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On the Future of Contracts of Succession in the Polish Law of Succession

O przyszłości umów dziedziczenia w polskim prawie spadkowym

Introduction

De lege lata, the contract of succession in the Polish legal system is not tantamount to the title to succeed. Such titles are the last will and testament and the relevant law. This is expressly reaffirmed in Article 926 § 1 of the Civil Code ("CC") which reads that the title to succeed results from the law or from a will (testament). In connection with the work of the Codification Commission for Civil Law appointed by the Minister of Justice, one of its objectives being the drawing up of a new code, including its Book V covering the law of succession, it is worth having a closer look at the idea and purpose of introducing a contract of succession (as title to succession) into Polish law. This paper will address this question. The author will also review the approach of the doctrine of Polish civil law to the purpose and usefulness of such a contract.

First, the concept of contract of succession needs to be explained to enable any further consideration. This is more than desirable also with a view to dispelling confusion existing in the terminology regarding inheritance agreements.

The concept of contract of succession

The literature on the subject differentiates between the contract of succession *sensu largo* and the contract of succession *sensu stricto*. As for the

former of the two contracts, the doctrine lists various types of contracts that have a minor or major, direct or even indirect impact on inheritance (e.g. the contract of waiver of succession) without, however, conferring the title of succession. On the other hand, the contracts that involve the title of succession (i.e. which contain the appointment of heirs) are considered the contracts of succession *sensu stricto.*

The Polish doctrine is not always unambiguous in its terminology related to these legal events.

J. Gwiazdomorski[1] used to define the contracts of succession *sensu largo* as "agreements in which the parties decide, in one way or another, on the estate of a deceased person." One of the parties to such an agreement must be to the person whose estate is covered by the agreement, i.e. the future testator. At the same time, Gwiazdomorski proposed the following categorisation:

A) Positive contracts of succession *sensu largo.* Among them, he pointed to the so-called contracts on universal succession and contracts on singular succession. The former aimed at the appointment of an heir, their subject matter being the estate to be left by a living person. Therefore, they should be considered as a third title to succeed (the basis for inheritance), permitted in some jurisdictions alongside the law and a will.
B) Negative contracts of succession *sensu largo,* their subject matter being "the waiver by a person of a financial benefit that they would receive by way of inheritance of the estate of another person."

For J. Gwiazdomorski, positive contracts of succession regarding the universal inheritance were the contracts of succession *sensu stricto.* Thus, the contracts of succession *sensu stricto* are the agreements that confer the title to succession. In Polish law *de lege lata* there are two such titles: first, the will, a unilateral legal act of beneficial nature whose statement of will has no specific recipient; it is also revocable, personal, causal, formal, and *mortis causa,* aimed to dispose of the testator's assets, and second, the law (Article 926 CC).

A. Doliwa shares a similar stance in his current literature. This author sees the term "agreements concerning an estate" as equivalent to "contracts of succession." As he points out, there are two categories of agreements

[1] See J. Gwiazdomorski, in *Encyklopedja Podręczna Prawa Prywatnego*. Ed. Konic, H. Vol. I. Warszawa 1934, 541.

concerning an estate. First, a contract of succession, in the broad sense, is an act at law having a specific, yet different effect on inheritance (e.g. a contract of waiver of succession). Second, a contract of succession, in the narrow sense, is agreement constituting a title of inheritance (such a contract may also contain dispositions upon death, i.e. the appointment of an heir or devices and instructions from one or both parties).[2] A. Doliwa's position is, by my standards, somewhat inconsistent as he points out elsewhere that the contract of waiver of succession is not a contract of succession as it is not a title to succession.[3]

As regards the terminology, it is worth noting the opinion expressed by M. Niedośpiał and M. Pazdan.

M. Niedośpiał says that the contract of succession (*Erbvertrag*), in the technical and legal sense, is an act in which the testator names a designated person (counterparty, third party) an heir and the person agrees to it. In other words, it is a contract in which the testator appoints the counterparty or a third party as an heir. The contract of succession, in the broad sense, is an agreement in which the testator names an heir or establishes a devise or instruction. Accepting this broader meaning of the term is not justified according to M. Niedośpiał. However, this concept should be confined only to the agreement to appoint an heir, as follows from the wording itself anyway (as in § 1249 ABGB; in a broader sense – as pointed out above – in § 2278 BGB, Article 494-497 ZGB). In any case, we should always be aware of what approach to the term is adopted; the contract of succession, in the broad sense, cannot contain other dispositions than the appointment of an heir, devise or instruction (cf. § 2278 BGB), e.g. the appointment of an executor of the will or family dispositions. If they can be contained under a given legislation, they can be treated as unilateral dispositions of the last will (testamentary) and included only in the contract of succession.[4]

