

Master Paper

**Invalidation of the
Will**

2007

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Invalidity of the Will

Inheritance is the testator's property, which is transferred to others according to his wish and desire. The law recognizes two ways of inheritance transfer- by will and by statute. Inheritance is transferred by statute in cases when there is no will.

Nine decades before, the will was made by a testator orally, in the presence of his/her family members, sometimes in the presence of others as well. Testator's will was accepted as was stated without any comments, as at that point of time, people had trust and faith towards each other. Afterwards, the will took a written form, whereby testator expresses his/her wish to transfer his/her own property/funds to persons specified by him/her in written. This written document is further certified by notary. Naturally, testator's will should be in consistence with respective laws and once the will is composed, the conditions of inheritance are defined not by law as it is, but by will.

The term "Will" has two meanings. Firstly, it is a document stating testator's wish, secondly, the act of the testator's expression. The act of the testator's expression is a unilateral transaction and doesn't imply any other person's opinion. There is no need that the heir should be informed about the content of the will. The will may have been made without undue influence, be in writing, be signed by the testator and by two impartial witnesses. It is utmost important for will validation that witnesses preserve the information confidential. The will can be formed in three types- simple, conditional and secret will¹.

The will is a unilateral and a personal transaction, in which is expressed only the wish of one person- testator's, and should be presented by him and not by others. Testator is free to

¹ Book Inheritance by will and by statute, G. Gharakhanyan 2000

choose his/her heirs. No one else can decide to whom his/her property will be bequeathed. The freedom of the testator's rights is limited with the compulsory share of his/her legal heirs.

The will is also personal and formal transaction. It is personal, since it presents testator's unique and exceptional wish, and is done only by testator and not by representative. The will like any other transaction has requirements on the form. It enters into force following testator's death. Therefore, it should be formed in consistence with testator's wish. In any event, composed will does not limit testator's rights to use his/her property during his lifetime.

The will is also an individual act; it can be composed by anybody. According to RA Civil Code the will should be written only by one person, for example, couple cannot legally draft their will together, irrespective the fact that they hold the same position.

There is a legal question, whether the will is not the same as donation. The answer is definitely no! The will is unilateral transaction, while donation is bilateral transaction- a contract. Donation is a contract and once it enters into force the property legally transfers to the recipient, where as the will has six month legal time period after testator's death prior to be transferred to the recipient. In addition, the legality of the will includes the availability of the property, which is contained in the will at the date of the opening the will.

Social value of the will supports the determination of the testator and the rights of legal heirs. By means of the will the testator has a chance to plan the using of his/her property after his/her death by heirs. A will serves a variety of important purposes. It enables the testator to select his heirs and be in a position to dismiss the ones he dislikes. The testator may entrust the execution of a will to a person named in the will- the executor of the will². The consent of this person to be the executor of the will must be expressed by him in a personally signed inscription on the will itself or in a statement attached to the will. The testator has the right to impose on one or several heirs by will the performance at the expense of the inheritance of any kind of

² Book Inheritance by will and by statute, G. Gharakhanyan 2000

obligation (a testamentary charge) for the benefit of one or several persons (the benefit-acquirers) who acquire the right to demand the performance of this obligation³.

Current paper aims to identify private actors involved in the transaction, their conflict of interests. Paper further describes in details the whole procedure of the will transaction from theoretical perspectives accompanied with international best practice. As a practical perspective, comprehensive studies of local cases are described. Afterwards, it goes forward evaluating the existing policy, identifying the current gaps and overlaps. Finally, it ends up with recommendations for reforms implementation, the areas needs to be improved and the obstacles needs to be overcome.

Private Actors

The private actors involved in a will are testator, witnesses, heirs and notary. A competent testator is a person who is of sound mind and requisite age at the time he makes the will, not at the date of his/her death when it takes effect. Anyone over an adult age (usually eighteen), is legally capable of making a will. If a person dies under the minimum age, his/her property will be distributed according to the laws of descent and distribution irrespective of presence of the will. A testator is considered mentally incompetent (incapable of making a will) if he/she has a recognized type of mental deficiency, such as mental retardation or severe mental illness. A person who uses drugs or alcohol can validly execute a will as long as she/he is not under the influence of drugs or intoxicated at the time he/she makes the will. Illiteracy, old age, or severe physical illness does not automatically deprive a person of a testamentary capacity, but they are factors to be considered along with the particular facts of the case.

