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Between universal succession and continuation of a civil-law partnership – dogmatic commentary on Article 872 of the Polish Civil Code

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The article addresses the apparent conflict between inheritance law and Article 872 of the Polish Civil Code, which regulates the continuation of a civil-law partnership after the death of a partner with the participation of his or her heirs. The aim of the study is to demonstrate that this provision does not establish a separate title of singular succession mortis causa. Rather, it authorizes the partners of a civil-law partnership to decide on the manner in which the property claims of the deceased partner's heirs, arising from his or her participation in the partnership and already covered by universal succession, are to be satisfied in a way that ensures the continuity of the business activity conducted by the remaining partners. The starting point for the analysis is the separation of the civil-law partnership relation from the internal relations between co-heirs and the need to take into account the economic value of participation in the partnership in mutual settlements between co-heirs who join and do not join the partnership.

Introduction

As a rule, the death of even one partner in a civil-law partnership leads to the dissolution of the partnership as a whole. It is a consequence of the fact that the civil-law partnership model is based on the assumption of stable personal relationships between the partners, which gives particular importance to the issue of the immutability of its personal composition. For this reason, significant controversies arise in both legal scholarship and practice regarding the possibility of admitting a new partner to the partnership, as well as the admissibility of a partner's

withdrawal or the transfer of that partner's legal position to a third party[1]. However, there can be no doubt that the partners' assets allocated for the purposes of the partnership, which during the partnership's existence constitute joint ownership of all partners, are transformed into fractional shares of the estate due to the individual partners as a result of the dissolution of the partnership. In such a situation, the heirs of the deceased are entitled to claim the preparation of accounts and settlements of property rights related to the deceased partner's participation in the partnership in accordance with Article 871 CC[2]. These rights form part of the deceased's estate and are therefore subject to the general rules of inheritance. Such consequences strictly reflect the personal nature of the civil-law partnership relationship under Polish law and implement the principle resulting from Article 922 § 2 CC, according to which a relationship closely related to a person is not subject to succession *mortis causa*.

However, the legislator allows for the introduction of different consequences in the event of the death of a partner in a civil-law partnership, by way of the autonomy of will of all parties to that relationship. Pursuant to the statutory authorisation under Article 872 CC, the partners may stipulate in the agreement that the death of one of them will not result in the dissolution of the partnership, and that the rights and obligations of the deceased partner will be transferred to the heir specified in the agreement. The successors of the deceased partner will exercise both his or her personal and property rights and obligations within the partnership to the extent to which the deceased partner was entitled at the time of death. However, the provisions of the partnership agreement may not interfere with the appointment of heirs or the composition of the deceased's estate, which remain reserved for the provisions of *ius cogens* of inheritance law. Under Polish law, non-hereditary rights may not be included in the inheritance regime by virtue of an agreement[3], and agreements on inheritance from a living person are invalid. Due to the nature of the contractual provisions of a civil-law partnership and the scope of rights resulting directly from Article 872 CC, it should be assumed that the partners in a civil-law partnership may only shape the personal aspect of the partnership relationship, i.e. the composition of the partners and the continuity of the partnership after the death of one of them. However, they do not interfere with the statutory regulations concerning the universal succession of property rights related to participation in a civil-law partnership, which, as a consequence of the opening of succession, will become part of the estate (Article 922 § 1 CC).

1. The structure of a partner's participation in a civil-law partnership

The bundle of personal and property rights and obligations arising from participation in a civil-law partnership does not constitute a structurally separate, transferable "share" or "set of rights and obligations" within the meaning of commercial company law. In the case of a civil-law partnership, the partnership relationship is limited to relations between partners that are so strictly personal in nature that the model of such a partnership does not provide for personnel changes without the need to conclude a new agreement. At the same time, the cessation of existence of one of the partners results in the annihilation of their personal connections within the framework of the agreement.

