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The concept of non-contractual obligations in inheritance law: international legal experience

Концепт недоговірних зобов'язань в спадковому праві : міжнародно-правовий досвід

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Abstract

The article is devoted to the study and analysis of such areas of civil law as non-contractual structures, within the inheritance law of individual European Union countries, the emergence, development and implementation of such structures in regulations governing the inheritance procedures of countries such as Poland, Czech Republic, Republic of Lithuania and the Republic of Latvia. The purpose of the study in the monograph is a comprehensive analysis of the nature and specifics of legal and doctrinal bases of regulation and practice of non-contractual constructions in the inheritance law of individual EU countries (Poland, Czech Republic, Lithuania, and Latvia). As a result of the study the concept of non-contractual constructions of inheritance law is formed in the work. The types of non-contractual constructions, first of all their dialectical classification, architecture and place in the system of inheritance law are singled out and analyzed. An analysis of their identification and separation in different states, depending on the legal family, traces the integrity of the

Анотація

Стаття присвячена дослідженню та аналізу такого напрямку цивільної правової науки, як недоговірні конструкції, в рамках спадкового права окремих країн Європейського Союзу, виникненню, розвитку та реалізації таких конструкцій в нормативно-правових актах, які врегульовують процедури спадкування таких країн як Республіка Польща, Чеська Республіка, Литовська Республіка та Латвійська Республіка. Мета дослідження в монографії полягає комплексному аналізі природи і специфіки нормативно-правових та доктринальних основ регламентації та практики реалізації недоговірних конструкцій в спадковому праві окремих країн ЄС (Республіки Польщі, Чеської Республіки, Литовської Республіки та Латвійської Республіки). В результаті проведеного дослідження сформовано концепцію недоговірних конструкцій спадкового права. Виокремлено та проаналізовано види недоговірних конструкцій, насамперед їх діалектичної класифікації, архітектури та місця в системі

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fundamental structure of knowledge about the obligatory rights of the testator within the will, heirs and beneficiaries in their biocentric expression and in the context of social ties. Emphasis is placed on rethinking and solving some problems in inheritance law, from the point of view of new world realities.

Keywords: non-contractual constructions, inheritance, inheritance law, will, heir.

Introduction

Recent trends in Ukraine have an impact on the vector of research in the field of jurisprudence, which is aimed at the legal systems of the member states of the European Union (hereinafter – the EU). Thus, the relevance of this article is due to the fact that in modern political, social, and economic situations in the world, the study of inheritance law is very valuable, as it has not only purely cognitive, academic but also political and practical nature, influencing social, economic and other components of countries, allowing to more clearly define all the inherent functions and impact of this type of rights on the world community, to outline the main activities, to more accurately establish the place and role in society, political, economic and social systems.

The twenty-first century marks the beginning of the transition to a new socio-cultural paradigm. Critical knots of life practice of the end of the XX century, the shift of priorities from the state to civil society which is rapidly developing, and therefore the hereditary right changes and improves. At the legislative level, states are increasingly strengthening the protection of the personal interests of citizens, improving the procedure for performing notarial acts, and determining the role of the notary in the practice of inheritance law in notarial activities. This creates new rules of law at both the national and international levels.

The relevance of the research topic is due to the constantly changing world, and, consequently, the institute of inheritance law, the high degree of significance of problematic aspects of human life and death for both theoretical modeling and practical implementation of a set of legal norms, institutions, mechanisms, utilizing which the social and legal communications connected with

спадкового права. Зроблено аналіз щодо їх ідентифікації та відокремлення у різних державах, залежно від правової сім'ї, прослідковано цілісність фундаментальної структури сфери знань щодо зобов'язальних прав заповідача в межах заповіту, спадкоємців та вигодонабувачів у їх біоцентричному вираженні та у контексті соціальних зв'язків. Зроблено акцент на переосмисленні та вирішенні деяких проблем у спадковому праві, під кутом зору нових світових реалій.

Ключові слова: недоговірні конструкції, спадкування, спадкове право, заповіт, спадкоємець.

understanding, legislative fixing, realization, and protection of the legal status of the person by non-contractual constructions are carried out.

