

Question of the monopoly of the inheritance law on the formation of the post-mortalsuccession – about “inheritance law without inheritance” in a comparative perspective

1. State the objective of the project

The regulations of inheritance law in Poland, but also typically in the countries of Western legal tradition typically presuppose, that subjects who will be successors of the deceased (with regard to rights of such a person, in particular property rights, but also his duties), will be appointed either by the deceased yet in his lifetime (mainly through testament, last will) or, lacking such appointment, by the legislator choosing the closest family. Inheritance law contains also a set of rules securing values agreed to as important by the legislator in the process of transferring the legal situation of a deceased person onto its successors – it particularly protects the will of the deceased (e.g. by adapting the interpretation of statements in a way friendly thereto, free revocability of legal acts in this field), but balances it with the protection of the closest family (e.g. through the institution of legitim, by which the closest family will receive a portion of the deceased’s wealth, who decided to dispose it onto other person).

The practice of law shows, however, that many of the legal relations within the civil law turnover have their own statutory regulation of post-mortalsuccession with regard to them – e.g. banking account contract, collecting funds in pension accounts, status of a shareholder of a company, contract of lease of a living flat – which is supposed to be connected with the inadequacy of inheritance law principles to social expectations with regard to their regulation. It is a part of a broader problem on lack of adjustment of inheritance law to current socio-economic reality, in which the notion of a family is no longer unequivocal and does not indicate people undeniably closest, as well as the wealth has a different shape than the later typical multi-generational household. This is why the participants of the legal turnover willingly search for ways to avoid inadequate principles of inheritance law and the legal regulations of particular legal relations seem to explicitly allow therefor. It makes a need for such a research, which will be conducted within this project, which is to present the actual scope of possibilities to form post-mortalsuccession.

The regulation of post-mortalsuccession outside inheritance law raises, however, significant doubts with regard to law as a system of solutions. Then it is important to answer such a question, whether application of inheritance rules respect the specificity of post-mortalsuccession, as well as e.g. inheritance tax, can take place, when the succession was regulated outside inheritance law (therefore it was supposed to be avoided), or apply the principles regulating normal life-time acts (which surely are less adequate). It can be wondered, to what extent this solution is in accordance with constitutional principles protecting inheritance right. Those examinations will altogether help establish, what would be the effects of applying a particular regulation of post-mortalsuccession outside inheritance law.

2. Research to be carried out

The research conducted within the project will be based mostly on analysis of the text of legal acts with regard to general rules of inheritance law, specific regulations of post-mortalsuccession outside inheritance law as well as the scope of possibilities within freedom of contract. Those texts will be both of currently binding Polish law as well as other, which can be inspiring to legislative changes – which includes chosen foreign laws (comparative research) or historical laws (historical research). In order to establish the meaning of the legal acts, the achievements of the judiciary and legal doctrine will be taken into consideration. Also researches on ethical meaning of the solutions as well as on their socio-economic reasons and effects will be adapted.

3. Present reasons for choosing the research topic

The application of institutions allowing for post-mortalsuccession outside inheritance law is a fact in the Polish legal reality as well as in many other legal systems. However, establishing the scope of the acceptance of such an application, common features for varied examples as well as legal consequences of their use helps, then, making more conscious decisions on this field by the legal turnover participants and adjusting current legal regulations to needs of the society by the legislator.

Moreover the issue on the border between law, economy and sociology; law of particular legal relations (mainly contracts) and inheritance law; law in theory and law in action – is significantly interesting from the researching point of view. Besides up till now no such work, as the one intended within this project – analysing both theoretical bases of regulation of post-mortalsuccession outside inheritance law, its particular symptoms available to the parties, their common features and general consequences of their applying – has been observed. Having this in consideration seems that it will be possible to draw enough broad conclusions with regard to existence of law, which effectively makes the needs of the participants of the turnover in the field of post-mortalsuccession true.