Consequences of Crimes Against Life for the Order of Succession

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Abstract In addition to sanctions stipulated by criminal law, an offender who commits a crime against life could also be facing civil-law consequences, including the loss of succession rights. These consequences are justified upon the basic principle that no offender should be allowed to benefit or enrich themselves by their criminal actions. Slovenian legislation regulates two legal institutions that are intended to punish the offender for committing a criminal offence against the decedent or their relatives; the unworthiness to inherit and disinheritance. The realisation of these concepts is essentially the question of determining the limits of two conflicting rights, the right of the heir to inherit from the decedent and the decedent's freedom of testation. The article will examine the nature of both concepts, the requirements under which they may be applied, as well as the implications for the offender and for the order of succession.

Keywords:
crimes against the decedent, unworthiness to inherit, disinheritance, forced heirs, intestate succession, testate succession

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1 Introduction

Punishing offenders for committing a crime against life is primarily a task that falls under the rules of criminal and/or tort law. However, consistent with a general principle that the offender should not profit from their crime, most modern jurisdictions have also recognised the significance of sanctioning the offender with a loss of their rights in other areas, including the field of succession. Disregarding slight variations of legal rules and requirements, most legal systems have established measures preventing an offender who commits a crime against another person's life from inheriting this person's possessions. To that effect, statutes regulating succession in civil-law countries all provide for some version of the concept of the unworthiness to inherit or, in some instances, disinheritance,[1] while common-law countries achieved the same effects through the rules established by case law; namely, the forfeiture rules in the UK or Australia (see, for example, Peart, 2002 or Hemming, 2008) and the slayer rule in the US (see, for example, Cohen, 2012 or Fellows, 1986), established in the case of Riggs v Palmer (1889).[2] The latter became (arguably) the most (in)famous case of murdering for inheritance in legal literature, not only for the court's decision that a slayer should not inherit and thus profit from their crime but also for its central position in the Dworkin-Hart debate on the merits of legal positivism.[3]

In the Republic of Slovenia, the available statistics clearly show that most crimes against life happen within the family, with as many as one-third to one-half of all killings committed against family members (Voglar, 1997: 52; Groznik, 2007). The vast majority of family murders and killings are not premeditated and happen as a result of dysfunctional family relationships (involving jealousy, hate, revenge, long-term violence), whereas only rare cases can be attributed to the motive of self-

[1] For an up-to-date comparative overview of legislation in the EU Member States, see for example a collection of national reports on Family Property and Succession in EU Member States by Ruggeri, Kunda & Winkler, 2019.

[2] Riggs v Palmer was a case decided by the Court of Appeals of New York in 1889. Francis B. Palmer made a will in which he left most of his estate to his grandson, Elmer E. Palmer, a defendant in the case. A smaller part of his property was bequeathed to two daughters, Preston and Riggs, the plaintiffs. Because Francis Palmer remarried, Elmer Palmer was worried that his grandfather might change the will, so he murdered him with poison. There was no rule in a valid statute that would prevent Elmer Palmer from inheriting from his victim. The court of appeal finally (with a dissenting opinion) ruled that when enforcement of a statute renders an absurd or unreasonable result, a court may interpret the statute in a manner which displays the lawmakers' true intentions and may stray from the statute's plain text.

[3] The case Riggs v Palmer was used by a legal philosopher Ronald Dworkin to argue that legal positivists have no plausible theory of theoretical disagreement (i.e. disagreement about the relevant criterion of legal validity), and that in addition to legal rules (contained in legal acts), law also consists of legal principles. For Hart's arguments, see Hart, 1961; for Dworkin's argument, see Dworkin, 1986 and Dworkin, 1977.

interest (Voglar, 1997: 58). However, even though most crimes against life are not committed with a specific intention of obtaining inheritance from the victim, the very act of taking someone's life, regardless of the offender's motive, carries both criminal-law and civil-law consequences. In the field of succession law, Slovenian legislation provides for two legal institutions that may be applied to punish the offender who would take or attempt to take the life of decedent (or his or her close relatives) by depriving them of their share of an inheritance, which they would otherwise have the right to receive. The notion of disinheritance gives the victim or the affected person a possibility to willingly deprive the offender of their forced share, while the unworthiness to inherit is applied *ex officio*, mostly in cases where the decedent can no longer express their will (e.g., because their life was taken by the offender), but it is presumed that they would agree that the offender no longer deserves to inherit any part of their estate.