Today, in the current geopolitical stage of the development of society, there is an urgent need for further steps towards compliance of national legislation with international law in the order of Ukraine's accession to the EU. Thus, EU member states, as well as other states, take an active part in the creation of such legal acts that regulate inheritance procedures.

Therefore, the study of foreign inheritance law is conditioned by the need to address issues that arise in the inheritance law of Ukraine and show that it is necessary to improve legislation through a detailed analysis of international inheritance law. We further proceed from the fact that the usual way of legal existence of a person-individual is his/her participation in civil relations of a private type (Kharytonov, Kharytonova, Kolodin & Tkalych, 2020). This will increase the level of legal culture of citizens and protect their interests in the implementation of inheritance rights.

This topic is especially relevant, in particular, for the preparation based on a generalization of previous scientific achievements, doctrinal research, which would trace the integrity of the fundamental structure of knowledge on the basics of non-contractual constructions in inheritance law in the context of social relations of individual EU countries, to rethink them in terms of the new world and domestic realities, which largely led to the choice of the research topic.

The purpose of the study in the article is to comprehensively analyze the nature and specifics

of legal and doctrinal bases of regulation and practice of non-contractual structures in the inheritance law of individual EU countries, to establish the greatness of general provisions, and to characterize such structures on the example of Poland, Czech Republic, Of the Republic of Lithuania and the Republic of Latvia.

Theoretical Framework or Literature Review

As of today, research in scientific circles on the problem aimed at studying the legal regulation of the possibility of disposing of property in the event of death through non-contractual constructions in the legal systems of the EU member states is fragmentary. In the field of scientific research, there are many works that analyze similar relations, but within the national legal field of Ukraine. Among the authors of such works, in terms of the characteristics of a similar order of the testator, called "testamentary disclaimer", provided by Art. 1237-1239 of the Civil Code of Ukraine (Law 435-IV, 2003), it is expedient to note Zaika (2007), Tsybul'ska, Voronina, Fomichova, Tokareva and Matiiko (2019). Zaika and Riabokon (2009), S. Fursa (2012), and E. Fursa (2013).

However, as already mentioned, a scientific analysis of the problem based on a study of current civil law was not conducted by several EU member states, and the problem, which is the title of the work, remains unsolved and therefore suggests that research within this work is timely. Thus, the study is based on some of Ukraine's immediate neighbors, such as the Republic of Poland, the Czech Republic, the Republic of Lithuania, and the Republic of Latvia, given, firstly, their location in the immediate vicinity of Ukraine and, secondly, several such Today, the countries are strategic partners of our state in its pursuit of European integration, and thirdly, unshakable cooperation between Ukraine and these countries, such as the Treaty on Legal Assistance in Civil Matters, which has existed for sixteen years in a row between Ukraine and the Czech Republic (2001)

Methodology

The methodology of the article consists of several methods of scientific knowledge, namely: analysis, synthesis, historical, and comparative-legal.

Thus, the method of analysis allowed to study the rules of several civil codes of the EU, and correctly determine the essence of non-contractual constructions in inheritance law. In

turn, the method of synthesis helped to see the whole picture of hereditary legislation and how the legislator went to regulate such relations.

In addition, the rules of inheritance law were considered by the authors in the historical context, which allowed to determine exactly what content the legislator invested in them. The historical method was used for this purpose.

The modeling method made it possible to determine what are the problems in the regulation of non-contractual structures in inheritance law and what are the ways to eliminate them.

Finally, the comparative law method showed how the rules of inheritance law of the selected EU countries are correlated, which, in turn, allowed to highlight the positive experience of each country in regulating the relations of inheritance law.

To achieve the aim of the study, the following tasks were set: to investigate the source base of civil law of individual EU countries on the example of the Republic of Poland, the Czech Republic, Lithuania, and Latvia and to determine the features of legal regulation and implementation of general provisions on testamentary dispositions and waiver of property by the testator within the will in case of his death; to compare a number of national legislations in the field of non-contractual constructions in inheritance law.

Results and Discussion

The subject of discussion in this study is the analysis of the situation that exists in the field of unification of non-contractual structures in the national law of individual EU countries that directly regulate relations arising from the death of an individual or his death because inheritance is a sphere of relations, which will inevitably have to go through each person (Pavliv-Samoyil & Mekh, 2018).

