

PROTECTION OF PERSONAL RIGHTS IN LAW OF SUCCESSION

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Abstract. This author aims to demonstrate that in addition to the legal measures provided for in Article 24 of the Polish Civil Code, protection of personal rights may also indirectly serve the institutions mentioned in Book IV of the Civil Code, one of which is the law of succession. These institutions are primarily disinheritance (Article 1008 of the Civil Code) and unworthiness of inheritance (Article 928 of the Civil Code), as well as the exclusion of a spouse from inheritance (Article 940 of the Civil Code). They serve to protect, above all, such personal rights as life and health, honour and freedom, in particular the freedom to make a will. Violation of these personal rights will be met with specific pecuniary sanctions, among them, deprivation of the right to inheritance, to the reserved share of the estate, to bequests, or to the statutory superannuation as provided for in Article 939 of the Civil Code.

Keywords: Civil Code; personal rights; inheritance; legacy; disinheritance; unworthiness of succession; exclusion of the spouse from succession; offence

INTRODUCTION

Measures for the protection of personal rights are generally listed in Article 24 of the Civil Code.¹ It mentions in particular: 1) the abandonment of the unlawful infringement of personal rights (para. 1 sentence 1); 2) the fulfilment of the actions necessary to remove the consequences of the (negative) infringement of personal rights, for example, the submission of a statement of appropriate content and in an appropriate form (para. 1 sentence 2); 3) pecuniary compensation (para. 1 sentence 3); 4) payment of an appropriate sum of money to a designated social purpose (para. 1, sentence 3 *in fine*);² 5) compensation in the case of pecuniary damage caused by the infringement of a personal right (para. 2). The first two are of a non-material nature [Cisek 1989, 114; Wierciński 2002, 183]. The last three are of a pecuniary nature and consist of the payment of a certain sum

¹ Act of 23 April 1964, the Civil Code, Journal of Laws of 2022, item 1360 as amended [hereinafter: CC].

² See also Article 448 CC.

of money by the person who committed the infringement of personal rights [Skiba 2017, 246].

The last paragraph of Article 24 of the Civil Code also acknowledges the existence of rights provided for in other provisions guaranteeing the protection of personal rights. The legislator has referred here, for example, to the extra-Code protection provided for in copyright law and the law of invention. Such reference, however, does not exclude recourse to other provisions of the Civil Code (e.g. Articles 444-448 CC). The aim of this article is to indicate that, in addition to the measures directly dictated by the disposition of Article 24 CC, the protection of personal rights may be indirectly served also by institutions provided for in the provisions of the fourth book of the Civil Code, i.e. institutions of the law of succession. These institutions are, first of all, disinheritance (Article 1008 CC) and unworthiness of inheritance (Article 928 CC), as well as exclusion of the spouse from inheritance (Article 940 CC).

1. DISINHERITANCE (ARTICLE 1008 OF THE CIVIL CODE)

Article 1008 CC provides that the testator may disinherit, i.e. deprive his/her descendants, spouse and parents of the reserved portion of the estate in a will. Thus, disinheritance can only be made in a valid will, and its consequences follow arise directly from the will of the testator.³

This provision lists three grounds for disinheritance: 1) persistent conduct against the will of the testator in a manner contrary to the principles of social co-existence; 2) committing an intentional offence against the testator or one of his or her closest persons against life, health or freedom or gross insult; 3) persistent failure to fulfil family obligations towards the testator [Książak 2010, 164-90; Załucki 2010, 383-418]. It should be noted that not all of these prerequisites will overlap with a violation of personal rights. Among the statutory prerequisites for disinheritance, in the context of protection of personal rights, the behaviour set out in the second point particularly stands out.

³ The institution of disinheritance was shaped by Roman law, initially casuistically through case-by-case settlements, and ultimately the Emperor Justinian introduced in November 115 of 542 an enumerative catalogue of reasons for disinheritance comprising fourteen reasons for disinheriting descendants and eight reasons for disinheriting ascendants [Kursa 2008; Idem 2009]. In contemporary Codes, disinheritance occurs, for example, in the BGB (para. 2333), while the French Civil Code, followed by the Italian, do not know the institution of disinheritance, due to the fact that they adopt a system of reserves, and thus there is no place for the institution of disinheritance, whose function in practice is fulfilled by the institution of unworthiness of inheritance [Borysiak 2008, 159-62, 185].

