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NEGATIVE WILL

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ABSTRACT

Negative will stands out among other similar instruments due to its specifically defined content. Under negative will, the testator excludes one, several or all their heirs from succession while failing to identify other heir(s). Despite the absence of operational regulations on negative will in the binding legal order, because of the freedom of disposition under the law of succession, the legal doctrine, as well as the case-law, admit such an instrument. Negative will is purely abstract, in other words, the testator does not need to justify the cause of denying the heir their inheritance. Bearing in mind that the specificity of negative will is manifested only in its specific content, such a will can be drafted in any form as long as such a form is provided for in the applicable regulations at the time of drafting. The differences of opinion in the legal writings revolve around the effects of negative will. There is no uniform position with regard to whether the excluded heir should be treated as if he or she did not live up to the time of opening of the succession. It is also debatable whether, in the case of excluding – under negative will – a statutory heir from succession, we face intestate succession but without the excluded party or testate succession with the proviso that the interpretation of such a will should follow the relevant legal provisions on the former.

Key words: negative will, testator.

Negative will is distinguished among similar instruments by its specific content consisting of a disposition or dispositions excluding a heir or heirs

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from intestate succession.[1] Negative will may be drafted in any form permitted for this kind of legal act (i.e. the will) by the rules and regulations applicable at the time of its drafting (Article LII § 1 RICC[2]).

Although in the binding Civil Code[3] fails to regulate negative will, its admissibility, invoking the principle of freedom of disposition,[4] raises doubts neither in the legal writings[5] nor in the case-law.[6] The differences of opinion, however, revolve around the effects of such a will.

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[1] This is not the full definition of negative will – it will be addressed later in this paper.

[2] Act of 23 April 1964 – Regulations implementing the Civil Code (Journal of Laws No. 16, item 94).

[3] Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 2014, item 121 as amended); hereinafter "CC".

[4] Cf. in particular, Wójcik, S., Zoll, F. in "System Prawa Prywatnego. Tom 10. Prawo spadkowe", ed. B. Kordasiewicz (Warszawa 2015), 336; Skowrońska-Bocian, E., Wierciński, J. in "Kodeks cywilny. Komentarz. Spadki. IV", ed J. Gudowski (Warszawa 2013), 106, thesis 5; Sztyk, R."Testament notarialny," in *II Kongres Notariuszy Rzeczypospolitej Polskiej. Referaty i opracowania*, ed. R. Sztyk (Kluczbork 1999), 360-361 and Załucki, M. "Wydziedziczenie w prawie polskim na tle porównawczym," (Warszawa 2010), 98 and the referenced literature.

[5] Cf: Gwiazdomorski, J. *Przepisy ogólne dotyczące spadków, dziedziczenie ustawowe, testament* (Katowice 1965), 71; Pietrzykowski, J. in "Kodeks cywilny. Komentarz. Tom 3. Księga czwarta – Spadki. Przepisy wprowadzające Kodeks cywilny," ed. J. Pietrzykowski (Warszawa 1972), 1856; Wójcik, S. in *System prawa cywilnego. Tom IV. Prawo spadkowe*, ed. J. St. Piątowski (Wrocław-Warszawa-Kraków-Gdańsk-Łódź 1986), 188-189; Idem, "O niektórych uregulowaniach w prawie spadkowym. Uwagi de lege ferenda," in: *Rozprawy prawnicze. Księga Pamiątkowa Profesora Maksymiliana Pazdana*, ed. L. Ogiegłło, W. Popiołek & M. Szpunar (Zakamycze 2005), 1492-1493; Niedośpiał, M. *Testament. Zagadnienia ogólne testamentu w polskim prawie cywilnym* (Kraków/Poznań 1993); Skowrońska – Bocian, E. *Testament w prawie polskim* (Warszawa 2004), 154; Piątowski, J. St., Kordasiewicz, B. *Prawo spadkowe. Zarys wykładu* (Warszawa 2011), 104; Pazdan, M. in *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088. Przepisy wprowadzające*, ed. K. Pietrzykowski (Warszawa 2013), 922, n. 1; Kremis, J. in *Kodeks cywilny. Komentarz*, ed. E. Gniewek, P. Machnikowski (Warszawa 2013), 1698, n. 11; Niezbecka, E. "Skutki prawne testamentu negatywnego i wydziedziczenia," *Rejent* 7-8(1992), 18-21; Idem in *Kodeks cywilny. Komentarz. Tom IV. Spadki*, ed. A. Kidyba (Warszawa 2012), 157 and 260; Jokiel, E. M. in E.M. Jokiel, Z. Koźma, M. Ożóg, *Prawo spadkowe. Poradnik z wzorami testamentów i pism procesowych* (Gdańsk 2002), 33; Rojek, A. "Wydziedziczenie i testament negatywny," *Przegląd Sądowy* 9(2006), 105; Kaltenbek-Skarbek, L., Żurek, W. *Prawo spadkowe* (Warszawa 2007), 38; Witczak, H. "Skutki wyłączenia od dziedziczenia," *Rejent* 3(2009); Księżak, P. *Zachowek w polskim prawie spadkowym* (Warszawa 2012), esp. 149;

