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ON THE EFFECTS OF RENUNCIATION OF SUCCESSION IN THE LIGHT OF THE RIGHT OF THE RENOUNCING PARTY'S DESCENDANTS TO LEGITIME*

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Abstract. In the current legal setting, a contract to renounce succession is the only permissible agreement concerning the inheritance of a person who is still alive. The construction of this instrument may, however, raise reasonable doubts given the normative regulation of its effects. The binding force of a contract to renounce succession depends on the will of the parties thereto, as the provision of Article 1049(1) of the Polish Civil Code is of a dispositive nature. According to this provision, the renunciation of succession also affects the descendants of the renouncing party, unless agreed otherwise. Given that the Civil Code (Article 1049(1)) provides that the renouncing party and their descendants are to be treated as if they did not live to see the opening of the succession, as a result of the contract, not only will they not inherit under the law, but they will not be entitled to a force share of the estate (legitime), either. In view of the protective function of legitime and its *ratio legis*, such a normative solution can hardly be endorsed. The point is that it results in abstract disinheritance, that is, a situation in which individuals entitled to legitime are deprived of their right without any justification, i.e. despite the absence of grounds for disinheritance. In addition, the deprivation of their forced share is decided by the testator and a third party, i.e. the heir at law, who, when entering into the contract, does not act on behalf of his or her descendants but only on their own.

Keywords: renouncement of succession; descendants of the renouncing party; right to legitime; deprivation of legitime.

* Although this paper looks at a contract to renounce succession, it should be noted that, *de lege lata*, no more doubts exist as to whether it is possible to enter into a contract to renounce a reserved share of the estate (legitim) only. The legal basis is provided in Article 1048(2) of the Act of 23 April 1964, the Civil Code (Journal of Laws of 2023, item 1610 as amended [hereinafter: CC]). It reads that the renunciation of succession may be limited only to the right to a legitim in whole or in part. The cited provision was incorporated in the CC by the Act of 26 January 2023 on the Family Foundation (Article 129(12), Journal of Laws of 2023, item 326).

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1. THE *RATIO LEGIS* OF A CONTRACT TO RENOUNCE SUCCESSION

As regards contracts concerning the inheritance of a person who is still alive, the Polish Civil Code only allows a contract to renounce succession. In accordance with Article 1048(1) CC, a heir at law may renounce succession from the future testator through a contract. Any heir at law (with the exception of the municipality of the testator's last place of domicile and the State Treasury) may be a party to this contract, regardless of whether and in what sequence they would acquire the title to inherit from the future testator by law as at the time the contract is concluded [Kosik 1986, 560; cf. Pazdan 2015, 1140]. The consequences of the contract can be far-reaching, indeed, since, unless the parties agree otherwise, the renouncement of succession also extends to the renouncing party's descendants (Article 1049(1) CC). In principle, these consequences affect both the renouncer's descendants who live at the time of entering into the contract and those born thereafter. Also, any changes made to the contract aimed to modify its effects may also eliminate them with regard to selected descendants of the renouncing party [Pazdan 2021, Article 1049, Nb 2 and 3]. Following the contract, pursuant to Article 1049(2) CC, the renouncer of succession and his or her descendants, who are affected by the renunciation, are denied the succession as if they had been already dead during the opening thereof. The effect that Article 1049 CC produces is relevant not only for intestate succession from the testator, who is a party to the renunciation contract, but also for any extra rights vested with the renouncing party under intestate succession, including the right to a legitim, if, of course, the contract was concluded with the testator's spouse, descendant, or parent (and taking account of the legal consequences arising from adoption, see Articles 936 and 937 CC). If, as highlighted above, the renouncing party and, as a general rule, his or her descendants, are treated as if they had been already dead during the opening of the succession, and this is tantamount to the fact that they "who would not have been appointed to inherit by virtue of statutory law" (Article 991(1) CC) from that testator, they will not be entitled to a legitim, either.

From the testator's perspective, the significance of a contract to renounce succession is primarily reflected in the fact that those entitled to inherit under Article 991 CC will not be able to lodge any claims after his or her death, in particular to claim any pecuniary benefit as their reserved share. The doctrine shows that this kind of contract is most often concluded with a view to depriving a heir at law of his or her right to a legitim [Gwiazdomorski 1959, 74-76; cf. Kosik 1986, 590; Pazdan 1997, 186 and Rott-Pietrzyk 2006, 112-13], thus the effects of the renouncement contract are primarily manifested in the denial of that right [Księżak 2012, 121]. The doctrine further shows

that the renouncing of succession "coincides" with the renouncing party's acquisition of a significant pecuniary benefit. In other words, a fair distribution of the estate among the heirs takes places owing to the renunciation. If the renouncer enjoys a measurable benefit while the testator is still alive, there is no justification for receiving it by inheriting from that testator [Kordasiewicz 2015, 1048-1049]. Certainly, the entering into a contract to renounce succession should circumstances justifying the disinheritance of a person entitled to a reserved share occur must not be ruled out (Article 1008 CC). Not always, however, will the testator be willing to disclose the improper conduct of a close relative that creates grounds for disinheritance. Such a disclosure is more than likely to cause grief, humiliation, and shame.

