

The doctrine of 'substantial compliance' and the appropriateness of its implementation into the inheritance law of European states on the example of Poland

Description for the general public

The last will as an instrument of inheritance law is one of the ways of disposing own property in the event of death. In Europe, the inheritance law is still the domain of national law. Particular legal regulations of European countries generally provide for specific formal requirements for the valid preparation of wills, called formal requirements. The testator, if he/she wants to dispose of his/her property in the event of death, must prepare a last will in accordance with those requirements. If he/she does not do it, the desired effect shall not be obtained after his/her death. His/her last will, according to the formal regulations of the inheritance law of European countries (including Poland), will not be respected. However, this state of affairs does not seem satisfactory. Reflecting the last will of the testator seems to be an important value that individual legislators should strive for.

The above has already been noticed in some other countries. In the world, especially in common law countries outside of Europe, there are legal solutions that allow for the maintenance of a disposal in the event of death, which was prepared by the testator with the intention of transferring his/her property to his/her heirs, but during its preparation, formal requirements for such disposals were not met. One such example is the Australian doctrine called "substantial compliance". According to this concept, fulfilling the will of the testator is the most important, and therefore one should strive to respect his/her intentions despite the existence of certain formal defects in the last will. Of course, the formalism, plays its right role, but it is no longer the essence of the mechanism of disposing of property in the event of death.

As it can be assumed, the task of legal provisions should be to answer the question when, and if so, then on what basis, a last will prepared contrary to the provisions of the Act concerning the form of its preparation may have legal effect and be the basis for inheritance. Meanwhile, the law applicable in this area in Poland, as well as in other countries of continental Europe, does not provide for any clear structure that would explain the dilemmas appearing here at first glance. Such a statutory construction, in the near future, may turn out to be indispensable. Therefore, as part of the project, an optimal model for preservation of the testator's last will will be sought, with respect to the requirements of the act regarding form, but at the same time making it possible to consider as valid a last will even if it was not prepared in accordance with those requirements.