The witnesses are the persons, who at the wish of the testator may be present at the compilation and notarial certification of a will. In the case when the testator is not in a condition

³ RA Civil Code

to personally read the will, the presence of a witness is obligatory. If a will is compiled and certified in the presence of a witness, the will must be signed by the witness and his/her name and place of residence must be indicated in the will. In cases when in accordance with the rules of the Civil Code witnesses must be present at the compilation, signing, or certification of a will, the following may not be such witnesses and also may not sign the will in place of the testator- notary, a person in whose benefit a will is made or a testamentary charge is made, the spouse of this person, his/her children, or parents, citizens not having full dispositive capacity, illiterates and persons not able to read the will, persons having an active criminal record for perjury⁴.

Notary is the one of important actors in composing the will, who certifies the will, through which the will can be recognized as valid. Notary is responsible for the actions of the testator, must follow steps made by testator and at the time of certainty keep aware testator of the legal steps of making the will.

The Legislative Framework

The legal framework presents the legal basis for recognition of the will as invalid. Invalidation of the will has a separate emphasizes within the legal framework and its conditions are closely examined during the court proceedings, since it affects the will and consideration of the testators. There are several grounds for recognizing the will as invalid. One thing is stable that during the living time of the testator there can not be a question concerning the invalidation of the will, as testator has the right to change, even liquidate the previous will and to compose new one or not to compose anymore⁵. One of the important rule-point is that there is no criterion “what so ever” as regards to size, content, form, period of will that can be altered at any time upon testator’s discretion.

The main point for recognition the will as valid is the maintenance of the requirements for the form defined by law. The will is a transaction, so it should be done according to the Civil

⁴ Book Inheritance by will and by statute, G. Gharakhanyan 2000, RA Civil Code

⁵ RA Civil Code

Code of Validity of transactions- the form of transaction, content, activities of the parties of transaction and should be taken into consideration the norms of inheritance. The will should be formed indicating the place of its formation and time, to be signed personally by the testator and be certified by the notary. If the testator due to physical problems, illness or illiterateness is not capable to sign it, so by his/her request the will can be signed by another citizen in the presence of notary. The will must contain the name and the place of residence of that person (Civil Code art. 1204). If there is a violation of the will form, it can be considered as invalid. The will can also be recognized as invalid, if it is not certified by notary. So, there cannot be any doubts for the recognizing orally made will as valid.

According to the RA Law “On Notary”, the will is valid only by certification of the notary. At first notary should be sure that the will was made by testator by his/her own hands, if he/she was not capable to write, the will can be written by another person or by notary itself. Up to date technical methods-computer, typing machine can be equally used while making a will. Afterwards, the will should be read in the presence of the testator and be signed by him/her personally (Civil Code art. 1205, 3). However, there are cases when the testator is not able to read the will by his/her own, in this case notary should read it in the presence of the witness and to indicate in the will about it by pointing the reasons by which the testator was not able to read by his/her own. Notary is obliged to inform to that witness about the confidentiality of the will. Notary also is obliged to inform testator about the heir’s right of compulsory share.

According to the Civil Code of RA, article 1208, notary, heirs, illiterate and convicted persons cannot act as witness and cannot sign the will on behalf of testator⁶.

The will is formed in two examples and both of them have equal power. One of the copies is kept in the notary office and the second one is submitted to the testator.

⁶ RA Civil Code

According to the Civil Code of RA, article 1207, wills made in hospitals (military service), certified by the head of the hospital (or by the commander of the army) have equal legal effect as to the notarially certified one.

The grounds that court may consider the will invalid are as follows: If the will violates any person's rights and freedoms that are guaranteed by constitution and relevant laws, the court will examine the complaint of that particular person whose rights have been violated (Civil Code art. 1211, 1). There can not be any challenges concerning the will prior to its opening (Civil Code art. 1211, 2). The main ground for considering will as invalid is the violation of the rules concerning to formation of the will as is stipulated by the RA Civil Code (Civil Code art 1211, 3).

Composed will can be recognized as invalid or arguable, for example, if it is composed by violating the rules. It is considered as void transaction if it does not meet the conditions set out in the law (Civil Code art. 305). Hence, the will becomes arguable once it has been composed under the pressure or fraud.