2. THE *RATIO LEGIS* OF LEGITIM

Those can enjoy the right to a legitim who are related to the testator in a particular line and degree or remain in a marital bond with them. Upon the opening of the succession, this is the only formal criterion that is subject to verification. It means that the legal status of the potential beneficiaries of the estate is the same regardless of the actual relations among them. However, these actual relations, for reasons attributable to the entitled or the testator, may vary due to the different types of ties existing among them. In exceptional cases, such ties may not have even been established or may have been permanently broken. Anyways, this purely formal criterion, which looks at the familial nexus that comes from kinship or marriage, seems legitimate [Wierciński 2009, 84; Zachariasiewicz 2006, 201]. There is no doubt that the special status of the parties of relationships governed by family law, which is also reflected in their special status in succession law, has been awarded to them based on the legislator's assumption that a certain family pattern exists under family law where the legal bond stems from the actual bond based on intimacy, support, and care [cf. Strzebińczyk 2009, 477]. This assumption, however, is somewhat idealistic. Life shows that there can be major discrepancies between the legal situation (i.e. there is a legal bond between persons in formal terms) and the actual state of affairs where the actual bond is not only significantly weakened or broken, but also the conduct of one of the parties towards the other calls for social disapproval or should even be criminalized. As pointed out above, in extreme cases, such bonds may not have been established at all. In such circumstances, the legal status of a person who is a party to a particular relation under family law should be revised with regard to the "model" or "pattern" adopted by the legislator by depriving them of certain benefits, as such benefits should be hinged not only upon the existence of a bond in the legal sense but also upon the persons maintaining a de facto relation under family law.

Otherwise, the consequences of being a party to a relation under family law, including with regard to succession, would be difficult to accept [Witczak 2021, 108-10 and the literature referenced therein]. To eliminate such situations, the legislator provides for the option of denying the succession to a potential heir or depriving a potential beneficiary of the estate of the benefits that they could obtain after the testator's death. This option is available to the testator in the first place. Not only can they exclude a heir at law from succession, but they may also disinherit him or her; moreover, in cases of the heir's unworthiness of succession, if the court so decides, the option is available to anyone who has an interest in it (Article 929 CC, sentence two). Disinheritance and debarment from succession have a profound ethical justification and help prevent situations in which a heir who persistently and wilfully fails to fulfil his or her family duties towards the testator or who intentionally commits an offence against the latter obtains any advantage, either from the estate or as a result of the testator's death.

As noted elsewhere, maintaining family relations under family law, especially in a marriage or close kinship, goes with certain rights and duties both during the life of the parties and also in the event of the death of one of them. It happens that the testator's exercise of their testamentary freedom is misaligned with the expectations of the members of the deceased's close family and can be more than disappointing for them inheritance-wise. This is due to the fact that the testator can appoint anyone to succession or transfer the estate to anyone that he or she chooses, i.e. anyone with a capacity to inherit, while ignoring the members of the closest relations. As a consequence, these parties will be deprived of the protection that was provided while the deceased was still alive, such as, for example, child support maintenance. Since the person responsible, due to their position in the family, for providing for the family members is no longer there, these needs could still be satisfied from the assets left by the testator. As ruled by the Court of Appeal in Katowice, "The right to a legitim, as contributing to the maintenance of the testator's immediate family members, should be considered an extension of the child support obligation incumbent on the deceased."[1] The Court of Appeal in Warsaw shared a similar view that "The key functions of the right to a legitim are to contribute to the maintenance of the testator's immediate family members (as an extension of the child support obligation) ...and to secure the performance of the intergenerational contract, as well as securing the family's duty to render support and assistance."[2] The right to a legitim protects "direct heirs at law from being harmed by the testator."[3]

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[1] Grounds to the judgement of 18 November 2020, ref. no. VI ACa 374/20, Lex no. 2583919.

[2] Grounds to the judgement of 23 January 2014, ref. no. V ACa 742/13, Lex no. 797350.

[3] Judgement of the Court of Appeal in Katowice of 23 January 2014, ref. no. V ACa 742/13, Lex no. 1439043.

How the testator's immediate family will be safeguarded depends on the legislator and the choice of a legal instrument that can supply relevant safeguards. Certainly, it imposes restrictions on testamentary freedom, since the deceased's closest family members will receive certain benefits after the testator's death, regardless of what the testator decides to do with their estate mortis causa [Księżak 2012, 23]. In other words, the testator will never be able to dispose of their estate entirely freely, including with the exclusion of his or her relatives.[4] Some authors are right to argue that "since the deceased was a member of the family, he or she cannot ignore this fact by demanding certain action mortis causa, given the crucial importance of family interests if so happens" [ibid., 56-57].

