

**THE BULGARIAN ‘SOCIALIST’ LAW OF
INHERITANCE FROM 1949, AS A PRODUCT OF THE
ITALIAN ‘FASCIST’ CIVIL CODE FROM 1942 –
WHAT IDEAS FOR CHANGES IN BULGARIAN
INHERITANCE LAW CAN BE DRAWN FROM
THE DEVELOPMENT OF ITALIAN INHERITANCE LAW?**

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Abstract: The old Bulgarian Law of Inheritance from 1890 is a literal translation of the corresponding provisions from the repealed Italian Civil Code of 1865. Surprisingly, however, the Inheritance Law adopted in 1949, during socialism (and in the Stalinist period), which is still in effect in Bulgaria to this day, is also a reception of the Italian Civil Code of 1942. The latter was adopted during the regime of Benito Mussolini. This second Italy-to-Bulgaria reception is smaller in scope, not without modifications, and moreover, was not acknowledged at the time of its adoption. And it's no wonder – there is no way for socialists (or communists) to admit that they adopt legal norms created by the jurists of a 'fascist' regime. The explanation for this unexpected reception (transplant) is the involvement of two prominent Bulgarian 'bourgeois' civil law professors, Ivan Apostolov and Petko Venedikov, in the working group drafting the inheritance bill in 1948. The first part of the report is dedicated to identifying received texts in the Bulgarian inheritance law of 1949 from the Italian inheritance law of 1942. The second part of the report discusses ideas for changes in Bulgarian inheritance law that can be drawn from the development of Italian inheritance law.

Key words: succession, law of inheritance, reception of foreign legislation (legal transplant), Italy, Bulgarian, Codice civile of 1942, Bulgarian Inheritance Act of 1949

БЪЛГАРСКИЯТ „СОЦИАЛИСТИЧЕСКИ“ ЗАКОН ЗА НАСЛЕДСТВО ОТ 1949 Г. КАТО ПРОДУКТ НА ИТАЛИАНСКИЯ „ФАШИСТКИ“ ГРАЖДАНСКИ КО- ДЕКС ОТ 1942 Г. – КАКВИ ИДЕИ ЗА ПРОМЕНИ В БЪЛГАРСКОТО НАСЛЕДСТВЕНО ПРАВО МОГАТ ДА СЕ ИЗВЛЕКАТ ОТ РАЗВИТИЕТО НА ИТАЛИАНСКОТО НАСЛЕДСТВЕНО ПРАВО?

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Резюме: Старият български Закон за наследството от 1890 г. е дословен превод на съответните разпоредби от отменения Италиански граждански кодекс от 1865 г. Изненадващо обаче Законът за наследството, приет през 1949 г. по време на социализма (и в сталинския период), който е в сила в България и до днес, също представлява заимстване от Италианския граждански кодекс от 1942 г. Последният е приет по време на режима на Бенито Мусолини. Това второ заимстване от Италия към България е с по-ограничен обхват, не е без промени и освен това не е било признато по времето на приемането му. Това не е учудващо – социалистите (или комунистите) не могат да признаят, че възприемат правни норми, създадени от юристите на „фашистки“ режим. Обяснението за това неочаквано възприемане (правна трансплантация) е участието на двама изтъкнати български „буржоазни“ професори по гражданско право (Иван Апостолов и Петко Венедиков) в работната група, изготвила проекта на Закон за наследството през 1948 г.

Първата част на доклада е посветена на идентифицирането на текстове, заимствани в българското наследствено право от 1949 г. от италианското наследствено право от 1942 г. Втората част на доклада разглежда идеи за промени в българското наследствено право, които могат да бъдат изведени от развитието на италианското наследствено право.

Ключови думи: наследяване, наследствено право, възприемане (трансплантация) на чуждестранно право, Италия, България, Граждански кодекс от 1942 г., български Закон за наследството от 1949 г.

