

THE OBJECT OF PROTECTION AND THE SUBJECT MATTER OF OFFENCES RESULTING IN UNWORTHINESS TO INHERIT OR DISINHERITANCE

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Summary. In cases defined by law, a heir may be excluded from inheriting either by the court, on the basis of provisions of Art. 928–930 CC, or by the testator himself who can deprive the statutory heir of the right to legitim (art. 1008 CC). The reasons for depriving of inheritance on the grounds of unworthiness to inherit or disinheritance are different except in the case of committing an offence. Establishing whether a particular offence gives grounds for excluding from inheritance is based on legal criteria, different for these two civil-law actions. In case of unworthiness to inherit, it is the criterion of the „seriousness of offence” and the prerequisite of committing the offence „against the testator”. Both expressions raise difficulties of interpretation and until now there has not been developed, in legal literature and in the case-law, a uniform view as how to interpret them. There are also doubts as to understanding the criteria which let assess an offence in the context of the reasons for disinheritance – in the doctrine there is a particular inconsistency concerning the notion of a „person closest to the testator”. There are also differences concerning the catalogue of offences resulting in depriving of legitim. However, it is broadly accepted that, although the criterion based on the definition of the object of protection defined in Art. 1008 item 2 CC brings to mind associations with the typology of offences in the Penal Code, it should not mean a „simple reference” to relevant chapters of the Penal Code because of the complexity of the objects of protection specific for different types of offences.

Key words: unworthiness to inherit, disinheritance, offence

According to the provisions of the Civil Code (CC), similarly to the regulations of the Decree of 8 October 1946 – Inheritance Law¹, committing a criminal offence may give grounds for the court to deem an heir unworthy to inherit (Art. 928 § 1 item 1 CC) as well as it may allow the testator himself to debar a statutory heir from inheriting the legitim (Art. 1008 item 2 CC). The characteristics of the relevant offences, apart from the prerequisite of intent and, partly, the definition of the subject matter of the offence, are differentiated.

Considering the literal interpretation of Art. 928 § 1 item 1 and Art. 1008 item 2 CC, it seems that creating a catalogue of offences resulting in disinheritance is less complicated in case of determining the reasons for disinheritance. The provision of Art. 1008 item 2 CC indicates clearly that debarment from inheriting

¹ Dz. U. [Journal of Laws] No. 60, item 328, as amended.

the legitim may be justified in case of committing an intentional offence against life, health, freedom or a gross insult against the testator or one of persons closest to him². Such „formula” of a provision, consisting in indicating the object of protection, seems to reduce – in comparison to the provision of Art. 928 § 1 item 1 CC, where only the prerequisite of the „seriousness” of the offence was mentioned – the catalogue of offences which may provide grounds for disinheritance. Although according to Art. 1008 item 2 CC this catalogue is not restricted on the basis of the seriousness of the offence committed by the statutory heir, it should be noted that it is emphasised in the literature that such offence must be of a sufficiently serious character. Therefore, in case of disinheritance on the grounds of committing an offence which is not „sufficiently serious”, the disinherited may challenge the validity of the testamentary disposition as contrary to the principles of community life (Art. 58 § 1 CC)³. Nonetheless, in case of offences giving grounds for disinheritance the subject matter has been defined more broadly – it may refer not only to the testator himself, but also to one of the persons closest to him.

