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Articles

Studia Iuridica Lublinensia vol. 32, 1, 2023
DOI: 10.17951/sil.2023.32.1.79-97

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Persuading to Commit or Assisting in the Testator/ Decedent's Suicide in the Context of the Grounds for Unworthiness of Inheritance

O namowie lub udzieleniu pomocy do samobójstwa spadkodawcy w kontekście przyczyn niegodności dziedziczenia

ABSTRACT

The article contains a discussion of a criminal-law and civil-law nature in the context of the judgment of the Court of Appeal in Krakow of 20 May 2014 (I ACa 357/14, Legalis no. 1171941). Essential to settle a case of unworthiness of inheritance were the findings made in the criminal case for committing an act under Article 151 of the Polish Penal Code (PC) regarding whether the behaviour of a man who subsequently committed suicide can be considered as assisting his mother in committing suicide. The crucial issue here was the analysis of the mental state of the "perpetrator" and his motivation in the context of the implementation of the conditions of insanity or sanity limited to a significant extent (Article 31 §§ 1 and 2 PC). A judgment upholding an action for the man's

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unworthiness of inheritance, assuming that the defendant in these proceedings assisted his mother to commit suicide, could be made only if he were able to be pleaded guilty. Otherwise, namely in the case of declaration of his insanity at the time of committing the act, it would be pointless for the civil court to assess the crime of assisting suicide (Article 151 PC) from the point of view of its severity within the meaning of Article 928 § 1 (1) of the Polish Civil Code.

Keywords: unworthiness of inheritance; assistance in suicide; severe crime; insanity; testator

INTRODUCTION

The inspiration for the considerations presented herein is the judgment of the Court of Appeal in Krakow of 20 May 2014,[1] issued in a case concerning unworthiness of inheritance. The plaintiff was the mother of the deceased, who demanded that her grandson, the son of the deceased, be declared unworthy of inheritance, claiming that he had helped his mother commit suicide. "Article 928 of the Polish Civil Code (CC) which regulates unworthiness of inheritance reflects the widely accepted ethical principles and accepted customs according to which the inheritance by a person who has committed highly reprehensible acts of wickedness toward the testator/decedent is considered unfair and inappropriate. It is commonly considered unacceptable that the estate of the deceased, which is often the accomplishment of his entire life, is transferred after his death to a person who has committed a serious intentional crime against the deceased (…)".[2]

The facts of the case were as follows. The residential building housed a married couple G. – the later aggrieved person (H.G.) with her husband (B.G.), their adult son (P.G.), and mother of the woman (H.G.), the plaintiff in the proceedings for unworthiness of inheritance. The young man was passionate about paranormal phenomena and the beliefs of the Far East culture. With time, the hobby of her son began to be shared by his mother. Soon both began to be concerned about something. The son informed his father of his suspicions about a bomb planted in the garage, and due to suspicions about wiretaps installed in the house, both the son and his mother began communicating with the father and husband by writing on sheets of paper. Their surrounding people observed their strange, restless behaviour. The mother called the police and told them that she was being watched, that she was worried about her safety, because while going to work she saw a slowly driving black car, and that she saw two dark-coloured cars in front of her house. The intervention of police officers, who did not confirm the reported circumstances, ended with an admonishment of the reporting person. The son of the de-

[1] I ACa 357/14, Legalis no. 1171941.

[2] Substantiation of the judgment of the Court of Appeal in Bialystok of 10 April 2013, I ACa 23/13, LEX no. 1307390.

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ceased was also concerned about his and his parents' lives, and shared his fears not only with his mother, but also with his father. One day, the father found his wife and son's bodies in the attic, hanging on a mountain climbing guard line hooked to the wooden stairs. An emergency medical doctor who had been called in, established that the man and woman were dead.

Criminal proceedings were instituted for inducing, through persuasion or by providing assistance, a person to take his own life, i.e. for an act punishable under Article 151 of the Polish Penal Code (PC). Since it was established that the criminal act had not been committed, the proceedings were discontinued. The justification for the decision stated that the cause of death of both of the deceased was suicidal hanging. No person was found to have instigated or aided the event. A mental disorder rooted in the son's interest in paranormal phenomena and Far Eastern religions, which pushed him and the mother to make a suicide attempt, was considered the probable motive. From the arrangement of the woman's corpse and the manner in which the knot was made, it was apparent that the son helped his mother to commit the suicidal hanging and then hanged himself by hooking the rope behind his already hanging mother over the stairs to the attic.

This article seeks to analyse how the case findings regarding the mental state of a person making a suicide attempt affect the possibility of resolving a civil case of unworthiness of inheritance, and whether the simultaneous implementation of the elements of a criminal act under Article 151 PC by such a person can be regarded as having intentionally committed a grave crime against the testator/decedent. The article uses a formal-dogmatic method, based on the analysis and interpretation of the provisions of the Polish Penal Code and the Polish Civil Code.

GROUNDS FOR THE STATEMENT OF CLAIM IN THE PROCEEDINGS FOR UNWORTHINESS OF INHERITANCE

In these circumstances, the mother of the deceased woman applied to a civil court demanding that her grandson be considered unworthy of inheriting from his mother. Under the applicable regulations, considering an heir unworthy of inheritance may take place only in the event of one of the three reasons listed in Article 928 § 1 CC. There is no need to mention them all at this point. The reason pointed to by the plaintiff was "committing deliberately a grave crime against the decedent". The crime committed by the plaintiff's grandson was, in her opinion, the crime of assisting (his mother) in committing suicide (Article 151 PC). It is irrelevant for the initiation and conduct of these proceedings whether the defendant is alive or not. The death of the defendant in the proceedings for unworthiness of inheritance does not affect the pending civil proceedings, nor constitutes an obstacle to the initiation of the proceedings.