Firstly, in the second point of Article 1008 CC, the commission of an intentional offence against life, against the testator or one of his closest persons is indicated. These offences are defined in Chapter XIX of the Penal Code.⁴ These include: murder (Article 148 PC), the killing of a child by the mother during childbirth (Article 149 PC), advocating euthanasia (Article 150 PC), inciting or assisting in committing suicide (Article 151 PC), and offences relating to the termination of pregnancy (Articles 152-154 PC). Subsequently, in Article 1008 CC, the legislator indicated the commission of an offence against health as a reason for disinheritance. These, too, are defined in Chapter XIX of the Penal Code. These offences are: causing damage to health (Articles 156-157 PC), prenatal damage (Article 157a PC), exposure to danger of loss of life or serious damage to health (Article 160 PC), exposure to contagion (Article 161 PC) and failure to provide assistance (Article 162 PC).

Another group of offences providing grounds for disinheritance are offences against liberty. These offences in turn, are defined in Chapter XXIII of the Penal Code. Of these, the following should be mentioned first and foremost: deprivation of human liberty (Article 189 PC), human trafficking (Article 189a PC), punishable threats (Article 190 PC), stalking (Article 190a PC), forcing a person to behave in a certain way, failure to do so or endurance of such behaviour (Article 191 PC) and fixation or dissemination of an image of a naked person or of a person during sexual intercourse (Article 191a PC). Offences against sexual freedom and morality (Chapter XXV PC) and offences against freedom of conscience and religion (Chapter XXIV PC) should also be included. In addition, the second point of Article 1008 CC provides for gross insult to the honour of the testator or the person closest to him as a reason for disinheritance. This will be constituted in particular by cases of committing the offences of defamation (Article 212 CC), insult (Article 216 CC) and violation of integrity (Article 217 CC) [Księżak 2010, 173]. Although Article 1008 CC operates with the concept of “offence”, when assessing whether a given behaviour constitutes grounds for disinheritance, one should not, however, apply a purely penal interpretation of the concepts used in this provision [Kordasiewicz 2008, 427-30]. Following P. Księżak’s rightful statement “the concepts appearing in Article 1008 point 2 of the Civil Code are autonomous in nature and the civil court is not bound by the systematic and criminal qualification when determining whether a given conduct falls within the hypothesis of the provision” [Księżak 2010, 174]. A civil court is only bound by a final decision of the criminal court deciding whether or not an offence has been committed. On the other hand, in the absence of a conviction, the civil

⁴ Act of 6 June 1997, the Penal Code, Journal of Laws of 2022, item 1138 as amended [hereinafter: PC].

court determines on its own whether an offence has been committed [Niedośpiał 1993, 116].

Most of the aforementioned behaviours may be directed against the testator or the person closest to him or her (offences against health, freedom, gross insult to honour), only in the light of certain offences against life (e.g. infanticide, abortion), as grounds for disinheritance, persons closest to the testator, not the testator himself or herself may be affected. Without going into a detailed analysis of the above-mentioned behaviours providing grounds for disinheriting the person who has committed them, it should be noted that each of them essentially amounts to an action infringing a specific personal right (life, health, freedom, honour) of the testator or one of his or her closest persons.

As a consequence of such behaviour, the testator gains the power to disinherit, i.e. to remove the person who is a statutory heir who has committed the above-mentioned actions from the inheritance and deprive them of the right to the reserved portion of that inheritance (Article 1008 CC). It is up to the testator to decide whether the harm caused was great enough to him or her to decide to disinherit a descendant, spouse or parent. It may also happen that the testator, in spite of the harm caused, forgives such behaviour to the statutory heir. In such cases, he or she may not disinherit him or her and the disinheritance made earlier becomes ineffective. If, however, forgiveness has not taken place and the testator has effectively disinherited that person, he or she becomes excluded from the statutory inheritance and also loses the possibility to claim payment of the sum of money needed to cover the reserved portion of the estate or to supplement it (Article 991(2) CC) [Skowrońska-Bocian 2004, 156, 161-64], thus experiencing a peculiar pecuniary sanction.