The wording of Art. 1008 item 2 CC unequivocally brings to mind the typology of offences in the Penal Code (PC). Adopting a formal criterion will undoubtedly guarantee the creation of a closed catalogue of offences resulting in disinheritance. Considering the wording of the provision of Art. 1008 item 2 CC, the catalogue of offences resulting in disinheritance under the binding legislation should include the offences mentioned in the chapter XIX and XXIII of the Penal Code as well as a gross insult. However, it should not be ignored that the provision of Art. 1008 CC remained unchanged since 1964 in spite of amendments made in the Penal Code⁴. Adoption of a formal criterion as conclusive when including an offence to the catalogue belonging to Art. 1008 item 2 CC would modify this catalogue twice, excluding or including particular types of offences, in relation to the original one. During the period of validity of the Penal Code of 1932, pursuant to Art. 146 § 1 item 2 of the Decree – Inheritance Law⁵, the offences resulting in disinheritance would include: 1) intentional offences mentioned in Chapter XXXV (against life and health), that is: basic type of manslaughter (Art. 225 § 1 PC), murder committed in the heat of passion (Art. 225 § 2 PC), infanticide (Art. 226 PC), euthanasia (Art. 227 PC), encouraging or assisting suicide (Art. 228 PC), abortion (Art. 231, 232 and 234 PC), causing grievous (Art. 235 PC), medium (Art. 236 § 1 PC) and minor bodily harm or health disorder.

² Considering Art. 1008 item 2 CC, it seems that offences against property are excluded from the catalogue of offences resulting in disinheritance. See, for example, the Administrative Court judgement of 6 November 2012, I ACa 1112/12, LEX nr 1313448.

³ B. Kordasiewicz, in: *System Prawa Prywatnego. Tom 10. Prawo spadkowe*, ed. B. Kordasiewicz, Warszawa 2013, pp. 966–967, Nb 50.

⁴ At the time of entering into force of the Civil Code, the Penal Code of 1932 was effective and then, from 1 January 1970, the Penal Code of 1969 was in force until the current Penal Code of 1997 came into force on 1 September 1998.

⁵ In addition to the above-mentioned offences, committing a crime constituted the reason for disinheritance (Art. 146 § 1 item 1 CC).

der (Art. 237 § 1 PC), violation of bodily integrity (Art. 239 § 1 PC), involvement in a brawl or beating (Art. 240 and 241 PC), exposing human life to direct danger (Art. 242 § 1 and 2 PC), abandonment in a direct life-threatening situation of a person who is in care or custody of the offender (Art. 243 § 1 PC), exposure to venereal disease (Art. 245 PC), cruelty (Art. 246 PC), failure to provide aid in the event of life-threatening situation (Art. 247 PC); 2) intentional offences listed in Chapter XXXVI (against freedom), i.e. deprivation of liberty (Art. 248 PC), unlawful threat (Art. 250 PC), forcing (Art. 251 PC), violation of domestic peace (Art. 252 PC) as well as a gross insult (Cf. Article 255 § 1 PC). Thus, it would imply that the catalogue of offences giving grounds for testator to disinherit would not include, for example, offences against guardianship and custody (Chapter XXXI PC) such as abandonment of a child under the age of 13, despite having obligation to provide care, (Art. 200 PC) and persistent avoidance to pay maintenance (Art. 201 PC) or the sexual offences listed in the Chapter XXXII (Prostitution), even in case when the victim was minor under the age of 15 (Art. 203–214 PC). It would be tantamount to recognition that such types of behaviour do not constitute sufficient grounds for deprivation of the right to a legitim, which seems rather questionable.

A similar situation would be in case of the catalogue of offences based on the provisions of the Criminal Code of 1969, because it would not include, for instance, such offences as cruelty (Art. 184 PC), persistent avoidance to pay maintenance (Art. 186 PC) and abandonment of a minor under the age of 15 (Art. 187 PC), which are listed in the Chapter XXV entitled „Offences against family, guardianship and youth”, or committing a lascivious act to a person under the age of 15 (Art. 176 PC), which is, according to the classification of the Criminal Code of 1969, an offence „against decency” (Chapter XXIII).