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APPLICATION OF THE PROVISIONS OF CRIMINAL LAW IN A CASE OF UNWORTHINESS OF INHERITANCE. BINDING A CIVIL COURT WITH A FINAL DECISION IN A CRIMINAL CASE

It is the statutory criteria that determine whether the criminal offence committed by the heir may justify deprivation of benefits in a specific factual state. They are to be verified by a civil court in a trial. For unworthiness of inheritance, and as mentioned above, the deceased's mother asked the court to do so, pointing to the deceased's son as potentially unworthy to inherit after the deceased, and the decision in accordance with the statement of claim is subject to two conditions. First, the crime committed by the defendant must be a crime against the testator/decedent[3] and must be considered by the civil court as a grave crime within the meaning of Article 928 § 1 (1) PC. Second, the heir must commit the crime intentionally.

According to the essentially uniform view of the scholars in the field, the qualification of the heir's behaviour as committing (or not) a crime should be made under the provisions of criminal law (Article 7 PC).[4] However, it should be clearly

[3] Doubts are formulated in this respect in connection with crimes against the decedent's property. Due to the fact that the crime which, in the plaintiff's opinion, would justify the unworthiness of inheritance in the present case is a crime against the person of decedent/testator, and for this type of crime it is uniformly assumed that they meet the condition of Article 928 § 1 (1) CC, there is no need to present this issue more extensively.

[4] As in E. Skowrońska, *Przegląd orzecznictwa z zakresu prawa spadkowego (za lata 1989–1990)*, "Przegląd Sądowy" 1992, no. 9, p. 43; A. Szpunar, *Z problematyki niegodności dziedziczenia*, "Nowe Prawo" 1981, no. 2, pp. 23–24; M. Niedośpiał, *Glosa do wyroku SA w Gdańsku z 14.6.2001 r., I ACa 262/00*, "Orzecznictwo Sądów Administracyjnych" 2006, no. 8, pp. 78–79; M. Załucki, *Wydziedziczenie w prawie polskim na tle porównawczym*, Warszawa 2010, p. 401; H. Witczak, *Wyłączenie od dziedziczenia na mocy orzeczenia sądu*, Warszawa 2013, pp. 139–140; J. Ciszewski, J. Knabe, [in:] *Kodeks cywilny. Komentarz*, ed. J. Ciszewski, Warszawa 2013, p. 1563; E. Niezbecka, [in:] *Kodeks cywilny. Komentarz*, vol. 4: *Spadki*, ed. A. Kidyba, Warszawa 2015, p. 60, thesis 7; J.S. Piątowski, H. Witczak, A. Kawałko, [in:] *System Prawa Prywatnego*, vol. 10: *Prawo spadkowe*, ed. B. Kordasiewicz, Warszawa 2015, p. 178; E. Skowrońska-Bocian, J. Wierciński, [in:] *Kodeks cywilny. Komentarz*, vol. 4: *Spadki*, ed. J. Gudowski, Warszawa 2017, p. 66; J. Kuźmicka-Sulikowska, *Popełnienie przestępstwa jako przyczyna niegodności dziedziczenia w polskim prawie spadkowym*, "Wrocławsko-Lwowskie Zeszyty Prawnicze" 2017, no. 8, p. 139; M. Pazdan, *Komentarz do art. 928*, [in:] *Kodeks cywilny*, vol. 2: *Komentarz do art. 450–1088*, ed. K. Pietrzykowski, Legalis 2021, item II.2; J. Kremis, *Komentarz do art. 928*, [in:] *Kodeks cywilny. Komentarz*, eds. E. Gniewek, P. Machnikowski, Legalis 2021, thesis III.1; W. Borysiak, *Komentarz do art. 928*, [in:] *Kodeks cywilny. Komentarz*, eds. K. Osajda, W. Borysiak, Legalis 2022, item E.II.36; A. Sylwestrzak, [in:] *Kodeks cywilny. Komentarz*, eds. M. Balwicka-Szczyrba, A. Sylwestrzak, Warszawa 2022, p. 1423, thesis 6. Cf. J. Haberko, R. Zawłocki, *Prawnospadkowe konsekwencje popełnienia przestępstwa*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2014, no. 1, pp. 29–32. See also J. Gwiazdomorski, *Prawo spadkowe*, Warszawa 1959, p. 67; M. Szaciński, *Przesłanki niegodności według prawa spadkowego zunifikowanego oraz znaczenie orzeczenia sądowego ustalającego niegodność*, "Nowe Prawo" 1954, no. 12, p. 40. However, it is worth mentioning an isolated view, according to which, contrary to the view presented herein, it seems more justified to equate, in the context of the grounds for unworthi-

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stated that the reference to the concepts of criminal law during the interpretation of Article 928 § 1 (1) CC is not tantamount to the assumption that prior heir's conviction in a criminal trial is the condition for recognizing him as unworthy of inheritance. There is no doubt that the substantive legal norm applied by the court in the unworthiness of inheritance trial – in civil proceedings, makes the emergence of the legal consequences specified therein conditional not on the issuance and validation of a criminal court judgment, but solely on the fact of committing a crime. After all, such a norm does not refer to a criminal judgment, but to "the legal situation that may be ascertained by such a judgment".[5] Therefore, the fact that the perpetrator deliberately committed a grave offence against the decedent/testator will be sufficient for issuing a decision in accordance with the claim in a case for unworthiness of inheritance. This fact may also be determined by a civil court on its own in the trial for unworthiness of inheritance. It is also obvious that if such an heir has been legally convicted in a criminal trial for a specific crime, the civil court will be bound by the judgment of the criminal court as specified in Article 11 of the Polish Code of Civil Procedure. Pursuant to Article 11 sentence 1 of this Code, the findings of a final conviction judgment issued in criminal proceedings as to the commission of a crime must be binding on the court in civil proceedings. This binding character includes the features of the offence set out in the operative

