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Testamentary Succession, New Technologies and Recodification: On the Research That Needs to Be Conducted

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Abstract: *In view of the fact that one of the main tasks of modern inheritance law is to connect the available legal structures with the shape of property relations existing in the society and to favour solutions which enable to make the most of the testator's estate after his or her death, the author concludes that a research needs to be conducted to examine what consequences in this field of law follow, inter alia, from the wide availability of audio and video digital recorders, and what are legal consequences of registering the last will of the testator using such equipment, e.g. if in such context, can we call a video testament a newly developing form of estate disposition. In this scope projects should search for connections between the above-indicated technical equipment and the possibilities of fulfilling the last will of the testator, to analyze if they may be useful for applying the principle of testamentary freedom present in inheritance law and to explain if the application of such equipment by the testator will facilitate or hinder the execution of testator's will mortis causa.*

Key Words: *Civil Code; Inheritance Law; Succession Law; Will; Testament; Video Will; Electronic Will; Poland.*

Introduction

The issues of inheritance law have been acquiring significance for some time in the Eastern Europe. The legislation, which has been stable so far, raises a number of doubts which are a subject of contentious statements of scholars and judges.[1] That results, *inter alia*, from the fact that after the period of political transformation, the society has begun to grow wealthy and migrate (especially throughout the European Union), acquiring more and more properties, located not necessarily in the country of citizen-

[1] See CSERNE, P. Drafting Civil Codes in Central and Eastern Europe: A Case Study on the Role of Legal Scholarship in Law-Making. *Pro Publico Bono*. 2011, pp. 1-18. ISSN 2062-7165.

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ship, which at the moment of natural person's death are passed to the heirs, causing many conflicts.[2]

In this context, it should be clarified that succession under the most Eastern European laws is based on the principle of universal succession.[3] It occurs *ipso iure* when the devisor dies. Heirs succeed to the place of the deceased on the basis of the principles of statutory succession or testamentary succession. It is the same in Poland, where the devisor can choose between those two modes of distributing his property *mortis causa*.[4] According to the article 926 of the Polish *Civil code*,[5] title to succession results from the law or from a will (§ 1). Statutory succession to the entire estate takes place if the deceased did not name an heir or if none of the persons he named wish to or can be an heir (§ 2). Subject to the exceptions provided for by the law, statutory succession to part of the estate takes place if the deceased did not name an heir for that part of the estate, or if any of the persons named by him to succeed to the entire estate do not wish to or cannot be an heir (§ 3).[6]

When analyzing the testamentary succession in Poland, it has to be mentioned that according to the *Civil code*, a disposition of property effective upon death may be made only by a will (article 941 of the *Civil code* says that no disposition *mortis causa* can be made otherwise than by a will). A will may contain dispositions of only one testator, and the *Civil code* provides for his dispositions ordinary and special wills of which must he choose.[7]

Among the ordinary wills the law distinguishes holographic wills, notarial wills and allograft wills (articles 949 – 951 of the *Civil code*). Special wills include oral wills, journey wills and military wills (articles 952 –

[2] ZAŁUCKI, M. Wpływ prawa unijnego na polskie prawo spadkowe. In: A. KUŚ and A. SZACHOŃ-PSZENNY, eds. *Wpływ acquis communautarie i acquis Schengen na prawo polskie – doświadczenia i perspektywy: Tom I – 10 lat Polski w Unii Europejskiej*. 1. wyd. Lublin: Wydawnictwo KUL, 2014, pp. 277-290. ISBN 978-83-7702-850-6.

[3] LONGCHAMPS de BÉRIER, F. *Law of Succession: Roman Legal Framework and Comparative Law Perspective*. 1st ed. Warszawa: Wolters Kluwer, 2011, pp. 23-148. ISBN 978-83-264-1468-8.

[4] PIĄTOWSKI, J. S. and B. KORDASIEWICZ. *Prawo spadkowe: Zarys wykładu*. 7. wyd. Warszawa: LexisNexis, 2011, pp. 53-56. ISBN 978-83-7620-565-6.

[5] *Civil Code* [1964-04-23] [consolidated text: Journal of Laws of 2014, item 121].

[6] See WÓJCIK, S. *Podstawy prawa cywilnego: Prawo spadkowe*. 1. wyd. Warszawa: LexisNexis, 2002, p. 36. ISBN 83-7334-097-1.

