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Unworthiness to inherit – legal grounds and consequences. A comparative analysis of Polish and Slovak succession law

Introduction

According to the Art. 23 of the Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, disinheritance and disqualification by conduct (i.e. unworthiness of inheritance) govern the law determined pursuant to Article 21 or Article 22 of this Regulation. That means, unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death (Art. 21 Sec. 1). The unworthiness to inheritance – that is the subject of this study – is regulated in substantive succession national laws, which are not harmonised (provisions differ within individual Member States of the European Union). Discussion and comparison of the unworthiness of inheritance is justified. For this reason, the Authors undertook the analysis of Polish and Slovak regulations considering the unworthiness of inheritance.

The so-called unworthiness of inheritance[1] is a classical institution of inheritance law, known in Roman law and subsequently maintained in the great 19th-century European civil law codifications (i.e. ABGB[2], BGB[3], Code civil des Français)[4]. Simply means that the one who conducts reprehensible

[1] For example see: https://e-justice.europa.eu/487/EN/restrictions_on_successions__special_rules?BULGARIA&member=1 (accessed: 31.07.2025); M.D. Bob-Bocşan, A. Matthew, D. Murphy, *The foundations of the unworthy heir rule in Romania*, „European Review of Private Law" 2021, Vol. 29, Issue 6, pp. 913–924; D. Berekashvili, *Recognition of a person as an unworthy heir and inheritance-legal sanctions upon the mandatory heir of the share*, „Journal of Law (TSU)" 2019, No. 1, pp. 18–42.

[2] The Austrian Civil Code (ABGB) regulates in Art. 539 and Art. 540 the legal ground for unworthiness to inherit. Art. 539: Whoever has committed a criminal offence against the deceased or the estate which can only be committed intentionally and is subject to imprisonment of more than one year is disqualified by conduct unless i tis evident from the express or implicit conduct of the deceased that he forgave such person. Art. 540: Whoever frustrated or tried to frustrate the execution of the true last will of the deceased with malicious intent, for example if he forced or fraudulently caused the deceased to declare his last will, prevented him from declaring or changing his last will, or suppressed a last will which has already been declared by him, is disqualified by conduct unless it is evident from the express or implicit conduct of the deceased that the deceased forgave such person. He is liable for all damages to third parties caused by this. unworthy to inherit, unless the deceased had indicated that he forgave him. He is liable for any damage thereby caused to a third party. See: P.A. Eschig, E. Eschig-Pircher, *Das osterreichische ABGB – The Austrian Civil Code*, Wien 2021, p. 211.

[3] The German Civil Code (BGB) regulates in Art. 2339 Sec. 1 and 2 the legal grounds legal ground for unworthiness to inherit. Art. 2339/1: 1) where the heir has intentionally and unlawfully killed the decedent, attempted to do so, or placed the decedent in a condition that rendered them incapable, until death, of making or revoking a testamentary disposition; 2) where the heir has intentionally and unlawfully prevented the decedent from making or revoking a testamentary disposition; 3) where the heir has induced the decedent, through fraudulent conduct or unlawful duress, to make or revoke a testamentary disposition; 4) where the heir, in connection with the decedent's testamentary disposition, has committed a criminal offence under Arts. 267, 271 to 274 of the German Criminal Code (StGB), such as document forgery or related offences. Art. 2339/2 The unworthiness to inherit on the grounds specified in Art. 1, Sec. 3 and 4, does not arise if the relevant testamentary disposition had already lost its validity prior to the decedent's death, or if it would have become invalid thereafter. See: Ch. Grüneberg (ed.), *Bürgerliches Gesetzbuch*, 81. neubearbeitete Auflage, München 2022, pp. 2633–2634.

[4] Complementary see the Czech regulation in the Act. No. 89/2012 Coll. Civil Code: Art. 1481: A person is excluded from the right of inheritance if he or she has committed an intentional criminal act against the testator, the testator's ascendant, descendant, or spouse, or a reprehensible act against the testator's last will, in particular by forcing the testator to make a testamentary disposition, by deceitfully inducing him to do so, by obstructing him in expressing his last will, or by concealing, falsifying, forging, or intentionally destroying his testamentary disposition, unless the testator has expressly forgiven such an act. Art. 1482: 1) If, on the day of the testator's death, divorce proceedings initiated by the testator are ongoing as a result of the spouse having committed an act constituting domestic violence against the testator, the testator's spouse is disqualified from inheritance as a statutory heir. 2) If a parent has been deprived of parental responsibility because they abused it or grossly neglected its exercise through their own fault, they are disqualified from inheritance from their child under the rules of intestate succession. Art. 1483: The descendant of a person excluded from the right of inheritance shall take that person's place in intestate succession, even if the excluded person survives the testator. This shall not apply in the case provided for in Section 1482(1).

behaviour does not deserve to be a beneficiary of the inheritance. The general essence of unworthiness of inheritance is that, for reasons specified by the legislature, a potential heir may be excluded from inheriting the will of the deceased[5]. This is an exception to inheritance (an unworthy heir does not inherit). Unworthiness of inheritance is therefore a specific sanction of a civil law nature.

This paper discusses and compares the legal regulations of unworthiness to inheritance in Poland and the Slovak Republic. It analyses the scope of potential unworthy heirs, the premises of unworthiness of inheritance, and indicates the applicable solutions regarding forgiveness. It also highlights the important issue of the procedure for determining unworthiness to inheritance and its consequences. The considerations carried out may provide valuable insights for a more comprehensive understanding of the institution in question, indicate directions for possible future amendments to national legislation, and constitute material for exploring the feasibility of a common regulatory framework among EU Member States in the context of the prospective harmonization of succession law. The reflections undertaken may thus serve as an incentive for further scholarly inquiry and as a source of guidance for legislators seeking to refine existing provisions. Furthermore, the study has a practical dimension, as its findings may prove useful in cases involving cross-border succession where a Polish or Slovak citizen acts as an heir in the other jurisdiction.