M. Pazdan argues that the term "contract of succession" is given by some a broad interpretation and is used interchangeably with "agreements concerning an estate." He claims that this is misleading. It is more correct

[2] See A. Doliwa, in *System prawa prywatnego*. Vol. 10. Law of Succession, Warszawa 2009, 914.

[3] See A. Doliwa, in "Umowa o zrzeczenie się dziedziczenia." *EP* (6-9) 2008, 15.

[4] See M. Niedośpiał, *Swoboda testowania*. Bielsko-Biała 2002, 21. This last reservation of this author referring to the conversion of the contract of succession into a will does not seem well-grounded.

to distinguish between these two terms and use "contract of succession" in the narrow sense to refer to an agreement comprising another legal act parallel to a will which may lead to the title to succession. So, the contract of succession is an agreement whose one or both parties make dispositions *mortis causa*. Such an interpretation of the contract of succession is one of the components of agreements concerning an estate.[5]

In my opinion, no distinction should be drawn between the contracts of succession *sensu largo* and *sensu stricto.* This can ensue in unnecessary legal oversimplifications and misunderstandings. Since the contract of waiver of succession is not the title to succession (its subject matter and purpose is not to establish an heir), it is not the contract of succession *(sensu largo)*. Still, it is and should be counted among the inheritance agreements concerning a living person or agreements concerning an estate. It would be ungrounded, in my opinion, to put an equal sign between the concepts: "contract of succession" and "agreement concerning an estate." I reckon that the logical relationship between these concepts is that any contract of succession is an agreement concerning an estate (inheritance) but not every agreement concerning an estate (inheritance) is a contract of succession. This is the case with the contract of waiver of succession.

As you can see, the terminology pertaining to the problems in question is anything but uniform, and, as rightly pointed out by M. Niedośpiał, it is important to be aware what kind of legal transaction is being handled. For no doctrinal term or phase determines what type of legal event (legal transaction) we are dealing with.

Contracts of succession in other legal systems

Unlike in Poland, some foreign legislations allow contracts of succession. This is the case in, for example:

- German law – § 1941, 2274-2300 of the Civil Code[6],
- Austrian law – § 602 ABGB: "Contracts of succession, for the entire estate or part thereof, may be concluded only between spouses. The relevant provisions are contained in the chapter on matrimonial

[5] See M.Pazdan, in *System prawa prywatnego*. Vol. 10. Law of Succession, Warszawa 2015, 1146.

[6] For more details, see A. Duda, "Umowa dziedziczenia w prawie niemieckim – pojęcie i moc wiążąca." *Rej.* (3-4) 2004, 116- 148.

contracts" (cf. 1249-1254 ABGB); § 603 ABGB: "To what extent a donation in prospect of death is considered a contract or a last will is determined in the chapter on donations,"

- Swiss law – Articles 512-515 of the Swiss Civil Code (GBS),
- Hungarian law – § 655-658 of the Hungarian Civil Code of 1959 and § 7.48 - 7.52 and § 7.54 of the new Civil Code effective from 15 March 2014.

The legal approaches pursued in the different legal systems differ slightly from one other. Some systems allow not only unilateral (including one party's dispositions only) and bilateral (including both parties' dispositions) contracts of succession but also multilateral ones (e.g. German law). Sometimes, there are limitations as to: the parties to such contracts (e.g. only spouses or engaged couples can be the parties provided that they enter into marriage), the type of permitted inheritance dispositions (sole appointment of an heir or any other disposition), and finally a group of beneficiaries of these dispositions (only the parties to the contract or also third parties).[7]

Contracts of succession, in jurisdictions where they are permitted, are acts at law in case of death (*mortis causa*). Yet, they are not the dispositions of the last will as they do not serve the disposal of assets in the event of death and cannot be cancelled by a unilateral legal action. Instead of revocability – which is one of the three (next to the unilateral nature and *mortis causa*[8]) inherent attributes of the will as a legal act – in the case of contracts of succession by the operation of law which permits the "cancellation" of their legal effects, there is the subsequent agreement between the parties aimed to nullify the effects of the previously concluded contract of succession.