[7] See PIĄTOWSKI, J. S. and B. KORDASIEWICZ. *Prawo spadkowe: Zarys wykładu*. 7. wyd. Warszawa: LexisNexis, 2011, pp. 107-117. ISBN 978-83-7620-565-6.

954 of the *Civil code*). A will prepared contrary to these forms is not valid. Those solutions are typical for the former "Eastern Block" countries legislations and were present in the civil codes before the recodification, a process understood either as a project to create a new civil code, or as an essential amendment to normalize the look of the existing code. This so-called recodification has, among others, counteract decodification, the phenomenon leading to the loss of the central role of the civil code.[8]

In Poland, the process of recodification is now undergoing. The discussion concerning this subject has continued for several years. It has been followed, among others, by Green Book[9] prepared in 2006 by Civil Law Codification Committee attached to the Minister of Justice which is the optimum vision of Civil Law in the Polish Republic and by the project of first book of civil code of year 2008. The idea of new civil code has been supported, among others, by Legislation Council in the report concerning the creation of law of year 2006[10] where it was mentioned that the present state of the code gives the impression of partial codification mostly out-of-date so the preparation of new code is a very urgent matter. In spite of the objection of some circles, the idea of new code was supported by legal experts.

Now, after a few years, there are a lot of ideas on how to change the law. This in itself raises some questions that need to be asked. Those questions concern the whole of private law, not only the law of succession. But precisely in this area some of the questions according to many sound surprisingly, although they should be placed. It is so partly because not much attention is paid to the significance of new technologies in the area of the inheritance law.[11] Hence this statement is an attempt to outline what research should be taken for the designing of the new inheritance law instruments in the era of new technologies, what should be interesting not only for the Polish legislator.

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[8] McAULEY, M. Proposal for a Theory and a Method of Recodification. *Loyola Law Review*. 2003, vol. 49, no. 2, p. 262. ISSN 0192-9720.

[9] RADWAŃSKI, Z. ed. *Green Paper: An Optimal Vision of the Civil Code of the Republic of Poland*. 1st ed. Warsaw: Ministry of Justice, 2006. 152 p. ISBN 83-924046-1-0.

[10] See KĘPIŃSKI, M., M. SEWERYŃSKI and A. ZIELIŃSKI. Rola kodyfikacji na przykładzie prawa prywatnego w procesie legislacyjnym. *Przegląd Legislacyjny*. 2006, vol. 13, nr 1, p. 10. ISSN 1426-6989.

[11] ZAŁUCKI, M. Współczesne tendencje rozwoju dziedziczenia testamentowego – czyli nie tylko o potrzebie wprowadzenia wideotestamentu do nowego kodeksu cywilnego. *Annals of Juridical Sciences*. 2012, vol. 22, no. 2, pp. 23-52. ISSN 1507-7896.

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Polish testamentary law

As it was mentioned, the present Polish law recognizes six will forms (three ordinary wills and three special wills). One of the ordinary wills is the holographic will regulated by article 949 of the *Civil code*. This regulation says that a testator can make a will by writing it entirely by hand, signing it and dating it. Due to the article 950 of the *Civil code* an ordinary will may also be made in the form of a notarial deed. And, according to article 951 of the *Civil code*, a testator may also make a will by declaring his last will orally in the presence of two witnesses to the official person (allograft will). Within special wills the law provides, inter alia, an oral will. According to the article 952 of the *Civil code*, if imminent death of the testator is expected or, if due to extraordinary circumstances, it is not possible or very difficult for a will to be made in ordinary form, the testator may declare his final wishes orally in the simultaneous presence of at least three witnesses. The content of this oral will may be established in such a way that one of the witnesses or a third party writes down the testator's declaration within a year of it being made, giving the place and date of the declaration and the place and date of the written instrument, and the instrument is then signed by the testator and two witnesses or all the witnesses. But if the content of an oral will has not been established in the above manner, it may be established, within six months of the succession being opened, by the consistent testimonies of the witnesses given before a court. If the testimony of one of the witnesses cannot be heard or encounter obstacles which are difficult be overcome, the court may consider the consistent testimonies of two witnesses sufficient.

