. The provisions outlined, including strict notarial formalities, guarantee protection for mandatory heirs and creditors, and the establishment of a formal public registry for *agreements as to succession* intends to provide legal clarity, protect family and financial interests, and maintain individuals' control over their assets during their lifetime.

6. Conclusion

The inclusion of *agreements as to succession* into Macedonian inheritance law is a significant step towards modernising and improving the legal tools for estate planning. This proposed amendment, as stated in the *preliminary draft of the Macedonian Civil Code*, recognises the historical and practical relevance of *agreements as to succession*, while resolving long-standing legal loopholes in current legislation. By realigning Macedonian law with European legal standards, where such agreements are widely accepted, formally regulated and applied in practice, this development signifies a transition towards an inheritance system that prioritises legal certainty and foreseeability, as well as the protection of interests of all parties concerned.

This study delves into the evolution and current status of *agreements as to succession* in Macedonian inheritance law, shedding light on a gap in the legal system that has existed since the 1950s. This void was initially filled by specific *inter vivos* agreements – the *lifetime support agreement* and the *agreement on assignment and distribution of property during lifetime*. Both evolved over time but neither addressed the comprehensive requirements of classic, traditional, *mortis causa* agreements. From a historical viewpoint, *agreements as to succession* played an important role before being eliminated as part of post-World War II reforms, when they became ruins of the past, altering the development of inheritance law on the Balkans.⁸⁹

87 Ibid., Art. 5:149 para. 4.

88 Ibid., Art. 5:149 para. 5.

89 See more about the inheritance law of the Socialist Federal Republic of Yugoslavia post-World War II at: Blagojević, 1955, pp. 60–61.

The *lifetime support agreement* and *agreement on assignment and distribution of property during lifetime*, as observed in this study, demonstrate that, while useful in certain contexts when dealing with property distribution, they do not provide the same level of security or legal certainty as the conventional *agreements as to succession*.⁹⁰ The lack of a direct legal basis for inheritance, the vulnerability of mandatory heirs' rights, as well as the limitations on creditors' safeguards, all indicate that these agreements only partially achieve the goals generally associated with the *agreements as to succession*. Furthermore, their categorisation under obligation law complicates their role, especially when they seek to substitute traditional succession arrangements.

Addressing the need of urgent inheritance law reform, the *agreement as to succession* proposed in the *preliminary draft of the Macedonian Civil Code* includes important structural aspects such as the need for a strict form of a public deed, drawn up by a Notary, in the form of a *notarial deed* or a *solemnised private deed*, alternatives for mutual inheritance among married or cohabiting partners, and carefully managed revocation conditions. *Agreement as to succession*, distinguishes itself from *inter vivos* agreements, by enabling asset transfer arrangements that take effect *mortis causa*, while providing greater certainty in estate distribution and avoiding the potential manipulation of inheritance rights associated with the *lifetime support agreements* or the *agreement on assignment and distribution of property during lifetime*. The establishment of a public registry for *agreements as to succession* improves transparency and accountability by allowing authorised parties to access the content of the agreements only under certain conditions, ensuring privacy and trust. This feature is particularly significant in a context where reliable record-keeping can aid in avoiding potential inheritance disputes. Also, despite the fact that the act of registration is not mandatory for legal legitimacy, it does help to ensure the agreement's enforceability by certifying its provisions and protecting the parties' intents and interests. Finally, the approach of the *preliminary draft of the Macedonian Civil Code* on *agreements as to succession* allows for a more modern and dependable probate procedure that balances one's autonomy and family interests. This modernisation will bring Macedonian law closer to European standards in the field of inheritance law, assuring transparency and certainty for future generations.

Reintroducing *agreements as to succession* in Macedonian inheritance law is, in my opinion, a critical step forward, going beyond simply conforming with European standards. Bearing in mind the arguments in favour of these agreements, the *Commission for Drafting the Civil Code of the Republic of North Macedonia* accepted the concept that *agreements as to succession* should be legally reintroduced in the

90 See more about the differences between the agreement as to succession and other related institutions at: Ристов [Ristov], 2011, pp. 88–89.