The most important consequences of both institutions, the unworthiness to inherit and disinheritance, are basically the same; the offender is excluded from inheriting, and the order of succession is adjusted accordingly. However, there are also significant differences relating to the justification and nature of each institution, the scope and contents of offences that would be considered a justified reason for applying these consequences, procedural requirements, etc., which will be addressed within the framework of this article.

2 Succession in the Republic of Slovenia

In the Republic of Slovenia, both the right to inheritance and to private property are constitutionally guaranteed under Article 33 of the Constitution of RS,[4] whereas the former is primarily realised through the provisions of the Inheritance Act (*Zakon o dedovanju*, hereinafter: ZD).[5] The ZD comprehensively regulates relationships arising from succession rights and limitations thereof, all elements of intestate and testate succession, probate proceedings and other procedural matters. The Inheritance of Agricultural Holdings Act (*Zakon o dedovanju kmetijskih gospodarstev*, hereinafter:

[4] Ustava Republike Slovenije – Constitution of the Republic of Slovenia, Official Gazette of the RS, No. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99 and 75/16 – UZ70a.

[5] Zakon o dedovanju (ZD) – Inheritance Act, Official Gazette of the SRS, No. 15/76, 23/78, Official Gazette of the RS, No. 13/94 – ZN, 40/94 – odl. US, 117/00 – odl. US, 67/01, 83/01 – OZ, 73/04 – ZN-C, 31/13 – odl. US and 63/16.

ZDKG)[6] is the most important of other special acts affecting the course of succession. The ZDKG regulates the specifics of inheriting from a decedent who owned a protected farm, with the intention of preserving both the physical and economic integrity of protected farms. Certain succession-related issues are addressed by other specific acts, regulating different legal areas (e.g. Denationalization Act, Obligations Code, Notariat Act, Inheritance and Gift Tax Act, Civil Procedure Act, Non-Contentious Civil Procedure Act, etc.).

The constitutional right to inheritance is reflected in the right of the decedent to dispose with their property freely, not only during their life but also after their death (the so-called freedom of testation), and in the right of the heir to acquire the decedent's possession *mortis causa* (Zupančič & Žnidaršič Skubic, 2009: 30). As explained in the text below, none of these rights are unlimited.

Based on ZD provisions, Slovenian authors (e.g., Zupančič, 2002: 100-101; Zupančič & Žnidaršič Skubic, 2009: 71; Šinkovec & Tratar, 2005: 341; Kraljić & Rijavec, 2014: 126) derived the following list of necessary conditions that have to be met for the succession to take place:

(1) The decedent[7] died.

The succession commences after the decedent's death (Article 123 of ZD), which means that as long as the person is still alive, the succession cannot take place.[8] Before the decedent's death, the heirs have no right to inherit, nor do they have any other rights related to their (future) inheritance. They may not use or dispose of any part of the expected estate, and any such contract which purports to do so would be considered invalid (Article 104 of ZD).

[6] Zakon o dedovanju kmetijskih gospodarstev (ZDKG) – Inheritance of Agricultural Holdings Act, Official Gazette of the RS, No. 70/95, 54/99 – odl. US and 30/13.

[7] A decedent is a person whose possession is passed on to other persons after his or her death. If the decedent made a will, the term »testator« is used to emphasise that fact.

[8] The exception is a person who was declared dead. A declaration of death has the same legal effects in terms of succession as the actual death (Article 123(2) of ZD). In such case, the succession is deemed to take place on the day when the declaration of death becomes final, unless the declaration itself stipulates some other date (Article 124 of ZD). For more, see Kraljić & Rijavec, 2014: 127-128.

The moment of death dictates the frame of reference for the most critical legal consequences of succession, including the existence of heirs, the volume and scope of the estate, the validity of the title to succession, deadlines, the jurisdiction, etc. (for more, see Zupančič & Žnidaršič Skubic, 2009: 71-73).

(2) The heir exists.

The heir may be any natural person or legal entity, but only if they were alive (or incorporated) at the time of the decedent's death. The only exception is a *nasciturus*, a child that had already been conceived (but not yet born) at the commencement of succession, who is considered an heir if born alive (Article 125 of ZD). By analogy, a legal entity may also inherit even if it had not yet been incorporated at the moment of the decedent's death, assuming it subsequently fulfils all conditions necessary for acquiring its status as a legal entity and further assuming the procedure for its creation was underway at the time of death (Zupančič, 2002: 101). Legal entities may only inherit on the basis of a will, as they are not included in the circle of potential heirs under provisions of ZD.

(3) The heir has a valid title to succession.