Another one of special wills is a journey will. Article 953 of the *Civil Code* says that during a journey on a Polish sea-going vessel or aircraft, a testator may make a will before the commander of the vessel or aircraft or his deputy by declaring his final wishes to the commander or his deputy in the presence of two witnesses. The commander of the vessel or the aircraft or his deputy writes down the final wishes of the testator, giving the date they are written, and reads the instrument out to the testator in the presence of the witnesses, after which the instrument is signed by the testator, the witnesses and the commander or his deputy. If the testator cannot sign the instrument, the reason for there being no signature should be given in the instrument. If this form cannot be observed, an oral will maybe made.

The last of the acceptable testamentary forms is also a military will. In pursuance of article 954 of the *Civil code*, a military will shall be defined by an order of the Minister of National Defence issued in consultation with the Minister of Justice. According to that order, military will can be made only at the time of mobilization or war, or being in captivity. More or less, it has to be done in an oral form.[12]

The abovementioned Polish legal structures connected with the freedom of testation are based on the solutions prepared by the inheritance law sub-commission established in 1919 within the Codification Commission of the Republic of Poland. Since that the time has passed and the novelties and changes introduced by Polish legislator to inheritance law are not significant. That is why at least it should be considered whether these old solutions work smoothly nowadays and are suitable in the context of the current needs and expectations towards inheritance law regulations.[13] In that context, it can be easily seen that those legal structures available in this area, aiming at fulfilling the testator's will in case of his or her death, sometimes appear to be not adapted to the present times. In the age of high technology, the Internet, modern tools of communication, when almost every household has an access to audio and video digital recorders (computer sets, mobile phones, cameras), the law must undergo development and metamorphoses along with the society. Therefore, dilemmas arisen for years in the study of inheritance law and connected for instance with establishing whether to give the testator full testamentary freedom or to restrict it, from time to time as the reality changes, force the conduction of research into the issues of individual autonomy in this area. Results of such research carried out several or several dozens of years ago may lead to erroneous conclusions and not to reflect the right inheritance law reality, therefore the inheritance regulations by law may sometimes not meet the current needs of the society.[14]

Considering the above and especially due to the changes which have taken place in Poland since the political transformation, it is essential to have a new look at this area and to assess from the beginning the signifi-

[12] SKOWROŃSKA-BOCIAN, E. *Testament w prawie polskim*. 1. wyd. Warszawa: LexisNexis, 2004, pp. 13 and following. ISBN 83-7334-321-0.

[13] See Van ERP, S. New Developments in Succession Law. *Electronic Journal of Comparative Law* [online]. 2007, vol. 11, no. 3, pp. 12-14 [cit. 2014-04-28]. ISSN 1387-3091. Available at: http://www.ejcl.org/113/article113-5.pdf.

[14] SPENCER, P. S. Of Sound Mind and Gigabytes – The Future of Digital Wills. *Intelligencer Journal*. 2013-07-08, p. 5. ISSN 0889-4140.

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cance of the principle of testator's freedom to dispose of his or her estate in case of death. Discussions over new conceptions are nothing new, since certain attempts at the improvement of the situation in the field of private law were made long ago.[15] However, over twenty five years have passed after the abandonment of the communist system and those years are without any larger project of a new civil code including inheritance law. Now, when we are after a lot of amendments around civil law,[16] we should also consider more versatile research on inheritance law. Which ways should it go?

iPhone will?

The new age of technology has exponentially grown and allows for the transmission of various data messages from personal computers to portable devices. Because of the development of new technologies, legal practitioners are compelled to take cognizance of some developments, and evaluate the use of data transmission for legally recognized acts, even for the purposes of inheritance law.[17] In recent years there has been an increase in private and commercial activity on the Internet.

Lately, it has been said in the Anglo-American doctrine that the wide variety of circumstances in which a deceased can express himself, exacerbated in these times of apps, personal computers and tablets, an executor or their advisers must be vigilant to ensure they are fully comprised of the testator's wishes and testamentary dispositions. That is why the courts should try to give effect to a deceased's testamentary intention if they can.[18] An observation associated with this idea was made in New South Wales over twenty years ago, when the court stated that there are many cases in which the intention of the deceased has not been able to be given effect. "That is an evil which should be remedied as far as may

[15] VARUL, P. The Impact of the Harmonisation of Private Law on the Reform of Civil Law in the New Member States. In: R. BROWNSWORD, H.-W. MICKLITZ, L. NIGLIA and S. WEATHERILL, eds. *The Foundations of European Private Law*. 1st ed. Oxford: Hart, 2011, pp. 285-292. ISBN 978-1-84946-065-1.