De lege lata, the protection of the deceased's immediate family members is afforded primarily through the institution of a legitim. Both the doctrine and case-law seem to highlight that an individual has at least a moral duty to support his or her family. Part of this duty is to allow their relatives to enjoy certain benefits from the estate. However, as noted elsewhere, who benefits from succession and on what terms is determined by virtue of statutory law. "In this regard, there are individuals among the family members, to whom it is obligatory to transfer certain benefits from the deceased" [Załucki 2019, Article 991, thesis 1]. And this is in fact the role of a legitim: to transfer to the testator's immediate family members named in the law certain benefits from the estate independently of, or even against, the testator's will.[5] Deprivation of a reserved share may only take place when some strictly defined statutory grounds exist. They depend on the legal nature of an event under civil law that renders this protection ineffective. This is to be discussed below. A legitim falls to heirs who "would have been appointed to inherit by virtue of statutory law" (Article 991(1) CC)[6] if no will had been drawn up. These heirs should (obviously) enjoy a statutory title of succession and who would inherit in the face of negative conditions for the acquisition of the inheritance, i.e. the absence of events under civil law that create grounds for exclusion from succession. It should be emphasized that such circumstances do not involve negative will. Deprivation of the right to a reserved share upon the will of the testator may in fact occur only

[4] Judgement of the Court of Appeal in Łódź of 25 July 2013, ref. no. I ACa 141/12, Lex no. 1356561.

[5] Cf., for example, justification to the judgement of the Supreme Court of 28 April 2005, ref. no. III CK 569/04, Legalis no. 265946; justification to the judgement of the Court of Appeal of 31 August 2012, ref. no. I ACa 1349/11, Lex no. 1120012; judgement of the Court of Appeal in Szczecin of 8 June 2017, ref. no. I ACa 102/17, Lex no. 2379141; decision of the Supreme Court of 5 April 2018, ref. no. II CSK 85/18, Lex no. 1770069 and judgement of the Court of Appeal in Szczecin of 28 January 2021, ref. no. I ACa 544/20, Lex no. 2584157.

[6] I do not include cases of supplementation of the reserved share.

in disinheritance in the strict sense (Article 1008 CC)[7] [Księżak 2012, 153 and the literature referenced therein].

Testamentary freedom is not, therefore, of an absolute nature. Any limitations thereto are closely linked to the requirement to respect the constitutional guarantees of the protection of marriage, parenthood, family (Article 18 of the Polish Constitution), and family life (Article 47 of the same). In the view of the Constitutional Tribunal, the right to a legitim remains intertwined with the imperative to protect marriage, parenthood, and family and clearly serves the purpose of strengthening the family bond. The title of the members of the testator's family to have a share in his or her estate combined with confining the testator's testamentary freedom stems from the constitutional principle of protecting the values named in Article 18 of the Polish Constitution [Borysiak 2016, Article 18, Nb 182; Justyński 2019, 7]. The Constitutional Tribunal clearly says that the constitution does not stipulate any guarantees for the institution of a legitim, nor does it prescribe that it be established or indicate its legal nature. Guarantees, if any, only concern the protection of the testator's immediate family members, yet the model of this protection is at the discretion of the legislator. Undoubtedly, the absence of any control of testamentary freedom in the context of protecting the testator's closest relations would go against the basic law. Despite the fact that the constitutional standards do not warrant a constitutional subjective right to a legitim, the legislator assumes the obligation to create relevant legal solutions that, in the event of having to dispose of an estate mortis causa, will safeguard the financial and legal situation of certain persons who cultivate constitutionally relevant family relations with the testator. The Constitutional Tribunal unequivocally held that the right to a legitim does not violate the institutional guarantees of the right of succession and does not render an estate non-permanent in the event of death. Finally, the tribunal leaves the model of protection of the testator's closest relations to the legislator's discretion.[8]

3. WAYS TO DENY THE RIGHT TO A LEGITIM

Albeit any deprivation of the right to a legitim is immanent to the institution of disinheritance, it is clearly not the only way to produce this kind of effect. The list of circumstances under civil law that result in the loss

[7] Cf. justification of the resolution of the Supreme Court of 14 June 1971, ref. no. III CZP 24/71, Lex no. 1299 and the resolution of the Supreme Court of 10 April 1975, ref. no. III CZP 14/75, Lex no. 1875.

[8] See grounds to the judgement of the Constitutional Tribunal of 25 July 2013, ref. no. P 56/11, Legalis no. 722201.

of the right to a reserved share is relatively long and they can be of a different legal nature.