Content of the legal regulations

The unworthiness of inheritance in Polish law is governed by the provisions of Article 928–930 of the Polish Civil Code[6]. It follows from them that an heir may be adjudged unworthy by the court if: 1) he committed deliberately a grave crime against the deceased; 2) he induced the deceased by deceit or threat to draw up or to revoke a testament or in the same manner prevented him from performing one of these acts; 3) he intentionally concealed or destroyed the deceased's testament, forged or altered that person's testament or knowingly benefited from a testament forged or altered by another person; 4) he has persistently evaded the fulfilment of the duty of maintenance of alimony towards the deceased as determined in amount by a court pronouncement, a settlement before a court or other authority or other

[5] About *ratio legis* of unworthiness of inheritance see: P. Rafałowicz, *Dziedziczenie*, Toruń 2022, p. 297–303.

[6] Act of April 23, 1964, The Civil Code (consolidated text, Journal of Law of 2020, item 1740, as amended), hereinafter: k.c.

agreement; 5) he has persistently evaded the fulfilment of the duty of care towards the deceased, in particular arising from parental authority, guardianship, performing the function of foster parent, the marital duty of mutual assistance or the duty of mutual respect and support between parent and child (Art. 928 § 1 k.c.). An unworthy heir shall be excluded from succession as if he had predeceased the opening of the inheritance (Art. 928 § 2 k.c.). According to Article 929 k.c. a judgement of an heir to be unworthy may be demanded by any person who has an interest in doing so. Such a demand may be made within one year from the day on which the person concerned learned about the cause of unworthiness, but not later than before the lapse of three years from opening the inheritance. At least, what is the Article 930 k.c. about, an heir cannot be adjudged unworthy if the deceased forgave him (§ 1). If at the time of forgiving him the deceased did not have the capacity for acts in law, the act of forgiveness shall be effective if it was made with sufficient awareness (§ 2). The cited regulations have taken on and maintained their wording since the entry into force of the Civil Code. Only the list of reasons for unworthiness to inherit has changed and was expanded in 2023[7]. This proves that the issues discussed are current and have a practical dimension.

When it comes about the unworthiness of inheritance in Slovak law it is governed by the provisions of Article 469 of the Slovak Civil Code[8]. The concept of unworthiness to inherit represents a statutory mechanism by which a person, who would otherwise be entitled to inherit, whether under intestate succession, testamentary succession, or a combination of both, is excluded from the group of heirs because of certain behaviour on the part of that heir. According to Article 469 CC, anyone who has committed an intentional criminal offense against the testator, his or her spouse, children, or parents, or a depraved act against the expression of the testator's last will, shall not inherit. However, they may inherit if the testator has forgiven them for this act.

The unworthiness to inherit is not linked to any behavior on the part of the testator and must be considered by the court (notary) during the notarial procedure *ex officio*. That means the following:

1) determination of the unworthiness to inherit does not depend on any action of the testator during his lifetime, as it arises *ex lege*, when the behaviour of the heir meets the criteria set in Art. 469 of the CC,
2) if the legal criteria for unworthiness to inherit (or incapacity to inherit) as set by Art. 469 CC of the CC are met, the notary is obliged to take such behaviour into account *ex officio*.

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[7] Art. 928 § 1 point 5 added by Art. 1(4) of the Act of 28 July 2023 amending the Act Civil Code and certain other acts (Journal of Laws of 2023, item 1615).

[8] Act. No. 40/1964 Coll. Civil Code, as amended, hereinafter: CC.

As explained under 2 above, the unworthiness to inherit does not depend on any objection raised by the heirs during the notarial proceeding but is to be examined by the notary *ex officio*. This notary's obligation arises from Art. 175 of the Civil Non-Contentious Procedure Code (CNCPC)[9].

This is an expression of the investigative principle set out in Art. 6 of the CNCPC, which is an important rule of interpretation[10]. It determines who is responsible for carrying out procedural actions to clarify the facts necessary for the ruling and imposes a duty on the court (notary) to conduct evidence-gathering, even if the parties have not requested this. In the context of unworthiness to inherit, this means that the notary is obliged to examine the relevant facts on his own initiative, independently of any proposals by the heirs, although the heirs may also suggest to notary any relevant facts by themselves.

It can be stated that the cited regulations generally indicate that the concept of unworthiness to inherit is identical in the studied countries. However, despite certain similarities (e.g., both systems provide for the possibility of so-called forgiveness), the regulations exhibit several differences that require in-depth analysis, presented below.

The subject group of potential unworthy heirs

When analysing the issue proposed in the title, it is worth starting by indicating the subject group of potential unworthy heirs in both legal systems. Within the Polish system, unworthy may describe someone, who, in any given situation would inherit any financial benefit from the deceased[11]. It is assumed that the concept of heir within the meaning of art. 928 k.c. includes an heir entitled to inherit regardless of the title of appointment (testamentary heir, statutory heir), but also an ordinary legatee, a vindicative legatee (see Art. 972 and 981[5] k.c.), and a person entitled to legitim (compulsory share)[12]. It should be added that not only natural persons (although especially they) – therein both minors up to 13 years of age and those above that age[13] – may be deemed unworthy. For example, in relation to legal

[9] Act No. 160/2015 Civil Non-Contentious Procedure Code, as amended (CNCPC).

[10] R. Smyčková, M. Števček, *Commentary to art. 6*, [in:] R. Smyčková, M. Števček, M. Tomašovič, A. Kotrecová, et al., *Civilný mimosporový poriadok. Komentár*, Bratislava 2017, p. 21.

[11] W. Borysiak, *Commentary to art. 928*, [in:] W. Borysiak (ed.), *Kodeks cywilny. Komentarz*, 2024, Legalis.

[12] A. Sylwestrzak, *Commentary to art. 928*, [in:] M. Balwicka-Szczyrba (ed.), *Kodeks cywilny. Komentarz*, 2024, Lex.