If there is a deviation for example, misspelling of the words, which does change neither the meaning nor the content of the will, it cannot serve as the ground for its invalidation. For example, if the place in the will is misspelled, but still the meaning is clear it will be considered as a slight deviation. On the contrary, if misspelling occurs in the heir's name that, in its turn, may contradict with passport details (the name mentioned in the passport prevails above all) it, of course, will be examined as serious deviation and will be considered as a valid ground to recognize the will as null and void (Civil Code art. 1211, 4)⁷.

It may happen that separate parts of the will are considered as null and void. This however does not invalidate the whole will. Testator bequeaths several goods/estates to different people, if in any circumstances one of the mentioned points is considered invalid it does not give

⁷ RA Civil Code

effect to invalidation of the whole will, meaning that only that particular part in the will can be recognized as void (Civil Code art.1211, 5).

If the will according to the Civil Code is recognized as invalid, it doesn't deprive heirs to inherit from another valid will. There is no limitation to the number of times beneficiaries are considered as heirs. Irrespective of the times the will (that they are mentioned as heirs) recognized as null they can still be eligible for other wills (Civil Code art.1211, 6)⁸.

Case Analysis

There are cases at the courts for recognizing the will as invalid based on the following issues:

1. Are there enough bases to recognize the will as invalid if the will is certified by the deputy of the hospital's chief instead of the chief.
2. If a will was composed with the violations of the duties of notary. a) If the closed will is signed only by one witness. b) If the notary failed to explain to testator the notion of "compulsory ownership share in the heritage".
3. If the will contains misspelling in the address name results in confusion.
4. Whether the recognition of the separate parts of the will as invalid can serve as an obstacle for the recognition the rest of the will as valid.

In the case *Karapetyan vs. Asatryan* the applicant's complaint have been denied for recognizing a will invalid. Karapetyan, an applicant, is a tour-guide, who is traveling based on his work schedule. When Karapetyan left a country for a month, he has been informed that his father was transferred to the hospital for the deep pain of the heart, where unfortunately he died. He came back and found that there is a will written by his father. But the main trouble for Karapetyan was that the will was certified by the deputy of the hospital Mr. Asatryan, instead of the chief doctor. After all he came to the court with a complaint to recognize the will invalid, which was certified by the chief's deputy. However, the Civil Code of the Republic of Armenia provides an article 1207 1), concerning an equated wills to those Notarially certified, that wills of

⁸ RA Civil Code

citizens located for treatment in hospitals or any other inpatient treatment institutions can be certified not only by medical section chief, but also their deputies. The court held that in certain case deputy has a right to certify the will written by the decedent as there wasn't any violation of the law related to the validation of the will according to the RA Civil Code⁹.

In the case of Sarkisyan vs. Central Notary District, concerning the will's invalidity due to notary's incompleteness of its duties, which results the violation of heir's rights or interests. Sarkisyan, an applicant, is from Diaspora with the very weak knowledge of native language and is the son of the decedent from informal marriage. The will was closed will. Upon hearing the will Sarkisyan was surprised as his name wasn't mentioned, even though his father kept contact with him till the end of his days and they were in a very good relationship. After investigating the procedure of the making the will through the witness of the will, he brought suit against the Notary for inaccuracy. RA Civil Code concerning the duties of the notary an article 23 3) provides that any kind of notary activities that are inconsistent with RA laws or legal acts or international agreements should be denied.

As regards to steps of the closed will, Article 1206 3) of RA Civil Code provides that the testator should submit the will in the glued envelope to the notary in the presence of two witnesses, whereas in this case there was only one witness. This information provides the only witness; he added also that during acceptance of the envelope notary didn't explain to the testator about the right to a compulsory ownership share in the heritage. Article 1206 4) of the same code provides that the notary must explain to the testator about the right to a compulsory ownership share in the inheritance. In making the final decision, the court took into consideration the fact that the will was closed and the witness was unaware of what it contained. Whereas, the notary failed to implement its duties and haven't informed him about the basic primary portion that his son is entitled. Though the marriage was not registered, however, he recognized his

⁹ Notary Center

father ship towards his son. Thus, taking into consideration above mentioned violations the court held that there are sufficient basis for the recognition of the will as invalid according to the article 1211 1) of the same Code, a will may be declared invalid by a court on basis of a suit by a person whose rights or interests are violated by this will¹⁰.