The legislator has defined disinheritance as a concept (Article 1008 CC). It should be understood as the act of depriving the parties named in Article 991(1) CC of the right to a legitim based on the testator's will due to improper conduct [Kordasiewicz 2015, 1051; Idem 2008, 418-19; Skowrońska-Bocian 2004, 152; Załucki 2010, 48; Witczak 2013, 104]. What follows, disinheritance is considered an exceptional institution: a private punishment for (at least) unethical conduct of the righholders [Księżak 2012, 161]. It cannot be ignored that disinheritance involves a penalty "which goes beyond the mere exclusion from succession; more than that, it essentially suppresses the exclusion itself" [ibid., 163].

The specific nature of disinheritance is that it is the only civil-law instrument to be employed by a testator to independently deprive their heir of a reserved share [Gwiazdomorski 1959, 403]. The testator's subjective right, having the normative power of unilaterally creating new legal circumstances, has a special character [Borysiak and Górniak 2024, Article 1008, Nb 6]. The testator can only exercise his or her power to disinherit in one way, i.e. by drawing up a last will; by extension, they can only personally deprive someone of the right to a legitim (Article 944(2) CC), provided that they exercise the full capacity to perform acts in law (Article 944(1) CC). The testator's will to deprive a specific person of his or her right to a reserved share of the estate must be exercised and expressed in a defectless manner and in an appropriate form, along with indicating the rationale for disinheritance.

As pointed out above, disinheritance in the strict sense, besides depriving the rightholder of the right to a legitim, has "a very weighty and severe effect for the disinherited person, namely excludes them from intestate succession" [Gwiazdomorski 1972, 1582]. Although such an effect is not stipulated anywhere in the CC and, therefore, it cannot be assumed that exclusion from intestate succession occurs *ex lege* as a consequence of disinheritance, yet it is unassailable that disinheritance, as resulting even in the loss of the right to a legitim (*argumentum a minore ad maius*), also deprives the rightholder of the option if inheriting by virtue of statutory law [Witczak 2013, 45-51; Kosik 1986, 544; Niezbecka 1992, 22].[9] In other words, disinheritance in the strict sense "involves a penalty which goes beyond the mere exclusion from succession; more than that, it essentially suppresses the exclusion itself" [Księżak 2012, 163]. The strict understanding of disinheritance therefore entails the exclusion from inheritance and from a reserved share [Skowrońska-Bocian 2004, 152; cf. Niedośpiał 1993, 119]. The literature on the subject

[9] See also grounds to the resolution of the Supreme Court of 14 June 1971, ref. no. III CZP 24/71, Lex no. 1299.

even contains a view that the deprivation of the right to a legitim, which embraces the exclusion from succession, is a single testamentary instruction which "should not be divided by creating a guise of having two different instructions but only linked externally" [Gwiazdomorski 1972, 1581].

In most cases, disinheritance is a penalty for failure to fulfil family duties, provided that the failure can be attributed to the individual entitled to a reserved share, as well as being culpable and persistent.[10] It is no more challenged that the effect of depriving a disinherited person of the possibility to inherit by virtue of statutory law is independent of the effectiveness of disinheritance *sensu stricto*, i.e. the indication in the last will of a reason from among those listed in Article 1008 CC. Failure to provide such a reason or to indicate one beyond those provided for in Article 1008 CC results in disinheritance while keeping the right to a reserved share.[11] Should this be the case, such disinheritance is considered groundless, ineffective, or invalid [Witczak 2013, 105 and the literature referenced therein]. The drawing up of a negative will also produces this effect. Negative will stands out due to its content. It contains a disposition or dispositions excluding the heir or heirs at law from intestate succession, and the testator does not nominate another person as heir instead [Idem 2015, 35-39 and the literature referenced therein]. Exclusion from inheritance in a negative will is "essentially purely abstract (i.e. causeless)" [Biernacki 1949, 133, 135-36]. Therefore, the direct effect of a negative will is the heir's failure to be admitted to succession (the heir does not succeed at law). The effect is the same as in all the other cases of exclusion from succession (cf. Articles 928(2), 940(1), 1020, 1049(2) CC).[12] Yet, under a negative will, an excluded heir does not lose the right to a legitim[13] [Niezbecka 1992, 24].

As pointed out above, the effect of losing the right to a reserved share will also be seen if the testator enters into a contract to renounce succession,

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[10] Grounds to the judgement of the Court of Appeal in Katowice of 6 March 2013, ref. no. I ACa 4/13, Lex no. 1293610.

[11] See the resolution of the Supreme Court of 13 March 2008, ref. no. III CZP 1/08, OSNC 4(2009), item 52.

[12] Cf. also Articles 8(1), 12(2), 26(1) and 43(1) of the Decree of 8 October 1946, the Law of Succession (Journal of Laws No. 60, item 328 [hereinafter: LS]).