On the other hand, in external legal relations, the partners in a civil-law partnership remain independent entities conducting business activity in their own name and on their own account, while the common economic purpose agreed upon in the partnership agreement merely justifies the use of their individual resources for the

[1] S. Grzybowski, *System Prawa Cywilnego*, vol. 3, part 2: *Prawo zobowiązań. Część szczegółowa*, Wrocław 1976, p. 805.

[2] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2025, item 1071, as amended).

[3] According to legal doctrine in this regard, see A. Kidyba, K. Kopaczyńska-Pieczniak, *Komentarz do art. 872*, [in:] *Kodeks cywilny. Komentarz*, vol. 3: *Zobowiązania. Część szczególna*, A. Kidyba (Ed.), Warszawa 2014.

implementation of a joint venture. Admittedly, a joint ownership arises between the partners with regard to that part of their assets which is related to the implementation of the partnership agreement, lasting until the civil-law partnership is dissolved, but this does not mean that a separate asset pool belonging to a separate entity (the partnership) is created.

Upon the dissolution of a civil-law partnership, there is a fundamental change in the legal status of the assets accumulated within the partnership. The joint co-ownership that previously covered the assets intended for the joint venture is transformed into fractional co-ownership. This means that the previously uniform, indivisible joint rights of the partners, inextricably linked to the duration of the contractual relationship, are converted into fractional ownership rights, as specified in the partnership agreement or resulting from dispositive provisions of the Polish Civil Code. Each of the former partners obtains their fractional share of ownership of this property, which may be independently traded, encumbered and, finally, subject to succession *mortis causa*.

It follows that the dissolution of a civil-law partnership as a result of the death of a partner leads to the separation of the previously unified bundle of personal and property rights and obligations enjoyed by each partner within the partnership. The loss of partner status entails the extinction of all rights and obligations arising from this special personal relationship between the parties to the partnership agreement (related to the person of the partner, their status as a contractor, the performance of non-monetary services, loyalty, cooperation in the conduct of business). However, the fate of the property component, which is not destroyed (e.g. participation in joint ownership and profits, bearing losses), is different. After the death of a partner and, consequently, the dissolution of a civil-law partnership, the deceased's share in fractional co-ownership begins to function solely as part of his personal property and not as a component of a unified bundle of rights and obligations related to participation in the partnership.

The problem arises when the partners choose to make use of the possibility, provided for in Article 872 CC, of preserving the contractual relationship of a civil-law partnership by allowing the heirs of a deceased partner to participate in it. They may do so by including a clause in the partnership agreement stipulating that, upon the death of any partner, the partnership shall continue with the participation of that partner's heirs. Importantly, Article 872 CC expressly provides that, where such a clause has been included in the partnership agreement, the heirs of the deceased partner enter the partnership in place of the deceased by operation of law. The succession of the heirs to the deceased partner's rights and obligations within the partnership is therefore not left to the discretion of the living partners and does depend on any subsequent decision on their part[4]. Significantly, the applicable regulation does not make this effect dependent on the express prior consent of the heirs themselves, which gives rise to certain interpretative difficulties on the basis of the general principles of inheritance law and law of obligations, in particular in the context of the limits of automatic legal succession in relationships with such a strong personal component as it is in a civil-law partnership.

The most important consequence of the automatic entry of the deceased partner's heirs into the partnership is continuation of the partnership itself. The contractual relationship under this agreement is maintained, albeit with the substitution of the deceased partner. As a result, the joint property of the partners is not converted into fractional co-ownership, so the heirs of the deceased partner simultaneously become subjects of contractual rights and obligations with a clear personal character arising from the partnership agreement, and co-holders of, contributed to and used for the purposes of a civil-law partnership, property rights under joint (undivided) co-ownership – essentially acting as co-owners of this property within the limits set by the structure of joint ownership.

[4] See J. Gudowski, [in:] *Komentarz do kodeksu cywilnego. Księga trzecia. Zobowiązania*, G. Bieniek (Ed.), vol. 2, Warszawa 2011, p. 903; A. Kidyba, K. Kopaczyńska-Pieczniak, *op. cit*.

By analogy to the solutions developed in relation to a general partnership, it should be assumed that a civil-law partnership agreement may provide for the entry into the partnership of one, several, or all the heirs of a deceased partner. It may also specify which co-heirs are excluded from participation in the partnership or make admission to the partnership contingent upon the fulfilment of certain conditions (e.g. possession of specific professional qualifications or conducting a specific business activity). Since, in both a general partnership and a civil-law partnership, the legislator formulates the partners' right to determine the future existence of the partnership after the death of one of them in a substantially similar manner, there are no grounds for limiting the scope of contractual freedom in this respect in a civil-law partnership more narrowly than in a general partnership[5].

However, the admissibility of such a modification of the civil-law partnership's composition on the basis of contractual provisions leads to the emergence of a problem of a certain, perhaps apparent, conflict between inheritance law regulations, defining the rules of succession *mortis causa* in general, and specific provisions governing the structure of a civil-law partnership after the death of one of its partners.

2. Regulatory nature of the contractual provision contained in Article 872 CC

Article 872 CC occupies a clearly exceptional position in the structure of contract law. It should be assumed that its specificity does not lie in establishing a different title to acquire rights after the death of a partner, which would be competitive with inheritance law, but in granting all partners in a civil-law partnership jointly the right to maintain the civil-law partnership relationship. At the same time, it gives the partners the competence to determine the manner in which the heirs of one of them – appointed to inherit in accordance with the general principles of inheritance law, statutory or testamentary – will be able to exercise the property rights included in the inheritance and related to the testator's participation in the civil-law partnership. This is evidenced by the *expressis verbis* content of Article 872 sentence 1 CC: "It may be stipulated that the heirs of a partner shall enter the partnership in his place," which means that this provision does not interfere with the inheritance process itself, which retains its fundamental significance, nor does it modify the statutory rules determining the circle of persons entitled to inherit[6].

In Article 872 CC, the legislator grants the partners the power, already at the stage of drafting the terms of civil-law partnership agreements, to decide the further exercise of the personal rights and obligations arising therefrom, as well as the manner of exercising property rights, both previously exercised by the deceased partner[7].

It should be noted that regardless of the solution adopted in the partnership agreement, the

[5] Cf. J. Lic, *Następstwo prawne po śmierci wspólnika osobowej spółki handlowej*, "Przegląd Prawa Handlowego" 2024, no. 9, pp. 11–26.

[6] The heirs join the partnership after the death of a partner not on the basis of inheriting his rights and obligations in the partnership, but as a result of a contractual reservation that modifies the general rule of expiry of the contractual relationship upon the death of a designated person – instead of terminating, this relationship is maintained, with the participation of persons from the circle of heirs – designated on the basis of general inheritance rules. In other words, the source of the heirs' participation in the partnership is the provision of the partnership agreement providing for a specific effect of the death of a partner, and not the succession *mortis causa* itself. See S. Grzybowski, *op. cit.*, p. 830. For a broader discussion of the legal consequences of a partner's death in a civil-law partnership, see P. Zakrzewski, *Udział spółkowy wspólnika spółki cywilnej jako przedmiot następstwa prawnego mortis causa pod tytułem szczególnym*, "Przegląd Prawa Handlowego" 2013, no. 5, pp. 17–25; A. Kidyba, K. Kopaczyńska-Piecznia k, *op. cit*.

[7] M. Stępień argues that Article 872 CC "regulates exclusively the manner in which the heirs obtain formal standing to exercise a partner's rights and obligations in a civil-law partnership" (M. Stępień, *Zarząd sukcesyjny a prawa spadkobierców zmarłego wspólnika do wejścia do spółki cywilnej*, "Przegląd Prawniczy TBSP UJ" 2021, no. 1, p. 64). However, P. Zakrzewski (*op. cit.*, pp. 17–25) treats the "entry" referred to in the first sentence of Article 872 CC as a case of singular *mortis causa* succession.

value of property rights related to the deceased partner's participation in the joint venture must be reflected in his estate (Article 922 CC). It has previously been argued in the literature that a partner's interest in a partnership is not inheritable in the strict sense, although at the same time it is not entirely excluded from the estate, as it forms part of the estate as an asset of a specific nature[8].

However, the wording of Article 872 CC allows the partners to decide whether the heirs will be able to exercise their property claim to that part of the estate which results from the deceased partner's participation in the company, exclusively by seeking settlement and payment of the corresponding value (according to the rules applicable to the outgoing partner, referred to in Article 871 CC, in the event of the dissolution of the partnership), or by joining the maintained partnership in place of the deceased partner and continuing to exercise those rights on the terms applicable to the existing partner (in the event of applying Article 872 CC and including an appropriate provision in the civil – law partnership agreement)[9].

The rejection of the concept that Article 872 CC establishes a new title to singular succession *mortis causa* is supported by the fact that its application does not result in the exclusion of the subject matter of the rights covered by it from the regime of universal succession *mortis causa*, as is the case with other instances of singular succession known to the law, such as a disposition in the event of death in a life insurance contract (Article 831 § 1 CC) or the designation of a person entitled to withdraw funds from a bank account after the death of its owner (Article 56 of the Polish Banking Law[10]).

In the case of singular succession *mortis causa* understood in this way, certain benefits do not enter the estate at all and are not subject to division among the heirs. The legal consequences of these rights have a different legal basis and are vested in the indicated entities regardless of whether they are heirs. On the other hand, the property rights resulting from the deceased partner's participation in a civil-law partnership are included in the deceased's estate in their entirety and may be either accepted or rejected together with the entire estate (if the estate is rejected, the persons appointed to inherit do not acquire the status of heirs, and therefore they are not entitled to property claims for the preparation of accounts and settlement of the partnership's assets, nor are they entitled to join the partnership in place of the deceased partner), which in itself determines that no separate singular succession *mortis causa* in the material sense is established here. The subject matter of Article 872 CC is not the acquisition of these property rights *per se* – this takes place in accordance with the general principles of inheritance law – but the determination of the manner in which they are exercised by the heirs who have already acquired the status of universal successors.

Furthermore, accepting the assumption that the partners in a civil-law partnership jointly decide with the testator on the disposal of his or her estate in the event of death would be in clear conflict with Article 1047 CC, which stipulates that an agreement concerning the succession to the estate of a living person is invalid, as well

[8] J. Kremis, *Komentarz do art. 922*, [in:] *Kodeks cywilny*, vol. 2: *Komentarz do artykułów 535–1088*, E. Gniewek (Ed.), Warszawa 2004, pp. 773–775; I. Hasińska, *Trwałość składu osobowego spółki cywilnej a wejście do spółki spadkobierców zmarłego wspólnika*, "Białostockie Studia Prawnicze" 2017, vol. 22(4), DOI: https://doi.org/10.15290/bsp.2017.22.04.09, p. 130.

[9] See the solution adopted in the case of a general partnership, according to which the accession of the heirs of a deceased partner to the partnership pursuant to Article 60 of the Polish Act of 15 September 2000 – Commercial Companies Code (consolidated text, Journal of Laws 2024, item 18, as amended) means the satisfaction of that part of the joint claim for repayment of the share which is attributable to the acceding heirs. See J. Lic, *op. cit.*, p. 17. Cf. also thesis 1 of the judgment of the Voivodship Administrative Court in Szczecin of 25 October 2007, I SA/Sz 59/07 (LEX no. 401605), emphasizing that the accession of one heir in place of the deceased partner neither infringes the inheritance rights of the remaining heirs nor removes the deceased partner's partnership interest from the estate.

[10] Act of 29 August 1997 – Banking Law (consolidated text, Journal of Laws 2026, item 38, as amended).

as with the principle of testamentary freedom of testamentary disposition, as it would constitute an unacceptable interference by the testator's contractual partners with his or her autonomy in shaping the order of succession. Adopting the concept of singular succession *mortis causa* in this case would mean that the testator would have to either waive his or her freedom of testamentary disposition with regard to this part of his property in advance, in agreement with the other partners, or exclude it from the estate, thereby reducing his inheritance. Such a construction would be functionally similar to dispositions made during one's lifetime in favour of future heirs, e.g. gifts subsequently included in the estate, which confirms that the interpretation of Article 872 CC as the basis for singular succession *mortis causa* is dogmatically indefensible, especially in cases where the value of property rights associated with the testator's participation in the civil-law partnership is almost equal to the value of entire estate or constitutes a significant part of it. It should be borne in mind that the transfer of rights *mortis causa* must, by its nature, take into account, in particular, the protection of the interests of the deceased partner and heirs[11].

What is particularly significant in this context is that the legislator explicitly provides that a civil-law partnership is continued by replacing the deceased partner with his or her heirs (the title of inheritance is irrelevant). It should be assumed that this does not refer to an abstract group of potential successors, but rather to those heirs who have actually succeeded to the estate, that is, those who have neither rejected the inheritance nor been declared unworthy of succession, nor excluded from inheritance for other reasons provided for under inheritance law. Only in relation to these entities can one speak of an actual entry into the legal position of the deceased partner, both in terms of general inheritance and within the continued civil-law partnership relationship pursuant to Article 872 CC. Therefore, inheritance must be at least a simultaneous event (if not a prior event) to the establishment of an obligatory relationship with the heir replacing the deceased partner.

3. The impact of property relations between partners in a continued civil-law partnership on internal settlements between co-heirs

It should be noted that the group of persons designated in the partnership agreement as entitled to join the partnership upon the death of one of the partners need not coincide with the group of that partner's heirs. Consequently, two categories of heirs may be distinguished: first, those who will enter the partnership in place of the deceased partner, and second, those who, despite having the status of heirs, will not acquire the status of a partner.

The term "heirs" merely defines the scope of persons who may join the partnership on the basis of a relevant contractual provision, without thereby determining that all persons entitled to inherit in a given case will acquire the status of partners. As the literature indicates, such a structure remains consistent with the essence of the relationship's characteristic of partnerships, in which not only the title of legal succession is relevant, but also the personal element of the bond connecting the partners. For this reason, the remaining partners may be interested in admitting to the partnership only specific persons belonging to the circle of heirs, and not every person who has acquired the estate of the deceased partner[12]. An analysis of the position of heirs entering a civil-law partnership in place of a deceased partner requires – as in the case of heirs not entering the partnership – a consistent distinction between two levels: the partnership relationship itself and the internal relations among co-heirs. Only by taking this distinction into account can the essence of the structure provided for in Article 872 CC be properly understood.

Within the framework of a civil-law partnership, heirs who enter the partnership pursuant to Article 872 CC and the relevant provisions of the agreement obtain the status of partners in place of

[11] J. Lic, *op. cit.*, p. 16.

[12] P. Zakrzewski, *op. cit.*, p. 18 ff.

the deceased partner. Where several heirs enter the partnership, the existing scope of rights and obligations of the deceased partner becomes the common basis for exercising the status of a partner. They gain a dual position: partners in a civil-law partnership and co-heirs of the deceased partner under a general title. Co-heirs not designated in the partnership agreement, or expressly excluded in its content, do not enter the partnership pursuant to Article 872 CC and remain outside the scope of this legal relationship, although it should be assumed that they retain their property rights under inheritance law. The distinction between heirs who enter and those who do not enter the civil-law partnership in place of the deceased partner has certain consequences at the stage of the division of deceased's estate.

Since, where a civil-law partnership is continued pursuant to Article 872 CC, it is not dissolved, the partners' joint property is not transformed into fractional co-ownership. Consequently, the joint assets are not divided into fractional shares that could become part of the individual partners' personal property, including the estate of the deceased partner. It should therefore be assumed that the co-ownership of the property remaining in joint ownership – as structurally and functionally closely linked to participation in the partnership and existing exclusively between the current partners – does not directly become part of the deceased's estate.

The joint ownership of assets used to achieve the company's objectives precludes their division, but does not prevent the economic value of a partner's share in such joint property from being determined. This value may be determined by reference to the hypothetical value of the fractional share in the joint assets that would have fallen to the deceased partner had the partnership been dissolved and the joint ownership converted into fractional co-ownership. This value is awarded to the heirs who join the company; they obtain the opportunity to further realise this asset potential within the framework of the continued contractual relationship. If only some of the heirs are included in the civil-law partnership structure, the economic value of participation in that partnership should be taken into account in the division of the estate, either by crediting it to the heirs who have joined the partnership or by imposing on them an obligation to make additional payments or repayments to the co-heirs who have not joined the partnership, so as to restore the balance of value corresponding to the shares in the deceased's estate.

A comparison of these two aspects reveals a clear symmetry between the situation of heirs who are partners and that of heirs who do not enter the continued civil-law partnership. Although the latter are excluded from the personal status of a partner, they retain a share in the economic value of the rights associated with participation in the partnership and may demand appropriate settlements. Heirs who enter the partnership, on the other hand, obtain the status of partners *vis-à-vis* the other partners, but remain only part of the group of entities entitled to the value of that share in the deceased's estate[13].

4. Decision-making autonomy of the heir of a deceased partner with regard to participation in a civil-law partnership

It should be emphasised that in Article 872 CC, the legislator does not create a subjec-

[13] Analogously to a general partnership, the assumption of a partnership interest by any of the heirs on the basis of a contractual provision (Article 60 of the Polish Commercial Companies Code) does not deprive the remaining heirs of their entitlements to the deceased partner's proprietary share, nor of the corresponding claim for payment of the value of that share and for the return of items contributed to the partnership for use only. However, whereas in the case of a personal commercial partnership endowed with separate legal subjectivity these claims may be asserted by the heirs who did not accede to the partnership directly against the partnership itself, and the interest assumed by the acceding heirs should be reduced by the amounts paid out, in a civil-law partnership – which by its very nature is identical with the totality of its partners – these matters remain exclusively within the sphere of internal settlements between the acceding and non-acceding heirs and are irrelevant from the perspective of the continued existence of the partnership relationship. Cf. the analysis of Article 60 of the Polish Commercial Companies Code in J. Lic, *op. cit.*, p. 17.

tive right for heirs to replace a deceased partner, but establishes a mechanism for their automatic entry into the partnership upon the death of a partner by virtue of the law itself (*ex lege*). This raises a natural question: what instruments are available to an heir who, although appointed to inherit, does not want to be a partner? Two basic solutions can be distinguished here, with different weightings.

First, the heir may reject the inheritance (Article 1012 ff. CC) and thus not obtain the status of heir at all. However, the consequence is not only that they will not be able to enter the partnership pursuant to Article 872 CC, but also that they will be definitively deprived of all property rights to the deceased's estate, including those completely unrelated to the civil-law partnership. This measure is therefore radical and, in many factual configurations, may be objectively prejudicial to the heir – rejection of the inheritance due to unwillingness to participate in the partnership may mean giving up significant assets, which is difficult to consider a rational solution from the perspective of inheritance protection.

The second option is to accept the inheritance, i.e. to enter into the general regime of universal succession, join the civil-law partnership pursuant to Article 872 CC, and subsequently make use of the remedies provided for in the Polish Civil Code for a partner wishing to withdraw from the partnership. In this respect, Article 869 CC, which regulates the termination of a partner's share, is of central importance. Pursuant to § 1 thereof, if the partnership has been concluded for an indefinite period, a partner may withdraw from it by giving three months' notice at the end of the financial year. With regard to partnerships concluded for a definite period, the key provision is § 2, which provides that, for important reasons, a partner may terminate their share without notice even if the partnership has been concluded for a definite period, and any contractual provision to the contrary is invalid.

This provision essentially resolves the problem of the suggested imprisonment of an heir in a fixed-term partnership. Since the legislator explicitly allows for termination of the agreement for important reasons also in a fixed-term partnership, and at the same time invalidates any contractual provision excluding this right, there are no grounds to claim that an heir who has entered the civil-law partnership is completely deprived of the possibility of leaving. In practice, it is not difficult to imagine that the very fact of joining a civil-law partnership against the heir's will, with the necessity to bear economic risk, liability for obligations or to conduct activities for which he has neither preparation nor intention, may, in specific circumstances, constitute an important reason within the meaning of Article 869 § 2 CC. This assessment will always be casuistic, but it is difficult to deny that the *ratio legis* of this provision is precisely to prevent partners from being permanently bound by a relationship that has become unacceptable to them[14].

In light of the above comments, it is worth adding that a civil-law partnership agreement may – and should – make the entry of an heir into the partnership conditional upon their express consent. Since legal doctrine accepts the admissibility of including in a partnership agreement various conditions for the entry of an heir, such as possessing specific professional qualifications, conducting a specified business activity or meeting other personal criteria, it is all the more acceptable to introduce a condition in the form of the heir submitting a declaration of intent to join the partnership. Such a clause falls within the limits of freedom of contract set out in Article 353^1 CC and does not generate a conflict with Article 872 CC, which, when interpreted in conjunction with such contractual provisions, only creates a possibility, not an obligation, for heirs to continue their participation.

[14] A certain protective function in the event of a partner being trapped in a partnership based on a strictly personal relationship founded on trust may be performed by Article 58 CC in conjunction with Article 353^1 CC, which provides for the invalidity of provisions contrary to the law or the nature of the legal relationship. This does not mean invalidating the entire partnership agreement, but rather eliminating provisions that exceed the permissible scope of freedom of contract.

Conclusion

The analysis leads to the conclusion that Article 872 CC should not be interpreted as a separate basis for singular succession *mortis causa*. Rather, it serves solely to regulate, by contract, the exercise of property rights already subject to universal succession. This solution makes it possible to preserve the continuity of the partnership to be maintained without affecting either the structure of inheritance or the principle of freedom of testamentary disposition. It is of key importance in this context to draw a clear distinction between the sphere of the civil-law partnership relationship and the relations among the co-heirs, while at the same time taking into account – within the distribution of the deceased's estate – the economic value of participation in the partnership, which should be duly reflected in the settlement arrangements. On the other hand, from the perspective of protecting individual autonomy, it is necessary to suggest that civil-law partnership agreements be drafted in such a way that an heir's entry into the place of the deceased partner is made conditional upon their express consent, treating Article 872 CC as conferring a right to continue participation rather than imposing an obligation to become permanently bound to another person's business venture.

Abstrakt

Między sukcesją uniwersalną a kontynuacją spółki cywilnej – glosa dogmatyczna do art. 872 polskiego Kodeksu cywilnego

Słowa kluczowe: *klauzula kontynuacyjna; dziedziczenie (mortis causa) praw wspólnika w spółce cywilnej; dziedziczenie w spółce cywilnej; kontynuacja działalności gospodarczej; śmierć wspólnika spółki cywilnej; roszczenia majątkowe spadkobierców wspólnika spółki cywilnej*

W artykule podjęto problem pozornej kolizji pomiędzy prawem spadkowym a przepisem art. 872 Kodeksu cywilnego, który reguluje kwestię kontynuacji spółki cywilnej po śmierci wspólnika z udziałem jego spadkobierców. Celem opracowania jest wykazanie, że przepis ten nie ustanawia odrębnego tytułu sukcesji syngularnej mortis causa, lecz upoważnia wspólników spółki cywilnej do zadecydowania o sposobie realizacji roszczeń majątkowych spadkobierców zmarłego wspólnika związanych z jego uczestnictwem w spółce – które zostały już objęte sukcesją uniwersalną – w sposób umożliwiający zachowanie ciągłości działalności gospodarczej prowadzonej przez dotychczasowych wspólników. Punktem wyjścia do analizy jest oddzielenie płaszczyzny stosunku spółki cywilnej od płaszczyzny stosunków wewnętrznych pomiędzy współspadkobiercami oraz konieczność uwzględnienia ekonomicznej wartości uczestnictwa w spółce we wzajemnych rozliczeniach między współspadkobiercami wstępującymi i niewstępującymi do spółki.

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Case law

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