In the case of *Arzumanyan vs. Abrahamyan* the reasons for the recognition of the will as valid were sufficiently brought to court's attention during investigation of the attached documents and house register certificate. The applicant, Mrs. Arzumanyan is a neighbor of the decedent, who has very close relations with the decedent. Mrs. Abrahamyan is the wife of the decedent, who always has been in conflicts and disagreements with her neighbor from the very beginning of their acquaintance. On the day of the opening the will, it became clear that there is a misspelling in the name of the inherited home address. The real name of the address is Ervand Qochar, but in the will it has been written Hrachya Qochar. The attached documents revealed the fact of misspelling in the content of the will. Respondent, Mrs. Abrahamyan was guided by the Article 1211 4) of the Civil Code of RA, slips of the pen and other insignificant violations of the procedure for compilation, signing, or authenticating a will shall not be basis for declaration of a will as invalid if it is proved that they could not influence the understanding of the testator's expression of his wish. Mrs. Abrahamyan thought that misspelling the name of the address cannot be an obstacle as it can be accepted ordinary confusion, as in all attached documents the address name has been written in right way. The applicant was guided by article 1210 1) of the same Civil Code Of RA, in the interpretation of a will, the notary, the executor of the will, or the court shall take into account the literal meaning of the words and expressions contained in it based on the fact that Hrachya Qochar street does really exist in reality and it does result in confusion. It is true that in our country both names of the streets exist and are practically used. Exploring the registered persons at the wrong address name- Hrachya Qochar, disclosed the fact

¹⁰ Notary Center

that the house address mentioned in the will is the wrong one and is inconsistent with attached documents. Ervand Qochar, was the address where the decedent has been registered together with his family. The court held that in the will there was confusion in the address name, based on the register book and attached documents to the will¹¹.

Harutyunyan vs. Harutyunyan Junior concerned an invalidation of separate parts of the will. The applicant Harutyunyan is a son of the decedent, who suspects his son Harutyunyan Junior in the death of his father, but he was not the only one who had that doubts. Decedent who had a sudden death spent his last days with his grandchild Harutyunyan Junior. Neighbors gave their testament that descendant and grandchild have always been involved in conflicts resulting in noise and disturbance, from which can be inferred that they were arguing. But this is not the only reason of Mr. Harutyunyan's doubt. When the executive expertise examined the case, they found toxin in the decedent's body after autopsy. Harutyunyan. Jr. was tried and found guilty of causing his grandfather's death, because of this criminal conviction Harutyunyan. Jr. was excluded from the will as an unworthy heir according to the article 1191 1), 3), 4) persons shall be excluded from inheritance both by will and by statute, who has intentionally committed an attempt on donor's life. The basis for exclusion from an inheritance as unworthy heirs is a sentence and/or decision of a court that have entered into legal force. The rules of the present Article shall extend to heirs having a right to a compulsory ownership share in the inheritance. The court held that all above mentioned articles have the legal grounds for making changes in the will, not entirely but only the parts, where something is willed to Harutyunyan Junior according to article 1211 5) , invalidity may be recognized for the will as a whole or for individual testamentary dispositions contained in it¹².

¹¹ Notary Center

¹² Notary Center

Description of the transaction

Though in all cases the main criteria that are being applied answers to the only and same question, whether or not the will has been issued in accordance with the testator's last wish and desire and whether or not the main procedural steps have been maintained. The main steps for recognition the will as invalid are as follows

1. An applicant, whose rights are violated by the will may file a suit to the court
2. The court after exploring the case in detailed manner takes appropriate measures
3. Invalidation of the will through court proceedings
4. Accordingly the decision is made based on the results of hearing

According to the article 1195 1) of the Civil Code of RA, a citizen has the right to leave by will all his/her property or part of it to one or several persons. A testator by his/her own choice and desire chooses the heirs for his/her will depending on several conditions the heirs might vary from first level to the last one. Though he/she is completely competent to make any decision "whatsoever" there is an exceptional condition specified by the law. According to the article 1194 1), a compulsory ownership share is the right of an heir to inherit, regardless of the content of the will, not less than half of the ownership share which would have been allotted to him/her in case of inheritance by statute. In the case of *Sarkisyan vs. Central Notary District* there was closed will where the testator and the notary omitted to include the notion of compulsory ownership share, which resulted in Courts invalidation of the will.

According to the article 1198 1) of the Civil Code of the RA, the testator may indicate in the will another person (sub-designation of an heir) in case the heir designed by him/her in the will dies before the opening of the inheritance. If testator acts in a manner stipulated by the law it will never arose any concerns/problems.