[13] By the way, a child under parental authority cannot be deemed unworthy of inheritance because of acts committed by his legal representatives without his participation; the same applies to persons under the care or guardianship, for more see: O. Wawrzyniak, *Małoletni jako niegodny*

persons (if they are a potential heir), it is the actions of their bodies (Art. 38 k.c.) that will be assessed from the point of view of qualifying them as conduct justifying or not justifying the unworthiness of inheritance[14]. Simultaneously, in the literature, it is considered that the municipality of the deceased's last place of residence and the State Treasury cannot be deemed unworthy of inheritance if they were to inherit from the deceased pursuant to the statutory succession[15].

According to Slovak law, anyone entitled to inherit, whether by law or by will, may become an unworthy heir**.** The subject who may be deemed unworthy is any natural person with legal capacity, including a minor. However, a minor cannot be deemed unworthy to inherit under the first legal basis, as this ground requires criminal liability, which under Slovak law is recognised only at the age of fourteen[16]. The consequence of unworthiness to inherit is that the entitled heir is excluded from the inheritance and is treated as if he or she had predeceased the decedent[17], with a substitute heir taking their place where applicable[18].

Section 469 of the Civil Code recognises two legal grounds for unworthiness to inherit**,** both of which are connected to the behaviour of the person entitled to inherit. These grounds relate to the decedent and to those persons named in Section 469 of CC who are closest to the decedent (parents, siblings, spouse). From the wording of the law, it follows that a person becomes an unworthy heir even if he did not act against the decedent directly, but committed such conduct against the decedent's spouse, parents, or siblings. According to both case law and legal doctrine, in case reasons for unworthiness are met according to Section 469 of the Civil Code, the unworthy heir is automatically excluded from the inheritance, even if the other heirs consent to them inheriting[19].

In summary, the subject group of potential unworthy heirs in both legal systems includes anyone who, in each situation, would be entitled to inheritance but meets the behavioural requirements specified by law. In Polish law, these requirements cover only conduct (acts) towards the testator, while

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dziedziczenia, „Monitor Prawniczy" 2024, No. 12, pp. 778–785; M. Zelek, *Commentary to art. 928*, [in:] M. Gutowski (ed.), *Kodeks cywilny. Komentarz*, Vol. 3: *Art. 627–1088*, 2022, Legalis, nb 2.

[14] H. Witczak, *Commentary to art. 928*, [in:] M. Fras, M. Habdas (eds.), *Kodeks cywilny. Komentarz*, Vol. 6: *Spadki (art. 922–1087)*, 2019, Lex.

[15] W. Borysiak, *Commentary to art. 928*, [in:] W. Borysiak (ed.), op. cit.

[16] More in the further part of this study.

[17] J. Bajánková, *Commentary to art. 469*, [in:] M. Števček, A. Dulak, J. Bajánková, M. Fečík, F. Sedlačko, M. Tomašovič, et al., *Občiansky zákonník II. § 451–880. Komentár*, Praha 2015, p. 1641.

[18] Decision of the Supreme Court published in the Collection of the Decisions of the Supreme Court R 99/2011.

[19] Decision of the Supreme Court R 99/2011; I. Fekete, *Občianbsky zákonník. 3. zväzok. Dedenie, Záväzkové právo – všeobecná časť. Veľký komentár*, 2. aktualizované a rozšírené vydanie, Bratislava 2015, p. 74.

in Slovak law, they also cover conduct (acts) towards the testator's closest relatives (the Slovak regulation clearly extends protection). Essentially, the subject group in both countries includes individuals regardless of age, although in Slovak law – due to criminal provisions – the criteria for unworthiness cannot be met in the case of a minor under 14 years of age.

Premises of unworthiness of inheritance

Polish law

The catalogue of premises

The catalogue of premises of unworthiness of inheritance, contained in Art. 928 § 1 k.c., is closed (enumerative). Other behaviours of the heir, even if they could be assessed negatively from the point of view of generally accepted customs, cannot constitute a sufficient basis for applying such a far-reaching sanction as unworthiness of inheritance[20]. The potential testator cannot modify the list of reasons for unworthiness specified in Art. 928 § 1 k.c.[21]

The first circumstances which determine an heir may be adjudged by the court as an unworthy heir are when he/she deliberately committed a grave crime against the deceased. It needs to be recorded that in this case, it is analysed if the heir's action was intentional[22]; if it is a crime and a "grave crime", and finally if this action was directed against the deceased. It is commonly accepted that the qualification of the heir's behaviour as committing (or not) a crime should be made under the provisions of criminal law; however, a previous conviction of an heir in a criminal trial is not a condition for recognising him as unworthy of inheritance[23]. As an example, the Supreme Court decided that the deceased wife, who had committed a crime of psychological abuse against deceased, consisting, among other things, of persistently and maliciously limiting contacts with a minor child, as a result of which there was a gross violation of the principles of family coexistence and

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[20] Judgment of the Supreme Court of December 10, 1999, II CKN 627/98, Lex No. 1231370; M. Załucki, *Commentary to art. 928*, [in:] M. Załucki (ed.), *Kodeks cywilny. Komentarz*, 2024, Legalis.

[21] M. Zelek, *Commentary to art. 928*, [in:] M. Gutowski (ed.), op. cit., nb 6.

[22] Judgment of the Supreme Court of July 3, 1923, III Rw 1245/22, Lex 2709984; W. Borysiak, *Commentary to art. 928*, [in:] W. Borysiak (ed.), op. cit.

[23] See: H. Witczak, M. Budyn-Kulik, *Persuading to commit or assisting in the testator/decedent's suicide in the context of the grounds for unworthiness of inheritance*, „Studia Iuridica Lublinensia" 2023, No. 1, pp. 79–97; M. Załucki, *Glosa do wyroku Sądu Apelacyjnego w Gdańsku z dnia 20 września 2016 r., I ACa 189/16*, „Rejent" 2017, No. 12, pp. 95–101; I. Ciszek, *Glosa do wyroku Sądu Najwyższego z dnia 23 marca 2016 r., III CSK 80/15*, „Rejent" 2017, No. 4, pp. 83–94, compare: judgment of the Court of Appeal in Cracow from January 1, 2019, I ACa 576/12, Legalis 2024043.

its cohesion and permanence, and then caused the deceased to attempt on the lives of his closest relatives and his own life, may be deemed unworthy of inheritance[24]. Another actual thesis of the Supreme Court is that a spouse who has committed adultery does not, by that very fact, become unworthy of inheriting from his or her spouse[25].