A title of succession denotes reasons that grant a certain person the right to inherit in a particular case (Šinkovec & Tratar, 2005: 57). Thus, a person may only inherit if they have a valid title to succession in a particular case. In the Republic of Slovenia, this title can either be a law, which determines the circle of persons who qualify as potential heirs according to their relation to the decedent (intestate succession), or a will, in which the decedent determines his or her own heirs (testate succession). The purpose of the will is to bypass the legal order of succession, which is why the testate succession has a priority and the intestate succession will only take place in those cases where no valid will exists or where the testate heir cannot or may not inherit (Zupančič & Žnidaršič Skubic, 2009: 74-75). Succession contracts, with which someone intended to leave their estate or a part thereof to another person, are explicitly prohibited by Slovenian legislation (Article 103 of ZD), as no one may irrevocably be bound by such decision regarding their property.

(4) The heir has a capacity to inherit and is not unworthy to inherit.

The capacity to inherit is a capacity to acquire the decedent's rights and obligations. Under Slovenian legislation, every natural person has the capacity to acquire inheritance on the basis of the law or will, whereas legal entities may only inherit through the testate succession (Pavlin, 2012: 371; Zupančič & Žnidaršič Skubic, 2009: 75). Foreign citizens enjoy the same rights of inheritance as citizens of the Republic of Slovenia, under the condition of reciprocity (Article 6 of ZD). Nevertheless, even a person with a capacity to inherit may not do so, if he or she is deemed unworthy to inherit (see below, point 3).

(5) The estate exists.

By definition, succession can only take place if the decedent left some property and/or rights that can be subject to succession (i.e. the estate). The estate can be active or passive (Šinkovec & Tratar, 2005: 341).

If the listed conditions are met, the heirs are considered to obtain the estate at the moment of the decedent's death, without delay (*ipso iure*). No special legal act is thus necessary for the acquisition of inheritance (e.g. a hereditary statement); however, heirs may waive their inheritance with an explicit statement, if they wish to do so, regardless of whether the title of succession is a law or a will (Zupančič, 2002: 104; Zupančič & Žnidaršič Skubic, 2009: 71; Šinkovec & Tratar, 2005: 356, 367).

3 The unworthiness to inherit

3.1 Crimes against life and the unworthiness to inherit

A person becomes unworthy to inherit if they commit an act or omission for which they no longer deserve to inherit, even though they would otherwise have the capacity to do so (Zupančič & Žnidaršič Skubic, 2009: 75). The institute of the unworthiness to inherit is a type of a civil-law sanction, which may be imposed against the offender in addition to, or independent of, a criminal sanction. Its purpose is not only to discourage individuals from trying to obtain the inheritance by any means necessary, but also to uphold the (presumed) will of the decedent. By stipulating the consequences of the unworthiness to inherit, the law presumes that in some instances, the decedent would not want a particular person to inherit his or

her estate, but is unable to express his or her opinion by disinheriting that person (e.g. the unworthy person took their life or destroyed the will after their death or without their knowledge) (Pavlin, 2012: 372; Constitutional Court of the RS, U-I-3/93).

Article 126 of ZD catalogs the situations when a person becomes unworthy to inherit:

- a person who intentionally took or attempted to take the decedent's life;
- a person who forced, threatened or deceived the testator into writing or revoking his or her will or a provision of the will or prevented him or her from doing so;
- a person who hid or destroyed the testator's will in an attempt to prevent the execution of a will, as well as a person who forged the testator's will;
- a person who gravely neglected his or her obligation to maintain the decedent, even though such obligation was imposed on him or her by law, as well as a person who refused to provide necessary assistance to the decedent.[9]

The situations contained in this list, are exhaustive and must be interpreted strictly and narrowly. Interpreting the last situation on this list has turned out to be the most problematic, as "to gravely neglect one's obligation" and "necessary assistance" are legal standards, the precise contents of which should be determined in each particular case.[10] While the courts are required to consider all subjective and objective circumstances of the case, relating to both the decedent and the heir, they must also take pains to ensure their scope of review follows a restrictive interpretation, without resorting to analogies (Pavlin, 2012: 373, 379; Higher Court in Ljubljana judgment I Cp 1901/2018).

[9] Until 1994, a person was also considered unworthy to inherit if they fled the country in order to avoid a conviction for a serious criminal offence, to avoid a mandatory military service or with the intention to perform hostile acts against their country, and have not yet returned at the moment of the decedent's death. The Constitutional Court of the Republic of Slovenia repealed this reason as unconstitutional with a reasoning that the state cannot protect state or public interest by intervening with the testator's right to dispose of his or her property after death. For more see, the Constitutional Court of the Republic of Slovenia decision No. U-I-3/93 of 16 June 1994.