Macedonian legal system, considering them in the *preliminary draft of the Macedonian Civil Code*. This reform addresses the critical need for a legal tool that accurately represents the complex nature of family dynamics and property rights in modern Macedonia. Unlike current solutions, provided by the *lifetime support agreements* or the *agreement on assignment and distribution of property during lifetime*, *agreements as to succession* could enable a clear legal structure that protects the individual intentions and wishes, while honouring inevitable inheritance rights. This development is not merely about legal modernisation but about creating a respectful environment and stability within families. For me, this reform would transform the Macedonian inheritance system by balancing tradition and progression, ultimately ensuring that family legacies are both protected and thoughtfully honoured.

Bibliography

- Антиќ, О. [Antikj, O.] (1986) 'Уговор о наслеђивању и други забрањени наследно-правни уговори у нашем праву' [Ugovor o nasleđivanju i drugi zabranjeni nasledno-pravni ugovori u našem pravu], *Анали Правног факултета у Београду* [Anali Pravnog fakulteta u Beogradu], 1986(5), pp. 512–513.
- Barton, G.A. (1904) *Contracts in Assyrian and Babylonian Literature: Selected Transactions, With a Critical Introduction by Robert Francis Harper*. New York: D. Appleton & Company.
- Blagojević, B.T. (1955) *Nasledno pravo FNRJ sa osvrtom na prava drugih država*. Beograd: Naučna knjiga.
- Видиќ, Ј. [Vidikj, J.] (2004) 'Наслеђивање у Србији' [Nasleđivanje u Srbiji], *Зборник Правног факултета у Новом Саду* [Zbornik Pravnog fakulteta u Novom Sadu], 2004, pp. 421–423.
- Галев, Г. and Дабовиќ Анастасовска, Ј. [Galev, G. and Dabovikj Anastasovska, J.] (2021) *Облигационо право (додипломски студиум)* [Obligaciono pravo (dodiplomski studii)]. Скопје: Saint Cyril and Methodius University Press.
- Ѓуриќ-Милошевиќ, Т. [Gjurikj-Miloševikj, T.] (2024) *Наследноправни уговори као перспектива српског наследног права* [Naslednopravni ugovori kao perspektiva srpskog naslednog prava]. Kragujevac: Faculty of Law, University of Kragujevtso.
- Хаџи Василев-Вардарски, М. [Hadzi Vasilev-Vardarski, M.] (1982) 'Уште еднаш за договорот за доживотна издршка меѓу брачните другари' [Ušte ednash za dogovorot za dozivotna izdrzka megju brachnite drugari], *Годишник на Правниот факултет во Скопје* [Godisnik na Pravniot fakultet vo Skorpe], 1982/XXVI, pp. 215–216.
- Хаџи Василев-Вардарски, М. [Hadzi Vasilev-Vardarski, M.] (1983) *Наследно право* [Nasledno pravo]. Скопје: Kultura.
- Крстиќ, Н. [Krstikj, N.] (2021) *Уговор о уступању и расподели имовине за живота* [Ugovor o ustupanju i raspodeli imovine za života]. Niš: Faculty of Law, University of Niš, Center for Publication.
- Манчев, Д. [Mancev, D.] (1997) *Договорот за доживотна издршка во теоријата и практиката на Република Македонија* [Dogovorot za dozivotna izdrzka vo teorijata i praktikata na Republika Makedonija]. Self-publishing.
- Мицковиќ, Д. and Ристов, А. [Mickovic, D. and Ristov, A.] (2016) *Наследно право* [Nasledno pravo]. Gradsko: Stobi-Trade.
- Мицковиќ, Д. and Ристов, А. [Mickovic, D. and Ristov, A.] (2016) *Реформата на наследното право во Република Македонија* [Reformata na nasledното pravo vo Republika Makedonija]. Gradsko: Stobi-Trade.