1. Historical Introduction

After the Liberation of Bulgaria from 500 years of Ottoman rule in 1878, the country embarked on a path of European modernization, including through the adoption of Western European legislation as applicable law.¹

The first Bulgarian Inheritance Act of 1890 was almost a literal translation of the corresponding provisions of the Italian Codice civile of 1865, relating to inheritance, wills, and gifts. Since the Minister of Justice who submitted the bill did not know Italian, he used the text of the Italian code through the Russian translation by Professor Zarudny, which was not particularly good.² Nevertheless, there is probably a 99% match between the original text of the Bulgarian Inheritance Act 1890 and the provisions of Codice civile 1865. Where there are differences, they are deliberate. For example, in Bulgaria, the law designates the mother and father as a separate class of heirs – the second inheritance class – in intestate succession, which excludes all other ascendants, brothers and sisters, and all collaterals³. Also, in Bulgaria, the surviving spouse receives a share of the inheritance, rather than usufruct over a share.⁴ Furthermore, with a subsequent amendment to Bulgarian law, the share of the surviving spouse was increased and became even larger if the marriage had lasted more than 10 years⁵.

Let's speed up the historical overview. The year is 1944, with the coup d'état on September 9, 1944, bringing a government dominated by communists to power. Before 1947, a new constitution was adopted – socialist, and in the same year the remnants of the 'bourgeois' opposition were finally crushed. However, in 1948, something happened that

¹ For a general, accessible overview in English of Bulgarian family and succession law, see **Todorova, V., St. Stavru, D. Topuzov.** International Encyclopaedia for Family and Succession Law. National Monographs: Republic of Bulgaria. The Netherlands, Kluwer Law International BV, 2019; a new, updated text as of 2022.

² **Фаденхехт, Й.** Несъобразности и редакционни погрешки в Закона за наследството. – Списание на Юридическото дружество в София, г. II (Fadenheht, Y. Nesaobraznosti i redaktsionni pogreshki v Zakona za nasledstvoto. – Spisanie na Yuridicheskoto druzhestvo v Sofia, g. II) (1902/1903), № 1, с. 39.

³ Art. 23 of the Inheritance Act 1890, respectively Art. 6 of the Inheritance Act 1949.

⁴ Articles 38 – 42 Inheritance Act 1890, respectively Article 9, paragraphs 1 – 3 Inheritance Act 1949.

⁵ Amendment from 1906.

remains unexplained to this day. A project-draft for a new Inheritance Act was drawn up. The directive issued top-down was: a reform of legislation under the influence and reception of Soviet socialist law. The bill was passed in the last days of 1948 and finally on January 3, 1949. Surprisingly, this Inheritance Act of 1949, which is still in effect today, is also a partial reception of the Italian Codice civile, specifically the one from 1942. The latter, as is known, was adopted during the rule of Benito Mussolini. This second, more recent reception (legal transplant) from Italy to Bulgaria is smaller in scope, not without modifications under socialist influence, and moreover, it was not acknowledged at the time it was carried out. And it is no wonder – there was no way that socialists (or communists), especially at the startup of a Stalinist-style regime, would admit that they were applying legal norms created by the jurists of a 'fascist' regime. The explanation for this unexpected reception (transplantation) is the participation of two prominent Bulgarian 'bourgeois' civil law professors, Ivan Apostolov and Petko Venedikov, in the working group for drafting the 1948 inheritance bill. What is more, after a number of provisions from the repealed Inheritance Act – all of Italian origin – were omitted in the initial draft of October 1948, these provisions were 'reintroduced' into the final text by the legislative committee of the National Assembly, thanks to the participation of the tireless Professor Venedikov as an expert in the committee.⁶

To this day, there has been no complete publication of the preparatory works on the draft law and no in-depth historical analysis of the process of its adoption.⁷

⁶ See the memoirs of Prof. Venedikov himself – see **Венедиков, П.** Спомени. 2 доп. издание. С. (Venedikov, P. Spomeni. 2 dop. izdanie. S.), 2018, 461 – 463, as well as the discussions during the first and second readings of the draft law in the National Assembly at the end of 1948 and in 1949, see **Петров, В.** Мотиви и законодателно обсъждане на Закона за наследството от 1949 г. (Petrov, V. Motivi i zakonodatelno obsazhdane na Zakona za nasledstvoto ot 1949 g. – <https://www.challengingthelaw.com/semeino-i-nasledstveno-pravo/motivi-obsazhdane-zn-1949/>).