The fact that the legislator did not revise Art. 1008 item 2 CC every time when the classification of offences in the Penal Code was changed means that the legislator did not make simple reference to the regulations of the Penal Code. Nonetheless, the legislator indicated the goods of presumably highest value⁶ among those considered as the most important (i.e. personal interests) – life, health and freedom, whose infringement by the persons closest to the testator (wife, descendants, parents) may give grounds for depriving them of protection provided for in the provisions of Book IV of the Civil Code. Such presumption seems to be justified also by the fact that Art. 1008 item 2 CC indicates a gross insult as grounds for disinheritance. The gross insult, defined as slanderous defamation, did not appear as a separate (aggravated) type of offence in the provisions which were in force at the time of entry into force of the Civil Code. There is no clear regulation in this respect in the Criminal Code of 1997, either. The slanderous defamation was regulated only in the Criminal Code of 1969 (Art. 178 § 2 PC). The

⁶ See, for instance, A. Marek (*Obrona konieczna w prawie karnym. Teoria i orzecznictwo*, Warszawa 2008, p. 104), where life and health are described as „the most valuable” goods, whereas, according to the author, dignity and property are goods of „definitely lesser value”.

offender was the person who claimed or publicized false accusations concerning behaviour or character of another person with the intention to humiliate him in public or deprive him of confidence necessary for his position, profession or activity. Whereas the basic type of defamation consisted in spreading any humiliating information, including the true one, in good faith, the slanderous defamation consisted in spreading defamatory information in bad faith by the slanderer, who was aware or, at least, approved of the possibility that this information was false. To accuse of slanderous defamation it was necessary to prove that the offender acted with the intention to humiliate the victim in public or expose him to deprivation of confidence indispensable for his position, profession or activity⁷. The slanderous defamation was punishable by up to 3 years' deprivation of liberty. There is no doubt that the abandonment of a separate classification for the slanderous defamation in the Criminal Code of 1997 does not imply decriminalisation of this kind of acts. Under the current legal status, the basic type of defamation bears attributes of the offence of slanderous defamation, whereas the intention of the offender who, knowing that the allegations towards the testator are false, still slanders him in order to humiliate him in public or to deprive him of confidence indispensable for his position, profession or activity, will constitute an aggravating circumstance in the determination of the penalty⁸.

Apparently, adopting a formal criterion in order to create a catalogue of offences – reasons for disinheritance is deceptive. There are, at least, two more arguments against „rigid sticking” to the classification of offences in the Penal Code.

Firstly, although „each particular act always causes harm to the individually defined good protected by law”⁹, the individual types of offences may have several objects of protection and that is why there is a distinction between basic and secondary object of attempt. Let us use as a relevant example an offence of cruelty (Art. 207 PC). In reference to the object of protection in case of the offence of Art. 207 PC, there are various opinions in the doctrine of law, however, it is most commonly accepted that cruelty is the offence with, at least, double object of protection. The basic object of protection is family, its welfare, proper functioning, effective care over vulnerable and helpless individuals, rational upbringing

⁷ J. Wojciechowski, *Kodeks karny z krótkim komentarzem praktycznym*, Skierniewice 1992, pp. 215–216.

⁸ See P. Hofmański, J. Satko, *Przestępstwa przeciwko czci i nietykalności cielesnej. Przegląd problematyki. Orzecznictwo (SN 1918–2000). Piśmiennictwo*, Kraków 2002, p. 17. See also J. Sobczak, *Komentarz do art. 212 k.k.*, in: *Komentarz do kodeksu karnego. Beck Online Komentarze*, edited by R. Stefański, ed. X, Legalis, the legal status as of May 2014, thesis. 15 and works cited.

⁹ Each offence has its particular object of protection. An individual object of protection is „good which is the object of protection of a given criminal law provision, or good against which the offence was committed” (A. Marek, *Prawo karne*, Warszawa 2011, Nb. 144 and 145). Individual objects of protection concerning offences listed in the same chapter of the Penal Code fall within the framework of the generic object corresponding to them (Nb. 146).

of youth within the frames of correct family relations¹⁰. The secondary object of protection, depending on the form and intensity of actions taken, may be, above all, life (Art. 207 § 3 PC) and health, physical integrity, freedom and human dignity (Art. 207 § 1 and 2 PC)¹¹. Both in literature and in the case-law, it is emphasized that in case of cruelty the catalogue of secondary objects of protection is complex. There are even some representatives of the legal doctrine who assume that the object of protection in case of cruelty is constituted by the personal interests of individual persons, members of the family¹².