Contracts of succession are not found in French, Italian, or Dutch law or in many other legal systems.

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[7] See, e.g. M. Pazdan, "Umowy dziedziczenia w polskim prawie prywatnym międzynarodowym." *SIS* (5) 1979, idem "O umowach dziedziczenia zawieranych przed polskimi notariuszami." *Rej.* (4-5)1996, 6off, idem "Czynności notarialne w międzynarodowym prawie spadkowym." *Rej.* (4) 1998, 112-113, A. Duda, *Umowa dziedziczenia*…, op.cit., 116ff, Rott-Pietrzyk, E. "Umowa dziedziczenia – uwagi de lege lata i de lege ferenda." *Rej.* (2) 2006, 166ff.

[8] The occurrence of these three attributes is a prerequisite for regarding a will as an act at law; see e.g. E. Skowrońska-Bocian, *Prawo spadkowe*. Warszawa 2011, 72.

Justification of the prohibition of contracts of succession

Justification of the prohibition on entering into contracts of succession (contracts of succession *sensu stricto* – as some would like to stress) is fairly simple. The point is that they would constrain the contracting parties. After the conclusion of a contract of succession, unlike in the case of a will which the testator may at any time revoke without the need to justify their decision, the cancelling of the legal consequences of such a contract would only be possible by concluding another agreement nullifying the previously made contract of succession. For various reasons, to reach such a consensus by the parties could be impossible or very challenging. Consequently, any admission of the existence of contracts of succession would violate the principle that the testator is entitled to determine their last will as long as they die (*ambulatoria est voluntas testatoris usque ad mortem*).

The literature on the subject highlights, beginning with the regulation contained in Article 58 Code of Obligations, that the prohibition of concluding agreements concerning the estate of a living person is driven by the concern that they could lead to "attempts on the testator's life" by those who would be entitled to the estate as a result of such acts at law.[9] For this reason, M. Niedośpiał regards such acts as contrary to the principles of social coexistence as "exposing the testator's life to risk."[10] A. Kubas supported a view that the admission of agreements concerning the estate of a living person might also lead to the violation of the prohibition of custody substitution as referred to in Article 964 CC.[11]

Contracts of succession were already ruled out by the 1946 Decree on the Law of Succession. The so-called socio-political theses of the draft version of the decree published in 1946 read that: "The draft decree does not allow contracts of succession mainly due to the resulting constraint suffered by the parties in that they are unable to terminate the contract unilaterally or amend it, even though any changes taking place from the time of conclusion of the contract in the parties' life situations justify the need to modify or cancel the contract. The admission of contracts of succession would stand oppose to the fundamental assumptions of any

[9] See R. Longchamps de Bérier, *Zobowiązania*. Lwów 1939, 150; Namitkiewicz, J. *Kodeks zobowiązań. Komentarz dla praktyki*. Vol. I - General, Łódź 1949, 89.

[10] See M. Niedośpiał, "Darowizna na wypadek śmierci." *PiP* (11) 1987, 53.

[11] See A. Kubas, *Umowa na rzecz osoby trzeciej*. Warszawa-Kraków 1976, 84.

dispositions of the last will which always offers the possibility of a unilateral cancellation or modification of such dispositions."[12] Addressing the objection of arbitrariness, the same reasons can be assumed to have caused the authors of the Civil Code not to legitimize contracts of succession in the Polish legal system.

In this context, the current approach adopted by the Polish legislator appears as balanced and intermediate. For the Polish legislator only permits a contract of waiver of inheritance, at the same time disallowing agreements that would result in the appointment to inheritance. In my view, such a solution should be assessed positively.

The work of the Codification Commission for Civil Law

For more than ten years, our country has been witnessing a discussion on the future shape of civil law, including the provisions of the law of succession. With regard to the regulations on succession, the demand for a profound revision is indisputable. Some changes have already been implemented (e.g. on the order of intestate succession, bequest, liability for succession debt).

Part of the discourse addresses the question of whether to amend the 1964 Civil Code or draw up a new code. In addition, under the Regulation of the Council of Ministers dated 22 April 2002 on the appointment, organisation and operation of the Codification Commission for Civil Law,[13] the Minister of Justice established the said Commission. Pursuant to Article 8(1) of the Regulation, the Commission's responsibilities comprise the following: 1) formulation of the guidelines and general concept of modifications to civil law, family law and private commercial law, 2) formulation of the guidelines and development of draft provisions of fundamental importance for the system of civil law, family law and private commercial law, including tasks arising from the harmonisation of Polish law with European law.