2. UNWORTHINESS OF INHERITANCE (ARTICLE 928 OF THE CIVIL CODE)

Article 928 CC contains a closed catalogue of prerequisites for being declared unworthy of inheritance. According to para. 1, an heir may be declared unworthy by the court if: 1) he or she has intentionally committed a grave offence against the testator; 2) by deceit or threat, he or she has induced the testator to make or revoke a will or in the same way prevented him or her from doing one of these acts; 3) he or she has intentionally concealed or destroyed the testator's will, forged or altered his or her will or knowingly used a will forged or altered by another person.

The first of these prerequisites was indicated by the legislator using the term "intentional grave offence", which is not defined in the Civil

Code, which compels an analysis of the provisions of the Penal Code, based on which the meaning of the term “offence” (Article 7 PC) and the term “intentional” (Articles 8-9 PC) can be established. However, the provisions of the Penal Code do not provide an answer as to how to understand the term “grave”, leaving the qualification of a given offence to the judgement of the court adjudicating in the process of declaring an heir unworthy, taking into account the circumstances of the particular case. In any case, the offence in question should be directed against the testator himself.⁵ In the first instance, such offences should include offences against life⁶ and health, freedom, sexual freedom and morals, family and guardianship, honour and bodily integrity. Their commission harms the personal interests of the person against whom they are directed, in this case the testator’s personal interests.

The next two prerequisites for declaring an heir unworthy boil down to various forms of influencing the testator’s will with regard to the drawing up of a will or the annihilation or forgery of his will. In these cases, too, it is possible to speak of a violation of the testator’s personal right, which is the freedom to make a will.⁷

It is worth noting at this point that currently work is already advanced on the draft amendment of Article 928 (a draft bill amending the Civil Code and certain other acts [UD222]; Government draft bill amending the Civil Code and certain other acts [Print No. 2977]), which is to extend

⁵ The scholars have formulated a *de lege ferenda* proposal to extend the basis specified in Article 928, point 1, by committing such an offence also against the testator’s closest relatives, similarly to the one adopted in Article 1008, point 2 [Zralek 2006, 209-10; Kuźmicka-Sulikowska 2017, 146-49]. Such an extension, although in my opinion unjustified, as the inadmissibility of inheritance is relative in nature and, by definition, refers to inheritance from a specific person and not other persons, even if they are close to him, would undoubtedly increase the scope of persons whose personal rights are additionally protected by means of inadmissibility of inheritance.

⁶ Both Roman law and modern Civil Codes treat as a reason for declaring an heir unworthy the murder of the testator; see: D. 34,9,3; D. 48,20,7,4; Article 727(1) of the French Civil Code; para. 2339(1) of the BGB; Article 463(1) of the Italian Civil Code. This kind of protection of life is present in each of the systems, because if a potential heir intentionally contributed to the death, or killed the testator, it would not be appropriate if, being guilty of the testator’s death, he inherited from his victim. A testator who has been killed, on the other hand, cannot disinherit his torturer, so the only thing that comes into play in this case is the intervention of the law, which allows the person guilty of the testator’s death to be declared unworthy of inheriting from him.

⁷ Protection of the freedom to make a will by declaring oneself unworthy is also provided for in para. 2339 BGB. Interestingly, Italian law also (Article 463(4) of the Italian Civil Code) provides for this type of ground of unworthiness, although French law does not. This indicates that, although in principle the Italian Civil Code of 1942 is modelled on the French Code as far as succession law solutions are concerned, its drafters were also inspired by the solutions adopted in the BGB.

the catalogue of prerequisites for declaring an individual unworthy by two more, i.e. “persistent evasion of the fulfilment of a maintenance obligation towards the testator defined in amount by a court decision, settlement concluded before a court or other authority or other agreement” [Witczak 2022] and “persistent evasion of the duty of care towards the testator, in particular arising from parental authority, guardianship, the exercise of the function of a foster parent, the matrimonial duty of mutual assistance or the duty of mutual respect and support between the parent and the child.”⁸ Again, in the absence of mutual respect and support between parent and child, a violation of personal rights can be found.