Secondly, the legislator does not always place offences of the same type in one chapter of the Penal Code (see Chapters XXIII, XXIV and XXV) because of the legislative technique and because individual types of offences, as it was pointed out, may have not one but several (basic and secondary) objects of protection. It should be emphasized that for the classification of types of offences the decisive factor is the „role that a given object of protection plays in the behaviour of the perpetrator” and not – gravity of the protected good¹³.

The attempt against particular goods (especially life, health, freedom) should justify *in abstracto* the possibility to deprive of the right to legitime, regardless of the type of offences in the Penal Code the given offence was „allocated to”. Otherwise, it would lead to an absurd conclusion that the same offence (for example, cruelty), committed by two different persons in different time, could (as a type of offence against life and health – Art. 246 PC of 1932) or could not (as a type of offence against family and guardianship – Art. 207 PC of 1997) give grounds for disinheriting. Nonetheless, on the basis of the law in force at the time when an offence was committed, it is doubtlessly of primary importance to assess the behaviour of the offender in view of Art. 1008 item 2 CC (also Art. 928 § 1 item 1 CC), i.e. whether such act constitutes an offence¹⁴. Reference to the notions of the criminal law when interpreting Art. 928 § 1 CC does not mean, as it was mentioned above, that the prior conviction of the heir for an intentional offence against the testator is a prerequisite for deeming him unworthy

¹⁰ As indicated above, according to systemic classification cruelty was not always classified as an offence against family and guardianship. In the Criminal Code of 1932, the relevant regulation (Art. 246) was placed in the chapter concerning offences against health and life (Chapter XXXV).

¹¹ See, in particular, A. Zoll, in: *Kodeks karny. Część szczególna. Komentarz do art. 117–277 Kodeksu karnego*, ed. A. Zoll, Kraków 1999, thesis 1 and 2.

¹² See more information, in particular, S. Hypś, in: *Kodeks karny. Komentarz*, ed. A. Grześkowiak and K. Wiak, Warszawa 2012, pp. 941–942, Nb. 2 and works cited.

¹³ For example, robbery was placed in the Chapter XXV, that is along with the offences against property, on the basis of motives of the perpetrator, i.e. property appropriation, in spite of the fact that the goods which fall under the category of secondary object of protection (for example, freedom) have undoubtedly higher value (violation of these goods is „only” a means to attain a principal aim.) – A. Marek, *Prawo karne...*, Nb. 148 and 149.

¹⁴ See more information on this subject: H. Witzczak, *Wylączenie od dziedziczenia na mocy orzeczenia sądu*, Warszawa 2013, p. 138 et seq. and works cited. Cf. J. Haberko, R. Zawłocki, *Prawnosпадkowe konsekwencje popełnienia przestępstwa*, RPEiS 2014, no. 1, p. 29 et seq., particularly p. 41.

to inherit. The fact of the heir not being convicted by a criminal court does not constitute an obstacle in excluding him from inheriting pursuant to Art. 928 § 1 item 1 CC. It is sufficient for the offender to commit the offence – he does not need to be convicted or even tried¹⁵.

In case of unworthiness to inherit the crucial factor for determining kinds or types of offences justifying the exclusion from inheritance is the clarification how to interpret the expression „serious offence” used in the art. 928 § 1 item 1 of the Civil Code. The main cause of the interpretational difficulties is the fact that, both in the Criminal Code and in the criminal law literature there is no definition of a „serious offence”¹⁶. Hence, it may be argued that in each individual case it will depend on the decision of the civil court if a given act is counted (or not) as a serious crime¹⁷.