It is worth noting that negative will was regulated under the Decree of 8 October 1946 on the Law of Succession.[7] In accordance with Article 31 LS, if the testator excluded their relative or spouse from intestate succession under their last will and testament, at the same time failing to name another person their heir (negative will), the excluded is/are considered dead at the time of the opening of the succession; this, however, does not waive the heir's right necessary to demand the legitime. The content of such a will was therefore the exclusion by the testator of their relative (from the group of statutory heirs) or spouse from intestate succession without identifying another person as the heir.[8] At that time, the representatives of the legal doctrine stressed that "in this provision, the law of succession makes allowances for human nature, often involving frequent disputes even among the members of the closest family; such disputes are likely to lead to the exclusion of one of the family members from succession."[9] There is no doubt that the mentioned regulation might be useful in cases where there is no reason for disinheritance provided while the testator's intention is to prevent their spouse or relatives from inheriting through testate succession. For the exclusion under negative will is "substantially purely abstract (i.e. causeless), while disinheritance is definitely causal

Osajda, K. in *Kodeks cywilny. Komentarz. Tom III. Spadki*, ed. K. Osajda (Warszawa 2013), 434, theses 4-6; Ciszewski, J., Knabe, J. in *Kodeks cywilny. Komentarz*, ed. J. Ciszewski (Warszawa 2013), 1731, thesis 3; Skowrońska-Bocian, E., Wierciński, J. in *Kodeks cywilny. Komentarz. Spadki. IV...*, 254, thesis 2 and 106, thesis 5. The literature on the subject particularly emphasizes that the admissibility of such an instrument is justified by the number of functions that it serves or might serve. There is even a view (Wójcik, S. *O niektórych uregulowaniach w prawie spadkowym...*, 1493) that by negative will "in a relatively mild manner, you can accomplish what, according to the explicit provisions of the act, can be accomplished through the instruments (institutions) having not only a juridically stringent but also morally severe or even disqualifying effect on certain individuals (recognition of the heir as unworthy, disinheritance)." It seems, however, that due to the adverse effects of negative will, such a position is questionable.

[6] See especially the Resolution of the Supreme Court of 10 April 1975, III CZP 14/75, *OSNC* 2(1976), item 28.

[7] Journal of Laws No. 60, item 328 as amended; hereinafter "LS".

[8] Cf. e.g. Biernacki, J. "Testament negatywny oraz jego właściwości i skutki," *Przegląd Notarialny* 1949, vol. 1, 132 i 136.

[9] Baziński, A. *Prawo spadkowe. Komentarz* (Łódź 1948), 111.

(Article 148)."[10] The rationale behind such a decision may vary. It can be a "punishment" for the excluded caused by their attitude or conduct towards the testator (which, however, does not suffice for disinheritance), a desire to demonstrate a fair treatment of all those eligible to inherit under the act if, for example, one of them was bequeathed some assets while the testator was still alive, or a desire to transfer a greater slice of the assets to the benefit of some of the statutory heirs while excluding another who enjoys a superior financial position.[11] From the legal viewpoint, they are of no significance. In addition, the testator was not forced to state the reasons for exclusion from succession;[12] such exclusion was not dependent on the fault of the excluded, and reference to the institution of reconciliation was ineffective in that case.[13]

It is worth noting, as pointed out by the Supreme Court, that Article 31 LS did not provide that the exclusion from succession through the testator's will was practicable only under negative will. The provision of Article 31 does not contain such a limitation, and the above argument is also upheld in Article 109 LS which reads that if the testator names several heirs to their estate or part of the estate in such a manner that *they are to replace the statutory heirs* (underline H.W.), then the portion of the estate released by the fact that one of the heirs named in the will does not want to or cannot be a heir, falls, in the absence of any other testator's will, to the other heirs in the part corresponding to the part of the estate to which they are entitled. In the provision of Article 31 LS, the legislator intended to "explain how the excluded relative or spouse should be treated in cases where intestate succession comes into play."[14]

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[10] Biernacki, J. *Testament negatywny...*, 133 and 135-136.