[16] In particular, the law of contract and the law of property were undergoing big transformation.

[17] See SNAIL, S. and N. HALL. Electronic Wills in South Africa. *Digital Evidence and Electronic Signature Law Review*. 2010, vol. 7, p. 67. ISSN 2054-8508.

[18] BENNETT, M. Technology and Wills (Using an iPhone, Word or Other Modern Devices). *Lexology* [online]. 2014-04-16. 6 p. [cit. 2014-04-28]. Available at: http://www.lexology.com/library/document.ashx?g=7c55bb2e-9726-4a5a-acd4-e7d1475010bb#page=1.

be."[19] It follows that, on the one hand, there is an opinion that the formal requirements must give way to the last will, at least if the will of the testator is clear.[20] On the other hand, meeting the formal requirements – according to many – is so important that if they are not met, the will should be considered as invalid in any circumstances.[21]

A good example of what can happen if agree with one of those views can be the recent court rulings from Australia. The deceased shortly before his suicide created a series of records on his iPhone. One was expressed to be his last will in which the deceased named an executor and provided for his property to be gifted away. The named executor applied to the court seeking that the iPhone record be proved as a will. His application was successful even though the law in Australia does not provide such form of wills.[22] When considering this judgement, the court observed that the document commenced with the words, *"This is the last will and testament..."* of the deceased, who was then formally identified, together with a reference to his address. The court also said that the appointment of an executor, again, reflects an intention that the document be operative. Then the court has noticed that the deceased typed his name at the end of the document in a place where on a paper document a signature would appear, followed by the date, and a repetition of his address. All of that, it the opinion of the court, demonstrated an intention that the document be operative. The instructions contained in the document, as well as the dispositions which appear in it, all evidence an intention that it be operative on the deceased's death. In particular, the circumstance that the document was created shortly after a number of final farewell notes, and in contemplation of the deceased's imminent death, and the fact that it gave instructions about the distribution of his property, all confirm an intention that the document be operative on his death. It was why the court was satisfied that the deceased intended the docu-

[19] In the Estate of Masters (Deceased); Hill v. Plummer [1994-05-18]. *New South Wales Law Reports*. 1994, vol. 33, pp. 446 and following. ISSN 0312-1674.

[20] Van ERP, S. New Developments in Succession Law. *Electronic Journal of Comparative Law* [online]. 2007, vol. 11, no. 3, pp. 12-14 [cit. 2014-04-28]. ISSN 1387-3091. Available at: http://www.ejcl.org/113/article113-5.pdf.

[21] CHALMERS, J. Testamentary Conditions and Public Policy. In: K. G. C. REID, M. J. de WAAL and R. ZIMMERMANN, eds. *Exploring the Law of Succession: Studies National, Historical and Comparative*. 1st ed. Edinburgh: Edinburgh University Press, 2007, pp. 99-113. ISBN 978-0-7486-3290-9.

[22] *Jason Yu – Karter Yu* [2013-11-06] [online]. 2013, QSC 322 [cit. 2014-04-28]. Available at: http://www.queenslandreports.com.au/docs/db_keydecisions/QSC13-322.pdf.

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ment which he created on his iPhone to form his will.[23] And it was the reason why the court issued a grant of probate of the iPhone document to the executor named in it.

On the other hand, a similar case was decided in Sweden. The deceased spent part of his last hours alive sending text messages to his family and friends in which he detailed what they would inherit when he died. A few hours later, he committed suicide. In the court procedure it was established that this was definitely his last will that he wanted to split his assets this way. A district court at first ruled the text messages were valid, but then an appeals court has overturned the verdict. According to one of the Swedish inheritance law experts, if the man had written down his last wishes with a pen, the instructions would have remained valid. In the press release it was pointed out that it was time for a thorough review of inheritance law in Sweden. "Swedish inheritance laws are ancient and a lot has happened since the early 20th century when the rules were written down."[24]

So as can be seen, new technologies rise a lot of questions on the grounds of inheritance law. It can be noticed that thinking outside the square may be required because of the future testamentary dispositions that may occur. It is why practitioners must confirm that the deceased's testamentary intentions nowadays may not be limited only to formal will executed in accordance with the legislation. It should be observed that more and more people are preparing a video in which they read the will and explain why certain gifts were made and others not made. Finally we are living in the times where every household has an access to audio and video digital recorders and might be willing to use them for the inheritance law purposes. This includes the various modern devices on which testator intentions may be recorded. That is why we need to find legal solutions for such needs and expectations.[25]

[23] *Jason Yu – Karter Yu* [2013-11-06] [online]. 2013, QSC 322 [cit. 2014-04-28]. Available at: http://www.queenslandreports.com.au/docs/db_keydecisions/QSC13-322.pdf.