[10] E.g., for how long did the heir failed to provide support or assistance, if the decedent had any other means of support at his or her disposal, if the decedent's life was at risk, if the heir committed a criminal offence by failing to provide support or assistance, if the heir was even able to provide support or assistance, etc. See, for example, the Supreme Court of the RS decisions II Ips 552/2004, II Ips 667/2006 and II Ips 418/2008; Higher Court in Ljubljana judgments III Cp 951/2009 and II Cp 1356/2019; Higher Court in Celje judgment Cp 699/97.

Tthe first reason listed under Article 126 of ZD for the unworthiness to inherit is an act of intentionally taking or attempting to take the decedent's life. The assessment of whether such act was indeed committed, and whether, consequently, the unworthy person should be prevented from inheriting, should be carried out in accordance with the provisions of Criminal Code (hereinafter: KZ-1)[11] and the following considerations should be taken into account. First, a person may only be deemed unworthy to inherit if they committed or attempted to commit a criminal offence of intentionally taking the decedent's life (mainly manslaughter and murder under Articles 115 and 116 of KZ-1, but also voluntary manslaughter under Article 117 of KZ-1) and not for any other criminal offence, regardless of how seriously it affected the decedent (Pavlin, 2012: 375). Second, the act has to be directed against the decedent and not some other person; if the offender took or attempted to take a life of the decedent's relatives, they may not be sanctioned by the unworthiness to inherit after the decedent (but might be unworthy to inherit after the affected relative, if they also have a title to succession in relation to that person). Third, the act must be committed with intent, which means that the offender had to be either aware of his or her act and wanted to commit such act (direct intent), or had to be aware that an unlawful consequence might result from his or her conduct but nevertheless allowed for such consequence to occur (conditional intent) (Article 25 of KZ-1; see also Bavcon et al., 2013: 278ff.). Acts committed through negligence or acts resulting in graver consequences than intended (e.g., grievous bodily harm resulting in death, Article 124 of KZ-1) do not qualify as reasons for a person to be considered unworthy to inherit (see also Bavcon, 2013: 303-305). Fourth, the attempt to take a life is sanctioned by the unworthiness to inherit, but the act committed in self-defence or out of (justifiable) necessity is not, as in both situations the necessary intent element is absent (Articles 22, 32, 34 of KZ-1; Pavlin, 2012: 374-375; for more, see also Bavcon, 2013: 232ff. and 240ff.). Fifth, it is not just the offender who is deemed unworthy to inherit, but also the accomplice and any other person who instigated the offence or assisted the offender (Zupančič & Žnidaršič Skubic, 2009: 75).

[11] Kazenski zakonik (KZ-1) – Criminal Code, Official Gazette of the RS, No. 50/12 – official consolidated text, 6/16 – popr., 54/15, 38/16, 27/17, 23/20 and 91/20.

A criminal conviction or a final judgment in criminal proceedings is not a condition precedent for the offender to be considered unworthy to inherit. If such judgment exists, the probate court is bound by the criminal court's decision, regardless of the outcome (either a conviction or acquittal). However, if no such judgment was issued by a criminal court, the probate court may either stay the proceedings until a competent criminal court issues its decision in criminal proceedings or, instead, address the question of the offender's criminal liability as a preliminary question. This option is especially relevant in cases where criminal proceedings are no longer possible (e.g. the offender died). The probate court may issue its own decision regarding the elements of a criminal offence and the potential heir's (un)worthiness to inherit, or stay the proceedings and refer the case to litigation if certain facts remained disputed (Pavlin, 2012: 384-385; Higher Court in Ljubljana decision I Cp 2561/2017; see also Ude et al., 2010: 134-135).

3.2 Consequences of the unworthiness to inherit for the order of succession

A person who is unworthy to inherit is prevented from acquiring inheritance through either the intestate or testate succession, as well as from obtaining anything else (e.g. a bequest or other benefits) on the basis of a will (Article 126(1) of ZD). The unworthiness to inherit thus affects all forms of universal or singular succession and all heirs (including forced heirs) (Pavlin, 2012: 373). All reasons for the unworthiness to inherit refer to the acts or omissions that target a particular decedent, which is why a person who is unworthy to inherit from one testator may still inherit from others. The unworthiness to inherit is, therefore, an instance of a relative incapacity to inherit (Zupančič & Žnidaršič Skubic, 2009: 78).