[11] Baziński, A. *Prawo spadkowe. Komentarz...*, 111-112. See also Niedośpiał, M. *Testament...*, 105-106.

[12] Still, when indicating the cause of disinheritance, the testator had to be aware that the legal effect might have been further reaching than originally intended. This will be discussed later in the paper, still, at this point, it should be noted that the effect of negative will does not involve the deprivation of the right to the legitime. Yet, certain conduct of the statutory heir entitled to the legitime may justify a stronger effect taking the shape of disinheritance, that is, the deprivation of the right to "a reserved share of an estate."

[13] See the Resolution of 10 April 1975, III CZP 14/75, *LEX* 1875.

[14] Justification of the Resolution of the Supreme Court of 8 May 1963, III CR 75/63, *LEX* 104756.

In the case of negative will, intestacy only followed in which, of course, the excluded party did not partake; yet, due to the fact the excluded were regarded as deceased at the time of opening the succession, succession might have fallen to their descendants if the excluded was the testator's child (Article 17 § 2 LS).[15] Therefore, the literature on the subject justly emphasized "the most distinguishing feature of the consequences of negative will" being that the family of the descendant excluded from intestate succession was, compared with all the other statutory heirs, somehow the most privileged; exclusion of the descendant "is an example of the most special privilege of the *stripes* represented by them."[16] It should be noted that the idea of succession by the excluded party's descendants was not unquestionable across the legal literature.[17]

It is worth noting that, with regard to the consequences of negative will, the jurists of the time advanced an opinion that succession actually takes place and is, to some extent, both testate and intestate. Indeed, the estate is shared by the persons named in the act but not all, and those who succeed inherit the portions other than indicated by the law, unless the exclusion covered the testator's child who already has their own children, or (assuming the same approach) the testator's siblings, and, the will does not say that the testator's wish is to exclude them from succession.[18]

While the discussed decree was in force, the jurisprudence assumed that "the exclusion from succession, although not necessarily expressly stated in the will, must follow, without doubt and in any case, from the content of the will. In particular, the content of the will must not raise doubts as to whether the testator has unconditionally excluded their relative or spouse from intestate succession."[19] The exclusion of a statutory

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[15] Cf. Bielski, J.I. *Nowe prawo spadkowe...*, 54.

[16] Biernacki, J. *Testament negatywny...*, 133, 135 and 137. It was later stressed by Księżak, P. *Zachowek...*, 150-152.

[17] Zoll, F. *Prawo cywilne w zarysie opracowane przy współudziale A. Szpunara. Prawo spadkowe. Tom V* (Warszawa 1948), 30.

[18] Cf. Gwiazdomorski, J. *Prawo spadkowe* (Warszawa 1959), 53.

[19] So in the Resolution of the Supreme Court of 8 May 1963, III CR 75/63, *LEX* 104756. The exclusion from inheritance does not need to be clearly stated, in particular, the testator is not expected to use the word "exclude" or a word or expression of similar meaning or effect. As any other declaration of will, negative will requires interpretation,

heir does not have to involve his deprivation of all the benefits of the estate and, as stressed earlier, is not tantamount to disinheritance. Therefore, for example, making a bequest to the benefit of a heir-at-law does not, by itself, rule out the will of excluding from succession.[20]

As indicated above, despite the absence in the current legal order of a statutory regulation of negative will, its admissibility does not arouse controversy either in the legal writings or in the case-law. It is worth noting that the literature on the subject points to three types of testamentary dispositions which enable the testator to exclude their statutory heirs from succession, although not all of them meet the definition of negative will. The first type involves "a statement that the statutory heir does not inherit anything after the testator and receives no portion of his estate. In the second type of disposition, the testator excludes the statutory heir from succession but makes a bequest in their benefit or secures their right to legitime. Finally, the third type refers to the testamentary distribution of the entire estate among other persons without even mentioning the name of the legal heir."[21] Still, it was clearly underlined that a will containing one of the aforesaid dispositions is not always negative will. Referring to Article 31 LS, it was assumed that negative will needs to possess two attributes: the testator must exclude their legal heir from succession and do not establish any other heir to the estate.[22]

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as provided in the provisions of Article 95 and 96 LS. If the content of the will clearly indicates that a person should be denied succession, it should be respected even though the will makes no express mention of exclusion as such (the Judgement of the Supreme Court of 12 October 1962 III CR 56/62, *LEX* 105883).