According to the article 1205 2) of the Civil Code of the RA, a notarially certified will must be written by the testator or written down from the testator's spoken words by a notary. Afterwards notary certifies the will. If in the above cases testators, being totally new and

unsophisticated in this kind of doings, position is understandable and permissible. In contrary in a notary case the later can and may not discard its liabilities and have unserious attitude toward performing its obligations. Therefore, any misconduct from the notary side should be carefully examined and necessary measures should be undertaken in order to avoid similar problems in future.

According to the article 1211 1), 3), 4), 5), a will may be declared invalid by a court on suit by a person whose rights or interest are violated by this will. A will shall be declared invalid as the result of violation of rules on the form of a will or other provisions of the Civil Code on the invalidity of transactions. Slips of the pen and other insignificant violations of the procedure for compilation, signing, or authenticated a will shall not be bases for declaration of a will as invalid if it is proved that they could not influence the understanding of the testator's expression of his/her wish.

Depending on the particularities of the case as well as the content of the will the court may recognize or invalidate the will. Majority of cases brought to the court claimed the same thing to recognize the will invalid. An applicant has to take all necessary actions in order to prove the truthfulness of his/her claims. It is his/her duty to persuade the court that the request he/she has made in his/her claim is legal based on justifications stated in the same claim. Only after examining all the facts and evidences as well as testifying the witnesses the court may hold a decision.

International Best Practice

Generally courts examined all presented documents, physical evidences, testify the witnesses and only after make the final verdict. In Lithuania the formation of the will is the same as in Armenia. A will may be made exclusively by the testator himself/herself, who must be legally capable person who is able to comprehend the importance and consequences of his/her actions (Civil Code art.5.15). A will shall be considered as invalid if it was made by a

legally incapable person, made by a person of limited legal capacity due to the abuse of alcoholic drinks, narcotic or toxic substances, its content is unlawful and impossible to understand. A will may be considered as invalid on other grounds of invalidation of transactions. The content of such will may not be established by judicial procedure. A testator may not authorise another person to establish or alter the content of a will after the death of the testator (Civil Code art. 5.16) An action for acknowledging a will or separate parts as invalid may be brought only by other intestate or testate successors who would be entitled to inherit if the will or separate parts thereof were recognized as invalid. On recognizing a later made will as invalid, the previous will shall not become effective, except in cases where a later will was recognizes as invalid, because it had been made under coercion or real threat, likewise where it had been made by a person acknowledged by the court legally incapable, or by a person whose legal capacity was limited by the court on the grounds of abuse of alcoholic drinks, narcotic or toxic substances (Civil Code art.5.17)¹³.

In Moldova, in case testator drew up several wills, amend them and do not substitute totally one another, all of them remain in force. The previous will shall maintain its validity to the extent, its provisions are not altered by subsequent wills (Civil Code art. 1470). The will shall be considered as invalid in the event of- the beneficiary of the will dies before the testator, heir disappears during the life period of testator or was alienated by him/her, the unique successor does not accept the inheritance. It violates the succession reserve (Civil Code art. 1471)¹⁴.

In Finland a testament shall be made in writing with two witnesses simultaneously present, after the testator has signed the testament or acknowledged his/her signature. These shall attest the testament with their signatures. They have to be aware that the document is a testament, but it shall be in the discretion of the testator whether to inform them of the contents of the testament (Civil Code section 1). The witnesses shall note their occupations and places of

¹³ Civil Code of Lithuania

¹⁴ Civil Code of Moldova

residence next to their signatures, as well as note the place and time of the attestation; they shall note also any other factors that they consider relevant with regard to the validity of the testament (Civil Code section 2). If the testator has revoked his/her testamentary dispositions in the order provided for the making of a testament, or destroyed the testament or otherwise clearly indicated that the dispositions no longer correspond to his/her last will, the dispositions shall be invalid. A promise not to revoke a testament shall not be binding (Civil Code section 5)¹⁵.

Republic of Bulgaria is continental country. This statement is evidenced with similar approaches in considerations law of the will. Similar to that of Armenian law testator has to write the will in hand writing. It can be revoked at any time. However, in contrary to Armenian law in Bulgaria omission of the date in the will itself invalidate the will. Exceptions are made in those cases where there are sufficient grounds to suspect that the will has been drawn in the time when the testator was incapable of realizing in its own actions. Further Bulgarian law in the will like Armenian, provides with compulsory share and its absence in the will may cause its invalidation. It also defines similar stages for preparation of the will for example, the testator has to sign the will, which should be further certified by two witnesses and finely be stamped by the notary¹⁶.