As a consequence of being declared unworthy, an heir is excluded from the inheritance as if he had not lived to see the opening of the inheritance (Article 928(2) CC). He or she cannot inherit from the testator in question either under the law or under the will, claim the execution of an ordinary bequest (Article 972 CC), or receive the object of a debt collection bequest (Article 981⁵ CC), and loses the right to a reserved portion of the estate [Szpunar 2002, 16-17]. This type of sanction is imposed by the court at the request of the person concerned (Article 929 CC). However, also in this case, the testator has an influence on whether the person who has violated his/her personal rights will be declared unworthy, because as long as he/she is alive (as long as the violation of his/her personal rights does not cause his/her death or loss of consciousness), he/she can forgive the act in question (Article 930 CC) and prevent the filing of an effective motion to declare him/her unworthy. Thus, also the court’s declaration of an heir as unworthy, although not made by the testator himself, does not take place completely independently of the will of the testator whose personal rights have been violated. In the same way that disinheritance constitutes a specific sanction for the person who has violated the testator’s personal rights.

3. EXCLUSION OF A SPOUSE FROM THE SUCCESSION (ARTICLE 940 OF THE CIVIL CODE)

In addition to disinheritance and unworthiness of inheritance, the protection of personal interests is also served by the solution adopted in Article 940 CC. According to this provision, a legitimate application for divorce or separation through fault of the spouse, in the event that the applicant dies before the court decision is made, results in the exclusion of the guilty spouse from the statutory inheritance (para. 1). He or she is also deprived of the right to the reserved portion of the estate (as if he or she had been

⁸ See <https://legislacja.rcl.gov.pl/projekt/12354503/katalog/12839239#12839239>; <https://www.sejm.gov.pl/sejm9.nsf/agent.xsp?symbol=RPL&Id=RM-0610-173-22> [accessed: 11.04.2023].

disinherited) [Stecki 1990, 91] and the statutory superannuation provided for in Article 939 CC. However, the exclusion of a spouse from the inheritance on the basis of Article 940 CC does not deprive him or her of the donation (inheritance, share in the inheritance, bequest) provided for him or her by the spouse in the will [Trzewik 2009, 130-32]. The reason for being found guilty of divorce or separation through the fault of the spouse may also be a violation of personal rights, such as an attitude to life, health or liberty, for example, if a spouse tried to kill, physically or mentally abused or imprisoned a spouse.

In these aforementioned cases we may also find violations of personal rights sanctioned by the rules of the law of succession. The main consequences in terms of the statutory succession for the spouse committing the infringement of the spouse's personal rights will be, similarly to the case of declaring an heir unworthy of inheritance, related to the property sphere of the testator – he or she will not be able to inherit from the deceased spouse, nor will he or she be able to claim a reserved portion of her or his estate. The exclusion of the spouse from the inheritance is carried out by the court (para. 2), however, it would not be possible without a prior legitimate petition for divorce or separation through the fault of the spouse, filed during his or her lifetime.

CONCLUSIONS

The considerations carried out in this article lead to the conclusion that the protection of personal rights is also served by the mentioned institutions of the law of succession: disinheritance, unworthiness to inherit and exclusion of the spouse from the inheritance.

These institutions have multiple functions. Firstly, a preventive function, which is primarily realised through the means of protection of the aggrieved person provided for in Article 24(1) CC. This function is also realised through the aforementioned institutions of inheritance law, as the fear of not receiving the inheritance from the deceased can in many cases effectively restrain the heirs from behaviours that constitute a violation of personal rights of the deceased or those closest to him/her.⁹ In particular, if the inheritance represents a significant value, the prospect of losing it strengthens the preventive function. Although its effectiveness largely depends on knowledge of the law, it seems to be obvious to almost everyone that, for example, the testator's murderer should not inherit from him.

⁹ As M. Niedośpał notes, certain testamentary dispositions, in particular disinheritance, and sometimes the very announcement of its making, may influence the behaviour of the persons concerned [Niedośpał 2004, 78-79].

These institutions also have a repressive function, which narrows down to losing (not gaining) what the person guilty of violating personal rights would have received if the personal rights had not been violated by them, i.e. a kind of a pecuniary penalty. In the case of disinheritance one can also find a retaliatory (satisfying) function, when the testator, in the way, takes revenge, or seeks justice, by depriving the person who violated his or her personal rights cited above of the right to a reserved portion.¹⁰

Disinheritance, unworthiness to inherit and the exclusion of a spouse from the succession primarily protects personal rights such as life and health, honour and freedom, in particular the freedom to make a will. In the case of infringement of personal rights in the sphere of the freedom to make a will, the inadmissibility of the inheritance causes the most natural sanctions, taking into account the type of the infringed personal right, as the one who has acted on this freedom will not be able to inherit (nor receive a bequest or a reserved portion of the estate) from the one whose freedom to make a will has been infringed. Similarly, in the case of violation of other personal rights protected by the institutions of inheritance law, the sanction consisting in depriving the violator of personal rights of the right to inherit, a reserved portion, a bequest or a statutory superannuation from the person whose personal rights he violated in one of the previously mentioned ways seems to be the most appropriate.