[20] So in the justification of the Decision of the Supreme Court of 12 October 1962, III CR 56/62, *LEX* 105883 and the Supreme Court in the Decision of 8 May 1963, III CR 75/63, *LEX* 104756. See also the opinion of the Voivodeship Court in Lublin (referred to by the Supreme Court in its justification of the Decision of 8 May 1963, III CR 75/63, *LEX* 104756), according to which, pursuant to Article 31 LS, besides negative will provided for therein, there is an option of indirect exclusion from succession when the portion identified by the testator as falling to a person named in the will takes the form of bequest.

[21] So in Gwiazdomorski, J. *Glosa do uchwały z dnia 14 czerwca 1971r. (III CZP 24\71)*, *Nowe Prawo* 10(1972), 1580.

[22] Ibidem, 1580-1581.

Bear in mind that under negative will the testator excludes a statutory heir from succession (i.e. under currently binding law, their spouse, relative or stepchild) while failing to name another person the heir.[23] Also, such exclusion from succession is, in this case, "purely abstract" and causeless,[24]

Therefore, the direct effect of negative will is the heir's failure to be admitted to succession (the heir does not succeed).[25] The specific nature of negative will is expressed in the fact that the heir does not lose the right to his reserved share[26], and the representatives of the legal doctrine support the idea unanimously. Considering the function of legitime that is aimed to protect the interests of the testator's relatives by securing their specific benefits from the estate, the adopted solution is fully justified. Legitime falls to heirs who would have been entitled to intestate succession (Article 991 § 1 CC)[27] if the will had not been drawn up. Apparently, despite the literal wording of Article 991 § 1 CC [..."who would have been entitled to intestate succession"], it is meant to draw attention to such heirs who hold a legal title to succession (belong to the group of statutory heirs)[28] and would have had the right to their share in the absence of obstacles under civil law that prevent succession.[29] It should be emphasized that such circumstances do not involve negative will. Deprivation of the right

[23] Cf. Sztyk, R. *Testament notarialny...*, 361 and Ciszewski, J., Knabe, J. in *Kodeks cywilny...*, 1731, thesis 3.

[24] unlike disinheritance which is "definitely causal" (see footnote 9). See Article 1008 CC and, e.g., the Judgement of the Administrative Court in Poznań of 13 January 2011, I ACa 1021/10, *Leglis*;

[25] This means that the effect is the same as in all the other cases of exclusion. Cf. Articles 928 § 2, 940 § 1, 1020, 1049 § 2 CC. Cf. also Articles 8 § 1, 12 § 2, 26 § 1, 43 § 1 LS.

[26] Cf. Article 31 *in fine* LS which provides that the exclusion from intestate succession does not affect the rights of the heir-at-law (see Article 145 LS) to claim the legitime.

[27] Intentionally, I do not include cases of supplementation of the reserved share.

[28] Holding the legal title to be appointed to succession is among the so-called positive premises of succession.

[29] For example, through a court's decision recognizing the legal heir unworthy of succession (Article 928 § 2 CC) or excluding the testator's spouse from intestate succession (Article 940 CC). These events are referred to as the negative components of succession.

to a reserved share *upon the will of the testator* may in fact occur only in disinheritance in the strict sense (Article 1008 CC).[30]

Controversy arises, however, in the question of whether the heir excluded from succession in negative will should be treated as *deceased at the time of opening the succession*, as expressly provided in Article 31 LS (underline H.W.). The literature on the subject challenges the accuracy of the above regulation and, by extension, is critical about the views of those authors who, despite the lack of the relevant provision (recognized as defective in this context), still approach negative will as implying the death of the excluded party.[31] The problem is of importance, especially from the viewpoint of practical application. Let us have a look at the deployed arguments.