Furthermore, the unworthiness to inherit is personal in nature, meaning that only the person who is unworthy to inherit bears the consequences of his or her actions; that person's actions should not adversely affect his or her descendants. In the case of intestate succession, the descendants inherit their shares as if the unworthy person had died before the decedent (under the right of representation). In the case of testate succession, the descendants have no right of representation, which is why intestate heirs will inherit instead of the unworthy person, unless the testator stipulated otherwise in his or her will (Articles 79 (1) and 127(1) of ZD; Zupančič & Žnidaršič Skubic, 2009: 78; Kukovec, 2017: 11-12; Pavlin, 2012: 387; Supreme Court of the RS decision II Ips 301/2017). Therefore, regardless of the title to succession,

the unworthiness to inherit affects the order of succession in the same way as if the offending heir had died before the decedent, with all accompanying legal consequences.

The probate court considers the unworthiness to inherit of its own motion (*ex officio*), unless a person is allegedly unworthy to inherit for failing to provide support or necessary assistance (Article 127(3) of ZD; see also Higher Court in Ljubljana decision I Cp 4883/2010). In such a case, any person who has a legal interest for someone not to inherit may claim that they are unworthy to do so (Zupančič & Žnidaršič Skubic, 2009: 78). Generally, the reason for the unworthiness should exist before or at the moment of the decedent's death, but it may also occur later (e.g. a will is destroyed or forged after the testator's death). In such cases, the unworthy person is deemed never to have become an heir (with the *ex tunc* effect) (Pavlin, 2012: 383).

The unworthiness to inherit, therefore, occurs *ipso iure,* regardless of the decedent's will. However, the decedent can forgive actions which otherwise would result in the unworthiness to inherit, either explicitly or with a conclusive act (e.g., the decedent and the heir later renew a close friendship; the decedent leaves something to the heir in his or her will after being made aware of their actions). Following the (full) forgiveness, the heir is no longer deemed to be unworthy to inherit (Šinkovec & Tratar, 2005: 345, 347; Pavlin, 2012: 388). The option of forgiveness stems from the highest importance of the decedent's last will. Since one of the main reasons for the existence of this institute is a presumption that the decedent would not want such person to inherit from them, the possibility to forgive allows them to rectify the situation (where that is still possible) if this is not, in fact, the case.[12]

3 Disinheritance

3.1 Freedom of testation and its limitations

The testate succession in the Republic of Slovenia is governed by the principle of the freedom of testation, which means that the testator may decide, by drafting a will, the fate of their possessions after their death, regardless of the legal order of succession (Zupančič & Žnidaršič Skubic, 2009: 33). The testator is free to leave his

[12] Unlike ZD, ZDKG explicitly provides that the decedent may not forgive the unworthy person who failed to provide support or necessary assistance to the decedent, if the unworthy person is the decedent's spouse or partner, parent, child, adoptee or a descendant thereof (Articles 14 and 18 of ZDKG).

or her possessions, or part thereof, to any person or persons (and is not obliged to treat all descendants equally, as the law does), either as a hereditary share or as a bequest; determine a substitute heir in case the first heir dies before the testator or becomes unworthy to inherit; assigns a specific part of the estate to be used for a pre-determined purpose, etc. (Articles 78 to 82 of ZD). Above all, the freedom of testation may not be restricted by a contract. Any contract that purports to oblige someone to include or omit a particular provision in their will, or to revoke or not revoke a particular provision, is null and void (Article 105 of ZD). The same applies to all succession contracts that purports to oblige a party to leave their estate to another person, as well as to all contracts referring to a future estate or expected inheritance (Articles 103 and 104 of ZD). Thus, the law gives priority to the freedom of testation, before legal provisions determining the heirs and their shares (Zupančič & Žnidaršič Skubic, 2009: 65; see also Kraljić, 2011: 257ff.).

However, this does not mean that the freedom of testation is entirely unlimited. Certain restrictions can be found under general rules on legal transactions (e.g., the contents of the will may not violate constitutional provisions), whereas the ZD also includes limitations specifically intended to restrict the freedom of testation. Article 8 of ZD states that the testator may dispose of his estate in a manner and within limits set by law.

The most notable and significant of those limitations is the concept of a forced share. While testators may change the legal order of succession by making a will, they may not wholly disregard it. The concept of a forced share is designed to prevent testators from disposing of a part of their estate (the so-called reserved share) if certain persons exist who are assigned this share by law, regardless of the testator's wishes. The absolute forced heirs are comprised of the decedent's descendants, adoptees and their descendants, the decedent's parents and the decedent's spouse, a cohabiting partner or a same-sex partner. The relative forced heirs are the decedent's grandparents and siblings, who may only evoke their forced heir status if they are permanently unable to work and do not have sufficient means of maintenance. All these persons are considered forced heirs only if they would be entitled to inherit as intestate heirs in the specific case (Article 25 of ZD). The forced share of the decedent's descendants, adoptees and their descendants, the decedent's spouse or partner amounts to one-half, and the forced share of other forced heirs' amounts to one-third of what they would be entitled to inherit under the rules of intestate succession (Article 26 (2) of ZD). The decedent is free to dispose with the rest of