It should be noted that such doubts did not exist during the period when the regulations of 1946 were in force. Pursuant to the art. 7 item 1 of the Decree – Inheritance Law, unworthy to inherit was the person who committed crime against the testator or one of the persons closest to him. Assuming the rationality of the legislator, it should not raise doubts that since entering into force of the Civil Code, the notion „serious offence” must not be equated with the notion „crime”.

In the literature, it is rightly highlighted that for determining if an offence committed by the heir is a serious offence within the meaning of art. 928 § 1 item 1 of the Civil Code important is not only the kind of the committed offence (felony or misdemeanour), but also the circumstances in the given case, in particular, the kind of good which was threatened, the scope of the damage, modus operandi (cruelty, serious indication of bad faith of the heir) and the motivation of the perpetrator (willingness to humiliate or dishonour of the testator in a way particularly acute for the victim)¹⁸.

An additional difficulty in indicating types of offences which justify the unworthiness to inherit seems to arise from the expression referring to the offence „against the testator” used in the art. 928 § 1 item 1 of the Civil Code¹⁹. There can be doubts whether it should be understood as an offence against the person

¹⁵ See more: H. Witczak, *Wyłączenie od dziedziczenia...*, pp. 333–334 and works cited.

¹⁶ Although the authors use the expressions „serious”, „the most serious crime”. See more: H. Witczak, *Wyłączenie od dziedziczenia...*, pp. 173–177 and works cited. As to the meaning of the notion „serious offence” see comments of P. Kłak, *Glosa do wyroku Sądu Apelacyjnego w Gdańsku z dnia 14 czerwca 2001r., sygn. I ACa 262/00*, OSA 2005, no. 9, pp. 86–90.

¹⁷ See more: H. Witczak, *Wyłączenie od dziedziczenia...*, p. 178 and 335, works cited and the case-law. See also the Katowice Administrative Court judgement of 19 December 2014, I ACa 787/14, LEX no. 1621091.

¹⁸ See, particularly, E. Skowrońska, *Przegląd orzecznictwa z zakresu prawa spadkowego (za lata 1989–1990)*, PS 1992, no. 9, p. 43 and M. Pazdan, in: *Kodeks cywilny. Tom II. Komentarz do artykułów 450–1088*, ed. K. Pietrzykowski, Warszawa 2011, p. 1028, Nb 4.

¹⁹ Although in the Art. 1008 item 2 CC there is an expression „towards the testator [...]”, this difference has no particular significance. It seems that the wording of the provision required using an expression different to „against the testator [...]”, when referring to the subject matter of offence, just because the word „against” had been already used in reference to the object of attempt.

of the testator (his personal interests) or, in a broader sense, as an offence also against his material interests (i.e. an offence against property). It can be assumed that it regards only the personal interests or any/each (serious) offence and the expression „against the testator” was used only to indicate the subject matter of the offence, that is to limit it, in case of prerequisite for disinheritance (offence against the testator or one of persons closest to him) only to the deceased²⁰. Therefore, a serious offence could be both an offence against personal interests protected by the criminal law and material interests of the testator²¹.

It was already mentioned that the law differentiates the subject matter in case of offences resulting in unworthiness to inherit and disinheritance. The offences which justify the unworthiness to inherit are, pursuant to art. 928 § 1 item 1 Civil Code, offences „against the testator”, whereas in case of disinheritance – „offences against the testator or one of persons closest to him”²². One cannot fail to notice that the subject matter regarding offences which result in depriving of the right to legitim is definitely broader, however, because the legislator used a vague expression, it is not possible to indicate precisely individuals who can be considered as „closest to the testator”. Although such expression may give rise to difficulties in practice, it seems justified, if we take into account the fact that, unfortunately, ties of kinship or marriage do not always guarantee the emotional closeness between people²³.