The second and the third premises are indicated in Art. 928 § 1 k.c. (item 2 and 3) are closely related to the deceased's freedom of testation. Worth paying attention here is that deceit and threat indicated in the above-mentioned provision (Art. 928 § 1 item 2 k.c.) should be understood in the same way as they are used in the provisions of the general part of the k.c. regulating defects in declarations of intent (Art. 86 and 87 k.c.). For example, in the court's opinion the premises of deceit in the meaning of Art. 928 § 1 item 2 k.c. are met when superficial non-verbal contact with the testator, consisting of simple movements of the head or eyeballs, creating the appearance of a relationship, was used to involve an unaware person in complicated and extensive notarial activities[26]. However, the fact of drawing up a testament in a state that excludes conscious or free decision-making and expression of will cannot be identified uncritically with deceit or threat. The lack of testamentary capacity does not by itself prove deceit[27]. It is debatable whether it is possible to recognise an heir as unworthy if, despite the occurrence of the premises of Art. 928 § 1 item 2 k.c., the testator's will could have been expressed in a manner free from defects. It seems that the "ineffectiveness" of the heir's actions, whether due to subsequent actions of the testator or a third party, is of no importance here[28].

The third group of circumstances justifying the recognition of an heir as unworthy (Art. 928 § 1 item 3 k.c.) is conditioned by the intention of the heir's action, namely his/her behaviour was intentional or conscious. Actions such as concealing a testament, destroying it, forging or altering the document intentionally, or the use of a testament forged or altered by another person consciously. Therefore, for example, concealing a testament without being aware that the document concealed is a testament, or concealing knowledge of the existence of a testament, is not a premise for recognizing an heir as unworthy[29]. The effects of the heir's action, especially the occurrence of benefits on his/her side, are indifferent[30].

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[24] Judgment of the Supreme Court of March 23, 2016, III CSK 80/15, OSNC 2017, No. 2, item 25.

[25] Judgment of the Supreme Court of November 29, 1934, C.II.1871/34, Lex 1638331.

[26] Judgment of the Court of Appeal of September 30, 2021, I ACa7/21, Lex No. 3263221.

[27] Judgment of the District Court in Olsztyn of March 10, 2022, IX Ca 1487/21, Legalis No. 2682405.

[28] W. Borysiak, *Commentary to art. 928*, [in:] W. Borysiak (ed.), op. cit.

[29] M. Hałgas, *Ukrycie testamentu jako przesłanka niegodności dziedziczenia*, „Przegląd Sądowy" 2007, No. 11–12, pp. 30–43.

[30] W. Borysiak, *Commentary to art. 928*, [in:] W. Borysiak (ed.), op. cit.

The last two premises indicated in Art. 928 § 1 k.c. (id est non-alimony, and persistent failure to perform the obligation to care for the deceased), are relatively new. Their inclusion in the catalogue of grounds for unworthiness of inheritance corresponds to the society's view of the possibility of inheritance by persons who, through their reprehensible negligence, make it impossible for the deceased to satisfy his/her basic life needs (economic and social) during his lifetime. Article 928 § 1 point 4 k.c. constitutes the avoidance of alimony obligations that arise from family relations, in addition, understood as a maintenance claim that will only arise when statutory conditions arise, i.e. when the need for its implementation arises (Art. 133–135 of the Family and Guardianship Code). This alimony obligation must be determined in terms of amount by a court decision, a settlement concluded before a court or other body or another agreement[31]. For this prerequisite of unworthiness to inherit, the persistent evasion of alimony duty is essential. A persistent is a deliberate, reprehensible, and repeated failure to perform an alimony obligation[32]. It is worth emphasizing that the literature indicates that even if the deceased tolerated the heir's reprehensible behaviour during his lifetime (he did not feel resentment), the heir may still be deemed unworthy after his death if others have an interest in it – especially other heirs entitled to inherit[33]. Finally, the last circumstance mentioned as the basis for deeming an heir unworthy (Art. 928 § 1 point 5 k.c.) was defined by the legislator very broadly. In the case of evading the obligation to care for the deceased, the court is left with the possibility of assessing the heir's care for the deceased (an open catalogue of grounds for exercising care)[34].

Complementing the above considerations, it should be emphasized that the conditions listed by the legislator in Art. 928 § 1 k.c. should be interpreted strictly, due to the significant consequences of declaring an heir unworthy. As a result, for example, unworthiness to inherit does not apply to situations where the bond between the deceased and the heir simply breaks down, e.g., divorce. Similarly, infidelity by a spouse (where the duty of fidelity, strictly understood, is limited to sexual contact and the erotic-emotional bond with another person) does not constitute grounds for declaring unworthiness[35].

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[31] P. Wołowski, *Nowe przesłanki niegodności dziedziczenia*, „Monitor Prawniczy" 2024, No. 6, pp. 346–356.

[32] M. Mądel, *Niegodność dziedziczenia z powodu niealimentacji – de lege lata*, „Radca Prawny. Zeszyty Naukowe" 2024, No. 3(40), p. 11 et seq.

[33] W. Łapińska, *Uporczywe uchylanie się od wykonywania wobec spadkodawcy obowiązku alimentacyjnego jako przesłanka niegodności dziedziczenia*, „Transformacje Prawa Prywatnego" 2023, No. 1, p. 70–71.

[34] Komentarz do zmiany ustawy z dnia 28 lipca 2023 r. o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw (Dz.U. 2023, item 1615).

[35] A. Lutkiewicz-Rucińska, *Skutki prawne obowiązku wierności małżeńskiej w prawie spadkowym*, „Prawo i Więź" 2024, No. 6, p. 971.

Forgiveness

An heir cannot be deemed unworthy if the testator has forgiven him (Art. 930 § 1 k.c.). By introducing the institution of forgiveness, understood as an emotional act, the legislator enabled the testator to correct the effects of the mechanism of unworthiness. The significance of an act of forgiveness is not dependent on formal criteria. The legislator allowed for the possibility of effective forgiveness even by a person lacking full capacity, provided they acted with sufficient discernment, meaning they understood the meaning and significance of their act (Art. 930 § 2 k.c.).

