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THE ENTITLEMENT TO THE RESERVED PORTION, THEORETICAL AND PRACTICAL PROBLEMS OF THE DISINHERITANCE

Theses of the PhD dissertation

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I. The subject, the aim and the structure of the dissertation

Under the freedom of testamentary disposition, the testator is free to decide whether or not he wishes to dispose of his assets on his death, and how he wishes to fill them out within the framework of the law, thus overriding the legal succession order. However, the legislator has undoubtedly placed a limit on the freedom of testamentary disposition by introducing the concept of the reserved portion: the fundamental aim of the legal systems is to protect the property interests of the testator's closest relatives by granting them a share in the estate, even against the testator's wishes. The second restriction on the freedom of testamentary disposition is closely linked to the first, since the only way in which the testator can unilaterally extinguish the claim to a share of the estate is by exercising the right of disinheritance, which is also limited by the law, which sets out a list of reasons for disinheritance. Disinheritance is regulated as a special form of exclusion from the succession within the field of succession law. Disinheritance differs from other forms of exclusion from the succession in that in this case the legislator leaves it to the testator alone to decide whether he wishes to exclude his heirs completely from the succession. Disinheritance is a special reason for exclusion from the succession which may also affect the reserved portion: the testator may, in his testamentary disposition, exclude from the reserved portion those who are entitled to it under the law, if the reasons listed in the Civil Code are present.

The present thesis provides an overview of the development of the legal instruments of the reserved portion and disinheritance from their regulatory emergence to the present day: in the case of the former, we have focused on the aspects of the former relating to the freedom of testamentary disposition and the protection of the persons entitled to the reserved portion, while in the case of disinheritance we have focused on the way in which the legislator has defined the scope of the conduct underlying the legal instrument and the reasons for this. We have sought to examine the interpretations that have emerged in the literature over time and, where available, the products of practical application.

In order to outline the disinheritance system of a given period, it is essential to first clarify the legal succession regime and the range of persons entitled to the reserved part and the extent of their shares, as these are the basis of the disinheritance legal institution. The system of reasons for disinheritance is a highly practical institution, and it has always been up to the courts to give it real substance. In the case of several reasons for disinheritance, we can say that their actual meaning does not necessarily emerge from a reading of the legal text, but we shall see that the interpretation of the text, which often seems clear, has caused and continues to cause many difficulties in the application of the law. In our view, the real content of the disinheritance attitudes can be understood in the light of the positions that have been taken in the process of its creation - proposals, motions,

studies - and after studying the products of the application of the law, and it is only with the knowledge of these that it is possible to give meaning to the text of the law. The thesis is therefore a thorough legal-historical analysis, because we have considered it essential to trace the codification history of the concepts of the reserved portion and the disinheritance, to see how they have changed and how their meaning has evolved in the legislation. We will see how the codifiers, contemporary legal writers and practitioners have viewed the institution of the reserved portion and the real content of the reasons for disinheritance, which are important points of reference for understanding their real meaning, the reasons for their existence in the legislation and, consequently, their best possible practical application.

In contrast to other European states, Hungary only adopted a civil code in 1959, and the rules of legal succession, the legal institutions of the reserved portion and disinheritance, and the background of their development are therefore characterised by a long but interesting and eventful journey, which is worth travelling, because we can learn about remarkable legal theoretical positions, ideas and codification solutions in connection with the legal institutions analysed, which put them in a different light. Although the Hungarian law of succession did not recognise the institution of the reserved portion until 1848, we considered it important to examine the development of the freedom of testamentary disposition in the law of succession prior to that time, since King St. Stephen, in addition to introducing the legal order of succession that is still in force today, had already made testamentary disposition possible. It will be seen how the introduction of the possibility of testamentary succession in the Árpád era shaped the relationship between individual autonomy and the interests of the state, and how the entail system had a lasting impact on the development of Hungarian inheritance law.

In the thesis, we examined the German, Austrian and French legal systems, following the same principles as in the case of the Hungarian legislation. We have outlined the rules of the foreign legal systems analysed concerning statutory succession and testamentary disposition from the beginning to the present day, the emergence of the legal institutions of unworthiness and disinheriting, and we have tried to find and present as many legal literature positions as possible, as well as occasional practical examples.

From the text of the law - not only from the Hungarian Civil Code, but also from the private law codes analysed - we can deduce a practical definition of disinheritance in the strict sense. We know, therefore, what disinheritance means according to the law, which is the consequence of disinheritance: the persons entitled to the reserved portion receives nothing of the share of the estate provided by law, by virtue of the will of the testator. The legal concept of disinheritance may also be approached from another, theoretical angle: it is clearly a set of conduct directed against the person of the testator, which will have property consequences on the part of the testator and not

personal consequences, and which is a legal consequence which depends solely on the decision and discretion of the testator.