his or her estate as desired (the so-called available share). If the total value of the decedent's testamentary dispositions and gifts distributed during the decedent's life exceed the available share, the forced heirs may claim that they were deprived of their forced share and request the reduction of decedent's dispositions or even the return of gifts (for more on a forced share, see Pavlin, 2012; Zupančič & Žnidaršič Skubic, 2009: 92-103; Zupančič, 2002: 54-62; Kraljić & Rijavec, 2014: 168-171).

Some other restrictions refer to the prohibition of determining an heir to another heir (the so-called fideicommissary or indirect substitution; Article 93 (3) of ZD); a ban on simultaneous wills between two persons who would appoint each other as mutual heirs; or the conditions for the unworthiness to inherit or disinheritance (see also Zupančič & Žnidaršič Skubic, 2009: 65-66; Šinkovec & Tratar, 2005: 59-61). Furthermore, a testator has to satisfy certain legal requirements regarding the form of the will; a will is only valid if it was drafted in one of the forms determined by the ZD and under conditions stipulated by the ZD (e.g., as the will is a strictly personal legal transaction, representation is not allowed; the invalidity of the will due to force, threat, fraud or error, etc.; see Articles 59 and the following; see also Zupančič, 2002: 65-71).

3.2 Crimes against life and disinheritance

Even though the law does not generally permit the testator to dispose of the forced share freely, it does recognise certain exceptional circumstances under which even the concept of the forced share would be deemed unfair. The ZD recognises two situations in which a forced heir may be deprived of their forced share (or a part thereof); pursuant to conditions stipulated by the ZD, they may be disinherited (*exheredatio ob iusta causa*) or they might be deprived of their forced share in favour of their descendants (*exheredatio bona mente*).[13]

[13] The testator may deprive his or her descendant or adoptee who is deeply in debt or lives extravagantly of their forced share (in part or in full) in favour of their own descendants. This measure remains valid only if the person who is to be deprived of their forced share has a child or grandchild from a previously deceased child at the time of the testator's death, who are not yet of age or are of age but are incapable of earning their own living (Article 45 of ZD). The purpose of this provision is to protect financial interests of the forced heir's descendants in cases where the inheritance could be spent or seized by the forced heir's creditors. The confiscated forced share is divided among all descendants who fulfil legal requirements of age or incapacity to earn in accordance with the provisions regulating a forced share (for more, see Zupančič & Žnidaršič Skubic, 2009: 105-106; Šinkovec & Tratar, 2005: 193-196; Pavlin, 2012: 410-415; Kraljić & Rijavec, 2014: 171-172).

Disinheritance is a legal institute that allows the testator to deprive a forced heir of their forced share (or part thereof) and thus prevent them from inheriting a part of the estate despite their statutory right to inherit a forced share (Pavlin, 2012: 391). The purpose of disinheritance is to punish an heir who has a legal right to a forced share for their unacceptable behaviour towards the testator or his or her relatives, or for the objectionable way in which they live their life (Zupančič, 2002: 60; Zupančič & Žnidaršič Skubic, 2009: 103). Article 42 of ZD lists only three reasons[14] for which a testator may disinherit their forced heir:

- who committed a serious offence against the testator by violating some moral or legal obligation;
- who intentionally committed a serious criminal offence against the testator, his or her spouse, child, adoptee or parents;
- who lives an idle and dishonest life.

The list of possible reasons for disinheritance is exhaustive and does not allow for an expansive interpretation (Pavlin, 2012: 393). The contents of (unclear) legal standards, such as "a serious offence against a moral obligation" or "idle and dishonest life", are determined by the courts, taking into account both the objective and subjective circumstances of each particular case. Slovenian case law[15] has adopted a firm position that reasons for disinheritance should not be evaluated only as an expression of the testator's displeasure with the disinherited person's conduct; instead, the reasons should be of sufficient importance and severity to justify the punishment of the offending heir with deprivation of (even) the legally guaranteed forced share. Therefore, the offence against the testator should be considered "serious" also under the criteria of social morality, and not just under the criteria established in a relationship between the testator and the heir.