ness of inheritance, the concept of criminal offence with the concept of prohibited act, and therefore an act or omission meeting the characteristics specified in the penal legislation (Article 115 § 1 PC), even if it does not constitute a criminal offence due to the absence of guilt (cf. Article 120 § 1 of the PC of 1969), and not with a crime within the meaning of criminal law. However, the adoption of this view would be contrary to the *ratio legis* of the institution of unworthiness of inheritance, owing to which it is possible in the area of succession law to sanction the unlawful and culpable conduct of individuals who could obtain financial benefits as a result of the testator's death. One cannot support a view that a person who, while meeting the statutory characteristics of a given type of prohibited act by his or her conduct was nonetheless mentally incompetent at the time of committing the act, cannot receive benefits from the inheritance (cf. A. Kozaczka, *Z zagadnień niegodności dziedziczenia w polskim prawie spadkowym*, [in:] *Rozprawy prawnicze. Księga pamiątkowa dla uczczenia pracy naukowej Kazimierza Przybyłowskiego*, eds. W. Osuchowski, M. Sośniak, B. Walaszek, Kraków–Warszawa 1964, pp. 144–148, especially p. 146). It is worth mentioning as a side note that a similar solution can be found in German law with regard to disinheritance. In accordance with § 2333 (4) of the German Civil Code, as amended by the Act of 24 September 2009 (*Gesetz zur Änderung des Erb- und Verjährungsrechts*), which entered into force on 1 January 2010, the testator may deprive the descendant, the spouse and the parent of their legitimate share in the testator's estate if the entitled person has been convicted of an intentional offence of an absolute custodial sentence of at least one year or has been placed in a psychiatric hospital (mental health unit) or a juvenile detention centre. This solution was strongly criticised by scholars who ruled out the admissibility of inheritance in cases where the perpetrators of the crime cannot be held liable. See W. Borysiak [rev.], R. Welser, *Die Reform des österreichischen Erbrechts: Gutachten*, Bd. II/1, Verhnadlungen des Siebzehnten Österreichischen Juristentages Manzsche Verlags- und Universitätsbuchhandlung, Wien 2009, X + 202s., "Kwartalnik Prawa Prywatnego" 2011, no. 2, p. 573.

[5] J. Rodziewicz, *Prejudycjalność w postępowaniu cywilnym*, Gdańsk 2000, p. 128.

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part of the judgment, and the circumstances of its commission related to the time, place or sanity of the perpetrator as well.[6] It does not, however, include the substantiation of the judgment.[7] Such binding nature will be tantamount to assumption that a specific type of crime has undoubtedly been committed intentionally, while the "legal qualification of the act" regarding the "severity" of the offence will in each case have to be carried out independently by the civil court. Thus, both in the event of a conviction and in the absence of it, the civil court will have to assess on its own whether the offence committed by the defendant is a "grave" crime within the meaning of Article 928 § 1 (1) CC.[8]

SIGNIFICANCE OF PERPETRATOR'S MOTIVES AND VICTIM'S CONSENT FOR THE CRIMINAL-LAW AND CIVIL-LAW ASSESSMENT OF ASSISTANCE IN THE COMMISSION OF SUICIDE

Since in the case under analysis the criminal proceedings were discontinued, the possible fact that the defendant had committed a crime against his mother had to be established by the civil court during the trial for unworthiness of inheritance. This article does not constitute a commentary on the judicial decision in a criminal case, so it will not be analysed in detail, especially since the published text of the substantiation of the judgment relates to the decision in a civil case. The information relevant to the resolution of the criminal case is therefore not complete. Nevertheless, it is worth noting based on the available data that the wrong basis for discontinuance was adopted in the criminal case, which affects the outcome of the civil case. The case was conducted towards the offence under Article 151 PC. Its provision is structured as an alternative: the perpetration action consists in either persuading another person to commit suicide or in assisting another person to commit suicide. For the commission of the act, it is sufficient to perform only one perpetration action.[9]

In the case in question, which may prove to be essential for establishing the unworthiness of inheritance, persuasion to commit suicide was ruled out, both carried

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[6] Instead of many, see H. Witczak, [in:] *Kodeks cywilny. Komentarz*, vol. 6: *Spadki (art. 922–1087)*, eds. M. Habdas, M. Fras, Warszawa 2019, p. 150. See also the case law cited by M. Manowska, [in:] *Kodeks postępowania cywilnego. Komentarz*, ed. M. Manowska, Warszawa 2013, p. 34.

[7] See also H. Witczak, *Wyłączenie od dziedziczenia…*, p. 335 and the case law cited therein.

[8] For example, see judgment of the Court of Appeal in Warsaw of 11 August 2017, VI ACa 1914/16, LEX no. 2490254, thesis 1. See also the substantiation of the judgment of the Supreme Court of 11 March 2003, V CKN 1871/00, LEX no. 79753.

[9] M. Budyn-Kulik, [in:] *Prawo karne materialne*, ed. M. Mozgawa, Warszawa 2021, p. 532; R. Kokot, [in:] *Kodeks karny. Komentarz*, ed. R.A. Stefański, Warszawa 2015, p. 873. See also A. Wąsek, *Prawnokarna problematyka samobójstwa*, Warszawa 1982, pp. 60–61.