[24] See the opinion of M. Brattström spoken for Sveriges Radio, cited by *The Local* on February 14th, 2014, in the article SMS Not a Valid Last Will and Testament: Court. In: *The Local* [online]. 2014-02-24 [cit. 2014-04-28]. Available at: http://www.thelocal.se/20140224/sms-not-valid-last-will-and-testament-court/.

[25] See ZAŁUCKI, M. Współczesne tendencje rozwoju dziedziczenia testamentowego – czyli nie tylko o potrzebie wprowadzenia wideotestamentu do nowego kodeksu cywilnego. *Annals of Juridical Sciences*. 2012, vol. 22, no. 2, pp. 23 and following. ISSN 1507-7896.

In this context, when thinking of continental Europe, especially of Poland, it can be observed that the legislation and judicature is still dominated by the traditional views. It is believed that the formal requirements of wills uphold the testamentary dispositions and are designed to prevent abuses.[26] Because of that it seems doubtful that the courts are willing to apply well established legal principles to new technologies. An assumption can be expressed that such case under the Polish legal system would have ended without acknowledging the validity of a will.[27]

New tasks

The analysis of the Polish *Civil code* regulations governing the scope of testator's freedom to dispose of his or her estate in case of death shows that they do not face the challenges put out nowadays to inheritance legislation by new technologies. The same can be said about some other European legal systems. That is why in the nearest future the basic research task should be concerned with the influence of the development of technology on legal tools which may be used by the testator to shape social relationships *mortis causa*. It should answer the question if the current forms of testament are coherent with technological possibilities offered for the last years due to the appearance of a number of technical equipments available almost in every household.

Moreover, in view of the fact that one of the main tasks of modern inheritance law is to connect the available legal structures with the shape of property relations existing in the society and to favour solutions which enable to make the most of the testator's estate after his or her death, such research should examine what consequences in this field of law follow, inter alia, from the wide availability of audio and video digital recorders, and what are legal consequences of registering the last will of the testator using such equipment, e.g. if in such context, can we call a video testament a newly developing form of estate disposition. In this scope the new rising scientific projects should search for connections between the above-indicated technical equipment and the possibilities of fulfilling the last will of the testator, analyze if they may be useful for applying the principle of testamentary freedom present in inheritance law

[26] See MAHANY, B. Electronic Wills – Convenience or Recipe for Fraud?. In: *Due Diligence* [online]. 2013-12-28 [cit. 2014-04-28]. Available at: http://www.mahanyertl.com/mahanyertl/2013/electronic-wills-convenience-or-recipe-for-fraud/.

[27] Such will form is inconsistent to the Civil code and should be invalidated due to the article 958 of the *Civil code*. *Civil Code of the Republic of Poland*.

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and explain if the application of such equipment by the testator will facilitate or hinder the execution of testator's will *mortis causa*.

At the same time, due to the increased migration of the society and more frequent acquisition of properties abroad which result in inheritance with a foreign element (settled under a foreign law), the legal scholars projects should aim at showing implications carried by the availability of legal instruments which enable the testator under the private international law to dispose of his or her estate *mortis causa* as appearing in other systems of internal law, especially at establishing if liberalized requirements concerning a form of estate disposition in case of death in some legal systems which allow to accept as valid a testament in a form unknown in Poland (e.g. in an electronic form) may pose a threat to the order of succession as provided in the Polish law or help to fulfill the last will of the testator.[28]

A temptation to use of technologies

In the age of advanced technologies, and the Internet, when almost each household has an access to audio and video digital recording equipment (computer sets, mobile phones, cameras),[29] there exists a temptation to make use of such equipment also for inheritance law purposes and record a last will in this way. It seems that the possibility to pass the last will in such a form directed to family and friends could undoubtedly make a testament even more personal than now, allowing at the same time to sincerely justify the dispositions made. It would open up a possibility of saying goodbye to family and friends in a more spectacular manner, which leaves unforgettable memories and changes a bit unrewarding role of the legal transaction – a testament. It might be useful if the devisor is not a lawyer and writing a formal will may seem like a lot of trouble and expense (if he wants to hire a lawyer). Turning on the video camera

[28] These instruments can be observed in the Australian law which recognizes the so-called substantial compliance doctrine. See LANGBEIN, J. H. Substantial Compliance with the Wills Act. *Harvard Law Review*. 1975, vol. 88, no. 3, pp. 489 and following. ISSN 0017-811X.