The aim of the thesis is to present the theoretical and practical problems and difficulties of the interpretation and application of the disinheriting attitudes, and to highlight the strengths and negative elements of the analysed regulation, sometimes offering new or different proposals for solutions.

What are the problems of the legal instrument of disinheritance that deserve particular attention?

First and foremost, it is worth emphasising and examining the fact that there are unspecified disinheriting attitudes, which are difficult to define because of their vagueness, or whose meaning may vary from case to case, or whose content is expanded or modified from time to time. They have been present in the legislation since the introduction of the legal instrument of disinheritance. However, in addition to the former, we will also see how some disinheritance provisions that seem clear at first reading become obscure when we look more closely at their substance: the elements of the legislation and how they are interpreted in practice. An attempt has also been made in the thesis to show that, in addition to the above, there may be other human behaviours which cannot be included in the taxative rules, but which are reprehensible attitudes which, not only in the view of the disinheriting testator, but even in the common perception, make the heir deserving of exclusion from the succession.

As a result, the main theoretical and practical problem of disinheritance may be that, on the one hand, the legislator's failure to establish a conceptual framework or to provide delimitations for the content of the abstract reasons for disinheritance - adding that some sets of disinheriting attitudes cannot be precisely defined due to their specific nature - means that the provisions in question cannot be interpreted uniformly, which is the primary condition for the practical application of disinheritance. Another theoretical and practical problem is that many reasons for disinheritance can be interpreted in different ways. In the case of Hungary, the elusive reasons for disinheritance have mainly found their way into the current Civil Code (Act V of 2013 on the Civil Code, hereinafter also referred to as the Civil Code), making a significant part of the legal instrument vague. The consequences of the vagueness of disinheritance are likely to be mixed in the future, as there are an increasing number of wills containing disinheritance, in which the disinheritance must be supported by a legal reference and reason, and on the other hand, wills containing disinheritance with personal reasons are unlikely to be accepted by the disinherited in many cases, and therefore there may be more probate litigation in the future, and proving these cases is not expected to be easy.

As will be shown in the thesis, the theoretical and practical problems of disinheritance are thus interlinked. What is understandable in theory, or what is above and beyond the legislative intention

to group together cases that cannot be precisely identified according to a certain principle and which is theoretically sound, is more of a problem in practice. The new rules seek to ensure as broad a scope as possible for the right of disinheritance, but the vagueness of the provisions means that the legislative objective has not been fully achieved. It is impossible to strike a balance between the legislator's intention to draw up a precise map of human behaviour in the field of disinheritance and the practical problem of establishing the legitimacy of disinheritance in a given case, since, in the absence of a definition, it is impossible to determine whether the behaviour is prejudicial to the testator's person. In the case of the foreign countries analysed, it can also be said that none of the legislatures is seeking to fulfil these two requirements, either by granting its citizens complete freedom of testamentary disposition or by listing in its legislation only a few reasons for disinheritance which are as precisely defined as possible.

The thesis consists of an introduction and three main sections, which are divided into chapters and, where appropriate, sub-chapters and sub-sub-chapters.

The second part, covering the period before and after the introduction of the reserved portion, shows how the legislator settled the rules of statutory and testamentary succession before and after the introduction of this legal institution, and explores the initial traces of the reserved portion and the possibility of deprivation of inheritance in the periods analysed. It also provides an insight into the legal relations of succession under the entail system, the world of intestate and testate succession and the regulatory solutions of the Tripartitum that have been applied up to the present day. In the second part, as a historical section, we also find a section analysing the circumstances of the emergence of the reserved portion in the domestic legal system. We can gain insight into the process of the abolition of the entail system and the relevant provisions of the Austrian Civil Code, which entered into force in Hungary on 1 May 1853, and the analysis of the changes in the domestic inheritance regulations that this entailed. In the second part, a separate chapter will be devoted to the case law of Hungary without civil code, and a separate chapter will also present the court practice developed under Act IV of 1959 on the Civil Code (hereinafter: the 1959 Civil Code), which is relevant to the subject of the thesis.

In the third part, the current rules on the law of reserved portion and disinheritance are described, from the beginning of codification to the present day. In the third part, an attempt is made to analyse the disinheritance attitudes introduced by the new legislation in terms of the path they have followed to their final settlement. The third part deals in detail with all the drafts of the Civil Code published during the period under analysis, their solutions in succession law, with particular emphasis on the settlement of the reserved portion and the disinheritance, and we have also tried to explore and analyse the judicial practice developed under the Civil Code in force, which is relevant to the subject of this thesis.

The fourth and final part of the thesis provides an international overview of the intestate succession and testamentary succession rules in Germany, Austria, United Kingdom and France, the settlement of unworthiness and disinheritance, the relevant legal theory and, in some cases, the case law.