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out by a "third party", i.e. other than the victim and her son, and on the part of one of the victims. It was found that the victims had undertaken and planned their actions together, while isolating themselves from other people at the same time. However, one cannot support the position of the Court of Appeal in Krakow that it is irrelevant whether the son actually helped his mother commit suicide, as she accepted his actions and also strived to take her own life. The offence under Article 151 PC does not contain motive-related elements. It is irrelevant whether the perpetrator who helps another person to commit suicide does so for financial gain, compassion, revenge, or following any ideology or beliefs. His motivation is important for imposing the penalty: it can be considered an aggravating or a mitigating circumstance. In the context of the case decided by the Court of Appeal in Krakow, the perpetrator's motivation is extremely important, as it may affect the interpretation of the term "grave crime" used in Article 928 § 1 (1) CC. A motivation deemed reprehensible, e.g. deserving special condemnation, would undoubtedly lead the court to assume that a grave crime was committed against the decedent/testator.

The more important issue, however, is the element of the victim's consent or the absence thereof. The elements of the prohibited act under Article 151 PC do not include violence, threat, or trickery.[10] Apparently, the consent of the aggrieved party is irrelevant. The legislature does not include it explicitly among the constitutive elements, neither in a positive way: "with consent", nor in a negative manner: "against one's will", "without consent". While in the case of committing the act in question in the form of persuasion to commit suicide, one may have doubts about the question of consent, there are no such doubts about providing assistance. Persuasion within the meaning of Article 151 PC is the intellectual cause of the suicide's intention to kill himself (which he did not have before being persuaded) and also a way of influencing a potential suicide in order to "prevent" him from refraining from fulfilment of the intention already made.[11] In case of persuasion, the initiative to attempt suicide comes from the persuader. At least at the beginning of this process, the potential victim may not consent to this. It should also be remembered that, as part of the persuasion, the perpetrator may use various manipulative techniques, indirect methods of influencing the aggrieved, making it difficult for them to fully recognize the situation. There is no doubt, however, that taking a person's life (or at least an attempt to do so) allowing for the adoption of the legal qualification under Article 151 PC must be the own behaviour of the very

[10] But the use of deception by the perpetrator does not exclude the use of Article 151 PC. See M. Budyn-Kulik, *Doprowadzenie i pomoc do samobójstwa w polskim kodeksie karnym*, [in:] *Samobójstwo*, ed. M. Mozgawa, Warszawa 2017, p. 70.

[11] For example, see B. Michalski, *Komentarz do art. 151*, [in:] *Kodeks karny. Część szczególna*, vol. 1: *Komentarz do artykułów 117–221*, ed. A. Wąsek, Legalis 2010, margin ref. no. 7 and the case law cited therein.

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person making such an attempt. Otherwise, it would be regular homicide under Article 148 PC or euthanasia under Article 150 § 1 PC.[12]

In the case of assistance in suicide, the question of consent of the victim looks clear. The assistance is provided at the request (demand) of the person concerned, i.e. it is the victim who makes the decision to kill himself/herself and who asks the perpetrator for assistance in this endeavour. It is therefore the situation which took place in the case discussed herein. The fact that the victim herself decided to commit suicide (or together, but "on an equal footing" with her son) and perhaps even asked for help in committing it, does not prevent the possibility of attributing the offence under Article 151 PC to her son, but also constitutes a necessary prerequisite for this. It seems that the court's decision is based on a misinterpretation of the phrase "leads to providing assistance" used not so aptly by the legislature. The conduct under the case does not involve perpetration action characteristic of leading someone to do something, since the individual has already made a decision to attempt suicide. Assistance by its very nature takes place when the future suicide is no longer to be led to anything, as he has already decided to attempt suicide.[13]

Providing assistance to another person in order to lead them to suicide takes place in the case of taking any action that either enables or facilitates suicide, both in the case of physical assistance (which may consist, e.g., in providing a desperate person with pharmacological agents, the use of which will cause death) and mental assistance (which may involve, e.g., providing information on how these agents should be applied).[14] There is no doubt that in the case facts in question, the son's behaviour appears to be almost a classic assistance for the mother to commit suicide.

ASSESSMENT OF THE PERPETRATOR'S AND VICTIM'S MENTAL STATES IN THE CONTEXT OF UNWORTHINESS OF INHERITANCE

According to the view adopted in the literature and case law, only those who are able to recognize the meaning of their action in the form of killing themselves and directing their own conduct may be the target of the perpetration action under Article 151 PC. Otherwise, i.e. in the absence of such recognition (e.g. in the case of an insane person or a person whose sanity is largely limited, or a child),

[12] For more detail on this matter, see A. Wąsek, *op. cit.*, pp. 69–79. See also M. Budyn-Kulik, [in:] *System Prawa Karnego*, vol. 10: *Przestępstwa przeciwko dobrom indywidualnym*, ed. J. Warylewski, Warszawa 2012, p. 138.

[13] M. Szeroczyńska, *Eutanazja i wspomagane samobójstwo na świecie*, Kraków 2004, p. 388; M. Budyn-Kulik, *Doprowadzenie i pomoc…*, p. 70.

[14] B. Michalski, *Komentarz do art. 151…*, margin ref. no. 8–10. Cf. M. Mozgawa, P. Bachmat, *Przestępstwo namowy lub udzielenia pomocy do samobójstwa (art. 151 k.k.)*, "Ius Novum" 2017, no. 2, pp. 71–72.

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the perpetrator's act may be considered as homicide.[15] But there is still a question whether the woman was sufficiently aware of what she was doing when taking the decision to commit suicide to be considered as having taken it with sufficient discernment. If not, the son's conduct should be treated as homicide. This problem will be addressed further herein for both victims, as their mental state at the time of the act appears to be comparable.