[29] No statistics have been made about Poland, but it can be believed that statistics look similar in the free market economies. According to the source from the United States of America, today about 76 % of adults own a computer, 85 % of adults use the internet, and 46 % of adults own a smartphone. This phenomenon increases. See KOPPEL, D. *From the File Cabinet to Cloudacre: Resolving the Post-Mortem Crisis of Digital Asset Disposition for the Fiduciary* [online]. 2013, p. 1 [cit. 2014-04-28]. Available at: http://www.kceps.org/downloads/2013_prize/DavidKoppelFromTheFileCabinet.pdf.

and recording the devisor expressing his wishes about who he want to inherit his property seems much easier. Also, a video can be a useful tool when the devisor is concerned that someone might try to challenge his will after death. A video can provide useful evidence that the devisor knew what he was doing and wasn't being manipulated.

At least it seems like the technologies can be used for that purposes. But before writing a new legislation, research projects should be conducted and doctrine discussion should be started. Such projects should examine if possibilities created by new technologies may be used by available legal instruments which are applied by the testator to dispose of his or her estate in case of death or if it is necessary to make new generalizations and assertions and to advance new theories concerning the usage of technical equipment for inheritance law purposes. The result of such projects should include, inter alia, the legal characteristics of video testament as a new inheritance law instrument. Such research will allow to enrich the knowledge of inheritance law, will be a contribution to the development of this scientific field and will enable to explain connections existing between the development of technology and legal tools applied by the testator to shape social relationships *mortis causa*. Up to now, no research has been conducted in this scope in Poland, and there are no significant similar projects in the Central and Eastern Europe.

A value added to the present knowledge

New research in the area of inheritance law should result in the preparation of a paper that will supplement scholarly achievements of the inheritance law, especially in the area of legal tools applied in estate disposition in case of death. In connection with the development of new technologies, the current regulations pertaining to a form of testament have to be assessed, which will allow to establish if their structures rise to the challenges and possibilities created by widely accessible technical equipment.[30] An essential outcome of the research conducted should include an answer to the question if the changing technological reality may affect norms concerning the tools applied in estate disposition in case of death. In this aspect an attempt should be made to explain in terms of the inheritance law the significance of changing geopolitical factors which enable the acquisition of properties abroad in the context of the possibil-

[30] See ZAŁUCKI, M. Współczesne tendencje rozwoju dziedziczenia testamentowego – czyli nie tylko o potrzebie wprowadzenia wideotestamentu do nowego kodeksu cywilnego. *Annals of Juridical Sciences*. 2012, vol. 22, no. 2, pp. 23 and following. ISSN 1507-7896.

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ity of the testator to use regulations of a foreign inheritance law in order to create a desired order of succession and also threats to creditors making claims about the estate.[31] A value added to the present knowledge should also be the presentation of foreign studies and court practice of the chosen countries with reference to formal requirements of testamentary dispositions in the context of new technologies. The analysis of judicial and doctrinal tendencies will allow to formulate potential conclusions *de lege ferenda* with reference to the future regulations of the Polish inheritance law, including potential delineating of a video testament as a separate form of estate disposition *mortis causa*.

Conclusion

Almost ten years passed and the changes prepared by the Codification Committee in Poland did not lead to the creation of the new Code or even to the preparation of its project. Suggestions concerning new fourth book of civil code (inheritance law) have not even been officially presented. Codification Committee has so far prepared a few projects concerning single legal inheritance institutions. Such projects, no matter whether they were introduced or are still in the project phase, were considered controversial and scientific opinions concerning this subject were varied. And they did not contain any solutions to the problems of new technologies in the area of inheritance law.