II. Methods used in the research

In the course of the study, several research methods were used, including historical, comparative, interdisciplinary, descriptive and analytical methods. In the case of the legal institutions we studied, we included in the scope of legal historical analysis the essential determinants of the codification processes and reforms that took place in the course of the development of civil law in Hungary and abroad, presenting the historical development of the related body of law and, where possible, the elements that still determine it today. In addition to a detailed, analytical presentation of the relevant legislation, the aim of the thesis is to compare the various legal theoretical positions that have developed over time and the solutions on the practical side, pointing out that the interpretation and application of legal definitions and concepts that appear clear and the conclusions drawn from them have not always led to the same seemingly correct result in the history of legislation.

The comparative method was used in two ways: on the one hand, to compare the legal systems of different nations and Hungarian legislation, and on the other hand, to present the historical, chronological development of Hungarian legislation. We endeavoured to compare the domestic intellectual products of legal development with each other with a sufficiently critical perspective, where it was possible to highlight the positive development of legal institutions and to mention regulatory changes that we considered negative or unfavourable.

During the analysis of the rules of the Hungarian legal development concerning disqualification, it became clear to us that they are characterised by a strong interdisciplinary openness towards criminal law: the legislator, when determining and regulating the reasons for disinheritance, took into account not only private law but also public law factors and relations, keeping in mind the changes in social phenomena - i.e. sociological elements as well. In this connection, it may also be said that, if we wish to determine the real content of the concepts to be defined in the new legislation, their essential determinants, and perhaps to predict or calculate the expected impact of the new provisions, we must also pay close attention to the past and present situation of social phenomena, since legislation is in fact a reflection of society.

A significant part of the sources of the thesis are domestic and foreign legislation, Hungarian and foreign court decisions related to the topic, as well as domestic and foreign legal literature. We have tried to extensively research and study the domestic legal literature and case law related to the topic, most of which is included in the thesis, with special attention paid to the analysis of the debates in

the upper house of parliament and various committee debates. In the case of foreign legal literature, we have also striven for completeness, however, due to the limited scope of the thesis, a significant part of the legal material researched could not be included in this thesis, but we have tried to present the literature and legislation relevant to the topic and, where possible, to present examples of case law.

III. Summary of the research results and its utilization

With regard to the reserved portion, it can be said that although its abolition from the legislation has been raised several times in the course of time, and sharp criticisms and proposals have been made in this regard, the legislators have decided that its maintenance is justified in Hungary in the interest of the protection of the assets of those closest to the testator.

We have seen that the arguments against reserved portion have been the same for the last 170 years, and the same can be said of the reasons for keeping it in place.

With the introduction of the new Civil Code, the legislator has not changed the legal nature and fundamental characteristics of the reserved portion, but has introduced notable amendments to the detailed rules governing the reserved portion and has apparently tried to strike a balance between the freedom of disposal of the testators and the protection of the persons entitled to the reserved portion.

This can also be seen in the reduction of the amount of the reserved portion, the increase of the assets included in the basis of the reserved portion and the introduction of the so-called "two-year rule".

We have seen that the new rules, in addition to countering attempts to reduce the basis of the reserved portion by diverting the reserved portion claim, raise a number of practical issues and are likely to raise issues of evidentiary difficulty.

By extending the scope of disinheritance, the legislator has also opted for extending the freedom of disposition of the testators, and a comparison of the new Civil Code's rules on disinheritance with the previous rules clearly shows that the testator may exercise the right of disinheritance much more widely than before.

With regard to the current system of disinheriting, in our opinion, it can be said that without knowledge of the commentary, the positions and background reasons that play a role in the process of the creation of disinheriting behaviours, as well as the experience based on the old Civil Code and the case law without the Civil Code, their content cannot be derived from the text of the law alone, and without them their practical application is almost impossible. We have seen that the

practical problems stem from the fact that some legal provisions are not easy to interpret uniformly and that some grounds for disinheritance can be interpreted in different ways.

At the same time, we also consider that it would be a very difficult task for today's judicature without the products of the earlier jurisprudence, because we have seen that the practice from the 19th century onwards has merely adapted the disinheritance behaviours that has been constantly present in the legislation to the current social conditions, with few changes, while maintaining the main lines of the legislation.

We have tried to present the strengths and weaknesses of the new rules of the reserved portion and the disinheriting behaviours, as well as their shortcomings, to raise questions about their application and to voice our uncertainties and, in several places, our suggestions. In relation to both legal institutions, we believe that the legislator has constantly kept an eye on the development of case law over time, and has tried to shape the new legislation along the lines of this.

The aim of the thesis is to present the theoretical and practical problems and difficulties of the interpretation and application of disinheriting attitudes, and to highlight the strengths and negative elements of the analysed regulation in relation to reserved portion and disinheritance, sometimes offering new or different proposals for solutions.

