СЕКЦІЯ 3
ПРИВАТНО-ПРАВОВІ ЗАСАДИ РЕАЛІЗАЦІЇ ПРАВ ЛЮДИНИ

SECTION 3
«PRIVATE AND LEGAL BASIS OF REALIZATION OF HUMAN RIGHTS»

УДК 340

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IN SEARCH FOR AN EFFICIENT WAY TO CREATE POSTMORTAL SUCCESSION: QUESTIONED MONOPOLY OF INHERITANCE LAW?

The pandectistic assumption that all effects of death of a party of market exchange are regulated in a separate chapter of the civil codes devoted to inheritance law for a long time has been a founding principle of modern legislations. However, at the same time, legislators all around the world happen to regulate numerous institutions specifically when it comes to their post mortal succession (quasi succession) [4, 4].

The resulting question remains to what extent inheritance law should bear the monopoly to govern postmortal succession. And if this monopoly is undermined, due to protection of specific values characteristic to a particular institution only, the necessary question extends to the amount of such exceptions admissible to uphold that inheritance of rights remains as the principal effect of death in civil law.

Those questions are valid regardless of the given legal system. However, in this paper they will be primarily be based on the Polish, German and American law.

I. Principle of monopoly of inheritance law

The structure of inheritance law seems well-drafted in order to balance values and achieve the effect of a complex governance of pecuniary consequences of death. Then, pecuniary rights and duties are followed by the successor, either indicated by the deceased (will), or by the legislator in lack of a valid will. The rules for will regulate its

specificity as a mortis causa act. If the will does not provide adequate support to the closest family of the deceased, protection (e.g. legitim) applies.

At the same time, personal rights and duties expire. The admissibility to decide on the personal or pecuniary character of rights via inter vivos legal acts (mostly contracts) seems a well-adjusted solution within this system.

The principal effect of death, as pictured above, is the inheritance. However, the scope of exceptions makes it doubtful, whether this principle really applies.

II. Exceptions within inter vivos acts

It remains doubtless that some legal acts designed to create post mortal succession may take place inter vivos.

Firstly, the tradition of lifetime donations of the donor aimed at providing the future heirs with necessary goods may well serve the results alike to postmortal succession. Thus, many goods may demand administering, which may not be properly undertaken by elderly people, e.g. farms. In the German doctrine such instruments are commonly referred to as upfront succession *(vorweggenommene Erbfolge)* [8, 13]; in Poland also the Latin term of successio anticipata is used [6, 1091]. The drawback of such instruments is that the donor loses the control over property during life, which may remain problematic in case of raised and unsatisfied needs of the elderly person deprived of property. At the same time, it is impossible to challenge the admissibility of such instruments, which typically serve undeniable lifetime interests.

Secondly, following the general permissibility to condition the legal effects of the legal act from the future, known or unknown, events, it should be possible to condition such effects from the event of death. In Polish law this is vividly discussed as to borderline of contractual freedom, e.g. by the Polish Highest Court resolution from 13 Dec. 2013, III CZP 79/13, declaring the availability to conclude the donation at the event of death. At the same time, the previous statement of the Polish doctrine has been confirmed [3, 80]. Consequently, the contract in favor of the third party should also be admissible [1, 176]. In the German law alike instruments are subject of legislation, in § 2301 and § 328 and 331 BGB, known in the doctrine as inter vivos dispositions with the effect on death *(Zuwendungen unter Lebenden auf den Todesfall)* [5, 11]. Such instruments serve directly alike aims as postmortal succession, and affect the said monopoly of inheritance law.

III. Exceptions within the mortis causa instruments

Also, legal systems commonly allow for mortis causa instruments outside inheritance law. In the American law they are referred to as nonprobate (article 6 UPC), meaning that they allow for transfer of estate at the event of death, without involvement of the probate proceeding being a characteristic instrument of inheritance law.