REFERENCES

- Borysiak, Witold. 2008. "Ochrona członków rodziny spadkodawcy na tle historyczno-prawnym oraz prawnoporównawczym." *Zeszyty Prawnicze* 8, no. 2:149-89.
- Cisek, Andrzej. 1989. *Dobra osobiste i ich niemajątkowa ochrona w Kodeksie cywilnym*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.
- Kordasiewicz, Bogudar. 1988. "Kilka uwag o zasądzeniu odpowiedniej sumy na rzecz PCK na tle uchwały składu siedmiu sędziów SN z dnia 26 czerwca 1985 r." *Palestra* 10:21-31.
- Kordasiewicz, Bogudar. 2008. "Krąg osób uprawnionych do zachowku." In *Księga Jubileuszowa Prof. dr hab. Tadeusza Smoczyńskiego*, 420-30. Toruń: TNOiK.
- Księżak, Paweł. 2010. *Zachówek w polskim prawie spadkowym*. Warszawa: LexisNexis.
- Kursa, Sławomir P. 2008. "Powody wydziedziczenia descendentów wg noweli 115. cesarza Justyniana." *Studia Prawnicze* 1:85-137.

¹⁰ On the other hand, the basic function fulfilled by satisfaction for *non-material* damage or compensation for damage inflicted by infringement of personal rights is the compensatory function [Matys 2010, 324-36] and the literature quoted therein. However, this does not exclude the repressive (punitive) function of compensation or reparation [Kordasiewicz 1988, 26].

- Kursa, Sławomir P. 2009. "Powody wydziedziczenia ascendentów według Noweli 115 cesarza Justyniana." *Czasopismo Prawno-Historyczne* 1:17-46.
- Kuźmicka-Sulikowska, Joanna. 2017. "Popelnienie przestępstwa jako przyczyna niegodności dziedziczenia w polskim prawie spadkowym." *Wrocławsko-Lwowskie Zeszyty Prawnicze* 8:137-52.
- Matys, Justyna. 2010. *Model zadośćuczynienia pieniężnego z tytułu szkody niemajątkowej w Kodeksie cywilnym*. Warszawa: Wolters Kluwer Polska.
- Niedośpiał, Michał. 1993. *Testament. Zagadnienia ogólne testamentu w polskim prawie cywilnym*. Kraków-Poznań: Polski Dom Wydawniczy „ŁAWICA”.
- Niedośpiał, Michał. 2004. *Swoboda testowania*. Bielsko-Biała: STO.
- Skiba, Natalia. 2017. "Ochrona dóbr osobistych na gruncie polskiego prawa cywilnego." In *Dobra osobiste*, edited by Izabela Lewandowska-Malec, 213-50. Warszawa: C.H. Beck.
- Skowrońska-Bocian, Elżbieta. 2004. *Testament w prawie polskim*. Warszawa: LexisNexis.
- Stecki, Lech. 1990. "Wyłączenie małżonka od dziedziczenia ustawowego (art. 940 k.c.)." *Ruch Prawniczy, Ekonomiczny i Społeczny* 1:79-92.
- Szpunar, Adam. 2002. "Uwagi o prawie do zachowku." *Rejent* 6:13-27.
- Trzewik, Jacek. 2009. "Wyłączenie od dziedziczenia a krąg osób uprawnionych do spadkobrania." *Roczniki Nauk Prawnych* 1:123-45.
- Wierciński, Jacek. 2002. *Niemajątkowa ochrona czci*. Warszawa: C.F. Müller.
- Witczak, Hanna. 2022. "O potrzebie reformy instytucji niegodności dziedziczenia w świetle zmian proponowanych przez Ministerstwo Sprawiedliwości." *Prawo i Więź* 3:26-56.
- Załucki, Mariusz. 2010. *Wydziedziczenie w prawie polskim na tle porównawczym*. Warszawa: Wolters Kluwer.
- Zrałek, Jacek. 2006. "Niegodność dziedziczenia – uwagi *de lege ferenda*." *Rejent* 2:203-17.