Meanwhile, it should be mentioned that in recent years changes in some countries' inheritance laws are caused by new legal problems resulting from technological development and cultural and social changes. Especially technological changes bring a fresh perspective to inheritance law. Influence of new technologies on legal relations cannot pass undetected, what, among others, stimulates discussion how they can be used in the area of inheritance law. In this context, maybe it is time for estate law reform that would allow new technology based testamentary intentions that do not comply with current legislative requirements to be given effect. But to answer this question a serious research needs to be done.

[31] The possibility is about to open because of the *Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession* [2012-07-27]. OJ L 201, pp. 107-134. The Regulation shall apply to the succession of persons who die on or after August 17th, 2015.

In the abovementioned context, many factors should be considered. The most important of them are among others the ones connected with the European Integration and with the activity of constitutional courts. Uniform inheritance law in the whole European Union was always tempting. That is why particular legislators, regardless of Union legislation restrictions and theoretical legal arguments, changing their law, they usually did it taking into account the European integration process. Until now no efforts have been undertaken to standardize material inheritance law at the European level and the concept of giving European dimension to this law is still alive – newly adopted resolution being the example. Secondly, standards prepared on the background of constitution regulations should become references to suggested changes. As far as inheritance law is concerned I mean guidelines for basic act concerning protection of inheritance rights which evolved in recent years as well.

When talking about new inheritance law instruments one more thing need to be considered. The validity of any suggested changes can be evaluated only after several dozen years. Because, as Stelmachowski stated some time ago, inheritance law regulations could only be verified by the third generation.[32] Observing the development of private law in the European Union it may turn out that within the period of next several dozen years inheritance law solutions possibly created at that level will slowly displace national solutions what will not favour possible new codifications. Observation of such trends should become a challenge for national legislator and future national inheritance law should have European dimension. Maybe in several dozen years uniform inheritance law will be operating in the whole Europe.

References

BENNETT, M. Technology and Wills (Using an iPhone, Word or Other Modern Devices). *Lexology* [online]. 2014-04-16. 6 p. [cit. 2014-04-28]. Available at: http://www.lexology.com/library/document.ashx?g=7c55bb2e-9726-4a5a-acd4-e7d1475010bb#page=1.

CHALMERS, J. Testamentary Conditions and Public Policy. In: K. G. C. REID, M. J. de WAAL and R. ZIMMERMANN, eds. *Exploring the Law of Succession: Studies National, Historical and Comparative*. 1st ed. Edin-

[32] STELMACHOWSKI, A. *Wstęp do teorii prawa cywilnego*. 2. wyd. Warszawa: Państwowe Wydawnictwa Naukowe, 1984, p. 20. ISBN 83-01-05165-5.

SOCIETAS ET IURISPRUDENTIA
2014, ročník II., číslo 2, s. 19-34
http://sei.iuridica.truni.sk
ISSN 1339-5467

burgh: Edinburgh University Press, 2007, pp. 99-113. ISBN 978-0-7486-3290-9.

Civil Code [1964-04-23] [consolidated text: Journal of Laws of 2014, item 121].

Civil Code of the Republic of Poland.

CSERNE, P. Drafting Civil Codes in Central and Eastern Europe: A Case Study on the Role of Legal Scholarship in Law-Making. *Pro Publico Bono*. 2011, pp. 1-34. ISSN 2062-7165.

In the Estate of Masters (Deceased); Hill v. Plummer [1994-05-18]. *New South Wales Law Reports*. 1994, vol. 33, pp. 446 and following. ISSN 0312-1674.

Jason Yu – Karter Yu [2013-11-06] [online]. 2013, QSC 322 [cit. 2014-04-28]. Available at: http://www.queenslandreports.com.au/docs/db_keydecisions/QSC13-322.pdf.

KĘPIŃSKI, M., M. SEWERYŃSKI and A. ZIELIŃSKI. Rola kodyfikacji na przykładzie prawa prywatnego w procesie legislacyjnym. *Przegląd Legislacyjny*. 2006, vol. 13, nr 1, pp. 95-106. ISSN 1426-6989.

KOPPEL, D. *From the File Cabinet to Cloudacre: Resolving the Post-Mortem Crisis of Digital Asset Disposition for the Fiduciary* [online]. 2013. 34 p. [cit. 2014-04-28]. Available at: http://www.kceps.org/downloads/2013_prize/DavidKoppelFromTheFileCabinet.pdf.