[13] Cf. Article 31 in fine LS which provides that the exclusion from intestate succession does not affect the rights of a heir at law (see Article 145 LS) to claim a legitim. Correspondingly, the effect of exclusion from intestate succession is independent of the act of forgiving a disinherited person. Yet, the sole result of this act is the right of the forgiven person to keep the legitim. Condonation eliminates the effect of deprivation of the right to a legitim, but it does not neutralize the effect of denying succession to a heir at law. Exclusion from succession can only be invalidated by an appropriate modification or revocation of the last will. Mere forgiveness beyond the testamentary reality will not suffice (resolution of the Supreme Court of 14 June 1971, ref. no. III CZP 24/71, Lex no. 1299).

provided that the other party thereto is heir at law, as provided for in Article 991(1) CC. Deprivation of the right to a legitim will also take place after a court ruling on debarment from succession (heir's unworthiness to inherit). In accordance with Article 928(2) CC. an unworthy heir is excluded from succession as if he or she had predeceased the opening of the succession. Likewise, a judgment passed under Article 940 CC has the effect of depriving the testator's spouse of the right to a legitim, although the law does not prescribe that the spouse excluded from succession be treated as if he or she had not lived to the opening of the same [Witczak 2013, 393-94 and the literature referenced therein]. The rightholder may also waive his or her right if they make a declaration of rejection of the inheritance. If so happens, he or she is regarded as not living up to the opening of the succession (Article 1020 CC) and, therefore, they deprives themselves of the reserved share, since in such a situation he or she "would not hold the title to inheritance by the action of the law." The application of the provision of Article 5 CC[14] by a court of law in a process involving a legitim may lead to a partial or, in extreme cases, even complete deprivation of the right thereto. This conclusion can be drawn from the legal practice. It should be stressed, however, that the literature on the subject clearly shows that what determines the abuse of the law "by a claim for payment of a legitim are only circumstances occurring between the rightholder and the heir. Only they can be subject to change prospectively. Now, the circumstances occurring between the rightholder and the deceased testator ... can only be taken into account as additional and amplifying the state of contradiction with the criteria of abuse of the law. In isolation, they cannot stand behind a declaration of such an abuse" [Justyński 2005, 115; Idem 2023, 5-6].[15] Whereas the claim for a legitim is legitimate on grounds of the special family bond existing between the entitled persons and the testator and enables the testator to fulfil

[14] However, it should be noted that extreme approaches can be found across the Supreme Court's case-law, i.e. allowing, although only in exceptional cases, deprivation of the right to a legitim under Article 5 CC and definitely challenging such a possibility due to the fact that, in principle, the application of Article 5 CC may not cause a permanent loss of a subjective right (see in particular the judgement of the Supreme Court of 28 March 2018, ref. no. V CSK 428/17, Lex no. 2519624) with grounds and grounds to the judgement of the Supreme Court of 27 March 2024, ref. no. II CSKP 2091/22, Legalis no. 3063433.

[15] As in grounds to the judgement of the Court of Appeal in Białystok dated 31 March 2011, ref. no. I ACa 99/11, OSABG 1 (2011), p. 25. Cf. the resolution of the Supreme Court of 19 May 1981, ref. no. III CZP 18/81, Lex no. 2666 and the position of the Court of Appeal in Poznań, according to which reference to the principles of social co-existence when assessing a claim for a legitim "should rather protect the testator in a situation where the amount of the legitim proves excessive, e.g. as a result of a sudden economic shift or other phenomena beyond the heir's control but affecting the value of the inheritance" (as in the judgement of 16 December 2009, ref. no. I ACa 896/09, Lex no. 628229); see also the grounds to the judgement dated 13 February 2012, ref. no. I ACa 1121/11, Lex no. 1133334.

his or her moral duties towards the immediate family members, "the application of Article 5 CC should not therefore erode the aim of the provisions on legitim but should only save the testator from having to pay an excessive or disproportionate reserved share or from feeling aggrieved by the obligation to pay."[16] The rightholder's conduct cannot be ignored, which shows whether and how he or she had met their family duties, particularly towards the testator. Also, when ruling on a reserved share, the court cannot refuse to perform the moral assessment of the behaviour of the person entitled to it.[17] Due to the exceptional nature of Article 5 CC, refusal to grant legal protection or its significant limitation on the basis of the article "must be justified by circumstances that are glaring and unacceptable against the backdrop of the commonly respected social values."[18]

4. LOSS OF THE RIGHT TO A LEGITIM AS A RESULT OF A CONTRACT TO RENOUNCE SUCCESSION. THE LEGAL STATUS OF THE RENOUNCING PARTY'S DESCENDANTS

Obviously, the deprivation of the right to a legitim following the conclusion of a contract to renounce succession differs significantly from the other civil law events discussed above. The fundamental differences occur in two areas. The first one is the very procedure of deprivation; the other is the cause of disinheritance, in this case understood as effect in the form of deprivation of a legitim.