The substantiation for the discontinuance decision states that the act was not committed, but there is a contradiction there. First, it states that "the cause of death of H.G. and P.G. was suicidal hanging, and there is no evidence that anyone led the victims to this tragic event, either by persuasion or by providing assistance", and then that "from the arrangement of H.G.'s corpse and the way the noose was made, it was evident that the son helped H.G. to carry out the suicide hanging and then hanged himself by hooking the rope behind the already hanging mother, above the stairs to the attic". As noted above, this contradiction needs to be explained in the way that no other person (other than themselves) contributed to the death of the woman and her son; there was no third-party perpetrator here. The son, on the other hand, met the elements of the criminal act under Article 151 PC in the form of helping his mother commit suicide. Thus, it cannot be concluded that the act was not committed.

The right basis for discontinuance of the proceedings should be Article 17 § 1 (5) of the Code of Criminal Procedure (the accused died). The question of whether or not guilt can be attributed to him is then irrelevant for the determination of the case. If there is a concurrence of a substantive-law prerequisite (lack of guilt) and a formal prerequisite (the accused died) the formal prerequisite takes precedence, for reasons of procedural economy. There is only one case where the opposite is true. The offender must be acquitted in a situation where, for example, the absence of guilt can be established with full certainty on the basis of freely assessed evidence alone, i.e. on the basis of the data that the procedural body has in the case file. If, on the other hand, it is necessary to carry out even a single act of evidence-taking in order to establish this fact, such evidence-taking shall not be carried out, as procedural actions may only be carried out in admissible proceedings, i.e. proceedings in which no formal obstacles exist.[16] Regarding the proceedings for unworthiness of inheritance, as already noted, the death of the defendant does not affect the

[15] Cf. judgment of the Court of Appeal in Gdansk of 13 November 2009, II AKa 276/09, LEX no. 784247.

[16] R. Kmiecik, *Przedawnienie jako podstawa umorzenia postępowania karnego (uwagi w związku z precedensowym rozstrzygnięciem Prokuratury Generalnej)*, "Problemy Praworządności" 1980, no. 5, p. 13 ff.; M. Kulik, *Glosa do wyroku Sądu Apelacyjnego w Lublinie z dnia 9 grudnia 2015 r., II AKa 155/15 (LEX nr 2019905)*, "Czasopismo Prawa Karnego i Nauk Penalnych" 2017, no. 2, pp. 188–190.

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pending civil proceedings, nor is it an obstacle to the initiation of proceedings for unworthiness of inheritance.

Getting back to the civil-law considerations, let us recall, as has already been indicated, that a declaration of unworthiness of inheritance may concern only the perpetrator of a criminal act to whom intentional guilt may be attributed. It would be difficult to find a more vivid example of reprehensible behaviour on the part of an heir towards the testator/decedent than when the heir, with direct or possible intent, engages in acts that meet the statutory elements of a criminal act against the testator/decedent. Inheritance by persons whose reprehensible behaviour towards the deceased meets the elements of selected types of offences, in extreme cases causing his/her death, is clearly objectionable.[17]

In the situation under discussion, the question whether the man is to be held liable or whether one of the lawful excuses is in place is crucial to the decision on the civil case. The fact that the potential offender cannot be subjected to psychological and psychiatric examination constitutes a difficulty in evidence-taking terms. It is therefore necessary to consider, hypothetically, with alternative assumptions taken into account, how the question of criminal liability of the son of the testator/decedent could look like if his suicide attempt failed. The available material suggests that both the son and the mother behaved in an "untypical" manner. Their behaviour was disturbed. We can conclude from the description of their behaviour that both victims had delusions of persecution (belief that their lives are in danger or that they are being stalked). However, the severity of this condition is difficult to determine. On the one hand, it was so clear that it was noticed by their relatives, both close and further ones, while on the other hand, the reactions of the victims to the (probably imagined) circumstances related to the threat to life would indicate that they were able, at least to some extent, to undertake adequate measures, e.g. notifying the police of "suspect" cars.[18] Although, in the situation in question, the woman appears only in the role of the victim, and the son in the dual role of the victim and perpetrator at the same time, the mental state of both will be analysed in view of insanity. As regards the son, the question is whether the provisions of Article 31 PC would apply here. In the case of the woman, on the other hand, it is about determining whether her conduct meets the requirements of an action in view of criminal law (but not a criminal offence). Excluding this possibility would result in considering that her behaviour was not a suicide, which in turn would affect the criminal-law assessment of her son's conduct.

[17] H. Witczak, *Wyłączenie od dziedziczenia…*, pp. 15–17.

[18] Cf. B. Kosiba, W. Przybyszewska, I. Sołtyszewski, *Wybrane aspekty zachowań samobójczych*, "Journal of Modern Science" 2017, vol. 1, p. 84 ff.; I. Mochnacka, *Samobójstwo – teorie etiologiczne, ocena ryzyka, zasady postępowania i prewencji*, "Psychiatria w Praktyce Ogólnolekarskiej" 2005, vol. 5(1), especially p. 55.

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Article 31 § 3 PC may be excluded for sure, because no psychoactive substances were found in the blood of any of the victims. There is no information in the case file that any of the victims had an intellectual deficiency attributable to some degree of mental retardation. From the general data on their functioning, it can be assumed that the intellectual level of both was within the norm. Disorders appearing in their behaviour could indicate the occurrence of another disturbance of mental activities or even mental illness. The death of the victims, as mentioned above, precludes precise findings in this respect, so some considerations can only be hypothetical. It seems that both victims still had the ability to recognize the significance of their actions. Their actions seem to be deliberate and conscious in the sense that they wanted to die and undertook actions that could have and actually led to their death.