Under the binding legislation, because the legislator used a vague notion „persons closest (to the testator)” for determining the subject matter of offences resulting in disinheritance²⁴, it is proposed to refer to the provisions of the Penal Code in order to determine the subject matter where, as it seems²⁵, it was given a concrete content²⁶.

²⁰ It would be justified from the point of view of the legislative technique and the terminology of the Penal Code where the expression „offence against” is used to indicate the object of protection and not the subject matter of an offence.

²¹ See the judgement of the Supreme Court of 9 January 2014, V CSK 109/13, LEX nr 1425055.

²² See footnote 19.

²³ In passing, it may be remarked that the proposals *de lege ferenda* concerning the regulations on unworthiness to inherit refer to the broadening of the subject matter of the offence by the persons closest to the testator (according to M. Pazdan, *Propozycja zmian w przepisach tytułu i księgi czwartej kodeksu cywilnego*, as per: J. Zralek, *Niegodność dziedziczenia – uwagi de lege ferenda*, *Rej.* 2006, no. 2, p. 209, and following him J. Zralek, cited above, p. 217. See also *Zielona Księga. Optymalna wizja Kodeksu cywilnego w Rzeczypospolitej Polskiej*, ed. Z. Radwański, Warszawa 2006, p. 190). Assuming that such modification were justified, it seems that the expression „person closest to the testator” should be understood similarly as from the point of view of Art. 1008 item 2 CC and Art. 928 § 1 item 1 CCCode.

²⁴ And before entering into force of the Civil Code – also the unworthiness to inherit – cf. Art. 7 item 1 of the Decree.

²⁵ Doubts concern the expression „person remaining in cohabitation”, see below.

²⁶ According to, for instance, J. Pietrzykowski, in: *Kodeks cywilny. Komentarz. Tom 3 Tom 3. Księga czwarta – Spadki. Przepisy wprowadzające Kodeks cywilny*, ed. J. Pietrzykowski, Warszawa 1972, p. 1923 and J. Kosik, in: *System Prawa Cywilnego. Tom IV. Prawo spadkowe*, ed. J. St. Piątoski, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1986, p. 542.

The provision of Art. 115 § 1 PC, according to which the closest person is spouse, ascendant, descendant, siblings, relatives in the same line or degree, adoptees and their spouses, as well as persons remaining in cohabitation, generally²⁷ does not raise interpretational doubts except for the last expression, that is „remaining in cohabitation”²⁸. It may be noted in passing that in the Penal Code of 1932 the closest persons were differentiated from close persons. According to the statutory definition, the closest person was the relative in the ascending or descending line, siblings, spouse, as well as parents, siblings and children of the spouse (Art. 91 § 1 PC). There is no doubt that the notion of a close person, i.e. the person who, on the grounds of kinship, affinity, friendship or gratitude of the testator was entitled to expect an appropriate reward from him, had a much broader scope (Art. 91 § 2 PC).

²⁷ There are incidental differences of opinions as regards to the inclusion of a person remaining in marital relation – step-father, step-mother, son-in-law, daughter-in-law and their spouses to the category of closest persons. Considering the definition of affinity in Art. 61⁸ of the Family and Guardianship Code (FGC), it should not raise doubts that the above-mentioned subjects do not have the status of closest persons because they are related to their spouses by affinity and not – as it is required by Art. 61⁸ FGC – the relation of kinship. Such opinion is shared correctly by, among others, J. Majewski, in: *Kodeks karny. Część ogólna. Komentarz. Tom I. Komentarz do art. 1–116 k.k.*, ed. A. Zoll, Warszawa 2007, p. 1207, p. 23 and S. Hypś, in: *Kodeks karny. Komentarz...*, p. 655, Nb. 70. A contrary opinion is shared by, among others, S. Zimoch, *Osoba najbliższa w prawie karnym*, NP 1971, no. 9, p. 1303.