Unlike Armenian law, Spain except from open and close wills also recognizes holograph type of the will, which must be entirely written by the testator. The particularity of this kind of will is, that it does not have to be certified by any officer for example, notary and also by witness. After the testator's death the holograph will is submitted to the judge for authentication¹⁷.

Slovakian law also recognizes holographic law apart from an open and close wills. However it does not sharply require the will to be written by testator in hand writing. If the will is not written by the testator but is signed in presence of two witnesses there are more grounds for invalidation, which in its turn constitutes an open type of the will. Slovakian law also gives

¹⁵ Civil Code of Finland

¹⁶ Civil Code of Bulgaria

¹⁷ Civil Code of Spain

effect to nuncupative type of will, where it is produced by the testator, who cannot read or write. In this case it will be regarded as invalid, if it is not certified by three witnesses¹⁸.

Islamic law has a unique approach to compulsory share of the will. The testator can only inherit one third of his/her property and that should be done only with consent of his/her lawful beneficiaries. The list of lawful beneficiaries is identified in Quran. In other words testator does not have a legal right to increase or decrease the portions of those relatives whose portions are fixed in the Quran. As well as he/she does not possess any legal right to deprive the legal beneficiaries, who are identified in the same Quran¹⁹.

France law also recognize holographic type of the will with the slight difference: omitting the date of the will does not constitute ground for invalidation. The date can be restored through internal and external interventions. As regards to open will French law gives alternatives as to witness requirement. According to the later open will should be executed either in the presence of two witnesses and further be signed by the notary. If the case is certified by two notaries and no witnesses are involved, the will is still considered valid. All countries respective legislation has the same procedural stages for issuance of the will. Other requirements as to form are basically similar except of slight differences highlighted above²⁰.

Forming part of Soviet Union Armenia's legislative approaches and principles are similar to that of Russia's, particularly invalidation grounds. In Russian law the will can be considered as invalid only by the claim of a person, whose rights are violated, slips of the pen and other insignificant breaches of the procedure for the creation, signing or attestation of a will shall not serve as grounds for the invalidity of a will if a court has established that they do not affect the construction of the testator's will, specific dispositions contained in a will shall not be deemed to affect the rest of the will if one can suppose that it would have been included in the will even if

¹⁸ Civil Code of Slovakia

¹⁹ Islam Law

²⁰ Civil Code of France

the void dispositions there. Article 1211 of Armenian Civil Code states basically the same issues as been described²¹.

Procedure evaluation

Given the above comparison, it is obvious that basically the dominated principle and approaches have many things in common both in common and civil legislative systems. The answer can be very simple, since issuance of the will is same process irrespective of traditions, race, sex and civil status. Invalidation of the will is also a natural process occurring as a result of breach of common prescribed conditions. Invalidation grounds as well as issuance approaches have many things in common as well. This approach is slightly different among Muslim countries as was described earlier above.

Though local provisions on invalidation are very straightforward and similar to that of European ones they lack in flexibility. For example, the law fixed six (6) months period for opening the will. Six months is enough time if all the conditions are met without any unforeseen cases. Hence, the reality is not always in accordance with the initial plan. The provision for preserving the confidentiality is also worth to commenting. Article 1209, which states that the involved parties in the will should be guided by the principle of confidentiality and that the confidentiality is maintained by the respective legislation and by the current law. Though this article tries to regulate those principles, however, they are not precisely defined neither by the current law nor by other relevant laws what are the consequences in case of breach. The reason may vary depending from which side one looks at the situation. Issuance of the will has become practicable in the recent decades only. Up to date inheritance by the law has better rating and usage comparing with that of the will. Very few people make up their own will before death. Even fewer change the content and targets of their wills. Therefore invalidation grounds are not very diverse. This predictable situation does not give a room to broaden the outlook and consideration. Regulatory mechanisms are not very sophisticated they don't cover unforeseen

²¹ Civil Code of Russia

situations. This is main concern that may arise, whatsoever, in connection with the policy and its quality. Otherwise the implementation of the law is satisfactory. The law does protect to certain extent the right of the heir and of testator. Though unworthy heirs are rejected from priority share, in practice it is quite hard to identify them. The balance can be established once conflicting parties are granted with equal opportunities to prove their position and stand their interests.