Admittedly, a similar effect to the exclusion of a statutory heir from succession under negative will is when the testator distributes the estate among the parties from outside the group of statutory heirs.[32] Consequently, the boundaries between positive and negative seem to be blurred and elusive.[33]

The opponents of the idea of transplanting the solutions of Article 31 LS to the contemporary setting without reservations argue that the assumption that only the excluded heir is treated as deceased upon the opening of the succession and the one who has been omitted is not treated so would entail some differences in their legal situation only on the account of the seemingly different content of the will, that is, different in editorial terms but not in terms of the intention of the testator as to the effect of disposition of the estate upon their death,[34] which (if we accept this view) actually raises reasoned objections. It seem, however, that positive will – with heirs appointed from outside the statutory circle and negative will – with the statutory heir excluded and replaced by someone else – are only apparently

[30] Cf. Księżak, P. *Zachowek...*, 153 and the cited literature. Cf. justification of the Resolution of the Supreme Court of 14 June 1971, III CZP 24/71, *LEX* 1299 and the Resolution of the Supreme Court of 10 April 1975, III CZP 14/75, *LEX* 1875.

[31] Księżak, P. *Zachowek...*, 150.

[32] See, in particular, Piątowski, J., Kordasiewicz, B. *Prawo spadkowe...*, 104.

[33] Księżak, P. *Zachowek...*, 151. As regards the differences between negative will and the so-called positive will, see Witczak, H. *Wyłączenie od dziedziczenia...*, 113-114.

[34] Księżak, P. *Zachowek...*, 150-152.

different just as the opinions voiced in the literature (although not always precise enough). Such a statement is justified if we compare the effects arising from the drawing up of negative will. No doubt, the excluded party does not inherit and, if we assume that the content of the will is limited to that exclusion, succession is open to statutory heirs without the excluded one. If the content of the will is more complex, the effects on the order of succession can only be defined based on the testator's intention that can be uncovered only through the interpretation of the document *in concreto.* There should also be no doubt that if the excluded party retains the right to the legitime, it will not fall to their descendants.[35] The circle of persons entitled to a reserved share should, in fact, be defined by identifying the individuals who would be appointed to succession if the testator had not draft (any) will, including negative will.[36] It is not possible for the testator's son and his children (testator's grandchildren) to come to intestate succession simultaneously. Consequently, they will not be entitled to the legitime, either.[37] We are approaching a conclusion that the only debatable question is the "treatment" of the heir excluded in negative will as deceased at the time of opening the succession. Taking account of the the legal effects highlighted above, this wording is rather unfortunate and, perhaps, even illogical. Hence, we should subscribe to the view that the heir excluded from succession under negative will should not be treated as if they did not live up to see the opening of the succession.[38]

If we accept the assumption that the will only contains a disposition to exclude one of the heirs, the effects of the will will not be difficult to assess.

The effects of negative will are determined by the regulations in force at the time of opening the succession that govern the issue of intestate succession. Determination of the shares of the estate falling to statutory heirs who inherit in the same group as the excluded party is done without considering the latter, unless this person is a descendant, children, siblings or grandparents of the testator – only then descendants may inherit in place of the excluded (Article 931 § 2 CC, Article 932 § 5 CC, Article 934

[35] This remark certainly refers only to the testator's child.

[36] Gwiazdomorski, J. *Prawo spadkowe...*, 1959, 394.

[37] So in Księżak, P. *Zachowek...*, 146.

[38] Księżak, P. *Zachowek...*¸ especially 150.

§ 2 CC). Consequently, with the exception of cases of exclusion from succession of the descendant, siblings or grandparents of the testator (assuming that further descendants of the testator, descendants of his siblings or descendants of his grandparents are still alive), negative will will benefit the other heirs with whom the excluded party would also inherit (their shares will be greater than the share that they would receive if the will were not drawn up).[39] The situation of the spouse will never worsen unless they are excluded from succession. Their transfer to the second group guarantees half of the estate, i.e. as much as they could obtain in the first group.