Succession is renounced under a contract, yet the effects thereof do not only affect the parties but extend, by the action of the law, to third parties (who are not parties to that act in law). In point of fact, the primary outcome of the contract to renounce succession is to exclude the renouncing party, as well as his or her descendants, from intestate succession. As noted elsewhere, the provision contained in Article 1049(1) CC is dispositive, in other words, the effects provided for in the law occur in the absence of the parties' will to act otherwise. Since the law requires that the renouncing party be

[16] Grounds to the judgement of the Court of Appeal in Gdańsk of 27 January 2016, ref. no. I ACa 820/15, Lex no. 2259351. See also the judgement of the Court of Appeal in Łódź of 25 July 2013, ref. no. I ACa 141/12, Lex no. 1356561. Cf. judgement of the Court of Appeal in Wrocław of 31 August 2012, ref. no. I ACa 1349/11, Lex no. 1120012.

[17] Grounds to the judgement of the Court of Appeal in Warsaw of 21 October 2010, ref. no. I ACa 332/10, Lex no. 785393.

[18] Grounds to the judgement of the Court of Appeal in Szczecin of 8 June 2017, ref. no. I ACa 102/17, Lex no. 2379141. However, cf. the position of the Court of Appeal in Wrocław, according to which if no conditions provided under Article 928 CC or Article 1008 CC occur, the claim for a legitim is not regarded as conflicting with the principles of social co-existence" (grounds to the judgement of 31 August 2012, ref. no. I ACa 1349/11, Lex no. 1120012).

treated as if he or she had not lived to the opening of the succession, a further-reaching effect of the contract is to deprive the renouncer and their descendants of their right to a reserved share.

In view of the special protection that a legitim affords to the deceased's immediate family members, the testator can deprive persons entitled to that share of the estate only, as highlighted earlier, if the statutory conditions are met as named in Articles 1008-1010 CC. First and foremost, the so-called abstract disinheritance is not allowed, i.e. one without pointing to the cause thereof from among those listed in Article 1008 CC. Moreover, where the deprivation of a legitim follows a court ruling, as in the case of unworthiness to inherit or exclusion of the testator's spouse from intestate succession under Article 940 CC, the reasons for deprivation must occur as expressly indicated in the relevant provisions of the CC – an unethical behaviour of the rightholder towards the testator at a minimum (which, in the latter case, is a breach of marital duties leading to the discontinuation of the conjugal community). Even in a situation of "judicial disinheritance," in its decision to reduce the amount of legitim due to the claimant, the court, applying Article 5 CC, is most often guided by his or her behaviour of persistent and culpable failure to fulfil family duties towards the testator. Such cases are likely to occur where, despite existing grounds for disinheritance, the testator failed to disinherit or was unable to do so for reasons beyond his or her control, or, despite existing grounds justifying the unworthiness of the heir, no one brought the case to court in due time. In such situations, only having resort to Article 5 CC can help seek justice by reducing a legitim or, in extreme cases, depriving a person, whose behaviour towards the testator was reprehensible enough, of that share of the estate. Beyond that, it should be noted that the case-law has also seen opinions that the provisions of Articles 1008 and 928(1) CC cover only cases of discreditable and particularly reprehensible conduct of heirs towards testators, thus referring only to a gross violation of the principles of community life and providing for the complete deprivation of the entitled person of a reserved share as a consequence of such a conduct. In contrast, they do not cover heirs' behaviours towards testators which are contrary to the principles of community life to such an extent that, in the view of the general public, it would be considered unjust and immoral to grant the rightholder a full legitim. Yet, neither do they cover cases that are not so grossly reprehensible as to justify the deprivation of a person of the right to the entire reserved share as a result of disinheritance or unworthiness to succeed.[19]

[19] Grounds to the judgement of the Court of Appeal in Łódź of 11 July 2017, ref. no. I ACa 1718/16, Legalis no. 1675861.

In cases where a contract to renounce succession has been entered into, the rightholder is actually deprived of their legitim without a cause. Obviously, the rejection of inheritance does not require the statement of the cause, either, yet it is left solely to the discretion of the rightholder who has been appointed to inherit.