Recognized cases of non-contractual obligations in inheritance law were those that arose as a result of the establishment in the will of responses in the form of legatum (per vindicationem and sinendi modo), as well as fideicommissa. The main difference between these responses was, firstly, in the historical period of their formation (legatum was known to the norms of jus civile, and fideicommissa appeared in the period of the empire), and secondly, in formalism (unlike legatum, which could established only within the will,

fideicommissa was an informal request of the testator to the heirs in oral or written form to perform any action or transfer any property to another person) (Tsybul'ska, 2009; 2010).

Today, the civil law of the EU member states in the field of legal regulation of inheritance relations enshrines similar to the responses known to Roman law, constructions that result in non-contractual obligations between the heir and third parties – the beneficiaries (Valah, 2002). This statement is based on a study of the inheritance law of states such as the Republic of Lithuania, the Republic of Poland, the Czech Republic, and the Republic of Latvia.

To cover the tasks, we will consider in more detail, first, the settlement of this issue by the legislation of the Republic of Lithuania.

The Civil Code of Lithuania (Law No. VIII-1864, 1984) distinguishes certain types of orders "testamentinė išskirtinė". The division of this order into species took place depending on what is the subject of such expression of will within the will. The chief purpose of the testator's order in the will called "testamentinė išskirtinė" is to provide certain property benefits from the inheritance to third parties, beneficiaries, without burdening them with the relevant obligations that exist with such property and are part of the inheritance. The presence of such a will of the testator provided that the inheritance is accepted by the encumbered heirs and beneficiaries, gives rise to a binding legal relationship in which the encumbered heir is the debtor and the beneficiary is the creditor (Tsybul'ska, Voronina, Fomichova, Tokareva & Matiiko, 2019).

Today, the Republic of Poland is a member of the EU. Therefore, its legal norms must meet the same standards as European ones. Therefore, the analysis of certain norms of the inheritance law of Poland, which are aimed at regulating the possibility of disposing of one's property in case of death in favor of third parties who are not heirs, will be the object of research conducted within this work (Tsybul'ska, 2016ab).

The central act of civil law in the Republic of Poland is the Civil Code of 1964 (Law 1963, 1964). The fourth book entitled "SPADKI" is devoted to the hereditary law in this normative legal act. The possibility to make a will within the will in the form of an order called "zapis" is regulated by Articles 968, 970 - 981 (Chapter One "Zapis zwykły" Chapter Three "Zapis i polecenie", Title Three "ROZRZĄDZENIA NA WYPADEK ŚMIERCI", Book Poland).

(Tsybul'ska, Voronina, Fomichova, Tokareva & Matiiko, 2019).

"Zapis windykacyjny" is an order of the testator within the will, through which certain persons are provided with property benefits from the inheritance. This conclusion can be made by reading the content of the rules provided for in Articles 9811 - 9816 of Chapter Two with the appropriate title "Zapis windykacyjny" of Chapter Three "Zapis i polecenie" Title of the third "ROZRZĄDZENIA NA WYPADEK ŚMIERCI" of the fourth book "SPADKI" of the Civil Code of Poland from 1964.

Thus, the analysis of the norms of the Civil Code of Poland aimed at regulating the vindication record, in some way fills the vacuum that exists in the national civil science and, therefore, can be used later in subsequent scientific works.

Acquaintance with the norms of inheritance law of Poland in a comparative context with the corresponding norms of Lithuania gives grounds to identify common and distinctive features inherent in a similar order, which the testator in making a will may provide in its content. Such orders are: "zapis" and "zapis windykacyjny" (Civil Code of Poland), "testamentinė išskirtinė" (Civil Code of Lithuania). Among the central criteria for the comparative characterization of these orders, it is worth noting the following: the method of establishing these orders; a list of "third parties" in whose favor such orders may be directed; their subject; the nature of legal relations arising from their establishment.

Inheritance in the Czech Republic (Law No. 89/2012, 2012) is governed by Chapter Three, entitled "Inheritance Law" of the Civil Code of the Czech Republic, according to paragraph 1475 of which, the inheritance law determines the right to property or a proportional share in it.