²⁸ The notion „cohabitation” and, consequently, the „person remaining in cohabitation” is not understood unequivocally in the criminal-law literature. Alongside the opinion that the persons remaining in cohabitation are those who „independently of their sex and age live together, which implies that they (certainly) run a joint household and (presumably) have particular mental bond” (J. Majewski, in: *Kodeks karny. Część ogólna. Komentarz. Tom I. Komentarz do art. 1–116...*, p. 1209, p. 27), there is another opinion which limits this notion exclusively to cohabiting partners, that is persons remaining in a relationship equivalent *de facto* to a marriage (supporters of the opinion according to which the notion of a person remaining in cohabitation is identical to the notion of a partner in a *de facto* marriage are mentioned by S. Hypś, in: *Kodeks karny. Komentarz...*, pp. 656–657, Nb. 76). In the case-law, it is clearly emphasized that the notion „cohabitation” is referred „exclusively to a relationship of persons of different sex, equivalent *de facto* to a marital relationship (which, pursuant to Art. 18 of the Constitution is exclusively a relationship between persons of different sex)” – the sentence of the Supreme Court of 7 July 2004, II KK 176/04, LEX no. 121668; see also the Cracow Administrative Court judgement of 28 October 2009r., II AKa 176/09, LEX no. 570556. Regarding the possibility to include among closest persons – as those remaining in cohabitation – of persons of the same sex, there are various opinions in the doctrine. Such an option is definitely rejected by those who are of the opinion that only partners in *de facto* marriage (i.e. the persons of different sex) can be considered as persons remaining in cohabitation – such is the opinion of, for example, A. Zoll, in: K. Buchała, A. Zoll, *Kodeks karny. Część ogólna. Komentarz do art. 1–116 Kodeksu karnego*, Kraków 1998, p. 634, thesis 7; M. Budyn-Kulik, in: *Kodeks karny. Komentarz*, ed. M. Mozgawa, Warszawa 2012, p. 286, thesis 4. The supporters of a broader understanding of the notion „cohabitation” emphasize that to the category of „persons remaining in cohabitation” belong all that fulfil the criterion of cohabitation, regardless of the character of their *de facto* relationship (therefore including those in the homosexual relationships. (More information on this subject see S. Hypś, in: *Kodeks karny. Komentarz...*, p. 657, Nb. 76 and cited works).

As it was pointed out, there is no definition of closest or close person in the Civil Code, although the legislator used such notions in several provisions of the Civil Code²⁹. However, such definitions can be found in other normative acts, which raises the question about possibility, or rather, appropriateness of „transferring them to the area of the inheritance law”. Taking into account *ratio legis* of the provision of Art. 1008 item 2 CC, adopting a formal criterion for establishing a circle of persons closest to the testator (regardless of whether the point of reference was a provision from the area of the penal or civil law) does not seem appropriate. Determining whether the person against which the offender entitled to legitm committed an intentional offence is a person closest to the testator should be based on real emotional bonds between them³⁰. Therefore, it may be doubtful whether there is need to consider such definitions as reliable determinants when verifying if reasons for disinheritance on the basis of Art. 1008 item 2 CC were „fulfilled”. Subjects indicated in such definitions will be submitted to the same „verification” as persons not covered by them.

It may be remarked in passing that a similar discussion took place at the time of validity of the Decree of 1946. The opinions expressed in the doctrine were divided. Some authors questioned the use of definitions contained in other legislative acts in order to define the notion of the „closest person”, mainly due to the fact that its meaning was determined by particular purposes of given regulations. Especially the appropriateness of „using” the definition of the „closest persons” contained in the art. 91 of the Criminal Code of 1932 was questioned on the grounds of it being „adopted from totally different area of law”. There was also raised question that the notion of a closest person is usually understood differently in the rural environment and elsewhere³¹. It was postulated – taking into account the gravity of implications resulting from the art. 7 of the Decree-Inheritance Law as well as special difficulties caused by the use of a subjective criterion – to define the notion of the „closest person” in a way that „would not be subject to variations”, emphasizing also that the satisfactory solution of the aforementioned doubts could be achieved through the interpretation of the provisions of the inheritance law solely. Firstly, it concerned the provisions which defined the circle of heirs-at-law. The legislator did not include within this circle distant relatives of the testator because they often are *de facto* strangers in blood for him. On the other hand, the legislator considered that inclusion of a certain group of persons close to the deceased to the category of heirs is not sufficient