The Commission had already prepared the drafts of earlier amendments to the Civil Code. The result of its work was, among others, the incorporation in the Civil Code of the institution of bequest (*legatum per*

[12] DPP (3-4) 1946, 69.

[13] Journal of Laws of 14 May 2002, No. 55, item 476 as amended.

vindicationem), as a devise of material consequences, and the amendment of the provisions on the heirs' liability for the debts under the succession which consisted in the introduction of the principle of responsibility for the so-called benefit of inventory (i.e. up to the value established in the inventory of the estate's assets), in place of the currently binding principle of unlimited liability. The solution provided for in the Civil Code regulations effective before 18 October 2015 did not protect the heirs properly against the unexpected liability for succession debts exceeding the value of inherited assets. Currently, the Commission is working on the new code. For now, they have drafted Book I (the general part). Other books are also being developed: Book II (property law), Book III (contract law), Book IV (family law) and Book V (law of succession).

The previous term of the Codification Commission for Civil Law closed on 10 February 2015. The Commission chairperson for the new term was appointed on 1 March 2015 and the members two weeks later. Pursuant to § 6 of the Regulation of the Council of Ministers dated 22 April 2002 on the appointment, organization and operation of the Codification Committee for Civil Law, Prof. Tadeusz Ereciński appointed two permanent teams: for substantive law and for the civil procedure. In addition, other teams are formed to perform specific tasks: either related to the drafting of the new code or preparing new legal content to be implemented in the current legislation.

The following teams have been established to handle tasks related to the designing of the new Civil Code: for agreements to the transfer of rights, for service agreements, for loan agreements, for security of accounts receivable, for insurance agreements, and for licence agreements. This group also covers teams responsible for the review of preliminary drafts of the new law, not yet approved by the Commission. These teams are the following: for agreements to use a thing or rights, for regulations on the conclusion of agreements, for regulations on the conduct of affairs of other individuals without commission, for unjust enrichment, and for regulations of illegal acts. Other soon-to-be appointed teams will address the issues of property law, family law, and the law of succession.

The Codification Commission for Civil Law in the term of 2011-2015 mainly focused on the draft of the new code. They reviewed the drafts of the general part of the law of obligations (general part of Book II) and property law (Book III), prepared by the Commission's task forces of the previous term. They closed the review of Book I – the general part – and included the reservations made to the draft version of this book published

in 2009. The new version of the book will be published on the Commission's website after the expiry of the current term. The work on the law of succession also reported some progress (Book V). Work was started on the specific part of the law of obligations. The responsible teams addressed the agreements transferring things and rights and agreements regulating the provision of services.[14]

That in the new code the matters concerning the law of succession will – as it is now – be included in a separate book should be seen as positive. It is of secondary importance that the number of the book will change from IV to V.[15] The law of succession is part of civil law and the legal standards applicable to succession are generally to be found in the civil codes of many states. It follows from the fact that the classic European codes that have influenced other national regulations invariably contained a book on the law of succession. This is true of, for example, the German Civil Code (*Bürgerliches Gesetzbuch*), Book V (law of succession), or the French Civil Code (*Code Civil* – Napoleon Code), Book III (the methods of acquiring property rights). Similarly in the Civil Code of Québec, Canada, the Civil Code of Louisiana, USA,[16] the Dutch Civil Code (*Burgerlijk Wetboek*), the Spanish Civil Code (*Código Civil*) or the Italian Civil Code (*Il Codice Civile*).[17] These codes are considered the most exemplary regulations of civil law. They were often treated as model for the civil legislation in states with less impressive legal traditions (e.g. Ukraine, Estonia, Hungary[18]). Today,

[14] See the information provided on the website of the Ministry of Justice: www.ms.gov.pl.

[15] The added number of the book of the Civil Code results from the inclusion (as Book IV) of the provisions previously contained in the Family and Guardianship Code.

[16] Louisiana is the only US state not influenced by common law. Positive law is the prevailing system. Civil law in this state is based on the code basically reflecting the French model. This is unique across the United States (see M. Załucki, *Wydziedziczenie w prawie polskim na tle porównawczym*. Warszawa 2010, 265 – 266).