- Петковиќ, И.Д. [Petkovikj, I.D.] (1939) *Граѓански законик за Краљевину Србију: објашњен одлукама Касацисног суда у Београду* [Građanski zakonik za Kraljevinu Srbiju: objasnjen odlukama Kasacionog suda u Beogradu]. Beograd: Court of Cassation Press.
- Ристов, А. [Ristov, A.] (2011) 'Дали е потребен договорот за наследување во македонското наследно право' [Dali e potreben dogovorot za nasleduvanje vo makedonskoto nasledno pravo] *Нотариус [Notarius]*, 2011(19), pp. 83–94.
- Спиновиќ Трпеновска, Љ., Мицковиќ, Д. and Ристов, А. [Spirovikj Trpenovska, Lj., Mickovic, D. and Ristov, A.] (2010) *Наследното право во Република Македонија* [Nasledното право vo Republika Makedonija]. Скопје: Blesok.
- Спиновиќ Трпеновска, Љ., Мицковиќ, Д. and Ристов, А. [Spirovikj Trpenovska, Lj., Mickovic, D. and Ristov, A.] (2011) *Наследувањето во Европа* [Nasleduvanjeto vo Evropa]. Скопје: Blesok.
- Stojanović, N. (2003) 'Zašto je ugovor o nasleđivanju zabranjen u našem pravu?', *Pravni život*, 2003(10), pp. 176–177.

Legal documents

- 'Закон за меѓународното приватно право' [Zakon za meѓunarodnoto privatno pravo] [Law on Private International Law] (2020) Службен весник на Република Северна Македонија, [Official Gazette of the Republic of North Macedonia] No. 32/2020 [online]. Available at: <https://www.pravda.gov.mk/upload/Documents/ZAKON%20ZA%20MEGJUNARODNO%20PRIVATNO%20PRAVO%202020.pdf> (Accessed: 10 October 2024).
- 'Закон за наследувањето' [Zakon za nasleduvanjeto] [Law on Private International Law] (1973) Службен весник на СРМ [Official Gazette of the Republic of North Macedonia], Nos. 35/73 and 27/78.
- 'Закон за наследувањето' [Zakon za nasleduvanjeto] [Law on Private International Law] (1996) Службен весник на Република Македонија [Official Gazette of the Republic of North Macedonia], No. 47/96 [online]. Available at: <https://www.pravda.gov.mk/upload/Documents/Zakon%20za%20nasleduvanjeto.pdf> (Accessed: 10 October 2024).
- 'Закон за нотаријатот' [Zakon za notarijatot] [Law on Notariat] (2016) Службен весник на Република Македонија [Official Gazette of the Republic of North Macedonia], Nos. 55/2007, 86/2008, 139/2009, 135/2011, 72/2016, 142/2016 and 233/2018 [online]. Available at: [https://www.nkrm.org.mk/images/pravilnici9.1.2017/ZAKON%20ZA%20NOTARIJATOT%20\(Sluzben%20vesnik%20obr.%2072%20od%2012.4.2016%20god.\)pdf](https://www.nkrm.org.mk/images/pravilnici9.1.2017/ZAKON%20ZA%20NOTARIJATOT%20(Sluzben%20vesnik%20obr.%2072%20od%2012.4.2016%20god.)pdf) (Accessed: 12 October 2024).

- ‘Законот за неважност на правните прописи донесени пред 6 април 1941 година и за време на непријателската окупација’ [Zakonot za nevažnost na pravnite propisi doneseni pred 6 april 1941 godina i za vreme na neprijatelskata okupacija] [Law on the Invalidity of Legal Regulations Adopted before 6 April 1941 and during the Enemy Occupation] (1946), Official Gazette of the Federal Republic of Yugoslavia, No. 86.
- ‘Закон за облигационите односи’ [Zakon za obligacionite odnosi] [Law on Obligations] (2001) Службен весник на Република Македонија [Official Gazette of the Republic of Macedonia], Nos. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009 and 161/2009 [online]. Available at: [https://www.pravda.gov.mk/upload/Documents/ZOO%20redakciski%20precisten%202013\(1\).pdf](https://www.pravda.gov.mk/upload/Documents/ZOO%20redakciski%20precisten%202013(1).pdf) (Accessed: 15 October 2024).
- ‘Работна верзија на Македонскиот Граѓански Законик: Книга 4, Наследноправни односи’ [Rabotna verzija na Makedonskiot Gragjanski Zakonik: Kniga 4, Naslednopravni odnosi] [Working Draft of the Macedonian Civil Code: Book 4, Succession Law Relations] (in preparation).
- ‘Сојузен Закон за наследувањето’ [Sojuzen Zakon za nasleduvanje] [Official Gazette of the Federal People’s Republic of Yugoslavia] (1955) Службен лист на СФРЈ, Nos. 20/55, 12/65 and 42/65.