Forgiveness can only occur after the grounds for unworthiness have been met. Therefore, if the heir has committed several acts that meet the criteria described in Art. 928 § 1 item 1 k.c., then for unworthiness to be excluded, the testator's forgiveness must cover all these acts[36].

Slovak law

The catalogue of premises

Unworthiness to inherit, as regulated under Art. 469 of the Civil Code, is a legal institute under which a natural person, who would otherwise be entitled to inherit, is excluded from the inheritance because of specific conduct exhaustively defined in Art. 469 of the CC. Such conduct is (i) the commission of an intentional criminal offense against the decedent, his or her spouse, children, or parents, or (ii) reprehensible conduct contrary to the deceased's last will.

The first legal basis for disqualification from inheritance under the law is the commission of an intentional criminal offense against the testator, his or her spouse, children, or parents. The conditions for disqualification from inheritance on this ground are: 1) the commission of an intentional criminal offense, 2) the criminal offense was committed against the testator or his spouse, parents, or siblings, 3) if the testator did not forgive him for this act during his lifetime.

In accordance with the above unworthiness to inherit is based on the commission of an intentional criminal offense. From the wording of the law, neither the type nor the length of the sentence imposed is decisive, and it is not even essential whether the offender was convicted of the offense[37]. A final judgment by a criminal court is not a condition for unworthiness (e.g. due to the statute of limitations on criminal prosecution). The relevant condition is that he committed this intentional crime, in such cases, the notary must

[36] Judgment of the Court of Appeal in Warsaw of October 21, 2016, I ACa 1365/15, Legalis No. 2243487.

[37] J. Krajčo, *Občiansky zákonník pre prax (komentár). Judikatúra NS SR, NS ČR, ESD, ESĽP*, Bratislava 2025, p. 2020.

assess whether this condition has been met within the inheritance proceedings[38]. If, at the time of the testator's death, the offender had not yet been finally convicted of the intentional criminal offence, this is not decisive, as for unworthiness to inherit, it is sufficient that the intentional criminal offence was committed during the period relevant for establishing unworthiness, i.e., at the time of the testator's death. Inheritance unworthiness also occurs if the crime was not completed, provided that the conduct of the offender meets the criteria for preparation or attempt of a crime[39]. However, the notary is bound by a final criminal court judgment establishing that the offence was committed and identifying the person who committed it[40].

A person may be considered unworthy to inherit if they possess the capacity to perform legal acts (i.e. have the full capacity under Art. 38 of the CC and not restricted legal capacity by a court under Art. 10(2) of the CC). A person is considered unworthy to inherit if they are criminally liable; however, a person shall not be considered unworthy to inherit if are not criminally liable (i.e. a person younger than 14 years of age, a person lacking mental capacity under Art. 23 of the Criminal Code, or a person who acted in self-defence under Art. 25 of the Criminal Code or in a state of necessity under Art. 24 of the Criminal Code)[41].

The second legal basis for unworthiness to inherit is reprehensible conduct against the expression of the testator's last will. Only intentional conduct can constitute reprehensible conduct; however, the act does not necessarily have to amount to a criminal offence. Even negligent conduct may be regarded as reprehensible if, for example, it destroyed a will[42]. According to case law, reprehensible conduct is that[43]: 1) is directed against the document in which the testator's last will is recorded, 2) leave this document untouched, but thwart its implementation, 3) they are contrary to the testator's freedom to express his or her will. According to legal doctrine, reprehensible conduct also includes, for example, altering the testator's will or attempting to influence the testator's declaration of will in favour of a particular heir, provided that such conduct is contrary to good morals[44]. Unlike the first legal basis,

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[38] M. Križan, *Úvahy o konkurencii dôvodov vydedenia a decičskej nespôsobilosti*, [in:] S. Ficová, M. Ivančo, K. Raková, et. al., *Dedičské právo v hmotnoprávnych a procesnoprávnych súvislostiach*, Bratislava 2022, p. 73–80.

[39] J. Bajánková, *Commentary to art. 469*, [in:] M. Števček, A. Dulak, J. Bajánková, M. Fečík, F. Sedlačko, M. Tomašovič, et al., op. cit., p. 1641.

[40] Judgment of the Czech Supreme Court, No. 21 Cdo 2537/2010; Judgment of the Czech Supreme Court, No. 4Cdo 96/2010.

[41] J. Bajánková, *Dedičská nespôsobilosť*, [in:] M. Števček, A. Dulak, J. Bajánková, M. Fečík, F. Sedlačko, M. Tomašovič, et al., op. cit., p. 1641.

[42] I. Fekete, op. cit., p. 74.

[43] Ibidem.

[44] J. Krajčo, op. cit., p. 2020–2021.

reprehensible conduct may occur both during the testator's lifetime and after his or her death (e.g., forging the will, concealing the will, and similar acts).

Forgiveness

Unworthiness to inherit ceases if the testator forgives the heir. Forgiveness, however, is possible only during the lifetime of the testator. Forgiveness cannot occur if the heir engaged in the conduct during the testator's lifetime and the testator did not forgive it, or if the conduct occurred after the testator's death, when forgiveness was no longer possible (this applies only to reprehensible conduct against the expression of the testator's last will).

As for the form of forgiveness, the law does not prescribe any formal requirements. The testator may express forgiveness in writing, orally, or implicitly (by conduct). However, mere inactivity cannot be interpreted as forgiveness. For example, the fact that the testator did not file a criminal complaint against the offender does not in itself indicate that the testator forgave the act.

From the perspective of capacity, only a person with the legal capacity to perform such a legal act may grant forgiveness, which means that one who has not had their capacity restricted by a court under Art. 10 Sect. 2 of the CC[45] or is not incapable of expressing their will under Art. 38 Sect. 2 of the CC[46].