[17] The codes are available on-line at the following addresses: http://gesetze-im-internet.de/; http://www.droit.org/;http://www.canlii.org/;http://legis.state.la.us/;http://wetboek-online.nl/http://www.ucm.es/; http://www.jus.unitn.it/.

[18] Cf. Gârdos, P. "Recodification of the Hungarian Civil Law." *European Review of Private Law* (5)2007, 707ff; Dovgert, A. "The New Civil Code of Ukraine 2003: Main Features, Role in the Market Economy and Current Difficulties in Implementation." In *Commercial Law Reform in Russia and Eurasia*. University of Illinois at Urbana-Champaign 2005, 2ff. (conference proceedings); idem, "Ukraińska kodyfikacja prawa prywatnego międzynarodowego." *Kwartalnik Prawa Prywatnego* (2) 2008, 349ff. (after M. Załucki, "Ku jednolitemu prawu spadkowemu w Europie. Zielona Księgi Komisji Wspólnot Europejskich o dziedziczeniu i testamentach." In *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego*. Vol. VII. A.D. MMIX, 104).

all major codifications of civil law in the world, including the European codes, contain regulations concerning the law of succession.

The results of the work of the Codification Commission on Book V covering the succession *mortis causa* are still to be published. It should be noted, however, that in the discussion on the reform of civil law there is an express objective of regulating donation in case of death (*donatio mortis causa*). A need is highlighted for introducing far-reaching changes in the dispositions of the last will. The will is to remain the main form of such dispositions; at the same time, there is a plan to abandon some forms of will: allograph and specific. An open case is the question of admissibility of the conclusion of contracts of succession (also between the spouses). Joint wills are advocated along with the partition dispositions *mortis causa,* the so-called partition wills and custody substitution.

Therefore, the overall trend in the changes seems predictable at this point. The point is to contribute as much as possible – through the flexibility of regulations on the institution of law of succession and granting any potential testator the broadest possible freedom of disposing of (disposition) of their estate in the event of death – to the implementation of one of the functions of the law of succession, namely to encourage individuals to lead an active life and generate wealth.

Doctrine's approach to the need for the introduction of the institution of contract of succession into the Polish legal system

The literature on the subject reveals certain differences of opinion as to the need for the introduction of the institution of contract of succession into the Polish legal system.

More than twenty years ago, J. Pietrzykowski wrote that when amending the law of succession one should be "very careful as the existing regulations are rested on the well-established practice supported by the extensive case-law and legal literature..., and the stability of the legislation is specifically crucial in the area of transfer of property rights and obligations of the deceased to his or her heirs."[19] I think that J. Pietrzykowski's remark

[19] See J. Pietrzykowski, "Wybrane zagadnienia reformy prawa cywilnego." In *Z zagadnień współczesnego prawa cywilnego. Księga pamiątkowa ku czci Profesora Tomasza*

should also be referred to the development of the new code. In any case, there is no point in making changes for the change's sake. Regrettably, the adoption of knee-jerk changes to the law is nothing new to the Polish legislator. The consequences (of course negative) of this state of affairs are self-evident. Those who face the operation of the law on the daily basis know it best.

Apparently, a supporter of the introduction into Polish civil law of the third, next to the will and the law, title to succession, i.e. a contract of succession, was K. Przybyłowski back in the 1920s; he would say that, "in modern legislations, one can observe a trend towards broader admission of contracts of succession."[20] He recognized the institution of the contract of waiver of succession as progressive and deserving attention.

S. Wójcik expressed a dissenting voice.[21] He stressed that "the state of affairs with regard to the titles to succession has so strongly established itself in the public awareness over the last sixty years that any change thereto is not only unnecessary for material reasons but would also be unjustified for psychological reasons. Consequently, the future should see no third title to succession introduced into our law in the form of a contract, even concluded between strictly designated persons."

Still, E. Rott-Pietrzyk ventured a moderate opinion.[22] In her judgement, it seems that if the legislator decided to have the institution of joint will introduced, and the notaries public were positive about the donation *mortis causa*, considered admissible by many representatives of the doctrine anyway, the institution of the contract of succession *sensu stricto* would be superfluous. And the legal instruments existing in our law would satisfy the interests of the parties to these contracts. In particular, it would allow testators – to a satisfactory degree – to have their will fulfilled and to have the influence on the future of their estate after their death. The implementation of the concept of contract of succession is not required to make our inheritance law more efficient and responsive to some existing needs (unlike in Germany where contracts of succession have a long

Dybowskiego. Studia Iuridica. Vol. XXI. Warszawa 1994, 249-250.