Instead, it is necessary to think about the motivation and the course of the decision-making processes that led them to take and implement the decision to commit suicide, i.e. their ability to manage their own actions. Depending on the actual severity of the disorders (whether they form the clinical picture of a mental disease or another disturbance of mental function), their impact on the decision-making sphere at the time of the decision to commit suicide could have varied. Its extent could have only be established by proper examinations by expert psychologists and psychiatrists. Perhaps, despite the disorders being observed, the victims' ability to manage their own behaviour would not have been impaired or the degree of this impairment would have been small. In the case of the woman, this would mean that she was able to make her own autonomous decision to commit suicide, and thus that her son's behaviour would have to be considered as assistance in suicide. The situation would have also been quite clear if the opinions of expert witnesses had stated that the capability to manage one's conduct was completely disabled due to the severity of the disorder. The victim would have then been incapable of making an independent, fully autonomous decision to commit suicide. If the son had "helped" her to kill herself, he would have had to be considered to meet the criteria of the criminal act under Article 148 PC and not under Article 151 PC. However, Article 31 § 1 PC would have then been applicable to him and he could have not therefore been held penally liable. The most complex situation would have arisen if the impact of these disorders had resulted in a significant impairment of his ability to manage his own conduct. The man would then have committed an offence and, depending on the specific findings of the experts, the court could apply extraordinary leniency on the basis of Article 31 § 2 PC. A more difficult issue is the question of exactly what crime he committed, because it depends on the determination of the victim's state of consciousness with regard to the decision taken. The provision of Article 31 § 2 PC in such a situation allows for a certain simplification in relation to the perpetrator, in the form of substantially reduced insanity, which makes it possible to attribute to him the guilt and the subjective

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aspects of the offence and to treat him more leniently at the same time. There is no similar regulation for the victim. In this case, a general finding that his capacity to manage his or her own conduct was significantly impaired would not suffice. The experts would have had to determine whether the degree of "discernment" with which the victim acted would have allowed them to consider that, despite her disorder, she was able to control her behaviour; or whether it would have had to be assumed as impossible. In the first case, the son, by helping her to hang herself, would have given her the assistance to commit suicide; in the second case, he would have committed homicide (of course, the reference is only to the fulfilment of the material elements of the prohibited act).

Establishing the defendant's state of insanity in a lawsuit for the unworthiness of inheritance eliminates the possibility of issuing a decision admitting the statement of claim. Insanity is an exculpation circumstance that excludes the cumulative fulfilment of the conditions under Article 928 § 1 (1) CC. If, however, we "stop" at limiting the perpetrator's sanity, it should be stated that limited sanity affects "only" the reduction of the severity of guilt. It is assumed that the degree of culpability is inversely proportional to the degree of limitation of the perpetrator's sanity.[19] If the degree of limitation of the offender's sanity is close to its complete absence, these circumstances will significantly operate in favour of the offender when imposing the penalty.[20] Undoubtedly, they will also be important for the assessment of the crime committed by the perpetrator in conditions of such limited sanity, in terms of its gravity as set out in Article 928 § 1 (1) CC.

GRAVE CRIME AGAINST THE TESTATOR/DECEDENT IN THE MEANING OF ARTICLE 928 § 1 (1) CC AND THE CRIME UNDER ARTICLE 151 PC

Apart from the question of guilt of the perpetrator of the crime under Article 151 PC, it is necessary to assess this type of prohibited act from the point of view of its gravity. If it were possible to identify those types of criminal offences which, *in abstracto*, should be regarded as grave ones, therefore justifying the statement of claim in lawsuits for unworthiness of inheritance, these would undoubtedly include crimes against life. The classification of the offence under Article 151 PC as a grave crime within the meaning of Article 928 § 1 (1) CC should therefore be decided first of all by the criterion of the object of protection. Human life and

[19] For example, see A. Wilkowska-Płóciennik, *Niepoczytalność i ograniczenie poczytalności jako okoliczności wpływające na stopniowanie winy*, "Wojskowy Przegląd Prawniczy" 2006, no. 2, pp. 14–16.

[20] Cf. judgment of the Supreme Court of 10 April 1975, II KR 356/74, LEX no. 21673.

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health are situated at the very top of the criminal law-protected hierarchy of goods, and it is precisely the axiological hierarchy of goods protected by criminal law that constitutes the criterion on which the taxonomy of the specific part of the Polish Penal Code is based.[21] Human life is an objective value, which is to be understood as meaning that life of every human being is of the same highest value and is equally protected regardless of one's age, state of health, state of knowledge, culture, family membership, or usefulness for society.[22] It is also a particular expression of the protection of human life that the law guarantees that protection regardless of whether and what value their life represents for the victim himself/herself.[23] It should therefore cast no doubt that the offence under Article 151 PC, regardless of whether the perpetration action in a given factual situation is an incitement to commit suicide or "merely" providing assistance to it, is a grave crime within the meaning of Article 928 § 1 (1) CC. Regardless of whether the heir, acting to obtain inheritance benefits, led to the suicide of the testator/decedent by persuading the latter to commit it, or "only" provided him/her with assistance in committing it, there is no ethical ground for the heir to be granted this benefit. As a side note, it may be added that criminal law regulations on the protection of human life and health require not only that these goods be prevented from being damaged or destroyed, but also that measures be taken which are intended to repel the threat in cases where there is a risk to human life or health.[24]

Although the Court of Appeal in Krakow held that "the mere statement in the grounds of the discontinuation decision that the son helped H.G. to commit suicidal hanging cannot be regarded as evidence of the provision of assistance as set out in Article 151 PC, since this statement refers to the manner in which H.G.'s corpse was arranged and the manner of making the loop, and not to her decision to kill herself",[25] and the conduct consisting "only" in the technical provision of assistance in the implementation of her own decision to kill herself cannot be considered

[21] Cf. A. Zoll, [in:] *Kodeks karny. Część szczególna. Komentarz do art. 117–277 Kodeksu karnego*, ed. A. Zoll, Kraków 1999, p. 255. See also J. Kosonoga-Zygmunt, *Namowa i udzielenie pomocy do samobójstwa*, "Prokuratura i Prawo" 2015, no. 11, p. 47.