Forgiveness results in the termination of unworthiness to inherit *ex tunc*, even if the testator was not aware that granting forgiveness would allow the unworthy heir to inherit. Forgiveness is irrevocable**.** This means that the testator cannot restore the unworthiness to inherit or revoke the forgiveness. However, if, after forgiveness the heir again engages in conduct constituting unworthiness to inherit, they once again become unworthy to inherit.

Comparative analysis results

An analysis of the premises of unworthiness of inheritance in the studied legal systems leads to the following conclusions: Polish law precisely distinguishes five premises for declaring an heir unworthy (casuistic solution), while Slovak law limits the grounds to two categories (general solution). Therefore, it appears that the grounds in the studied legal systems differ. The analysis, however, indicates that both provisions are essentially identical to a certain extent – they indicate a crime (offence) against the testator and interference with the testator's will as a condition for unworthiness to inherit. Furthermore, both regulations require a specific attitude on the part of the heir ("intentionally", "persistently"). Although, in Polish law, because of the latest amendment, there are additional grounds for the heir's breach of the

[45] § 10 ods. 2 CC.
[46] § 38 ods. 2 CC.

duty of maintenance of alimony towards the deceased and the duty of care towards the deceased. After all, the Polish legislator specifically identified behaviours that interfere with a will (forgery, destruction, concealment, use of a forged one), while the Slovak legislator used the general term "reprehensible act against the expression of one's last will". Without judging which solution is better, it can be pointed out that the casuistic solution may raise fewer doubts, but at the same time, it prevents the provision from being adapted to practical realities, which, in turn, is an advantage of regulations formulated in a general manner.

Both legal systems allow for forgiveness by the testator, which has identical consequences (restoring the heir's right to inherit). However, while Slovak law requires the testator to have full legal capacity, Polish law does not require full legal capacity, if forgiveness is granted with sufficient discernment.

Determining unworthiness to inheritance and its consequences

Polish law

Legitimacy

Recognition as unworthy does not occur *ex officio*, but at the request of a person with a legal interest in it (Art. 929 k.c.). Although the circle of authorised entities is broad, it is not unlimited. If there is a prerequisite under Art. 928 § 1 k.c., anyone with an interest in it may bring an appropriate action[47]. Legitimacy is justified primarily by property interests, but also by non-property interests (so-called moral interests). It is assumed that moral interests exist due to the "ties of closeness" that connected a given person with the testator[48]. It occurs, for example, when a person who is in a close relationship with the testator experiences satisfaction because the inheritance will not be inherited by someone unworthy of it[49]. In turn, according to the Warsaw Court of Appeal, the active legitimacy to demand recognition as unworthy is not justified by the "moral interest" related to the desire to "protect the principles of social coexistence", the obligation to act for the common good or the good of a specific third party[50].

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[47] Judgment of the Court of Appeal in Gdańsk of January 11, 2017, I ACa 215/16, Legalis No. 1674036.

[48] W. Borysiak, *Commentary to art. 929*, [in:] W. Borysiak (ed.), op. cit.

[49] H. Witczak, *Commentary to art. 929*, [in:] M. Fras, M. Habdas (eds.), op. cit.

[50] Judgment of the Court of Appeal in Warsaw of January 23, 2014, VI ACa 804/13, Legalis No. 2123429.

Those entitled to demand that an heir be declared unworthy include, first and foremost, persons belonging to the circle of heirs (statutory and testamentary, even if they do not inherit in a specific case[51]), as well as: legatees, persons entitled by order, the executor of the will, the acquirer of the inheritance, the testator's creditors, a person in a close emotional relationship with the testator, and the prosecutor (Article 7 of the Code of Civil Procedure)[52]. If there are several persons entitled to demand that an heir be declared unworthy, each of them may bring the appropriate action independently.

Limitation in time

A claim to declare an heir unworthy may be filed within one year from the date on which the plaintiff learned of the cause of unworthiness, but no later than three years after the opening of the inheritance (Art. 929 k.c.). These are designated as mandatory deadlines under substantive law, the expiry of which results in the expiration of the right. Among other things, it is not possible to uphold a claim filed in violation of the mandatory deadlines under Art. 929 k.c., applying Art. 5 k.c.[53] The expiry of the deadline may result in the inheritance being transferred to an heir who has committed one of the acts listed in Art. 928 k.c.[54]

The one-year deadline specified in Art. 929 k.c., may begin from the opening of the inheritance (even if the entitled person learned of the cause of unworthiness before the inheritance opened) or later, i.e., from the moment the entitled person acquired (and not the potential possibility of acquiring) positive knowledge of the cause of unworthiness[55]. This means that the expiration of the entitlement under Art. 929 k.c. may occur at the same or different times for different entities and depends on the time at which each of them became aware of the existence of grounds for declaring unworthiness to inherit[56]. In turn, the expiry of the three-year period (deadline) from the opening of the inheritance, as defined by the legislature, results in the expiration of any interested party's entitlement to demand that an heir

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[51] Judgment of the Supreme Court of March 11, 2003, V CKN 1871/00, OSNC 2004, No. 5, item 85.

[52] A. Sylwestrzak, *Commentary to art. 929*, [in:] M. Balwicka-Szczyrba (ed.), *Kodeks cywilny. Komentarz aktualizowany*, 2025, Lex.

[53] Judgment of the Court of Appeal in Szczecin of November 23, 2016, I ACa 438/16, Lex No. 2174823; Judgment of the Court of Appeal in Katowice of August 1, 2007, V ACa 269/07, Legalis No. 96275.

[54] A. Paluch, *Zasady moralne czy pewność obrotu – o hierarchii wartości polskiego ustawodawcy na przykładzie wybranych problemów instytucji niegodności dziedziczenia*, „Transformacje Prawa Prywatnego" 2021, No. 1, pp. 85–96.

[55] See: Judgment of the Supreme Court of October 22, 1996, II CKN 5/96, Lex No. 333125; judgment of the Court of Appeal in Warsaw of March 5, 2015, VI ACa 731/14, Lex No. 1711596.