[20] See K. Przybyłowski, *Prawo spadkowe. Wedle stenogramu wykładów uniwersyteckich wydał J. Rodkowski*. Lwów 1929, 40.

[21] See S. Wójcik, "O niektórych uregulowaniach w prawie spadkowym. Uwagi *de lege ferenda*." In *Rozprawy prawnicze. Księga pamiątkowa Profesora Maksymiliana Pazdana*. Eds. Ogiegło, L., Popiołek, W., Szpunar, M. Kraków 2005, 1489.

[22] See E. Rott-Pietrzyk, "Umowa dziedziczenia – uwagi *de lege lata* i *de lege ferenda*." *Rej.* (2) 2006, 178-179.

tradition (over a hundred years) and such a contract is widely used in civil law transactions). Moreover, as E. Rott-Pietrzyk underlined, of certain significance is the legal tradition of having two titles to succession (a will and the law), strongly established in the legal awareness of the public and lawyers (in particular the judicature and notaries) over more than sixty years, as pointed out by S. Wójcik, too.

The author also underlines that: 1) a new tradition replaced the former one because, before the Polish legislator decided the matter in the Decree on the Law of Succession of 1946 and later in the Civil Code of 1964, both the contracts of succession and joint wills had been allowed in part of the shared lands; 2) there has been no thorough study in Poland that would indicate that there is, in practice, a demand for new instruments of succession law concerning the legal transaction *mortis causa.* Finally, E. Rott-Pietrzyk says that if no sound and persuasive argument is put forward in favour of the introduction of the contract of succession into the Polish legal system, it would be advisable not to have it in place. For this could in fact be seen as an unwarranted experiment. The introduction of a new legal institution cannot be only justified by the desire to join the ranks of more progressive legislations. She concluded metaphorically, inspired by the work of J. Lorentowicz, that the law of succession should not be "a scene for the avant-garde theatre and far-reaching experiments."[23]

Like S. Wójcik and E. Rott-Pietrzyk, I also oppose the introduction of the contract of succession into the Polish law of succession. I fully subscribe to the reasoning of E. Rott-Pietrzyk. I am far from thinking that such a sentiment should be considered backward (or in any case the absence of progressiveness) on the side of the Polish legislator. I would like to reiterate the arguments based on:

- first – a long tradition in the Polish legal system of having only titles to succession (a will and the law); still, it must be admitted that the law prevails as the title to succession,
- second – the recognition as admissible by a larger part of the doctrine, and recently by the Supreme Court (see Resolution of the Supreme Court of 13 December 2013r., III CZP 79/13[24]), of contracts of donation *mortis causa,*

[23] Ibidem, 179.
[24] OSNC 12 (2014), item 98.

- third – the provisions of Articles 1048-1050 CC on the contract of waiver of succession treated by some part of the doctrine as a contract of succession *sensu largo,*
- four – the fact that in the legal systems which allow a joint will, its similarity to the contract of succession is sometimes so strong that it is often called a "weakened" version of the contract of succession (this is the case in German law with reference to a mutual will). At this point, I wish to underline that I would advocate the establishment of a matrimonial joint will in Polish law of succession. Thus, a joint will, had it become an institution of the Polish Civil Code, would, to some extent, fulfil the objectives of the contract of succession.
- five – admissibility in the case-law of the Supreme Court of the construct of conversion of an invalid – because of the existing dispositions of two testators – of allograph will (Article 951 CC) into two separate oral wills (see e.g. Resolution of Seven Judges of the Supreme Court of 22 March 1971, III CZP 91/70[25]),
- six – the absence of the need registered by both the legal theoreticians and practitioners (notaries) to introduce a third title to succession.