While the effects of renouncing succession are fully understandable as regards the renouncer, the effects of this contract in relation to the renouncer's descendants are somewhat puzzling. As noted earlier, it applies to situations in which the parties to a contract to renounce succession have not excluded the effect regulated by the dispositive provision of Article 1049(1) CC in its content. Indeed, whether the solution proposed by the legislator is systemically coherent can be thrown into doubt. On the one hand, as already mentioned above, the Polish legal order safeguards the interests of the testator's closest family members by the institution of a legitim, which is limited subject-wise, while, on the other hand, the applicable law allows the testator, by arrangement with a third party, to abstractly deprive specific persons of their reserved share. If it were not for the express "endorsement" by the legislator, this act in law performed by the testator with his or her legal heir could be viewed as aiming to circumvent the law (Article 58(1) CC), and, therefore, absolutely null and void, since its effect would be to deprive the rightholder of their "mandatory share of the estate." At this point, it should be noted that the literature on the subject proposes a view that only in exceptional cases will a contract to renounce succession have to be deemed invalid due to the aim of harming the descendants of the renouncing party and, for example, depriving them of their potential right to a legitim. To illustrate the point, imagine a situation in which a person, who meets the criteria of unworthiness to inherit and cannot expect the testator's forgiveness, enters into a renouncement contract with the testator which aims to "deprive the descendants of the renouncing party of succession and deprive them of their legitim because the testator wishes to do so," although the author himself admits that this case should be considered controversial [Borysiak and Górniak 2024, Article 1049, thesis 16]. This opinion is not common in the doctrine and often legitimately challenged, given the unambiguous wording of Article 1049(1) CC [Wolak 2016, 282]. This, in turn, leads to a question of the constitutionality of this solution.

A contract to renounce succession is also unique as it determines, next to the testator, the order of succession. The frequently cited provision of Article 941 CC says that an estate can only be disposed of mortis causa through a last will. Yet, a contract with a third party can also work in the same way. The point is not that a third party is excluded from intestate succession because this exclusion will not worsen the legal situation of the co-heirs at law (conversely, it may only improve it), besides he or she can decide their legal

situation, but that the third party, along with the testator, also makes a decision on the exclusion of the descendants, who would otherwise inherit in the third party's place by virtue of statutory law and, consequently, on depriving them of their reserved share.

To more points should be highlighted on top of that. First, is should be determined which parties are affected by a renunciation contract, as proposed by the legislator in Article 1049(1) CC, patently unfairly. According to the wording of the said article, these are "the descendants of the person who renounces." As noted elsewhere, any heir at law can renounce succession, with the exception of the municipality of the testator's last place of domicile and the State Treasury. However, in view of the scope of the subject in question, account should be taken of the descendants of those heirs at law who are entitled to a legitim, in particular three "categories" of persons: the testator's spouse, his or her children (descendants), and his or her parents; additionally, as already mentioned earlier, this group should also include the testator's adoptees.

First, it seems evident that the effects of a contract to renounce succession cover only those descendants of the renouncing party who, under the law on intestate succession, would replace the renouncing party if he or she were no longer alive during the opening of the succession or, pursuant to the provisions of the CC, would be regarded as deceased during the opening procedure (Article 928(2) CC; Article 1020 CC). *De lege lata*, the effects of the said contract extend to include the descendants of the renouncer in three cases: if the renouncing party is a child or a more distant descendant of the testator (Article 931(2) CC), the testator's siblings (Article 932(5) CC), or the testator's grandparents (Article 934 CC), however, in the case of the latter, *de lege lata* these can only be their children and grandchildren [Pazdan 2015, 1145]. The descendants of the renouncing party are therefore "those individuals who step in his or her place in intestate succession if he or she did not live to the opening of the succession or is deemed deceased in light of the provisions of the Civil Code. Therefore, it does not concern the testator's siblings when the testator's parents are those renouncing succession" [Księżak 2012, 122; cf. Pazdan 1997, 194]. Similarly, the parties concerned are not the testator's parents when the renouncing parties are his or her grandparents [Pazdan 2021, Article 1049, Nb 1 and the literature referenced therein].

The views in the doctrine are not unanimous when it comes to the renouncement of succession in relation to the descendants of a renouncing party. Debatable are the effects of the contract in which either the testator's mother or father renounces to succeed.

Pursuant to Article 932(4) CC, the share of a parent who dies before the opening of the succession (or who is regarded under the Civil Code as deceased during the opening) does not fall to his or her children but to

the testator's siblings. Such a wording of the provision shows a link between the title of the testator's siblings to inherit the share of the testator's deceased parent(s) and the relationship to the testator and not the relationship to that testator's parent whose share is to be inherited. In other words, the siblings have their own title to inherit that share of the estate that has been freed by the testator's deceased parent, and they do not take over that share as descendants. This interpretation seems convincing when comparing the content of Article 932(4) and that of Article 934 CC, the latter defining the terms of succession by the testator's grandparents and the consequences of their death before the opening of the succession. As worded in the first sentence of Article 934(2) CC, if any of the testator's grandparents died before the opening of the succession, that share in the estate which would have gone to him or her would pass to their children. If a child of any of the testator's grandparents died before the opening of the succession, the share of the estate which would have gone to him or her would go to their children in equal parts (Article 934(2^1) CC). In this provision, the legislator determines the order of succession as follows: the descendants (children and grandchildren) of the deceased with a title to the estate step in his or her place first. At the same time, the legislator specified the manner of succession if the first method fails due to the lack of descendants (children and grandchildren). The other grandparents, who are to inherit the share of the deceased childless grandparent, acquire their own right to his or her share of the estate, based on their family bond with the testator and not with the grandparent who did not live until the opening of the succession. The comparison of the last two paragraphs of Article 934 CC demonstrates that the legislator, wishing to mandate succession by the descendants (children and grandchildren) of a rightholder who died before the opening of the succession, uses wording that clearly reveals such an intention (cf. also Article 931(2) CC). If, on the other hand, the legislator's intention is to establish a separate group of persons entitled to the freed share, it provides a mode detailed solution by reference to their blood relationship (or relationship by affinity – cf. Article 934^1 CC) with the testator[20] [Pazdan 2005, 44-45, 47].