[56] H. Witczak, *Commentary to art. 929*, [in:] M. Fras, M. Habdas (eds.), op. cit.

be recognised as unworthy to inherit. It is recognised in the doctrine that if an act is described in Art. 928 k.c. (e.g., forging a will) is committed after the three years has passed, such act will remain "unpunished"[57]. *De lege lata*, the deadlines set out in the Act are considered too short[58].

A decision declaring an heir unworthy (consequences of unworthiness to inherit)

If a request is made to deem an heir unworthy, the court may (but is not obligated to) deem the heir unworthy[59]. A court ruling on unworthiness to inherit is constitutive; it produces *ex tunc* effects[60]. An heir deemed unworthy is excluded from inheritance as if he/she had not lived to the inheritance open (Art. 928 § 2 k.c.), meaning he/she did not exist at the time of the testator's death. This means he/she is excluded from inheritance both under the law and under the will, and he/she is deprived of the right to a compulsory share[61]. What is important, the institution of unworthiness to inherit produces an individual effect, not a general one[62]. The effect of exclusion from inheritance applies to a specific testator, so a person deemed unworthy does not lose the ability to inherit generally, i.e., from other persons (i.e. they can inherit from another testator).

Slovak law

Legitimacy

As indicated in the introduction, in Slovak law, the determination of unworthiness does not depend on any action by the decedent; it arises *ex lege*, and the notary takes it into account *ex officio*. Unworthiness to inherit arises *ex lege* when the legal conditions are met, and the notary (court commissioner) must take it into account *ex officio.* It is assessed by a notary within the inheritance proceedings. The notary is most often made aware of that fact from the participants in the proceedings (i.e. other heirs), but it may also

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[57] A. Sylwestrzak, *Commentary to art. 929*, [in:] M. Balwicka-Szczyrba (ed.), *Kodeks cywilny. Komentarz aktualizowany*, 2025, Lex.

[58] W. Borysiak, *Commentary to art. 929*, [in:] W. Borysiak (ed.), op. cit.

[59] Judgment of the Supreme Court of May 22, 2002, I CK 26/02, OSNC No. 3, 2003; also: M. Niedośpiał, *Niegodność dziedziczenia – glosa – I CK 26/02*, „Monitor Prawniczy" 2005, No. 15, p. 217 et seq.

[60] Resolution of the Supreme Court of February 3, 2012, I CZ 9/12, OSNC 2012, No. 7–8, p. 99; judgment of the Court of Appeal in Szczecin of October 25, 2019, I ACa 429/19, Legalis No. 2295814.

[61] Judgment of the Court of Appeal in Szczecin of October 25, 2019, I ACa 429/19, Legalis No. 2295814.

[62] P. Wołowski, *Nowe przesłanki niegodności dziedziczenia*, „Monitor Prawniczy" 2024, No. 6, Legalis.

be informed by any other person, or the notary may discover it independently. The notary may also learn of the grounds for unworthiness to inherit from any other person; it does not necessarily have to be an heir. The notary verifies such information depending on the grounds for unworthiness, for example, by reviewing criminal case files or other relevant documents. However, if the matter was not resolved in criminal proceedings (e.g. due to a presidential pardon), the notary must independently assess the issue for the inheritance proceedings[63].

As it was mentioned, the notary is required to consider unworthiness to inherit *ex officio* and must investigate it even if no one objects. It must also be considered that even if the other heirs agree that the unworthy heir should inherit, the notary must ignore it and exclude the unworthy heir. The only person who could revoke the unworthiness to inherit is the testator. However, by the time the inheritance proceedings take place, the testator has already passed away, and therefore, such revocation is no longer possible. This means that if a person is unworthy to inherit, the notary cannot recognise their right to inheritance, even if none of the heirs raise an objection or if the other heirs have forgiven the unworthy heir.

Limitation in time

The decisive moment for assessing unworthiness to inherit is its existence at the time of the testator's death. Thus, if during the testator's lifetime the heir (i) committed an intentional criminal offence against the testator, their spouse, children, or parents, or (ii) engaged in reprehensible conduct contrary to the expression of the testator's last will, the heir is deemed unworthy to inherit.

According to case law, however, an heir may also become unworthy after the testator's death, but only in cases of reprehensible conduct against the testator's last will, such conduct can occur either during the testator's lifetime or after his death[64]. Regarding the period within which the court must be informed of unworthiness to inherit, the law does not expressly set a limit. However, pursuant to Art. 485(1) of the CC, if it is discovered after the settlement of the estate that another person is the rightful heir, the person who acquired the estate is obliged to return the property they received[65]. Consequently, if a final judgment is later found showing that the heir was lawfully convicted of an intentional criminal offence under Section 469, the rightful heir may file a claim against the unworthy heir to recover the inherited assets.

63 Zbierka súdnych rozhodnutí Z I, s. 511–512.
64 I. Fekete, op. cit., p. 72.
65 § 485 ods. 1.

A decision declaring an heir unworthy (consequences of unworthiness to inherit)

The decision is made by the notary within the notarial procedure. The court takes unworthiness to inherit into account *ex officio* and is obliged to investigate it even if no heir raises an objection. It must also consider it even when the other heirs agree that the unworthy heir should inherit. A court ruling on unworthiness to inherit is constitutive; it produces *ex tunc* effects. An heir deemed unworthy is excluded from inheritance both under the law and under the will, and he/she is deprived of the right to a compulsory share.

Unworthiness to inherit applies exclusively to the heir who committed the conduct specified in Art. 469 of the CC. It does not extend to the descendants of the unworthy heir, including children, grandchildren, or great-grandchildren.

In cases where one heir claims that another heir is unworthy to inherit, the notary, after thoroughly examining the inheritance rights and the circumstances of the case, decides with whom the proceedings will continue and which heir will be excluded from the inheritance[66]. If the decision depends on the determination of disputed facts, the court will, by way of an order, refer the heir whose right appears to be less probable to bring an action to have the disputed fact determined by the court[67].