It should be noted that in the legal systems permitting the contract of succession it is the strongest foundation of appointment to succession (follows by the last will and the law). This means that if the testator has entered into a contract of succession, the subsequent dispositions in the will or other inheritance agreement are invalid in so far as they violate the counterparty's rights ensuing from the previously concluded inheritance agreement. Similarly, any testamentary dispositions prior to the contract of succession are nullified if they limit the right of the individual benefiting from the contract of succession. For example, such a solution is to be found in § 2289 of the German Civil Code; it is similar in the ABGB – despite the absence of an express provision, it results from the nature of this agreement.[26] These three titles to succession (contract, will, law) pertaining to other parts of the estate are not mutually exclusive and can operate in parallel (e.g. heir A receives 1/3 of the estate under the will, 1/3 of the estate under the contract of succession and 1/3 of the estate under

[25] OSNCP 10(1971), item 168.
[26] See, e.g. Niedośpiał, M. *Swoboda…,* op.cit., 23.

the law; the same can apply for several heirs: e.g. heir A receives 1/3 of the estate under the contract of succession, heir B receives 1/3 of the estate under the will, heir C receives 1/3 of the estate under the law).[27]

I am of the opinion that there is no convincing argument that support the introduction of the contract of succession into the Polish legal system as an inheritance agreement constituting the title to succession. I would advocate this view also if the contract were to be "reserved" only for the spouses. The arguments of the representatives of the legal literature endorsing the prohibition of inheritance agreements covering the estate of a living person, including the contracts of succession, are still valid.

Conclusion

De lege lata, in Polish civil law, the law and a will are the only titles to succession. a contract is not the title to succeed (as follows from the provisions of Article 926 § 1, Article 941 and Article 1047 of the Civil Code). Article 1047 of the Civil Code does not rule out the conclusion of such contracts that, although made between living persons (*inter vivos*), have an impact not only on the possible appointment to inheritance but also on the partition of an estate and the right to legitim. For example, as a result of a donation agreement concluded between the future testator and their sole heir at law which transfers the ownership of an asset being the future inheritance, the value of the estate to be inherited in the future may be close to zero. On account of various donations made by the testator and expenses incurred for the upbringing and education of the heir, there are relevant settlements occurring between the heir or donees and the person entitled to legitim (Article 993 et seq. of the Civil Code). Finally, the testator's donations and the costs of raising and educating the heir are of importance in the settlements between the heirs in connection with the partition of the estate (Article 1039 et seq. of the Civil Code).

In this article, I endeavoured to demonstrate the futility of introducing into the Polish legal system of the contract of succession *sensu stricto* as a title to succession. I am of the opinion that existing legal, i.e. the two titles to succession, under the law and a will, should remain in force. On the other hand, I would propose the introduction into the Polish matrimonial

[27] Ibidem.

law of succession of the institution of joint will. As for the passable changes to the law of succession, it would be advisable, in my view, to have in place a clearer regulation of donation in case of death (*donatio mortis causa*). I would also advocate the introduction of the so-called partition wills and abandon specific wills, however, maintaining an allographic testament as ordinary will (along with two other forms of ordinary will: holographic and notarized).

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Summary

The author discusses the future of contracts of succession in the Polish law of succession. *De lege lata*, in its Article 1047, the Civil Code prohibits the entering into contracts of succession with the exception of contract of waiver of succession. Considering the ongoing work of the Codification Committee for Civil Law aimed to draw up a new code, the purpose of introducing such contracts as a third – next to a will and the law – title to succeed seems worthy of consideration. The author expresses the view that with regard to the succession titles the existing solution contained in Article 926 § 1 of the Civil Code should be maintained. Consequently, he advocates against the introduction of contracts of succession into Polish law.

KEY WORDS: contract of succession, estate, contract, succession, title to succession

Streszczenie

W artykule autor omawia zagadnienie przyszłości umów dziedziczenia w polskim prawie spadkowym. *De lege lata* kodeks cywilny w art. 1047 kc zakazuje zawierania umów o spadek, z jednym wyjątkiem odnoszącym się do umowy zrzeczenia się dziedziczenia. Z uwagi na prace Komisji Kodyfikacyjnej Prawa Cywilnego mającej opracować nowy kodeks cywilny, uprawnionym wydaje się rozważenie celowości ich wprowadzenia do nowego kodeksu cywilnego jako trzeciego – obok testamentu i umowy – tytułu powołania do spadku. Autor jest

zdania, że w zakresie tytułów powołania do spadku zasadnym jest pozostawienie obecnego rozwiązania wyrażonego w art. 926 § 1 kc. Tym samym opowiada się przeciwko wprowadzaniu do polskiego prawa spadkowego umów dziedziczenia.
SŁOWA KLUCZOWE: *Umowa dziedziczenia, spadek, umowa, dziedziczenie, tytuł powołania do spadku.*

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