²⁹ See, for ex ample, Art. 446 CC, Art. 908 § 3 CC, Art. 923 § 1 and 2 CC. For more information on this subject see J. Haberko, *Pojęcie osoby bliskiej w prawie cywilnym*, PS 2011, no. 3, p. 65 et seq.

³⁰ This opinion is shared by S. Wójcik, *Podstawy prawa cywilnego. Prawo spadkowe*, Warszawa 2002, p. 90, and also M. Załucki, *Wydzielniczenie w prawie polskim na tle porównawczym*, Warszawa 2010, p. 400.

³¹ See M. Szaciński, *Przesłanki niegodności według prawa spadkowego zunifikowanego oraz znaczenie orzeczenia sądowego ustalającego niegodność*, NP 1954, no. 12, p. 41.

and that is why some of the statutory heirs were especially secured by receiving the right to legitim. The teleological interpretation used while searching for the reason of such a solution justifies the conclusion that the legislator reserved this special protection for the persons closest to the testator. Therefore, it was considered justifiable to assume that, within the meaning of the inheritance law, the persons closest to the testator are those entitled to legitim³².

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³² *Ibid*, p. 42.

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PRZEDMIOT OCHRONY I PRZEDMIOT CZYNNOŚCI WYKONAWCZEJ PRZESTĘPSTW UZASADNIAJĄCYCH NIEGODNOŚĆ DZIEDZICZENIA LUB WYDZIEDZICZENIE

Streszczenie. W przypadkach wskazanych w ustawie sąd może z powołaniem się na przepisy art. 928–930 k.c. wyłączyć spadkobiercę od dziedziczenia albo sam spadkodawca może pozbawić osobę uprawnioną prawa do zachowku (art. 1008 k.c.). Przyczyny pozbawienia korzyści ze spadku dla niegodności dziedziczenia i wydziedziczenia są zróżnicowane poza przypadkiem dopuszczenia się przestępstwa. Ustalenia, czy konkretne przestępstwo uzasadnia wyłączenie od dziedziczenia, dokonuje się na podstawie ustawowych kryteriów, odmiennych dla tych dwóch zdarzeń cywilnoprawnych. W przypadku niegodności dziedziczenia jest to kryterium „ciężkości przestępstwa” oraz wymóg dopuszczenia się przestępstwa „przeciwko spadkodawcy”. Obydwa zwroty rodzą trudności interpretacyjne i nie wypracowano dotychczas ani w literaturze, ani w orzecznictwie jednolitego poglądu odnośnie ich rozumienia. Wątpliwości dotyczą także rozumienia kryteriów pozwalających na ocenę przestępstwa w kontekście przyczyn wydziedziczenia – w szczególności niejednolicie rozumiane jest w doktrynie pojęcie „osoby najbliższej spadkodawcy”. Różnice dotyczą także określenia katalogu przestępstw – przyczyn pozbawienia prawa do zachowku. Zgodnie natomiast przyjmuje się, że wprowadzenie kryterium w postaci określenia w art. 1008 pkt 2 k.c. przedmiotu ochrony wywołuje jednoznaczne skojarzenia z typologią przestępstw w kodeksie karnym, nie powinno jednak oznaczać „prostego” odniesienia” do odpowiednich rozdziałów w kodeksie karnym ze względu na charakterystyczny dla wielu przestępstw złożony przedmiot ochrony.

Słowa kluczowe: niegodność dziedziczenia, wydziedziczenie, przestępstwo