Issues related to the possibility of establishing a testamentary disclaimer in the will are directly addressed by the norms of the department of the third chapter of the third Civil Code of the Czech Republic with the appropriate title "Testamentary disclaimer". The first section of this section establishes the general provisions on the testamentary disclaimer, regulated by paragraphs 1594-1603, on the procedure for its establishment, the range of persons in whose favor it may be established, its subject, procedure and methods of execution, and grounds for revocation.

Of interest is the rule contained in paragraph 1478 of the Civil Code of the Czech Republic and

provides for the right to act as a testator legal entity, which is just being created. Such a legal entity has the ability to be a testator if it is created within one year after the death of the testator.

Familiarization with the content of paragraph 1477 of the Civil Code of the Czech Republic makes it possible to argue that the subject of the testamentary disclaimer may be the right to demand the issuance / establishment of: a specific thing; one or more things of a certain kind (if necessary); of a special right.

The general provisions of the division of the third chapter of the third Civil Code of the Czech Republic also contain norms aimed at regulating the issue of revocation of testamentary disclaimer. These norms are provided by paragraphs 1602 – 1603 of the Central Committee of the Czech Republic.

Interesting is the approach of the legislator in regulating the relations arising from the establishment of the refusal, the subject of which is a monthly, annual, or payable in another period, assistance. The respondent acquires the right to the amount for the entire period of appointment of such assistance if he lives to its beginning. And such payment can be made only in the term established for it. However, the Civil Code of the Czech Republic within this section does not specify anything about the term and procedure for payment of such assistance if it is to be provided to the recipient for life, because it is unknown in advance how long such benefit will last.

In the case of a testamentary disclaimer of a certain thing, the testator receives the fruits and income from the time of execution of this order of the testator, as well as everything else that will be added to such a thing, including encumbrances. Thus, paragraph 1625 states that from that day on, the defendant is also responsible for the defects of the thing, as well as its deterioration or destruction, which arose as a result of circumstances for which no one is responsible.

Along with the already mentioned countries, it is interesting to study the current state of civil law regulation of inheritance in the Republic of Latvia, firstly, because its central act in the field of civil law – Latvijas Republikas Civillikums – Civil Law of the Republic of Latvia (Law 1937, 1937) was adopted in 1937. In 1938 it came into force, but two years later, in 1940, it was abolished and replaced by the Civil Code of the Latvian SSR. With Latvia gaining independence

in 1990, the Civil Code of Latvia in 1937 was gradually restored in 1992-1993. That is why the study of its norms, in particular, the rules of inheritance law in the part aimed at legal regulation of the possibility to establish in the will an order called "legacy", is certainly interesting and relevant given the effect of its rules over time. The interest in studying the rules of inheritance law in Latvia is also justified by the understanding that Latvia is a member state of the EU, as well as the fact that between Ukraine and the Republic of Latvia in 1995 concluded an agreement (Ukraine and the Republic of Latvia, 1995).

Part Two of the Civil Code of Latvia, which includes eight sections, is devoted to inheritance law in the Republic of Latvia. The first section of this part provides general provisions of inheritance.

A will is a unilateral order that a person gives in case of his death in respect of all his property or a separate part of it, or certain things or rights, as provided in Art. 418 of the Civil Code of Latvia. If, however, not the entire inheritance or its share, but only a separate subject of it is to pass to someone by will, such an order is called a legate, and the person in whose favor such an order is made is a legatee, specified in Art. 500 of the Civil Code of Latvia.

The legacy can be given by will or directly, or instructed to perform it to the heir or other legatee (Article 501 of the Civil Code of Latvia). A legatee can be required to give something to a third party, but only without reducing the value of the legacy he received. Otherwise, such a legatee has the right not to issue or perform anything that reduces the value of his legacy. If the legatee is obliged to transfer the entire legacy to a third party, then, following Art. 504 of the Civil Code of Latvia must also transfer the costs and interest he received from the legate.

In case of breach of the obligation by the person burdened by the legate, the legatee has the right to file a personal lawsuit against the heir for the issuance of the legate. If the legatee's property was owned by the testator but is in the possession of another person, then the legatee may sue each owner of such property, as the testator could have done so before his death (Pokrovskiy, 2004; Rasskazova, 2013).