[22] See the substantiation of the judgment of the Court of Appeal in Katowice of 27 September 2006, II AKa 224/06, LEX no. 261664.

[23] See Articles 150 and 151 PC. Cf. B. Michalski, *Komentarz do art. 148*, [in:] *Kodeks karny. Część szczególna*, vol. 1: *Komentarz do artykułów 117–221*, ed. A. Wąsek, margin ref. no. 42; A. Zoll, [in:] *Kodeks karny. Część szczególna. Komentarz do art. 117–277 Kodeksu karnego*, ed. A. Zoll, p. 217; M. Królikowski, [in:] *Kodeks karny. Część szczególna*, vol. 1: *Komentarz do art. 117–221*, ed. M. Królikowski, Legalis 2017, margin ref. no. 2, 4.

[24] A. Zoll, [in:] *Kodeks karny. Część szczególna*, vol. 2: *Komentarz do art. 117–211a*, eds. W. Wróbel, A. Zoll, Warszawa 2017, p. 423.

[25] Substantiation of the judgment of the Court of Appeal in Krakow of 20 May 2014, I ACa 357/14, Legalis no. 1171941.

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a grave crime within the meaning of Article 928 § 1 (1) CC, but it is difficult to approve such a position, due to the reasons indicated above.

It should be stressed that the case law points out that the determinants of whether an intentional crime against a testator/decedent can be considered grave within the meaning of Article 928 § 1 (1) CC or not are the circumstances of the individual case, and the court should take into account, first of all, the type of endangered good, but also the extent of the harm, the motivation of the perpetrator, his *modus operandi* (cruelty, heartlessness, persistence), and the degree of severity of ill will.[26]

THE CRIME UNDER ARTICLE 151 PC AND OTHER PREREQUISITES FOR UNWORTHINESS OF INHERITANCE

From the legal point of view, the "classification" of the offence under Article 151 PC as a grave offence within the meaning of Article 928 § 1 (1) CC is not conclusive in the issue of inheritance. Despite the heir having committed a grave crime against the testator/decedent, the court will not be able to declare the heir unworthy of inheritance if the interested party made an appropriate request after the expiry of the time-limits set out in the Act (Article 929 sentence 2 CC), and where the testator/decedent has forgiven the perpetrator of the crime (Article 930 § 1 CC). As regards the first prerequisite, there is no doubt that the time-limits for suing have been complied with. Therefore, when formulating conclusions regarding the issue of the admissibility of inheritance by the perpetrator of the crime under Article 151 PC after his/her victim, we should refer to the issue of possible forgiveness in view of the facts of the case under analysis.

Forgiveness belongs to civil-law events, which eventually may legally annihilate the remaining (existing) prerequisites for disinheritance. The final decision to deprive the heir of inheritance benefits was left by the legislature to the testator. In many cases, the bond, the closeness linking the testator with the heir may turn out to be much stronger than the mere awareness of the heir's "misconduct".[27] The

[26] For example, see judgment of the Court of Appeal in Warsaw of 24 April 2013, VI ACa 1559/12, Legalis no. 1091779, thesis 2; judgment of the Court of Appeal in Krakow of 28 November 2014, I ACa 1191/14, Legalis no. 1213264; judgment of the Supreme Court of 23 March 2016, III CSK 80/15, Legalis no. 2024043; judgment of the Court of Appeal in Katowice of 21 January 2019, I ACa 576/12, Legalis; decision of the Supreme Court of 28 February 2020, V CSK 485/19, Legalis no. 2592175; judgment of the Court of Appeal in Warsaw of 15 April 2021, VI ACa 783/19, Legalis no. 2618107. See also substantiations of the following judgments: of the Court of Appeal in Krakow of 28 October 2016, I ACa 747/16, LEX no. 2166581; of the Court of Appeal in Warsaw of 11 August 2017, VI ACa 1914/16, LEX no. 2490254; of the Court of Appeal in Warsaw of 4 June 2019, V ACa 31/19, LEX no. 2702658; of the Court of Appeal in Szczecin of 25 October 2019, I ACa 429/19, LEX no. 2848116; of the Regional Court in Lodz of 30 March 2022, III Ca 1472/20, LEX no. 3334679.

[27] H. Witczak, *Wyłączenie od dziedziczenia*..., p. 341 and the literature cited therein.

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literature rightly emphasizes that forgiveness, which is a "reflection of Christian ethics", corresponds to "the needs of life practice".[28] Any wrongdoing can be forgiven, even in the case of attempted murder.

In the facts of the case under consideration, the assessment of this negative prerequisite for unworthiness of inheritance is not so obvious. This is so because doubts may be raised as to whether the forgiveness is effective. Firstly, effectiveness of the forgiveness depends on the testator's sufficient discernment and is independent of whether the testator had the capacity to perform acts in law or this capacity was limited at the time of the act of forgiveness (Article 930 § 2 CC). In view of the above, effective forgiveness can only be granted by a testator who has "the capacity to understand and feel the harm caused by the act underlying the unworthiness and to consciously forget this harm".[29] Undoubtedly, the testator had psychopathological symptoms, e.g. in the form of delusions of persecution or visual hallucinations. It seems that while she retained the capacity to recognize the meaning of her act, she was no longer able to manage her actions. She also seems to have been aware of the facts making her son unworthy of inheritance, which is a condition for effective forgiveness.[30] It is also difficult to assume that, in the light of the facts of the case under consideration, the behaviour involving at least allowing her son's assistance in her suicide was intended to "generate" a reason for his disinheritance. However, these are conclusions based only on the available case file material and do not take into account the expert opinion on the victim's mental competence. Secondly, in view of the facts of the case under analysis, forgiveness was to relate to facts that had not actually yet taken place. Scholars in the field are not in agreement as to whether forgiveness can only relate to facts that happened before the act of forgiveness or also future events. In view of the foregoing, there can be doubts whether, from a structural point of view, it is possible to forgive a perpetrator of the offence under Article 151 PC. The view that the testator may forgive all the facts providing a basis for unworthiness of inheritance that occurred before the act of forgiveness was made, regardless of whether the testator knew about them or not, but may not extend the forgiveness to future facts,[31] is questionable. The testator's will should be the decisive factor, hence expressing this will

[28] As held by J.S. Piątowski, [in:] *System Prawa Cywilnego*, vol. 4: *Prawo spadkowe*, ed. J.S. Piątowski, Wrocław 1986, p. 114.