As was stated earlier above the local invalidation provisions are in line with international and European ones. The difference constitutes in its implementation. Case studies reveal that court decisions vary for the same court petitions on will invalidation. This statement particularly relates to misspelling errors. Similar misspelling in one case may result in rejection and some other approval for invalidation. International law recognizes and necessitates the notion of customary law and principles of precedent known also as case law. Court issues similar holdings for similar issues. This ultimately affects court application flow given transparency and predictability of case law and its decision. Respectively, decrease in quantity results in quality increase, for example, review of situation and delivery of judiciary. Given the current judiciary system as it operates one should take into consideration the danger of corruption. Combating corruption is a priority for the country. This provision is also including in Millennium development goals and national action plan has been developed for coming years. Hence, the reality remains unchanged. Taking above into account, one can assume that most of the cases the court decision varies not from the invalidation grounds but on the status of the parties involved. This certifies the different court decision as to similar misspelling errors in the will content.

There are few conditions that may effect to improvement of the situation. The law should cover the issue in a broader sense given the reflections for emergency and other unforeseen situations for example, defendant issues a will in favor of his/her close friend separating priority share. Within the six months from the will issuance the heir (closes friends) dies having no idea that he/she is elected as an heir. After six months collapse the will is opened and turns out that

the targeted heir died shortly before. According to RA Civil Code article 1228 2), on request by an heir who has let pass the time period for acceptance of an inheritance, a court may declare that he has accepted the inheritance, if the court finds the reasons for letting pass the time to be compelling, in particular if it establishes that this time period was passed because the heir did not know and should not have known of the opening of the inheritance and on the condition that the heir who had let pass the time period for the acceptance of the inheritance applies to the court in course of six months after the reasons for letting this time period pass have ceased to exist. When it declares that an heir has accepted an inheritance, the court shall decide the questions deriving from the rights of other heirs to the inherited property and also shall declare invalid an earlier issued certificate of the right to an inheritance. In this case the issuance of a new certificate of the right to inheritance is not required. But what, if an heir after the fixed time period six months realized that he/she was heir? Unfortunately he/she loses his/her share from that inheritance. The priority heir applies to court requesting the invalidation of the will and recognition him/her as the main heir. The current law is not in a position to control the situation. Among other different issues needed urgent regulation, the most important one asks the question as who can be legally eligible heir? The priority heir of the testator or the priority heir of died heir?

There are lots of cases, which verdicts are depends on the type and measure of corruption. It is obvious that there will be obstacles hindering the smooth implementation of the process. Corruption and the extent of corruption play the major obstacle perhaps it cannot be solved within few years. It comes from people mentality and needs change of generations maybe two-three, in order to finally clear up that approach in everyday interactions. Hence, the confession and strong will can be a good drive to start putting it into force. Of course this is very general approach to the situation. More specifically, it should revise the current provisions and have broader outlook at the situation.

First steps can be considered proper needs assessment of the situation. In other words, the investigation of the recent cases in wills issuance, mostly with invalidation requests Identify

the gaps in the current law, how (positively, negatively) they effect the case and interests of the parties? Afterwards, having the answers at least clearer notion about the current situation decide how relevant is the law. Does it need any alteration based on the needs? Only thoroughly analysis of the situation may results in its improvement.

Recommendations for Reform

Based on the study the following are recommendations for reform;

- a. Given the above international justifications as to unforeseen situations, the law should extend timeframe between the opening of the will and the unknown heirs recognition at least with additional six months. (RA Civil Code 1228 2 amendment).
- b. Armenian legislation should also recognize the holographic type of the will as is widely accepted worldwide. Given Armenia's conviction and aim to adopt European legal standards and practices, this should also be taken into account.
- c. Witnesses involved in the will shall be convicted to financial compensation once the confidentiality principle is violated.

It is worth once more time to point out that the paper introduces the will issuance process with a special emphasises on invalidation process. Most importantly paper discusses legal framework, its gaps, which are the basic facts inputs in case studies. Case studies are considered as invaluable parts of the argument that the paper debated on. It also discusses in which conditions an applicant may claim for invalidating his/her will. Comparing with other countries it makes us to balance advantages and disadvantages of our country's legal approaches to the will's invalidation. Furthermore, taking into account both local and international legal framework and the challenges that are revealed from case studies, this paper comes up with recommendations for possible reform in this sphere.