On the example of the analysis of the rules of inheritance law, we can see that the influence of the rules of Roman law on non-contractual obligations in this area inevitably occurred. And

this, in turn, increases the interest in a more detailed consideration of the outlined issue within the common space of the EU.

In this context, it should be noted that today in each of the EU countries there are codifications of civil laws, so, in addition to the countries already outlined, we can mention France, where the French Civil Code of 1804 or the so-called "Napoleonic Code" (France, 1804) is the starting point codifications in Europe. In Germany, such a codified act is the German Civil Code of 1896 (Bürgerliches Gesetzbuch, (BGB) (Germany, 1896), also known as the Bismarck Code). Thus, the systematization of civil law in Germany, as can be understood, looking at the short time in the history of Western Europe in the nineteenth century, took place shortly after the codification of civil law in France.

Thus, given that from a legal point of view, a distinction is made between inheritance law systems that operate in foreign countries of continental Europe (most EU countries) and inheritance law systems that are specific to countries with Anglo-Saxon law (Ireland). The main difference between them is that in continental European countries the inheritance passes directly to the heirs, and in the countries with Anglo-Saxon law, it passes first to the third person and only then – to the heirs. In addition, in continental Europe, some countries generally follow the French model and countries for which the model is German law (Valah, 2002).

Thus, as we can see from all the above, in the states that are part of the EU, there is its national legislation with its traditions and, of course, stable in time. Therefore, there is a question about the motives for finding a common language in the form of common normative standards, in particular, in inheritance law, which will be mandatory in the EU.

In answer to this question, we can agree with the view that today there is a problem of the reconciliation of two legal systems that exist in the EU – continental, and Anglo-American (Rasskazova, 2013). And if there is a problem, you need to find a tool with which you can find a common language to solve it.

Today, the basis of uniform standards in the field of private law should be considered the Draft General Reference Scheme, which includes the principles, concepts, and model rules of European private law (Principles, Definitions, and Model Rules of European Private Law. Draft Common Frame of reference (hereinafter – the

Project or DCFR) (Study Group on a European Civil Code & the Research Group on EC Private Law (Acquis Group, 2009). The official translation of this Project in the CIS is the translation made by the Department of Civil Law of St. Petersburg State University, edited by Rasskazova (2013).

As can be seen from the content of this translation, it is a document created by scientists from EU member states. It consists of three parts. The first defines the principles, the second – the model rules, and the third – the concept. The next step to determine the role of the Project as a tool for harmonization of inheritance law in the EU is to study its content. Acquaintance with the content of this document makes it possible to say that its rules are aimed primarily at regulating contractual relations, although there are some cases of non-contractual obligations, such as unjust enrichment, harm to another person, and actions in the interests of another person without his instructions (Tsybul'ska, 2014).

Thus, the following question that arises when determining the subject of legal regulation, which is aimed at the rules of the Project, the impact of DCFR on the relationship of inheritance is natural. And, quite logically, the answer about the impossibility of application of its norms at regulation of relations of inheritance is seen. However, each conclusion must be substantiated. Therefore, the confirmation of this position is the second paragraph of Article I.-1: 101. According to the content of this norm, some issues are excluded from the scope of the act, in particular, the status and legal personality of individuals, wills and inheritances, family relations, working capital instruments, labor relations, legal regulation of real estate, regulations on legal entities and civil process and enforcement proceedings (Rasskazova, 2013). Thus, the first and main conclusion of this study can already be made, according to which the relations related to wills and inheritance are not regulated by the Project.

At the same time, the unambiguous perception of the instruction to exclude from the scope of the Draft issues related to hereditary succession does not mean the impossibility of applying its rules to relations that are closely related to inheritance but are not hereditary. Because the transfer of property based on inheritance due to the death of a person or recognition of his death provides for the possibility of the emergence or transfer of other rights and obligations that are not hereditary. Thus, from the testator, who during his lifetime was, for example, in any binding

legal relationship that did not end as a result of his death, his rights as a creditor and his obligations as a debtor may be transferred by inheritance to other persons – his heirs, who, in turn, will enter into such a binding relationship on the part of the creditor or debtor, provided they accept the inheritance.