[29] J. Pietrzykowski, [in:] *Kodeks cywilny. Komentarz*, vol. 3: *Księga czwarta – Spadki. Przepisy wprowadzające Kodeks cywilny*, ed. J. Pietrzykowski, Warszawa 1972, p. 1844.

[30] On the other hand, forgiveness, to be effective, does not require the awareness of legal consequences or the intention to cue these consequences, as these consequences take place by the operation of law itself. Instead of many references, see B. Kordasiewicz, [in:] *System Prawa Prywatnego*, vol. 10: *Prawo spadkowe*, ed. B. Kordasiewicz, Warszawa 2013, p. 970 and the case law cited therein.

[31] As in P. Księżak, *Przebaczenie w polskim prawie cywilnym*, "Państwo i Prawo" 2006, no. 11, pp. 60–61.

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in such a way that, regardless of what has happened or will happen, the testator forgives the heir all reprehensible deeds because he/she loves the heir should have the same legal effect as an act of forgiveness.

CONCLUSIONS

As can be seen from the example of the ruling which constituted an inspiration for this article, an unambiguous assessment of the conduct of the defendant in the proceedings for unworthiness of inheritance is often very difficult, if not impossible at all. It is very difficult to establish the mental state of those whose suicide attempt proved to be successful. The assessment of whether the victim's ability to manage their action was excluded or limited when committing the act, and to what extent, faces very serious obstacles. Usually, when there is a suspicion that a person died due to other than natural causes and that any other person (than the victim himself/herself) could have contributed to the victim's death, criminal proceedings are conducted. If the participation of other persons in the victim's act is ruled out, suicide is usually found, usually without a deeper analysis of the psychological condition of the victim. However, an assessment on this issue may be necessary to determine whether, in the case of extended suicide, one of the victims – the one who "helped" the other to attempt suicide in technical terms (tying a rope, fixing it, etc.) – can be considered as unworthy of inheritance in a civil process. It is then essential to determine whether the defendant in the inheritance unworthiness trial can be attributed to the constitutive elements of the offences under Article 151 PC or Article 148 PC, and whether he was sane when committing the offence.

On the other hand, the qualification of the perpetrator's behaviour from the point of view of civil law, i.e. Article 928 § 1 (1) CC, in such a situation raises no doubt. The commission of the offence under Article 151 PC by the heir against the testator should be considered as "committing a grave crime against the testator" as referred to in the cited provision. The classification of a specific type of offence as a grave crime within the meaning of Article 928 § 1 (1) CC should be dictated first of all by the criterion of the object of protection. If the crime is directed against goods placed at the top of the hierarchy of goods protected by the legal system, especially against life, we deal *in abstracto* with a grave crime within the meaning of the provisions on unworthiness of inheritance. Such a crime is the offence under Article 151 PC, regardless of whether the act of perpetration in the given factual state is an inducement to suicide or "merely" providing assistance for it. Doubts, however, as in the case in question, may concern the other prerequisites for unworthiness of inheritance, in particular the negative prerequisite in the form of an act of forgiving the heir made with sufficient discernment by the testator.

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Determining whether the act of forgiveness has been effective is a key issue for declaring unworthiness of inheritance, since an heir cannot be declared unworthy if the testator has forgiven him/her (Article 930 § 1 CC).

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ABSTRAKT

Artykuł zawiera rozważania o charakterze prawnokarnym i cywilnoprawnym na tle wyroku Sądu Apelacyjnego w Krakowie z dnia 20 maja 2014 r. (I ACa 357/14, Legalis nr 1171941). Dla rozstrzygnięcia sprawy o niegodność dziedziczenia istotne były ustalenia poczynione w sprawie karnej o popełnienie czynu z art. 151 Kodeksu karnego dotyczące tego, czy można uznać zachowanie mężczyzny, który następnie popełnił samobójstwo, za udzielenie pomocy do samobójstwa matce. Kluczowa była tu analiza stanu psychicznego „sprawcy" oraz jego motywacji w kontekście realizacji przesłanek niepoczytalności lub poczytalności ograniczonej w znacznym stopniu (art. 31 § 1 i 2 Kodeksu karnego). Wyrok uwzględniający powództwo o niegodność dziedziczenia mężczyzny, przy założeniu, że pozwany w tym postępowaniu udzielił swojej matce pomocy do samobójstwa, mógłby zapaść tylko wówczas, gdyby można było mu przypisać winę. W przeciwnym razie, tj. stwierdzenia jego niepoczytalności w chwili czynu, bezprzedmiotowe byłoby dokonywanie przez sąd cywilny oceny przestępstwa udzielenia pomocy do samobójstwa (art. 151 Kodeksu karnego) z punktu widzenia jego ciężkości w rozumieniu art. 928 § 1 pkt 1 Kodeksu cywilnego.

Słowa kluczowe: niegodność dziedziczenia; pomoc do samobójstwa; ciężkie przestępstwo; niepoczytalność; spadkodawca