Unlike in the case of unworthiness to inherit, where a person is deemed unworthy to inherit only if they committed a criminal offence of intentionally taking or attempting to take the decedent's life, the second reason for disinheritance has a broader scope. First, a person may be disinherited not only if they committed a

[14] The fourth reason, a crime against political foundations and security of Yugoslavia, was abandoned with the amending act of 2001 (Zakon o spremembah in dopolnitvah zakona o dedovanju (ZD-B) - Act Amending the Inheritance Act, Official Gazette of the RS, No. 67/01).

[15] See, for example, the Supreme Court of the RS judgments II Ips 562/92 and II Ips 43/2008; Higher Court in Ljubljana judgments II Cp 1936/2016 and I Cp 1531/2018; Higher Court in Maribor judgment I Cp 343/2003.

criminal offence against the testator, but also against his or her "spouse, child, adoptee or parents". Even though the ZD does not explicitly state so, this provision includes cohabiting partners or same-sex partners (whose legal status is equal to that of a spouse), as well as adoptive parents (whose legal status is equal to that of biological parents). If the testator separated from or divorced his or her partner after disinheriting the person who committed a criminal offence against the partner, disinheritance remains valid, as long as the reason for disinheritance existed when the will was made (Pavlin, 2012: 397).

Moreover, disinheritance is possible not only in the case of crimes against life (although the latter are definitely included) but also against other serious criminal offences. Disinheritance is only justified if the criminal offence in question was committed intentionally; either with a direct intent (the offender had to be either aware of his or her act and wanted to commit such act), conditional intent (the offender had to be aware that an unlawful consequence might result from his or her conduct but nevertheless allowed for such consequence to occur), or even momentary intent (the intent without a motive, *dolus repentinus*) (Article 25 of KZ-1; see also Bavcon et al., 2013: 278ff.). Acts committed through negligence, in self-defence or out of (justifiable) necessity are not valid reasons for disinheritance (Articles 22, 32, 34 of KZ-1; Pavlin, 2012: 398; for more, see also Bavcon, 2013: 232ff. and 240ff.). The testator may disinherit the offender, but also the accomplice or any other person who instigated the offence or assisted the offender (Pavlin, 2012: 398).

A final criminal judgment convicting the offender is not necessary for disinheritance. If no such judgment was issued by a criminal court, the existence of a criminal offence may be determined by a civil court. However, if the person who is being disinherited had already been acquitted with a final judgment before a criminal court, it is clear that the criminal offence was not committed and the reason for disinheritance, therefore, does not exist (Pavlin, 2012: 398).

3.3 Consequences of disinheritance for the order of succession

Testator wishing to disinherit their heir must explicitly and clearly state this in their will. The will can take any form, as long as it is legally valid, and the testator had the capacity to make it (Pavlin, 2012: 400). The word "disinherit" does not need to be included if the testator's intention to achieve this consequence is expressed in an

unambiguous manner. Disinheritance with a conclusive act (e.g. a testator who would divide his or her estate without including one of the heirs) is not possible (Šinkovec & Tratar, 2005: 186; Higher Court in Koper judgment I Cp 1279/2004).

The reason for disinheritance does not need to be indicated (e.g., if the testator wished to keep it private), as long as the statement clearly expresses the testator's intent to disinherit a certain person and the existence of a legally determined reason for them to do so (Šinkovec & Tratar, 2005: 187). However, it is prudent to do so anyway, in case a dispute arises, and the reason has to be proven to exist. At least one of the above-listed legal reasons has to exist at the moment of disinheritance (i.e. when the testator made a will or another act on disinheritance that meets all formal requirements to be considered a will). If the heir is being disinherited for living an idle or dishonest life, this reason also has to exist at the moment of the testator's death (Article 43 of ZD). The testator may not use the act of disinheritance to exclude everyone from universal succession; it has to refer to a specific heir (Pavlin, 2012: 391; Higher Court in Ljubljana judgment I Cp 3051/2016).

Disinheritance can be complete or partial, and may also be revoked by an explicit statement, pursuant to the same requirements as the revocation of a will, regardless of whether the reason for disinheritance has ceased or not. This means that disinheritance remains valid until formally revoked, even if the reasons for disinheritance no longer exist or if the testator (informally) forgave the offender (Pavlin, 2012: 410).