The descendants of the second group are appointed to succession if the excluded is the only (childless) descendant of the testator, and the exclu-

[39] On the effects of negative will, see Rojek, A. "Wydziedziczenie i testament negatywny," *Przegląd Sądowy* 9(2006), 106-107. In this case, the author allows two "mutually non-exclusive solutions." First in which the exclusion from succession leads to the increase of the share of other statutory heirs inheriting along with the excluded. Of course, this position is justified with the reservation (made in the main body of the text) to the descendants of the excluded party. Inaccurate seems the wording that the share due to the excluded "is distributed" among the remaining heirs of the testator. The point is that if the excluded is not appointed to succession, the estate is divided based on the guidelines provided in the CC among the remaining statutory heirs in the group (i.e. omitting the excluded). The term "distribution of the share" would be more appropriate with regard to the share growth, that is, in those cases in testate succession where any of the heirs appointed to succession does not want or is incapable of inheriting; there is no doubt, however, that thee share will increase. The author further claims that such a case will occur "only when if there is *the identity of persons* (underline H.W.) inheriting after the testator and excluded from succession under negative will" and illustrates it with the following example: the testator, having a wife and two children, excludes from succession his only son, a childless bachelor, under negative will. Referring to Article 935 § 2 CC, the author assumes that the share in the estate that would fall to the excluded will benefit their siblings and the living parent; they also inherit after the testator under intestate succession. In this way, their due share will increase (the author does not indicate, however, how to calculate the shares of "identical heirs"). In the other approach (referring, it seems, to cases where there is no identity of persons to inherit after the testator and the excluded party), the participation of the excluded in the share falls to their statutory heirs, which might lead to a conclusion that the spouse of the excluded will be appointed to succession. Meanwhile, in order to precisely determine the circle of heirs in a situation where one of them is excluded from succession under negative will, the important thing is not who inherits after the excluded but what the rules are of intestate succession after the "excluding party." Cf. author's conclusions concerning the effects of negative will on pages 108 i 110.

sion from succession of one or both parents allow access to the estate to the heirs of the third group. If the testator also excludes the siblings and their descendants from succession, their grandparents will inherit under intestate succession. The exclusion of a spouse and all the relatives, as referred to in Articles 931-934 CC, will result in the appointment to succession of the testator's spouse's children whose parents did not live up to the opening of the succession (Article 934^1 CC). If the testator's stepchildren are also excluded, the estate will fall, depending on the last place of residence of the testator, to his municipality or to the State Treasury (fourth group of intestate succession; Article 935 CC). In this context, it is right to point out that due to the clearly defined criteria of intestate succession by the municipality of last place of residence of the testator (no spouse or relatives of the testator who are appointed to intestate succession) or by the State Treasury (no spouse or relatives of the testator who are appointed to intestate succession, and additionally the inability to determine the last place of residence of the testator in Poland or determination that is was abroad),[40] there is a well-grounded opinion that negative will which excludes the succession by the municipality of the last place of residence of the testator does not result in the succession by the State Treasury but is deemed invalid.[41]

Finally, it should be emphasized that the testator's spouse and descendants excluded from succession under negative will do not lose their rights to a reserved share, which, certainly, does not need to entail the right to claim that share. The provisions of the Civil Code offer the testator a choice as to the method of securing the reserved share to the eligible parties. Due legitime can be obtained primarily in the form of the testator's donation, appointment to succession, bequest or special bequest. Only then, when the eligible party did not receive their reserved share in any of the forms listed above, they are entitled to claim the payment of a sum needed to

[40] Cf. Article 27 LS.

[41] Pazdan, M. "Dziedziczenie gminy i Skarbu Państwa – po nowelizacji kodeksu cywilnego w 2003r.," *Rejent* 2(2003), 16. See also Piątowski, J. St., Witczak, H., & Kawałko, A. in *System Prawa Prywatnego. Tom 10. Prawo spadkowe*, ed. B. Kordasiewicz (Warszawa 2015), 294.

cover or supplement the legitime[42] (Article 991 § 2 CC). It should also be highlighted that the satisfaction of the claim for legitime can be assessed from the perspective of Article 5 CC. Only in exceptional cases, the jurisprudence permits a reduction of the due legitime based on the provision referred to above. Aware of the list of reason behind the exclusion from succession, it is worth considering whether the assessment of admissibility of reduction, in a specific case, of the amount of the legitime, pursuant to Article 5 CC, should be carried out also taking account of the conduct of the eligible party, which indicates how they have met their obligations towards the family and the testator in particular.

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[42] When the benefit earned by the eligible heir is lower than the value of the due legitime.

Osajda, K. in, *Kodeks cywilny. Komentarz. Tom III. Spadki*, ed. K. Osajda, Warszawa 2013;
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