The example of hereditary legislation of Ukraine can be seen testamentary disclaimer (Articles 1237-1239 of the Civil Code of Ukraine (Law No. 435-IV/2003, 2003) and the testator's right to impose other obligations on heirs (Article 1240 of the Civil Code of Ukraine), which are the basis for binding legal relations. However, it should be remarked that these obligations arising from the establishment in the will of one of these testamentary dispositions are non-contractual.

Since, as already mentioned, the Project contains an exhaustive list of non-contractual obligations governed by its rules, namely: unjust enrichment, harm to another person, and actions in the interests of another person without his instructions, we encounter another problem based on the need nevertheless to determine the final possibility of using DCFR as a tool for harmonization of the norms of the current national legislation according to the EU standards. Given that the Project contains basic principles, model rules, and concepts, it would be appropriate to refer to the general rules governing all obligations that fall within the scope of the Project. Book three of the DCFR is devoted to these rules (Rasskazova, 2013).

Given the above, the conclusions regarding the impossibility of the Project to be a universal instrument of harmonization of absolutely all private legal relations should be considered reasonable, as its norms have a clearly defined scope. Therefore, DCFR will not always be able to be an effective way to find a compromise and apply its norms as a standard for regulating relations to which its norms do not apply. Among such relations are non-contractual obligations arising in inheritance law following the current legislation of the EU member states as a result of certain testamentary dispositions – testamentary disclaimer and the testator's imposition of other obligations on the heirs.

However, it would be impractical to conduct separate research without seeing a positive solution to the issue, which was crucial and key at the beginning of the conversation, therefore, the fact remains that the general provisions of the DCFR can exist as a standard proposed by the EU, as its rules at the level of general principles

will have a direct impact on the regulation of all obligations, regardless of the reasons for their occurrence.

Conclusions

Inheritance law in each of the countries selected for study allows citizens of such states to dispose of their property in case of death, defining their will in the will, which is directly aimed at protecting the personal interests of citizens, because many of them do not care who inherits their property after death. At the same time, the right of inheritance protects the interests of the family members of the deceased, which can be seen from the order of duty standardized in each civil code, which, of course, contributes to the strengthening of the family.

Inheritance in all EU countries analyzed in the study is a universal succession. And it is the inheritance that clearly reflects such a feature of universal succession as the simultaneous transfer to the successor of all rights and obligations that belonged to the testator, where at the time of opening the inheritance determines the composition of these rights and obligations.

Given the above analysis of civil law of the selected EU member states, it is seen that the features of non-contractual constructions in the inheritance law of such countries are related to the type of inherited rights, and in each case have both similar and different – special, for example, the difference in the capacity of the concept of the circle of "third parties". The task of the legislators of such countries is to create a legal mechanism for exercising the right to inherit, which will effectively enable each heir to inherit any property or obligations with the least legal problems for him, as can be seen, for example, from the Czech Civil Code. Republic, containing updated, taking into account the rapid pace of the rules of inheritance law governing non-contractual structures.

Accordingly, it is necessary to take into account some negative aspects in the national legislation of some EU countries, as well as to eliminate some gaps: at the legislative level it is necessary to simplify the registration of inheritance, to reform inheritance legislation, in particular within its non-contractual structures; it is needed to improve and approximate the national legislation of each EU member state to common European standards, as well as to introduce common and clear concepts, types and functions of non-contractual structures in EU inheritance law as a whole.

Thus, analyzing the legislation governing non-contractual structures in the inheritance law of EU member states, it should be noted that the protection of both personal and common interests and their property is regulated at the highest level and by a large number of regulations, when both in the European (within the EU) level needs a more sustainable institution of inheritance and conflict resolution, where the general legal act must meet all the requirements of a new society based on a market economy, because DCFR will not always be able to be an effective way to find a compromise and apply its rules in the quality of the standard for the regulation of relations to which its rules do not apply.

At the same time, a detailed analysis of such legal constructions in inheritance law as non-contractual, given the well-founded interest in large volumes both within other EU countries and, in comparison with other countries, legal families by systems are possible already within the limits of further scientific works.

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