The consequence of complete disinheritance is a complete loss of the right to inherit (and of a status of a forced heir); a disinherited person may not inherit on the basis of any title to succession. They may not receive any part of the estate, nor may they request the return or reduction of gifts given while the testator was still alive (Šinkovec & Tratar, 2005: 181; Pavlin, 2012: 407). In such a case, the rights of other persons who may inherit from the testator are determined as if the disinherited person had died before the testator (Article 44 of ZD). As the act of disinheritance represents a punishment for a certain offence, the consequences are of a strictly personal nature and do not affect the rights of other forced heirs (Pavlin, 2012: 409). This means that if the disinherited person has any descendants, they shall acquire his or her forced share on the basis of the right of representation; otherwise, the shares of other forced heirs shall increase correspondingly. If there are no forced heirs who would inherit under the provisions of ZD, the disinherited person's share is added

to the available share of the estate (Zupančič & Žnidaršič Skubic, 2009: 105; Šinkovec & Tratar, 2005: 190-194). Partial disinheritance results in a reduced forced share; a disinherited person does not lose the status of a forced heir, but their right to inherit is proportionally reduced to the extent of disinheritance (Zupančič & Žnidaršič Skubic, 2009: 104; Pavlin, 2012: 408).

The testator is not free to dispose of the part of the estate that would have been inherited by the disinherited forced heir, as that part of the estate remains reserved for other forced heirs who will inherit instead of the disinherited person (unless, of course, no such heir exists). These forced heirs will not acquire the part of the estate that would have been inherited by the disinherited person, as they have their own, personal legal right to inherit a part of the estate as forced heirs of the testator. Their forced share is calculated in relation to the entire estate and not in relation to the share of the disinherited person (Šinkovec & Tratar, 2005: 194).

If the disinherited forced heir disputes disinheritance (by claiming either that a legal reason for disinheritance does not exist or that disinheritance is not justified in a particular case), the probate court shall stay proceedings and refer the case to litigation. The person claiming disinheritance, i.e. a person who would then receive the disinherited person's share, must prove the existence of a valid reason, as well as the fact that grounds for disinheritance existed at the time of disinheritance (Zupančič & Žnidaršič Skubic, 2009: 104; Šinkovec & Tratar, 2005: 188; Higher Court in Celje decision Cp 759/2008).[16] When assessing the merits of disinheritance, the court may examine and establish facts related to the existence of any legally determined reasons, even those not mentioned by the testator, if the court can deduce that these are the actual reason for the testator's decision (Higher Court in Koper judgment I Cp 1279/2004; Higher Court in Ljubljana judgment I Cp 3051/2016; Šinkovec & Tratar, 2005: 187).

[16] This is an exception from a general rule contained in Article 213 (1) of ZD, according to which the court shall refer the party whose right is considered less likely to initiate civil or administrative proceedings. In the case of disinheritance, therefore, it is not necessary for the court to assess which party's right is less likely, as the burden of proof lies with the party claiming disinheritance. See Higher Court in Koper decision I Cp 63/2016 or Higher Court in Ljubljana decision I Cp 1357/2017. For more on this topic, see also Požun, 1996: 10-11.

4 Conclusions

In addition to sanctions stipulated by criminal law, an offender who commits a crime against life could also face civil-law consequences, including the loss of succession rights. These consequences are justified upon the basic principle that no offender should be allowed to benefit or enrich themselves by their criminal actions. Slovenian legislation provides two legal institutions that are intended to punish an offender for committing criminal offences against the decedent or their relatives; the unworthiness to inherit and the disinheritance. When considering these institutes, the law must balance two conflicting rights: on the one hand, the right of the heir to inherit from the decedent and on the other hand the freedom of testation, which allows the decedent to dispose with their property after their death as they wish.

A person who takes or attempts to take the decedent's life can be deemed unworthy to inherit. In such cases, the law presumes that the decedent would not want the offender to inherit his or her estate, but since they might not be able to express their will (as a murder/manslaughter victim), the unworthiness to inherit is considered *ex officio*. If the offender only attempted to take another person's life, they may be forgiven, but this is the extent to which the decedent's will is considered. In the case of disinheritance, however, the will of the decedent/testator is crucial. The intention must be clearly expressed in a form that meets all legal requirements for making a will. For that reason, an offender that took the decedent's life would not be disinherited, as the victim would be unable to express their will (but they might be deemed unworthy to inherit instead). On the other hand, disinheritance is possible not only in the case of (attempted) murder or manslaughter, but also in the case of other serious crimes, and not only in the case of crimes committed against the decedent, but also against their close relatives. Hypothetically, the offender who took another person's life could thus be disinherited by all their close relatives (spouses or partners, children or adoptees, parents or adoptive parents), while also being unworthy to inherit any part of the murdered decedent's estate. Despite some important differences between the two institutes that were highlighted in this article, the implications for the offender are basically the same. In both cases, the offender would be deprived (fully or partially) of the share that he or she would otherwise have the right to acquire, they would be excluded from the order of succession, and the estate would be divided instead as if the offender had died before the decedent.

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