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DISINHERITANCE ON THE GROUND OF AN OFFENCE AGAINST A TESTATOR'S NEXT OF KIN (ARTICLE 1008(2) OF THE CIVIL CODE)

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ABSTRACT

The article addresses the cause of disinheritance based on an offence against life, health or liberty or of a gross affront to dignity of a testator's next of kin (Article 1008(2) of the Civil Code). Certainly, due to limited space, the subject is far from exhausted. The mere presentation – from both the objective and subjective perspective – of the types of offences whose commitment by an individual holding a right to legitime (forced heir) justifies their disinheritance by the testator would most likely fill up a separate monograph work. Consequently, the author focuses on some most debatable issues related to the subject matter.

Key words: disinheritance, testator, next of kin, offence against life, health, liberty or of a gross affront to dignity

INTRODUCTION

The article addresses one of the causes of disinheritance, namely the commitment by a forced heir of an offence against life, health or liberty or

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of a gross affront to dignity of a testator's next of kin (Article 1008(2) of the Civil Code ("CC")). Courts rarely try cases related to disinheritance on such a basis,[1] still it requires a careful consideration and the dispelling of the many doubts that may, and does, arise in the discussed matter. First, the author explains who the next of kin is and highlights the difference between the disinheritance addressed in the title of the article and one based on the recognition of the heir as unworthy to succeed under Article 928 § 1(1) CC, as well as casting some light on the offences listed in the Penal Code that entitle the testator to disinherit the offending heirs.

GROUNDS FOR DISINHERITANCE

In Polish law – as in many other European legal systems, e.g. German, Austrian, or Swiss – an impediment to succession and to the recognition of a person as a lawful hair is the existence of a negative condition in the form of exclusion from succession. This condition may result from a law and result in the exclusion from succession *ex lege* or the exclusion may be decided in a court ruling. Sometimes, it may depend on the testator's or even heir's will. Among the legal institutions resulting in the exclusion from succession, there are: unworthiness to succeed, waiver of succession, disinheritance or rejection of succession. Disinheritance is regulated under Articles 1008-1011 CC. Contrary to the colloquial understanding of this term, it should be interpreted as depriving an entitled person (spouse, descendant, parents, see Article 991 § 1 CC) their right to a reserved portion (legitime). The right to a reserved portion is based on a family bond between the testator and the entitled. Therefore, the former may deprive the latter of this entitlement if they have acted unethically and seriously ignored their family obligations towards the testator or severely offended his feelings[2]. In principle, disinheritance (if the testator has not declared

[1] See Kordasiewicz B. in *System prawa prywatnego*. Vol. 10. *Prawo spadkowe* (Warszawa 2015), p. 1062.

[2] See Piątowski J. S., Kordasiewicz B. *Prawo spadkowe. Zarys wykładu* (Warszawa 2011), p. 229.

the opposite in his last will) covers *implicite* the exclusion from intestate succession[3]. If the testator does not name any heirs but only disinherits, such heirs are considered not succeeding. The last will limited to disinheritance is therefore a negative will.

Article 1008 CC lists the circumstances in which a testator may disinherit. This is a *numerus clausus* of the grounds for disinheritance. This may happen only if the forced heir: a) against the testator's wishes, persistently acts in a manner contrary to the principles of community life (para. 1); has intentionally committed a crime against the testator or a person close to him threatening life, health or freedom or has grossly affronted his dignity (para. 2); persistently fails to perform family obligations with regard to the testator (para. 3)[4]. This basis for disinheritance is treated similarly to the condition of unworthiness to succeed under Article 928 § 1(1) CC. The article provides that the heir may be declared by a court unworthy to succeed if he intentionally committed a serious crime against the testator. Comparison of the wording of Article 1008(2) CC and Article 928 § 1(1) CC leads to two conclusions. First that if the basis for disinheritance may be the commitment by the forced heir of an offence affecting the testator, or a testator's next of kin, where it is certainly possible and that the offence has been committed both against the testator and their next of kin, e.g. severe beating of the testator and his wife, then, in the case of unworthiness to succeed, the offence only affects the testator. Second that under Article 928 CC the list of offences that may justify the recognition of a heir as unworthy of succession is somewhat different. The nature of this difference is twofold. On the one hand, the legislator has not indicated explicitly what legal interests are violated or threatened by the unlawful act for this act to justify disinheritance. It is different with disinheritance

[3] So in the literature, e.g. Gwiazdomorski, J. *Glosa do uchwały z dnia 14 czerwca 1971r.* (III CZP 24/71), *NP* 1972, No. 10, p. 1581, including note 2; Witczak, H., Kawałko, A. *Prawo spadkowe* (Warszawa 2011), p. 172; Pogonowski, M. *Wydziedziczenie. Zarys problematyki Rej.* 4(2005), p.121; Niezbecka, E. in *Kodeks cywilny. Komentarz. Spadki*. Vol. IV, ed. Kidyba, A. (Warszawa 2008), p. 203; Załucki, M. *Wydziedziczenie w prawie polskim na tle porównawczym* (Warszawa 2010), p. 420. So the Supreme Court in its justification of the Resolution of 14 June 1971, III CZP 24/71, *OSNCP* 1972, No. 2, item 23.

[4] For more on the grounds for disinheritance, see Articles 146 and 147 of the Decree of 8 October 1946 Law of Succession (Journal of Laws No. 60, item 328).

performed by the testator as a result of an offence committed by the forced heir that jeopardizes life, health and liberty and affronts dignity. On the other hand, the legislator has determined that the offence be a serious offence. It is therefore possible to regard as serious an offence against life, health and liberty and – though much less likely but also not that impossible – the one related to a gross affront to dignity. Meanwhile, the concept of a "serious offence" used in Article 928 § 1(1) CC does not entail the same consequences as the term "crime" defined in Article 7 § 2 of the Penal Code ("PC"). In specific circumstances, "serious offence" under Article 928 § 1 CC may also be considered a minor offence (Article 7 § 3 PC)[5]. Thus, if the penal legislator does not introduce the notion of serious offence, the court adjudicating on unworthiness to succeed will be in each case forced to assess whether a prohibited act committed against the testator can be referred to as "serious"[6]. For example, the offence of fraud, which requires the action *cum colorato dolo directo* (with direct intent of a particular nature) as a result of which the testator suffers a significant damage or one of large size (see footnote 9,10), is not a crime (it is threatened with a penalty from 1 year to 10 years of deprivation of liberty under Article 294 PC in conjunction with Article 286 § 1 PC), yet, in my view, it can be regarded as "serious." Also a narrower scope of damage, in specific circumstances, may justify the assumption that the offence was "serious".

A characteristic shared by both the discussed grounds for exclusion from succession is that the offence, whose commission justifies such an exclusion, is to be deliberate and, therefore, must be committed with direct intent (*dolus directus*) or conditional intent (*dolus eventualis*)[7]. This means that the offences which, from the doer's perspective, are characterized by failure to demonstrate due diligence in the given circumstances (i.e. unin-

[5] See the Judgement of the Appellate Court in Gdańsk of 14 June 2000, I ACA 262/00, *OSA* 3(2002), item 25, with the glosses of C. Kłak, *OSA* 9(2005) and M. Niedośpiał, *OSA* 8(2006), Kremis, J. in *Kodeks cywilny. Komentarz*, eds. Gniewka, E. & Machnikowski, P. (Warszawa 2013), p. 1571.

[6] See Kremis, J. in *Kodeks*…, op. cit., p. 1571.

[7] A prohibited act is committed intentionally if the offender has the intention to commit it, i.e. they want to commit it (*dolus directus*) or, while foreseeing the possibility of its commitment, accept it (*dolus eventualis*) – Article 9 § 1 PC.

tentional fault[8]) can justify neither the recognition of a heir as unworthy of succession nor their disinheritance, even if they have led to "a significant damage"[9] or "a damage of large size"[10] to the testator's legal interest (Article 929(1), Article 1008(2) CC) or to their next of kin (Article 1008(2) CC).

THE IDEA OF TESTATOR'S "CLOSE PERSONS"

Although it uses the terms "close person" or "next of kin" in many of it provisions, the Civil Code fails to define them. The same applies to the provision under Article 1008(2) CC. This is an example of a legal loophole. The literature on the subject proposes four approaches to this notion.

The first approach *per analogiam* invokes Article 115 § 11 PC (Article 120 § 5(d) PC) which reads that, "next of kin means the spouse, an ascendant, a descendant, siblings, a relative of kin in the same line or degree, a party of an adoptive relationship and his/her spouse, and also a common spouse." The terminological difference ("close person", "next of kin") is not an obstacle. This view is endorsed by A. Baziński, J. Pietrzykowski, L. Stecki and J. Kosik[11]. J. Pietrzykowski admitted that considering the broadening in Article 120 § 5 PC of 1969 of the group of close persons compared with Article 91 § 1 PC of 1932,[12] this view as well

[8] In accordance with Article 9 § 2 PC, a prohibited act is committed unintentionally if the offender, without having an intention to commit it, perpetrates it as a result of failure to show due diligence required in the given circumstances, although they foresaw the possibility of committing the act or could have foreseen it.

[9] Its value at the date of the commitment of a prohibited act should exceed PLN 200,000.00 (see Article 115 § 5 and § 7 PC).

[10] Its value at the date of the commitment of a prohibited act should exceed PLN 100,000,000.00 (see Article 115 § 6 and § 7 PC).

[11] See Baziński, A. *Prawo spadkowe. Komentarz* (Łódź 1948), 44; Pietrzykowski, J. in *Kodeks cywilny. Komentarz*. Vol. 3 (Warszawa 1972), p. 1923; Stecki, L. in *Kodeks cywilny z komentarzem*, ed. Winiarz, J. (Warszawa 1980), p. 878; Kosik, J. in *System prawa cywilnego*. Vol. IV (Ossolineum 1986), p. 542.

[12] Article 91 § 1 PC of 1932 contained the following definition of a next of kin: "The next of kin is a relative in the ascending and descending line, siblings, spouse, or parents, siblings and children of the spouse."

as the one presented below have come closer in terms of the wording but still differ[13].

The second approach, according to which the idea of the testator's next of kin should be interpreted depending on the circumstances of the case, with an emphasis laid on the emotional bond between the testator and that person, and recommending the avoidance of adopting a purely formal position either under penal (Article 115 § 11 PC) or civil law (Article 691 CC[14]). The supporters of this view (J. Gwiazdomorski, S. Wójcik, M. Załucki, M. Pazdan, B. Kordasiewicz, J. Biernat) subscribe to the opinion that Article 1008(2) CC refers to persons with so strong an emotional bond with the testator that an act committed against one of them can be regarded as "almost tantamount" – in terms of the testator's condition, harm or suffering – to an act committed against the testator him or herself[15].

The third approach can be placed somewhere between the two outlined above. It proposes that, although when determining who can be treated as a close person to the testator, this concept should be considered separately for each case, with an emphasis laid on the emotional bond between the testator and that person, still, in its interpretation, it is advisable to refer alternatively to the purely formal qualification: either under penal or civil law (Article 691 CC). For example, J. Kremis[16] reckons: Since the statute fails to define – for the purpose of disinheritance – the concept of the testator's next of kin, the establishment of the relationship between the testator and the person who suffered as a result of an act committed by the person entitled to a reserved portion and, by extension, the acknowledge-

[13] See Pietrzykowski, J. in *Kodeks…,* op.cit., p. 1923.

[14] In accordance with Article 691 § 1 CC, in the event of death of the tenant of residential premises, the tenant's spouse who is not a co-tenant, the tenant's and the spouse's children, other persons towards whom the tenant had a maintenance obligation and any other person with whom the tenant was cohabitating becomes a party to the tenancy.

[15] See Gwiazdomorski, J. *Prawo spadkowe* (Warszawa 1959), p. 396; Wójcik, S. *Podstawy prawa cywilnego. Prawo spadkowe* (Warszawa 2002), p. 90; Załucki, M. *Wydziedziczenie*…, op.cit., p. 400; Pazdan, M. in *Kodeks cywilny. Tom II. Komentarz. Art. 450 – 1088. Przepisy wprowadzające*, ed. Pietrzykowski, K. (Warszawa 2013), p. 923; Kordasiewicz, B. in *System*…, op.cit., 1066-1067; Biernat, J. *Ochrona osób bliskich spadkodawcy w prawie spadkowym* (Toruń 2002), p. 26.

[16] See Kremis, J. in *Kodeks*…, op.cit., p. 1698.

ment of such as person having the quality of the testator's 'next of kin' will each time require a separate assessment of the circumstances of a particular case. Alternatively, it is possible to refer to similar concepts in the law, for example, in Article 691 CC, Article 115 § 11 CC, however, never treating their relevant provisions as invariably adequate to the examined case of succession.

This view is also supported by E. Skowrońska-Bocian and P. Księżak[17]. The latter author is of the opinion that only the assessment of each specific case can help determine the testator's close person. Any rigid formal criteria are inadequate. Of some help can be the persons listed in Article 115 § 11 PC and the persons entitled to the legitime. Decisive should be the assessment of the testator's relationship with a particular person. In specific circumstances, the next of kin can be a foster child, distant relative or even a friend.

The fourth approach proposes that the scope of the concept be restricted to the persons entitled to a reserved portion – "that narrow circle within the group of intestate heirs" – whose interests are particularly protected by the legislator (as pointed out by M. Szaciński)[18].

The third approach is relatively balanced, free from the rigid formalism and allowing a flexible use of the institution of disinheritance seems to be the most pertinent and should be endorsed. For example, if a person entitled to a reserved portion commits a serious (grave) offence (after all, threatened by the penalty from 2 to 12 years of deprivation of liberty) under Article 156 § 3 PC by repeatedly hitting the testator's foster child – whom the testator treated like a son although never formally adopted – with a poker during a family argument as a result of which the attacked person died after being taken to hospital, why should the testator be denied the right to disinherit the attacker? Adoption of the first (or especially the fourth) approach would render it ineffective. While the concept of a person remaining in cohabitation is now interpreted in the doctrine and jurisprudence more broadly, that is, it also encompasses persons of

[17] See Skowrońska-Bocian, E. *Komentarz do kodeksu cywilnego. Księga czwarta. Spadki* (Warszawa 2011), p. 231, Księżak, P. in *Kodeks*…, op.cit., p. 776.

[18] See Szaciński, M. *Przesłanki niegodności według prawa spadkowego zunifikowanego oraz znaczenie orzeczenia sądowego ustalającego niegodność NP* 12(1954), p. 39.

the same sex,[19] it cannot be interpreted to include also persons accepted as foster children (treated as own children).

There is one more issue that needs to be taken into account. Debatable is the issue raised by P. Księżak whether a forced heir committing an offence needs to be aware that the suffering party is the testator's close person. Him or her being unaware brings into question the justification for disinheritance. What if the heir did not intend to act against the testator or violate their family obligations, so, his or her act can be said to have affected the testator by coincidence, therefore, he or she acted unintentionally. This author proposes that although the provision on the discussed matter is not unequivocal, the function of disinheritance requires the inclusion of this component, too[20]. This argument pertaining to the function of disinheritance is, in my opinion, conclusive in that if the forced heir is not – without their own fault – aware that the prohibited act against life, health and liberty or a gross affront to dignity has been committed against the testator's next of kin, the perpetrator cannot be disinherited. And there is no need to assume that "he or she acted unintentionally towards the testator."

INTENTIONAL OFFENCE AGAINST LIFE, HEALTH OR LIBERTY AND OF A GROSS AFFRONT TO DIGNITY

The basis for disinheritance is the commitment by the forced heir of an offence against the testator or one of their close relatives. For disinheritance to be effective, the offence should not be any intentional prohibited act but an intentional act threatening life, health or liberty or be a gross affront to dignity (Article 1008(2) CC). The literature on the subject does not unambiguously determine what criterion should be used to assess the fact of committing such an offence. The prevailing view is that such an

[19] So in, for example, the Resolution of the Supreme Court of 28 November 2012, III CZP 65/12, *OSNC* 5(2013), item 57 and the Judgement of the Appellate Court of 26 June 2014, I ACa 40/14, *LEX* 1496122.

[20] See Księżak, P. in *Kodeks…*, op.cit., p. 776.

assessment must be made under penal law[21]. Consequently, it is substantive penal law (Penal Code) that sets out what acts fall within the definition of such offences. Yet, there is also another position that the assessment of which offences are – within the meaning of Article 1008 CC – intentional acts against life, health or liberty should be performed only partially and based on the provisions of penal law. The supporters of this view (J. Gwiazdomorski, B. Kordasiewicz, P. Księżak[22]) believe that some degree of flexibility is advisable. By their standards, the concepts set out in Article 1008(2) CC are autonomous, and the civil court is not bound by the penal-law systemic approach and classification when deciding whether some specific conduct fits in with the hypothesis of the given provision. In the light of this view, the application of Article 1008 CC should therefore be broader than it might ensue from the strict penal-law assessment.

An intermediate position seems the most accurate. It is the content of substantive penal law that determines whether certain conduct of a person entitled to a reserved portion is an offence and whether it is an offence against life, health, liberty or dignity. It would not be so if the legislator – for the purpose of the institution of disinheritance – formulated a separate definition of offence or a separate definition of the offence against life, health, freedom or dignity. However, it does not naturally follow that only the placement of an offence in a specific chapter of the Penal Code determines whether it is such an offence. Besides the type-specific object of protection of importance should also be the direct (specific, individual) object of protection.

Consequently, in my opinion, no basis for disinheritance exists: a) in the case of circumstances excluding the unlawfulness of an act[23] such as: necessary self-defence (Article 25 § 1 PC), state of necessity (Article 26 § 1 PC), conflict of obligations (Article 26 § 5 in conjunction with Article 26 § 1 PC), tolerable risk (Article 27 § 1 PC); b) in the case of circumstances

[21] See, e.g. Pietrzykowski, J. in *Kodeks cywilny. Komentarz*. Vol. III (Warszawa 1972), p. 1923.

[22] See Gwiazdomorski, J. *Prawo*…, op.cit., pp. 396-397; Kordasiewicz, B. "Krąg osób uprawnionych do zachowku" in *Księga Jubileuszowa Prof. dr hab. Tadeusza Smyczyńskiego* (Toruń 2008), pp. 427-430, Księżak, P. in *Kodeks cywilny. Komentarz*. Vol. III. Spadki, ed. Osajda, K. (Warszawa 2013), p. 776.

[23] Prohibited act is only an illegal act.

excluding guilt,[24] such as: state of necessity (Article 26 § 2 PC), conflict of obligations (Article 26 § 5 in conjunction with § 2 PC), error (Articles 29 and 30 PC) and insanity (Article 31 PC). The existence of these circumstances means that no offence takes place. An offence does exist when the law permits a waiver of penalty or the application of an extraordinary mitigation of penalty, and therefore, in my estimation, in this case there is the ground for disinheritance. According to P. Księżak,[25] in such circumstances, the final assessment should be left to the civil court. He offers an example of exceeding the limits of necessary self-defence (Article 25 § 2 PC).

Yet, I have doubts as to whether such circumstances as abolition, amnesty, limitation of punishability, expungement, or the use of clemency exclude disinheritance. In this respect, I would see eye to eye with the views of P. Księżak and B. Kordasiewicz[26]. P. Księżak maintains that the civil-law provisions do not indicate that such circumstances exclude disinheritance. It does not matter whether the perpetrator has been convicted, may be convicted or whether the records of his or her earlier process have been sealed (expungement). However, if the cause of disinheritance goes back to some events occurring many years before, it may turn out to be apparent and, thus, ineffective. It may entail a pretext and not a genuine basis (e.g. "I disinherit my son because he was rough on me thirty years ago"). B. Kordasiewicz argues that it is legally indifferent when the disinherited party committed an act underlying disinheritance. Also irrelevant is the time span between the act that leads to disinheritance and the moment the testator draws up the will. Therefore, in Kordasiewicz's opinion, disinheritance will be effective even when, at the time of making the last will, the criminal prosecution of the perpetrator is no longer possible due to the limitation of punishability or expungement. It is also worth noting that the periods of expungement in the case of a fine and restriction of liberty

[24] Prohibited act is only a culpable act.

[25] See Księżak, P. in *Kodeks*…, op.cit., p. 777.

[26] See Księżak, P. in *Kodeks*…, op.cit., pp. 777-778, Kordasiewicz, B. in *System*…, op.cit., p. 1066.

(Article 107 § 3 and 4 PC) have recently been considerably shortened[27]. Lawfully, it occurs after one year (for a fine) or three years (for restriction of liberty) from the enforcement, remission or limitation of penalty. The could frequently prevent disinheritance.

Article 1008 CC links the basis for disinheritance with the commitment of the offences listed therein, which must cover the phenomenal forms of perpetration, that is, principal perpetration, complicity, direct and facilitated perpetration, inciting and aiding and abetting, as well as the forms of involvement in the commitment, i.e. perpetration, attempt and the specific type of crime – provocation (Article 24 PC)[28]. Preparation is punishable only when so provided in the law (see e.g. Article 127 § 2 PC, Article 140 § 3 PC) and, in principle, cannot provide grounds for disinheritance. Disinheritance does not follow from the mere intention to commit an offence (*cogitationis poenam nemo patitur*). Also the Supreme Court, in its Decision of 3 September 1961, 1 CR 365/60,[29] found that attempt should essentially be treated in parallel with perpetration as regards the effects under Article 1008 CC. Disinheritance cannot be based on a situation in which penal law excludes the punishability of an attempt due to the voluntary withdrawal from commitment or prevention of the consequence meeting the criteria of a prohibited act (active repentance – Article 15 § 1 PC) [30]. As pointed out by P. Księżak,[31] it is more challenging to answer the question of what is the importance of failed active repentance (Article 15 § 2 PC), that is, a case where the perpetrator intentionally tries to prevent the consequence which meets the criteria of a prohibited act. This author reckons that the assessment of the actual state of affairs, it seems, should be left to the civil court. Personally, I take a different view. Since failed active repentance allows the court to apply only the extraordinary mitigation of penalty but does not determine the existence of the offence as a prohibited act, then the basis for disinheritance actually exists.

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[27] See the Act of 20 February 2015 amending the Penal Code and other selected acts (Journal of Laws No. 396).

[28] See Księżak, P. in *Kodeks*…, op.cit., p. 777.

[29] *OSPiKA* 3(1962), item 74.

[30] See Księżak, P. in *Kodeks*…, op.cit., p. 777.

[31] Ibidem.

To determine whether the forced heir has committed an intentional offence against the testator's close person is within the remit of the civil court investigating the effectiveness of disinheritance for the purposes of the final settlement. In this context, relevant seems Article 11 of the Code of Civil Procedure ("CCP") according to which the outcome of the penal proceedings, i.e the final conviction, bind the court in the civil proceedings. The civil court is bound by the operative part of the judgement and not by its grounds. This means that the civil court cannot rule, contrary to the decision of the criminal court, that no offence has been committed. If no penal proceedings were pending or no final and convicting judgement was passed, there is no bond under Article 11 CCP and the civil court examines the circumstances on its own. By the way, the prior penal proceedings are not required to establish the ground for disinheritance under Article 1008(2) CC[32].

Still, according to P. Księżak,[33] the civil court may determine that: a) an offence has not been committed against a next of kin within the meaning of Article 1008 CC; b) an offence is the one against life, health and liberty or is a gross affront to dignity; c) an offence is or is not gross when it comes to the affront to dignity. I agree with the author's view concerning the options named in a) and c). Yet, I support the view that the binding of the civil court with a final judgement of conviction does not essentially allow it to assume that the act of the forced heir is an offence against life, health, liberty or dignity, despite the different penal classification contained in the penal judgement. For example, if such a judgement regarded the conduct of the accused as an offence under Article 217 § 1 PC, the civil court cannot approach it as an offence against health because, for example, the indictment defined it as an offence under Article 157 § 1 or 157 § 2 PC. Similarly, if the penal court finds the forced heir guilty of the perpetration of unintentional bodily injury (Article 157 § 1 or 157 § 2 PC in conjunction with Article 157 § 3 PC), the civil court will not be able to find that the act was committed intentionally.

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[32] Cf. Gwiazdomorski, J. *Prawo*…, op.cit., p. 395; Kordasiewicz, B. *Krąg osób*…, op.cit., p. 430, Księżak, P. in *Kodeks*…, op.cit., p. 777.

[33] See Księżak, P. in *Kodeks*…, op.cit., p. 777.

In my opinion, finding the offender guilty of the offence under Article 233 PC (false testimony) or Article 234 PC (false accusation) does not empower the civil court to find them guilty of a prohibited act against liberty.[34] These offences are directed against justice.

Yet, if other sentence in passed in a criminal case than conviction (acquittal, dismissal, conditional discontinuance), the provision of Article 11 CCP would not longer be applicable, and the decision of the existence of a condition for disinheritance under Article 1008(2) CC would rest with the civil court.

Finally, and only in generic terms due to the confines of this paper, some offences against life, health, freedom and dignity should be noted, as typified in penal law, whose commitment by the forced heir may justify their disinheritance[35]. The offences against life and health are listed in Chapter XIX of the Penal Code (Articles 148-162 PC). Not all of them, however, will suffice as grounds for disinheritance. This is on account of the fact that, from the subjective perspective, they are characterized by unintentional fault, and, as discussed earlier, disinheritance can only ensue from the commitment of an intentional unlawful act. The offences that may lead to disinheritance are: a) murder (basic type – Article 148 § 1 PC, aggravated type – Article 148 § 2 and 3 PC, privileged type – Article 148 § 4 PC); b) infanticide (Article 149 PC); c) euthanasia (Article 150 PC); d) persuasion to or assistance in suicide of another person (Article 151 PC); e) severe impairment of health (basic type – Article 156 § 1 PC, aggravated type – Article 156 § 3 PC); f) medium impairment of health (Article 157 § 1 PC); g) light impairment of health (Article 157 § 2 PC); h) damage to an unborn infant (Article 157a § 1 PC), i) participation in battery (basic type – Article 158 § 1 PC, aggravated type – Article 158 § 2 and 3 PC, Article 159 PC); j) exposure of another person to a direct danger of loss of life or health (basic type – Article 160 § 1 PC, aggravated type – Article 160 § 2 PC), k) exposure of another person to HIV trans-

[34] A dissenting opinion in Gwiazdomorski, J. *Prawo*…, op.cit., p. 396, Kordasiewicz, B. in *System*…., op.cit., p. 1062.

[35] For further discussion on some of them, i.e. those that may underlie the recognition of an individual as unworthy to succeed, see Witczak, H. *Wyłączenie od dziedziczenia na mocy orzeczenia sądu* (Warszawa 2013), pp. 207 – 292.

mission (Article 161 § 1 and 2 PC); l) failure to come to the aid of another person (Article 162 § 1 PC). There are no grounds for disinheritance in the case of offences such as: under Article 155 PC (unintentional commitment of murder), Article 156 § 2 PC (unintentional causing of a severe impairment of health) and Article 157 § 3 PC (unintentional causing of a medium and light impairment of health).

The offences against liberty are named in Chapter XXIII of the Penal Code (Articles 189-193 PC; all of them are intentional). The following may lead to disinheritance: a) deprivation of freedom (basic type – Article 189 § 1 PC, aggravated type – Article 189 § 2 and 3 PC); b) trafficking in human beings (Article 189a § 1 and 2 PC); c) threat (Article 190 § 1 PC); d) stalking, identity theft (basic types – Article 190a § 1 and 2 PC; aggravated types – Article 190a § 3 PC); e) violence or illegal threat aimed to force another person into specific conduct (basic type – Article 191 § 1 PC, aggravated type – Article 191 § 2 PC); f) illegal recording or dissemination of the image of a naked person (Article 191a § 1 PC); g) intrusion upon seclusion[36] (Article 193 PC).

It should be clearly stressed that offences against life, health and liberty are not only those listed in Chapters XIX and XXIII[37]. As pointed out earlier, of importance is not only the type-specific object of protection, which would be approached differently in the penal codices in force in Poland. An offence against life, health or liberty may also be an act of abuse under Article 207 PC (basic type – in § 1, aggravated types – in § 2 and 3). Although the offence is regulated in Chapter XXVI of the Penal Code, Offences against Family and Duty of Care, it should be borne in mind that it has a very complex legal nature. The prohibited act under Article 207 PC is an offence of at least double object of protection. The main object of protection is the family, its proper operation or the institution of care. The other object of protection – depending on the form and intensity of abuse – is life, health, bodily inviolability, liberty and honour (dignity) of the person.

Also, the offence of rape under Article 197 PC, although regulated in Chapter XXV (Offences against Sexual Freedom and Decency), is directed

[36] Cf. Gwiazdomorski, J. *Prawo*…, op.cit., pp. 397-398.

[37] So rightly in Kordasiewicz, B. in *System*…, op.cit., p. 1062.

against freedom. It would be nonsensical to assume that the threat of rape (Article 190 § 1 PC) would be the basis of disinheritance because it is an offence against freedom in the Penal Code, while the rape proper is not as it is an offence against sexual freedom (Chapter XXV) and not freedom (Chapter XXIII)[38]. Any assessment in this respect should be be performed *in casu,* taking account of Article 11 CCP.

Finally, the offences against dignity regulated in the Penal Code (Chapter XXVII Offences against Honour and Bodily Inviolability) are: libel or slander – Article 212 PC (basic type – in §1, aggravated type – in § 2) and insult – Article 216 PC (basic type – in §1, aggravated type – in § 2). It should be noted that not every affront to dignity may justify disinheritance but only a gross one, i.e. particularly glaring. The use of imprecise term "gross" allows the court to perform its assessment separately for each case considering the broader picture and determine whether the affront is "gross" or has a different level of intensity. In this assessment, the subjective feelings of the suffering party are not conclusive (although should not be totally ignored), and the final evaluation should be as objective as possible. As pointed out correctly by J. Gwiazdomorski,[39] to decide whether an affront to dignity is gross in a particular case, all the existing circumstances must be considered, particularly the type of relationship between the testator and the heir entitled to a reserved portion (a different assessment of the same words will follow if uttered by a father to his son than the other way round), their social background, features of character and temper (impetuosity), or the circumstances in which the affront occurred. Disinheritance due to the violation of bodily inviolability seems, in my opinion, impossible (Article 217 § 1 PC). The protected interest in this case is not honour (dignity) but bodily inviolability.

The vast majority of offences underlying disinheritance are monor offences. Only the acts under Article 148 § 1 - § 3 PC and Article 189 § 3 PC are crimes.

It seems that in assessing the existence of grounds for disinheritance under Article 1008(2) CC, there is one more criterion to be taken into

[38] Ibidem.

[39] See Gwiazdomorski J. *Prawo*…, op.cit., 398. Also in Kordasiewicz B. in *System*…, op.cit., 1064.

account which is not clearly highlighted in the law, namely whether the offence committed by the disinherited party is grave enough. Consequently, where disinheritance resulted from an act which was not grave enough (causing social damage – see Article 115 § 2 PC), the disinherited party may invoke the invalidity of the relevant testamentary disposition as contrary to the principles of community life (Article 58 § 2 CC)[40].

CONCLUSION

The article addresses the cause of disinheritance based on an offence against life, health or liberty or of a gross affront to dignity of a testator's next of kin. Certainly, due to limited space, the subject is far from exhausted. Consequently, the author focuses on some most debatable issues related to the subject matter.

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[40] So in Kordasiewicz, B. in *System*…, op.cit., 1064. The author provides an example of an act of remaining for several hours in someone else's house against the will of the forced heir and concludes that it is hardly acceptable that this kind of conduct may underlie disinheritance. However, by my estimation, everything depends on the circumstances of the individual case.

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