⁷ We owe to Svetoslav Ivanov the discovery of the correspondence regarding the drafting of the inheritance bill. See his foreword to **Венедиков, П.** Система на българското наследствено право. 3 доп. издание. С авторови бележки върху второто издание, редакторски бележки към третото издание и препратки към

The first part of the report is dedicated to identifying texts in the Bulgarian Inheritance Act of 1949 that were adopted from the Italian Codice civile of 1942.

The second part of the report examines ideas for changes in Bulgarian inheritance law that could be drawn from the development of Italian inheritance law after 1942.

2. The Reception (legal transplantation) of the New Foreign Legislation

So far, I have identified a few provisions of such a new reception. I am talking about the adoption of rules that did not exist either in the 1890 Inheritance Act, nor in its precursors – the Napoleonic Code of 1804 and the Italian Codice civile of 1865 – but have come from new provisions contained in the currently operative Italian Codice civile of 1942.

Let me list them one by one:

2.1. The rule on conclusive (implicit) forgiveness of incapacity to inherit

According to Article 4, paragraph 2 of the Inheritance Act 1949, based on art. 466, paragraph 2 of Codice civile 1942, the unworthy person in whose favor the testator made a will, knowing the reason for the unworthiness, without expressly rehabilitating them as worthy, inherits only within the limits of the will. Such a rule was not present in either the repealed Bulgarian Inheritance Act 1890 or the Codice civile 1865.⁸

действащия закон. Ред. Св. Иванов. С., ИК „Петко Венедиков“ (Venedikov, P. Sistema na balgarskoto nasledstveno pravo. 3 dop. izdanie. S avtorovi belezhki varhu vtoroto izdanie, redaktorski belezhki kam tretoto izdanie i prepratki kam deystvashtia zakon. Red. Sv. Ivanov. S., IK „Petko Venedikov“), 2019, p. 6. Unfortunately, this correspondence has not yet been published in a place accessible to Bulgarian lawyers.

⁸ It should, however, be borne in mind that in art. 726 C. civ. 1865 the word *esspressamente* was used, which was omitted in art. 7 of the 1890 Inheritance Act, which is why Bulgarian doctrine (Венедиков, П. Система на..., бел. 7, с. 30) maintained the view that even under the 1890 Inheritance Act, a tacit forgiveness of unworthiness was permissible.

2.2. The form of the notarial (public) will

In Bulgaria, the regulation of the notarial will is in Article 24 of the Inheritance Act 1949. In Italy, the regulation of the *testamento pubblico* is in Article 603 of the Codice civile 1942. I will not quote the texts, as they are almost identical. In the Italian text, there is one additional sentence concerning deaf/deaf-mute individuals, but otherwise the texts are nearly verbatim. The new aspect in Italy and Bulgaria, compared to their old laws, is that the number of witnesses has been reduced from 4 to 2, with an explicit requirement in the notarial will to indicate the place – locus loci – of the will, as a formal requirement.⁹

2.3. The claim of an heir with a reserved portion (legittimario) against a third party to whom the testee or donee has transferred an immovable property

In Italy, the regulation is found in art. 563 Codice civile and 2652, § 8 Codice civile 1942; in Bulgaria, in art. 37 of the Inheritance Act 1949. The new aspect in Italy and Bulgaria, compared to their old laws, is that the filing of claims by heirs with a reserved portion (legittimari) is provided for, which affects the enforceability of court decisions against third parties.

2.4. The system of acquiring inheritance

According to art. 459 Codice civile 1942 and art. 48 of the Inheritance Act 1949 inheritance is acquired through acceptance. The effect of acceptance starts from the moment the inheritance is opened. Such a rule did not exist under the old law.¹⁰

⁹ By the way, in 2025 there is a decision by the second chamber of the Italian Supreme Court of Cassation and by the first civil chamber of the Bulgarian Supreme Court of Cassation on the issue of the place of the notarial will – almost identical cases, on the same provision in substance. Cf. decision No. 119 of 28.02.2025 in civil case No. 500/2024, SC, 1st civil chamber, Bulgaria, and respectively Corte Suprema di Cassazione decision of 14.04.2025 in case No. 26010/2019, 2nd civil chamber.

