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*Executor of last will in the Polish law  
on a comparative background*

Summary

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The increase in the economic value of private assets belonging to members of modern society has a significant impact not only on the trade, but also legal practice. A growing crowd of constantly enriching Polish citizens is looking for more modern juridical mechanisms, which use will lead to the protection of collected assets and their transfer to the selected entities. Theses posed by many representatives of contemporary doctrine and experience of practitioners specializing in private law leads to the conclusion that achievement of the indicated goals is possible by making not only *inter vivos acts* (between living persons - ed. J.G.), but also *mortis causa*. This group includes first of all the preparation of last will by means of which the testator can make a wide variety of dispositions. In Poland, the still least frequently used among them is calling up an executor.

The most likely reason for abiding practical and theoretical marginalization of last will executor in the Polish legal practice as the structure of inheritance law allowing for efficient disposal of inheritance left by the testator is its theoretical enigmatic character. This institution was so far the subject of only a few not very extensive studies of substantially narrow range of issues, most of which were created at least several decades ago. The indicated facts led to the adoption of the position that it is highly reasonable to undertake the task of conducting the first in Poland comprehensive analysis of the executor of last will under the provisions of Polish law, including the regulation of institutions in the selected countries of Western Europe. It was divided into seven distinct sections, for the preparation of which on research background a historical, axiological, formal, dogmatic (logical and linguistic) and comparative method was used.

The first chapter aims to determine the location of an executor in the system of private law. Considerations in this area start from the linguistic and semantic analysis of expressions crucial for the whole case, i.e. executor, last will and a disposition of property upon death. Then, in a framework manner, the historical development of the implementation of the broadly understood last will of the deceased has been described. In the next section one described outline of the concept and legislative motives dedicated to the executor, which appeared in the processes of codification of civil law in countries such as Germany, France and Poland. The content of the next fragment is in turn the primary determinant of the main points emerging in other sections of the dissertation, because it contains descriptions of the most important theories about the executor. It ends by saying that Polish regulation of the described institution is based on a model called fiduciary representation.

The second chapter deals with the subject the appointment of an executor. The starting point in this regard is an elaboration of the concept and the legal nature of this appointment.

Its main source was the last will. Its contents should include wording allowing identification of the appointed entity. In order to acquire this position, it is necessary that the entity has the full capacity to act and the specific moral or professional attributes. However, sometimes it happens that this appointment is characterized by a defect in which there are two types, i.e. invalidity and ineffectiveness.

The third chapter is the most extensive part of the prepared dissertation. Its subject is in fact the analysis of tasks of the last will executor. They consist of certain activities about which the executor may decide each time. As a rule, these include the acceptance of inheritance, its inventory, management, among others the execution of dispositions of property upon death, the repayment of inherited debts and distribution to the heirs of the remaining components of property. Limitations of this catalog, however, may arise not only from the will of the deceased, but also the laws, the rules of proper management or the existence of a collision occurring between the competence of executors and other entities which are authorized to make actions concerning the inheritance. Moreover, it is necessary to establish the method of implementation of the last will of the testator if he decided to appoint two or more executors.

The fourth chapter is devoted to the issue of civil liability of the executor. Depending on the specifics of the actual situation, the executor may be responsible for his own actions that led to occurrence of the damage or for the actions of entities under his authority. Specific alteration of these assumptions in turn occurs when there were a few executors. Additionally, one should realize that sometimes the heirs will have to bear responsibility for the damage caused to third parties due to the negative procedure of the executor.

The fifth chapter, in contrast to other, does not concerns the substantive, but the procedural issues related to the executor. Since it contains a description of situation of the entity holding that position in the Polish and EU civil proceedings involving matters of inheritance. It consists primarily of the judicial and procedural ability of the executor and his entitlement to act. He has a number of procedural rights. Some of them relate only to him, while others - refer to legal-inheritance matters.

The sixth chapter is a part of the prepared dissertation, the subject of which is the remuneration due to the executor. As a result of the statutory reference, it is regulated by appropriate application of the rules of order. This leads to the conclusion that its amount usually corresponds to the value of the work performed. Payment occurs usually after completion by the executor of all tasks entrusted to him. Otherwise, the claims' period of



prescription starts. One should also decide how to shape the salaries of at least two executors appointed by the same testator.

The sixth chapter focuses on the expiry of the position of the executor. Essential in this respect is the establishment of a catalog of its causes. Currently, these include completion by the executor of all tasks entrusted to him, his death or the loss of his legal personality, or a partial loss of his legal capacity, the passage of time, and his dismissal from his position. This legal event is associated with certain consequences, in particular the need to exempt the executor from liabilities incurred by him by the heirs of the testator.

The main research thesis of the Author was to show the executor of the last will as special juridical structure covering theoretically certain elements of many institutions appropriate not only for the inheritance law, but also part of general civil law, property law and contract law to which the present regulation in the Polish normative system prevents the full realization of its traditional axiological and praxeological assumptions. This preliminary view was reflected in the performed analysis. The results allowed for a determination of the fact that the institution of an executor is based on a hybrid, but not having sufficient basis normative juridical structure. Its future depend therefore directly on the direction of legislative changes chosen by the Polish legislature.

A handwritten signature in blue ink, reading "Jakub Głowacz". The signature is written in a cursive, flowing style with a large initial 'J'.