Comparative analysis results

The analysis of determining unworthiness to inheritance and its consequences leads to the following comparative conclusions: first, the studied legal systems present different approaches to determining unworthiness to inheritance. In Polish law, unworthiness is determined at the request of a person with a legal or moral interest (Art. 929 k.c.). Therefore, the entity with a legal interest in declaring an heir unworthy must take an action. The interested party's request initiates court proceedings. The court issues a judgment, which is constitutive in nature. Meanwhile, in Slovakia, unworthiness arises by operation of law (*ex lege*), and the notary (court commissioner) must take it into account *ex officio* in inheritance proceedings. The notary's findings are binding. No legal action is necessary. Anyone can inform the notary of the grounds for unworthiness, but the notary alone assesses and decides. If disputes arise, the notary refers the case to court (by obliging the party to file a lawsuit).

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66 Judgment of the Slovak Supreme Court, No. 4Cdo/96/2010.

67 § 194 ods. 1 CMP.

Significant differences also exist regarding limitations in time. Polish regulations provide mandatory deadlines for filing a motion to declare an heir unworthy. After these deadlines have passed, the right expires, even if the conditions of Art. 928 k.c. are met. However, Slovak regulations do not specify any clear deadlines. If it turns out that the heir was unworthy (e.g., a conviction revealed years later), it is possible to challenge the acquisition of the inheritance and request its restitution under Art. 485(1) of CC. The two systems also take different approaches to assessing unworthiness. Polish law provides for the assessment of acts fulfilling the criteria for unworthiness before or at the time of opening the inheritance. As a result, new acts (e.g., destruction of the will) occurring after three years from the testator's death remain legally irrelevant. This solution carries the risk that the unworthy person will retain the inheritance. On the contrary, in Slovak law, the status at the time of the testator's death is decisive, but reprehensible conduct against the last will can also occur after death. The Slovak system is therefore more flexible in this regard.

Finally, from the perspective of the consequences of unworthiness to inherit, in both systems, declaring an heir unworthy is constitutive and produces *ex tunc* effects – as if the heir had not lived to see the inheritance open. In both Poland and Slovakia, an unworthy heir is treated as if they had not lived to see the inheritance open, and therefore their descendants can take their place (the unworthiness does not extend to descendants, who retain their own inheritance rights).

Conclusions

In both Polish and Slovak law, unworthiness to inherit serves a protective function for the testator and their close relatives, eliminating from the circle of heirs those who have committed reprehensible acts against the testator (and, in Slovak law, also against their close relatives). The axiological justification for the institution under examination is similar in both systems, but the adopted legislative solutions differ, among other things, in their design (detailed results of the comparative analysis are included in the text).

De lege ferenda in Polish law, it is worth considering whether, in cases of particularly obvious premises for unworthiness to inherit, for example, a final judgment convicting the testator of a serious crime, it should be possible to establish unworthiness *ex officio*, without the need for an authorised entity to initiate it. Furthermore, it is questionable whether limiting the institution of unworthiness with a time limit is the appropriate solution. A closer examination of the practice of applying Slovak regulations – which do not establish clear deadlines for declaring an heir unworthy, thereby allowing the acquisition of an inheritance to be challenged at any time – is warranted.

In turn, *de lege ferenda* in Slovak law, it is worth considering further specifying the premises for declaring someone unworthy (including drawing attention to the new premises included in the Polish regulations because of the recent amendment). The issue of forgiveness is also worth considering. It seems that, given the general concept of inheritance law, persons with limited legal capacity, if they possess sufficient understanding, should be able to effectively forgive.

Finally, as a final reflection, the differences demonstrated regarding the unworthiness of inheritance in the studied countries only confirm that harmonizing inheritance law at the EU level will require a significant effort. Above all, however, this is a long way off.

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Summary

Unworthiness to inherit – legal grounds and consequences. A comparative analysis of Polish and Slovak succession law

Keywords: inheritance law, unworthiness to inherit, heir, harmonisation of inheritance law.

The subject of this study is a dogmatic-legal and comparative analysis of unworthiness to inherit in Polish law (Art. 928–930 k.c.) and Slovak law (Art. 469 of CC). Unworthiness to inherit is a civil law institution whose general essence is that, for certain reasons (factors) specified by the legislator,

a potential heir may be excluded from inheriting after the deceased. The aim of this article is to identify similarities and differences in the group of entities that may be deemed unworthy, the premises for being deemed unworthy, the possibility of forgiveness by the testator, and the determination of unworthiness to inherit and its consequences. Based on the conducted considerations, it was concluded that both legal systems regarding unworthiness to inherit are based on the same assumptions (the essence and purpose of the regulations are identical), but differ in specific aspects, such as the premises and method for determining unworthiness to inherit. This proves that discussion and continued research aimed at harmonising inheritance law in the European Union are desirable.

Streszczenie

Niegodność dziedziczenia – podstawy prawne i konsekwencje. Analiza porównawcza polskiego i słowackiego prawa spadkowego

Słowa kluczowe: prawo spadkowe, niegodność dziedziczenia, spadkobierca, harmonizacja prawa spadkowego.

Przedmiotem opracowania jest analiza dogmatyczno-prawna i porównawcza niegodności dziedziczenia w prawie polskim (art. 928 – 930 k.c.) i w prawie słowackim (art. 469 of CC). Niegodność dziedziczenia jest instytucją prawa cywilnego, której ogólna istota polega na tym, że z pewnych przyczyn (czynników), określonych przez ustawodawcę, potencjalny spadkobierca może być wyłączony z dziedziczenia po zmarłym. Celem artykułu uczyniono ustalenie podobieństw i różnic w zakresie kręgu podmiotów, mogących zostać uznanych za niegodnych, przesłanek uznania za niegodnego, możliwości przebaczenia przez spadkodawcę, ustalanie niegodności dziedziczenia i jej skutków. Na podstawie przeprowadzonych rozważań stwierdzono, że oba systemy prawne w zakresie niegodności dziedziczenia opierają się na tych samych założeniach (istota i cel regulacji są tożsame), zaś różnią się w kwestiach szczegółowych, np. przesłankach, czy sposobie ustalenia niegodności dziedziczenia. Dowodzi to, że pożądana jest dyskusja i kontynuowanie badań zmierzających do harmonizacji prawa spadkowego w Unii Europejskiej.