¹⁰ Between the Inheritance Act 1949 and the Codice civile 1942, there is a difference in the regulation concerning the acceptance and refusal, not of inheritance, but of bequests (on a private basis *legatums*). In Italy, the rule from Roman law has been preserved, according to which a bequest (*legatum*) is acquired without the need for acceptance, but with the right of refusal – art. 649, para. 1 of the C. civ. 1942. In Bulgaria, there is a rule for direct application (tel quel) of the rules for the

2.5. Possessory claim by the heir called to inherit but who has not accepted it

Art. 460, para. 1 Codice civile 1942 and art. 58 of the Inheritance Act 1949 stipulate that an heir who has been called but has not accepted the inheritance may bring possessory claims, even if they have not established actual detention over the property. Under the old law, in the absence of such a provision, there was a possibility that the exercise of the possessory claim could be regarded as an act of conclusive (implicit) acceptance of the inheritance.

2.6. The rule of independence of the inheritance option in case of multiple heirs:

According to the rule of art. 510 Codice civile 1942 and art. 62 of Inheritance Act 1949, acceptance by inventory, made by one of the heirs called, benefits all the others, even if the inventory is carried out by an heir different from the one who made the declaration.

In the old law of Bulgaria and Italy, it was different:

Thus, according to art. 213 of the Inheritance Act 1890 and art. 958 Codice civile 1865: If some of the heirs wish to accept the inheritance outright, and others – by inventory, then the inheritance is accepted by inventory. The declaration of one of the heirs is sufficient for this.

All of the above-mentioned corrections (*leges correctivae*) to the previous regulation can be summarized as rectifying flaws in certain rules or of ambiguities, identified by legal doctrine and jurisprudence (court's case law), where the previous regulation had caused theoretical or judicial disputes. Such calibration and refinement of the regulation can be expected, insofar as sufficient judicial case law and extensive legal scholarly literature, which examined even the smallest corners of the house of inheritance law, had accumulated for the period from 1865 to 1942.

acceptance and refusal of inheritance to the acceptance and refusal of bequests (*legatums*) – art. 22, para. 2 of the Inheritance Act 1949.

3. Ideas for amendments to the Inheritance Act 1949, drawn from the changes in the Italian Codice civile after 1942

The changes in Italian inheritance law after 1942 are neither numerous nor do they alter the general structure of inheritance law.

3.1. One example is the reform of 1975 concerning inheritance by the surviving spouse. Before the reform, the surviving spouse, when co-inheriting with children from the marriage or their descendants, received only usufruct over a share of the inheritance, depending on the number of children. After the reform, the surviving spouse always receives a share of the inheritance.¹¹ In Bulgaria, the position of the surviving spouse in this regard has been different since 1890 – he/she receives a share of the inheritance. Under the Inheritance Act 1949, the share is equal to that of each child when co-inheriting with descendants; the spouse also receives a share when co-inheriting with heirs of the second and third degree, and completely excludes heirs of the fourth degree. In Italy, however, the surviving spouse has an additional right – the right to live for the rest of their life in the family home and to use its furniture, if it belonged to the deceased or was jointly owned by the deceased and the spouse. Here, one might consider adopting this Italian rule in Bulgaria.

3.2. Regarding the regulation of the claim under Article 563 of the Codice civile 1942 by the heir with a reserved portion (*legittimario*) against a third party to whom the testee or donee has transferred real estate. In 2005, a rule was established that this claim cannot be brought in relation to donations if more than 20 years have passed since the donation was registered. Thus, in practice, the institution of the reserved portion of the inheritance leaves unaffected a category of old donations – those that the testator made 20 or more years before their death.¹² A similar rule is needed in Bulgaria as well.

¹¹ See **Bianca, C. M.** *Diritto civile. II-2. Le successioni*. Sesta edizione a cura di M. Bianca, P. Sirena. Milano, A. Giuffrè, 2022, p. 267.

¹² For this amendment see **Chinè, G., A. Zoppini**. *Manuale di diritto civile*. XVII ed. 2025-2026. Molfetta, Neldiritto Editore, 2025, p. 417.

4. In the Italian Code of 1942, there are other rules that could be successfully adopted in Bulgaria, even though they were overlooked when the Inheritance Act of 1949 was enacted

4.1. For example, the Codice civile 1942 contains a rule that did not exist in either the Napoleonic Code of 1804 or the Codice civile 1865. According to Article 605 of Codice civile 1942, not every defect in the form of a will results in its absolute nullity, but only those described in the first paragraph of this article.¹³ Conversely, the second paragraph of this article outlines defects in the form of a will that allow it to be annulled by the courts at the request of interested parties within a certain period. Such a rule is also needed in Bulgaria. In fact, precisely this rule was included in an early draft of the Bulgarian Inheritance Act in June 1948, but it was removed when the draft bill was submitted to the National Assembly in October 1948.¹⁴

4.2. In the Codice civile 1942 – art. 467, para. 1 – there is a rule according to which representation places the heirs in the position and to the degree of their predecessor in all cases when he is unable or does not want to accept the inheritance or the bequest (*legatum*). However, in the Inheritance Act 1949, representation, called substitution, is only allowed in the event of the death or unworthiness of the intermediate heir before or with respect to the original *de cuius*. For example, in Bulgaria, if the son dies before his father, the son's son – the grandson – can inherit the grandfather. But if the son is alive at the father's death and renounces his inheritance, the grandson cannot inherit the grandfather. The rule that applies is: "he who renounces kills his own stripe." Therefore, the share of the renouncing son would go to increase (*ius accrescendi*) the share of another descendant of the father (the grandfather). However, if all the father's sons renounce, the inheritance is offered to the heirs of the following class, not to the grandchildren. In Italy, under the rule of art. 467, para. 1, if a son refuses the inheritance from his father, the son's share is offered according to the rules of representation, to the grandchild. The Italian rule is closer to realizing

¹³ **Braun, Al.** Testamentary Formalities in Italy. – In: Kenneth G. C. Reid, M. J. de Waal, R. Zimmermann (eds.). *Comparative Succession Law. Volume I: Testamentary Formalities*. Oxford, Oxford University Press, 2012, p. 138.

¹⁴ This preliminary draft is available in the file at the State Archive, discovered by Dr. Svetoslav Ivanov. See note no. 7.

the idea of intestate inheritance – to carry out the presumed will and intentions of the testator. And the testator – the grandfather in our example – is generally in closer relations with his grandchildren, rather than with heirs from subsequent inheritance classes, and would want the inheritance to go to the grandchildren.¹⁵

The purpose of the report is to show the profound connections between Bulgarian and Italian inheritance law.

¹⁵ In the repealed Bulgarian Inheritance Act of 1890, there was a rule (borrowed from France, but also appearing in the Codice civile 1865 – art. 947) – Article 202, according to which an heir who has renounced cannot be substituted through representation; [but] if the renouncing heir is the only heir in their class, or if all of their co-heirs renounce, their children inherit by right and take their share individually. According to this rule, if a grandfather is survived by two sons, the first of whom has two sons of his own, and the second has four, then if one son renounces the grandfather's inheritance, the entire inheritance is offered to the other son; and if both sons renounce the inheritance, it is offered to the grandchildren, but equally to each grandchild – thus, the sons of the first son would receive 1/6 of the inheritance each, totaling 1/3 of the inheritance, not 1/2, as they would receive if a rule like the Italian rule of art. 467, c. 1 Codice civile 1942 applied. The logic behind the old rule is that the grandfather loves all his grandchildren equally, regardless of the fact through which of his sons they come from, and therefore they should inherit equally. This logic holds if both sons renounce the inheritance of the deceased. But the old rule seems illogical if only one son renounces it, because then the rule gives the entire inheritance to the other son, who, in the end, after he dies, will leave his inheritance to his children – who are only part of the grandchildren of the original *de cuius*.