Firstly, this extends to will-substitutes, which are functionally equivalent to last-wills, and allow to dispose of mostly of assets on financial intermediaries accounts by the account holder unilateral act [2, 1]. This is allowed e.g. in American law by means of a pay-on-death designation in the banking account (Sec. 6-201.8 UPC), or in Polish law by means of a disposition of the banking account asset at the event of death (*dyspozycja wkładem na rachunku bankowym na wypadek śmierci*, article 56 Banking law) commonly known as «banking legacy» *(«zapis bankowy»)*. Consequently, access

to such assets is faster and easier, as it does not demand inheritance proceeding, which is vital in case of financial consequences of a close person's death, namely new expenses (e.g. funeral), and raised costs of living (e.g. permanent living costs) to which the deceased no longer contributes.

Interestingly, American law solution evolved as a free-market competitor of probate, allowing for pay-off of assets from the banking account within avoidance of probate [7, 1108]. Whereas Polish law solution derives from Soviet law (article 436 of the 1922 Soviet Civil Code), where it was to encourage to bank savings [9, 34].

Alike instruments extend in both jurisdictions on payment for life insurance at the death of a holder, or payment from pension account. In German law this institution is observed as a variable of the contract in favor of the third party at the event of death (e.g. by judgment of the German Federal Court from 26 Nov. 2003, IV ZR 438/02).

Secondly, sometimes certain rights are continued at the death of their holder by the legislator specifically, without the possibility to dispose of them differently. This refers e.g. to the entry of the particular persons in close relations with the deceased flat leasor in the flat lease contract, only when they co-inhabited with the deceased at the lifetime. Consequently, it is justified in the vital social meaning of the right of the flat lease, but only for such people, who make a use of such flat to satisfy housing needs (and the scope of such persons is different from heirs).

Such regulations for nearly a hundred years has been continued in Polish law (currently article 691 Civil Code). It is also present in German law (§ 563 BGB), known as specific succession in rights *(Sonderrechtsnachfolge)* [10, 247]. Alike specific succession in favor of strictly indicated persons takes place in Polish law e.g. when it comes to transfer of the rights of the deceased employee's in favor of persons, whom the employer maintained at the lifetime (article 63^1 § 2 Labour Code).

IV. Conclusion

As presented above, many vital rights may be post-mortally succeeded outside inheritance law. The question is, whether this should be allowed, and what inheritance law rules should apply.

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CZY PRAWO DO ŻYCIA W ŚRODOWISKU Z CZYSTYM POWIETRZEM TO DOBRO OSOBISTE? WYBRANE ZAGADNIENIA

Znaczenie ochrony powietrza jest niezaprzeczalne. Zagadnienie to nabiera szczególnie na znaczeniu w perspektywie zmian klimatycznych, które nierozerwalnie połączone są z powietrzem jako jednym z komponentów środowiska. W Polsce istnieje bogate instrumentarium prawne, które tej ochronie ma służyć. Niepokoi niestety to, że duża ilość uregulowań prawnych nie przekłada się na skuteczną ochronę skutkującą dobrą jakością powietrza. Kiepski stan powietrza w Polsce to wypadkowa wielu okoliczności, które pozostają ze sobą w silnej korelacji. Wśród tych czynników wyróżnić można chociażby: duże uzależnienie gospodarki krajowej od paliw kopalnych, małe wykorzystanie energii pochodzącej z odnawialnych źródeł (szczególnie energii z wiatru), tzw. niska emisja (niekiedy silnie powiązana z ubóstwem energetycznym), a także małe wykorzystanie elektromobilności.

W opracowaniu tym Autorka chciałaby jedynie zasygnalizować niezwykle żywotny problem, który jest aktualnie przedmiotem rozpoznania przez Sąd Najwyższy w Polsce, zdając sobie jednocześnie sprawę, że wyczerpanie tematu nie jest możliwe, szczególnie, że kwestia ta jest mocno dyskusyjna, zarówno w orzecznictwie, jak i w doktrynie. Co symptomatyczne wyrok jaki zapadnie w tej sprawie będzie niezwykle istotny pod kątem ewentualnego dochodzenia roszczeń obywateli względem Skarbu Państwa za zanieczyszczenia powietrza.

W ramach sprawy zarejestrowanej pod sygnaturą III CZP 27/20 sformułowano następujące pytanie prawne: