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ABSTRACT OF THE DOCTORAL THESIS

Axiology of succession in polish inheritance law

The problem presented in this thesis comes down to reconstruction of the values which are protected and pursued by the Polish legislator through the design of the inheritance law.

The thesis that inheritance is embedded in economic and social values is the point of departure for the presented considerations.

To defend the aforementioned thesis, following supporting questions were asked:

- 1) What is the goal of the construct of succession?
- 2) By which instrumental values is the goal of the construct of succession to be achieved?
- 3) What is the role of other inheritance law instruments?
- 4) Is it possible to reconstruct the hierarchy of values on which the construct of succession is based?
- 5) Do the current regulations allow to achieve the goals of individual institutions related to succession? If not, what *de lege ferenda* postulates may be suggested?

In this dissertation, the following methods were used: dogmatic-legal method, analytical-law method, historical-legal method and comparative law method.

The dissertation consists of six chapters.

Chapter I deals with the general issues of the axiology of law; a definition of the term 'value' is provided, values are distinguished between goals and instrumental values, and methods for encoding values in a legal text as well as techniques for decoding them are presented. In addition, this chapter contains considerations on the purpose of the law and the way of achieving it in the light of the Constitution of the Republic of Poland. It also presents a catalogue of civil law principles.

Chapter II sets out the structure of the values of inheritance law and succession and the general relations between them, taking into account the conclusions drawn from the analysis of both

the constitutional norms and the principles of civil law, which was presented in Chapter I. Moreover, it presents an axiological justification for the construction of general succession of inheritance.

The following problems are examined: the issues of inheritance law and the structures regulated in Title I of Book Four - General Regulations, i.e.: the capacity to inherit, testamentary capacity, the right of relatives of the deceased to use the accommodation and household facilities. This chapter explains, among other things, why the law of inheritance is based on the family paradigm.

The subsequent chapters show the axiological dimension of individual institutions of inheritance law: statutory succession (Chapter III), succession by a testamentary disposition (Chapter IV), the institution of *legitim* and disinheritance (Chapter V), as well as the unworthiness to succeed, the exclusion of a spouse from the inheritance, pursuant to articles 935¹ and 940 of the Civil Code and agreements concerning renunciation of succession (Chapter VI).

In each of the aforementioned chapters, three key issues can be highlighted: first an attempt to establish *the ratio legis* of the analysed institutions and a set of values that guide or *should* guide it; secondly their dogmatic analysis, which takes into account significant problems commented on both in the judicature and literature; thirdly, the assessment of the regulation in the context of its axiology.

The dissertation ends with the recapitulation, which present the following conclusions:

- 1) The values revealed in the construct of succession and in related institutions are: the testator's dignity and their other personal interests, freedom of the testator's will, the testator's family and their individual family members, their loved ones, private property, security and certainty of legal transactions, equity and justice,
- 2) The purpose of succession and inheritance law is to protect the security and certainty of legal transactions. The technical and legal expression of this value is revealed by basing inheritance law on the structure of universal succession and the *ipso iure* acquisition of succession at the time of the testator's death.

This is the only value that wholly justifies succession of the property obligations and thus makes it possible to implement the *pacta sunt servanda* principle. Therefore,

succession is an instrument which allows the legislator to fulfil the obligation of taking care of the common good (an obligation which is imposed on the Polish legislator by article 1 of the Constitution of the Republic of Poland), and also obligations arising from the introduction of the principle proclaiming that the Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice (concluded in the article 2 of the Constitution of the Republic of Poland).

At the same time, it supports the existence of a free market economy (article 20 of the Constitution of the Republic of Poland).

- 3) The objective of the inheritance law, which is security and certainty of legal transactions, is to be achieved thanks to the instrumental values characteristic of both statutory succession and succession by a testamentary disposition, as they are the only two ways of transferring the testator's rights and obligations to their heirs.

The values characteristic of statutory succession are as follows: protection of private property and protection of the deceased's family as a unit and its individual members.

- 4) The succession by a testamentary disposition accepts freedom of the testator's will as the guiding instrumental value, and that freedom is an extension of the right of ownership specifically the freedom to dispose of the thing by its owner during their lifetime. As to how the protection of the testator's family and its individual members will be accomplished depends solely on the morality of the testator and the factual circumstances concerning the specific family.
- 5) Disinheritance, the unworthiness to succeed and the exclusion of a spouse from the inheritance pursuant to article 935¹ and article 940 of the Civil Code constitute the institutions designed to implement the principles of equity. They are based on a common axiological core, namely on the *nullus commodum capere potest de iniuria sua propria* principle no one should profit from the evil they do to another. In this way, the rule of restorative justice is being implemented, and more specifically, the retribution for the evil done.

In the final conclusions, the following hierarchy of values applying to succession was recreated:

- 1) security and certainty of legal transactions (including the protection of the creditors);
- 2) ownership (namely, private ownership);
- 3) freedom of the testator's will;
- 4) protection of the deceased's family and its members;
- 5) protection of the testator's loved ones (who are not family members);

- 6) justice and equity (as a correction of justice);
- 7) the testators' dignity, other personal interests of the deceased and the resulting memory of the deceased.

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