However, a view has also been proposed in the literature that, following the 2009 amendment to the terms of intestate succession, the effects of a contract to renounce succession should be construed differently if the renouncing party is a parent or parents of the testator. Thus, in the first case, the effects of the contract will affect the testator's siblings, but they will not affect

[20] Similarly on this point, the Supreme Court in the Resolution of the Chamber for Civil Matters of 14 October 2011, ref. no. III CZP 49/11, "Orzecznictwo Sądu Najwyższego Izba Cywilna" 3 (2012), item 35. The opinion of the Supreme Court was voiced before the amendment of Article 934 CC by the Act of 28 July 2023 amending the Civil Code and some other laws (Journal of Laws item 1615).

the testator's own descendants, who are more distant descendants in relation to his or her parents. Renouncement of succession by one of the testator's parents will only affect their descendants who are the testator's biological siblings (coming from the parent who has renounced the succession and the testator's other parent) and the testator's step-siblings (coming from the parent who has renounced the succession and another person); however, the renouncement will not extend to the testator's step-siblings who descend from the testator's other parent who has not renounced to inherit it from the testator [Borysiak and Górniak 2024, Article 1049, Nb 10-11]. At the same time, it has been acknowledged that the effects of a contract to renounce succession concluded by the testator's grandparents will not extend to the testator's parents. Still, the renouncement by both testator's grandparents will exclude their children and grandchildren, i.e. aunts and uncles and first cousins, from succession.

The normative structure of the succession renouncement contract as regards its effects actually deprives the descendants of the renouncing party of any influence over their held rights. Obviously, under the law, the effectiveness of such a contract does not dependent on the descendant's consent. Also, he or she has no control over the concluded contract. Even if the descendants of the renouncing party are minors, the renouncer does not need to seek the approval of the guardianship court as in the case with the rejection of succession. The situation in which the deprivation of the right to a legitim occurs in accordance with applicable law is unacceptable, given that the renouncing party does not act on behalf of his or her descendants but exclusively on their own. While, according to the view widely held in the literature, the descendants of the renouncing party can render a renouncement contract null and void by entering into an agreement removing its effects, this entitlement can hardly be considered sufficient to sanction the structural defects of the original contract. The representatives of the doctrine are unanimous about a view that a contract to renounce succession may be concluded not only between the first parties concerned but also between those descendants of the renouncer who will be affected by its execution. There are dissenting opinions, however, regarding the admissibility of entering into such a contract by the renouncer's descendants after his or her death. The prevailing view in the doctrine is that it is possible as long as the renouncing party dies before the testator. On the contrary, few representatives of the doctrine argue that the death of the renouncer does not affect the admissibility of such a contractual instrument primarily because it does not exert any impact on the legal position of the renouncer, and, therefore, it does not interfere with the rights of third parties [for more, see Borysiak and Górniak 2024, Article 1050, thesis 6 and 6.1].

CONCLUSIONS

Although the principle of contractual freedom does not find application in the law of succession, in the case of the contract provided for in Article 1048 CC, the legislator leaves its parties relative freedom to decide its effects. When assessing an act in law from the viewpoint of Article 58 CC, if not for the legal nature of the provision contained in Article 1049(1) CC, it can be inferred that in a situation where the parties to a contract to renounce succession do not neutralize its effects with regard to the renouncing party's descendants, the contract would in fact be aimed at circumventing the law because its execution would leave the persons entitled under Article 991 CC unprotected, although the law guarantees otherwise. Such a regulation is hard to understand, since an abstract, and causeless at the same time, exclusion from succession by the testator him or herself cannot produce such an effect, whereas a contract with a party that should have no influence on the rights of others actually does. System-wise, this solution should be deemed defective.

Full endorsement should be given to the view expressed in the literature and concerning the rules of determining a legitim fund. It says that the law of succession should "follow the principle that the testator may not, by his or her dispositions, create limitations or exclusions of the protection guaranteed by the reserved share" [Księżak 2012, 102]. It seems clear that this principle should apply even more to acts in law performed by the testator with third parties, regardless of what legal relationships exist between the other party to the act (performed with the testator) and parties secured by the statutory protection.

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