LANGBEIN, J. H. Substantial Compliance with the Wills Act. *Harvard Law Review*. 1975, vol. 88, no. 3, pp. 489-531. ISSN 0017-811X.

LONGCHAMPS de BÉRIER, F. *Law of Succession: Roman Legal Framework and Comparative Law Perspective*. 1st ed. Warszawa: Wolters Kluwer, 2011. 289 p. ISBN 978-83-264-1468-8.

MAHANY, B. Electronic Wills – Convenience or Recipe for Fraud?. In: *Due Diligence* [online]. 2013-12-28 [cit. 2014-04-28]. Available at: http://www.mahanyertl.com/mahanyertl/2013/electronic-wills-convenience-or-recipe-for-fraud/.

McAULEY, M. Proposal for a Theory and a Method of Recodification. *Loyola Law Review*. 2003, vol. 49, no. 2, pp. 261-286. ISSN 0192-9720.

PIĄTOWSKI, J. S. and B. KORDASIEWICZ. *Prawo spadkowe: Zarys wykładu*. 7. wyd. Warszawa: LexisNexis, 2011. 248 p. ISBN 978-83-7620-565-6.

RADWAŃSKI, Z. ed. *Green Paper: An Optimal Vision of the Civil Code of the Republic of Poland*. 1st ed. Warsaw: Ministry of Justice, 2006. 152 p. ISBN 83-924046-1-0.

Regulation (EU) No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession [2012-07-27]. OJ L 201, pp. 107-134.

SKOWROŃSKA-BOCIAN, E. *Testament w prawie polskim*. 1. wyd. Warszawa: LexisNexis, 2004. 232 p. ISBN 83-7334-321-0.

SMS Not a Valid Last Will and Testament: Court. In: *The Local* [online]. 2014-02-24 [cit. 2014-04-28]. Available at: http://www.thelocal.se/20140224/sms-not-valid-last-will-and-testament-court/.

SNAIL, S. and N. HALL. Electronic Wills in South Africa. *Digital Evidence and Electronic Signature Law Review*. 2010, vol. 7, pp. 67-70. ISSN 2054-8508.

SPENCER, P. S. Of Sound Mind and Gigabytes – The Future of Digital Wills. *Intelligencer Journal*. 2013-07-08, p. 5. ISSN 0889-4140.

STELMACHOWSKI, A. *Wstęp do teorii prawa cywilnego*. 2. wyd. Warszawa: Państwowe Wydawnictwa Naukowe, 1984. 489 p. ISBN 83-01-05165-5.

Van ERP, S. New Developments in Succession Law. *Electronic Journal of Comparative Law* [online]. 2007, vol. 11, no. 3, pp. 1-20 [cit. 2014-04-28]. ISSN 1387-3091. Available at: http://www.ejcl.org/113/article113-5.pdf.

VARUL, P. The Impact of the Harmonisation of Private Law on the Reform of Civil Law in the New Member States. In: R. BROWNSWORD, H.-W. MICKLITZ, L. NIGLIA and S. WEATHERILL, eds. *The Foundations of European Private Law*. 1st ed. Oxford: Hart, 2011, pp. 285-292. ISBN 978-1-84946-065-1.

WÓJCIK, S. *Podstawy prawa cywilnego: Prawo spadkowe*. 1. wyd. Warszawa: LexisNexis, 2002. 153 p. ISBN 83-7334-097-1.

SOCIETAS ET IURISPRUDENTIA
2014, ročník II., číslo 2, s. 19-34
http://sei.iuridica.truni.sk
ISSN 1339-5467

ZAŁUCKI, M. Wpływ prawa unijnego na polskie prawo spadkowe. In: A. KUŚ and A. SZACHOŃ-PSZENNY, eds. *Wpływ acquis communautarie i acquis Schengen na prawo polskie – doświadczenia i perspektywy: Tom I – 10 lat Polski w Unii Europejskiej*. 1. wyd. Lublin: Wydawnictwo KUL, 2014, pp. 277-290. ISBN 978-83-7702-850-6.

ZAŁUCKI, M. Współczesne tendencje rozwoju dziedziczenia testamentowego – czyli nie tylko o potrzebie wprowadzenia wideotestamentu do nowego kodeksu cywilnego. *Annals of Juridical Sciences*. 2012, vol. 22, no. 2, pp. 23-52. ISSN 1507-7896.

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