In this context, the following summary findings and recommendations have been made in relation to the legal instruments analysed.

We believe that the text of the Civil Code is not very clear as to who and in what cases is entitled to reserved portion, or more precisely, the secondary nature of the parents' reserved portion is not sufficiently emphasised. The Civil Code states in relation to the definition of the persons entitled to reserved portion (§ 7:75) that "The descendants, spouses and parents of the testator shall be entitled to a reserved portion if, at the time of the opening of the succession, they would have been the testator's legal heirs or, in the absence of a testamentary disposition, heirs."

It is our view that the rules on legal succession should be collected from several places in the text of the Civil Code, and that an explanation of the provisions is essential for their understanding. We have a similar view on the rules on the right to the reserved portion, and we feel that the text of the Act is not clear at first reading, in that it sets out the persons entitled to a reserved portion, but does not emphasise the important fact of when the institution of parental reserved portion comes into play. In our opinion, it would be worthwhile to draft the Civil Code § 7:75 should be worded as follows: "The descendant, spouse and parent of the deceased shall be entitled to reserved portion. If the descendant of the testator is entitled to a reserved portion, its descendant and the parent of the testator shall not be entitled to reserved portion."

We have deduced that such seemingly objective offences as, for example, the crimes aiming against the testator’s life, which appears in the context of the unworthiness, also raise a number of practical

questions, and we have found that this is not a purely criminal category in the legislation, but that it includes, in addition to the punishable acts, also acts understood in the sense of inheritance law. We have read that, in our opinion, the French regulation of unworthiness draws attention to the importance of the fact that acts against the life of the testator can be committed not only as an offender but also as an accessory, which can be deduced from the Hungarian regulation, but only after reading several specialist literature, it would be justified to emphasise this in Hungarian legal literature, especially in the commentaries.

With regard to the obstruction or defeating of the testator's will - as the second reason of unworthiness - in the light of the cases cited, we have established that any form of content, i.e. positive-active participation in the making of the will, is also considered by practice as reason of unworthiness falling under this point, not only the obstruction of the free expression of the testamentary disposition. In our opinion, the negative side can be deduced from the wording of the law, but after reviewing the practice, these negative obstructive behaviours only constitute part of the present point of unworthiness, the other part being the positive-active side as stated by the practice.

With regard to the third reason of unworthiness, the crimes aiming against the testator's life for the purpose of receiving a share in the estate, we believe that the legislation covers what appear to be realistic cases and that similar provisions can be found in the legislation of other countries, but we believe that the norm may affect a very small number of groups and that it is therefore unlikely to take root in practice in the future. It is not uncommon for someone to make crime aiming against the life of the testator's heir, but as the practical examples presented here have shown, this is almost invariably committed by the persons entitled to the reserved portion, and is therefore invoked by the testators in their wills as a reason for disinheritance.

In the context of unworthiness, we see that the inclusion of unworthiness as the first item of the disinheriting attitudes creates confusion among clients. In our day-to-day practice, we find that most clients have never heard of the legal category of unworthiness and seeing it among the reasons for disinheritance, do not think to look for unworthiness elsewhere. For this reason, in our opinion, it would be more appropriate to add the following to the first place of the disinheritance attitudes: "Disinheritance shall be deemed to be in order if the persons entitled to the reserved portion a) would be unworthy of inheritance after the testator in the cases specified in § 7:6 (1) of this Act;".

In the case of the crime committed to the detriment of the testator, as the second reason for disinheritance, we believe that if the condition of being considered serious by reason of the relationship had remained in the text, it would have been possible to say that the offences against the testator, which fall within the criminal law category, would not have been regulated by the disinheritance system, but only the crimes aiming against the testator's life. The crime committed

to the detriment of the testator is to be understood as disinheritance in the relationship between the testator and his heir, i.e. it includes acts which are criminal in the sense of succession law, but also includes cases which are criminal under criminal law.

The second turn of the third reason for disinheritance, namely the crimes aiming against the life of the deceased's relatives or other serious offences committed against them, can be clearly understood as a criminal law category and depends on the criminal law assessment, the concept of serious offences is entirely objective, the case law previously included cases that were considered as crimes under the Criminal Code, and with the entry into force of the Civil Code, misdemeanours are expected to be included as well.

As regards the serious breach of the legal provide maintenance, as the fourth reason for disinheritance, the practical examples show that the reason for disinheritance has a well-defined objective aspect, namely the existence of a maintenance obligation between the testator and the persons entitled to the reserved portion, the existence of which can be easily established. There is also a subjective aspect of the conduct giving rise to the disinheritance, which requires a case-by-case assessment of the conduct in question, namely the existence of a 'serious' breach of the above obligations, which must always be assessed in the circumstances of each case. Within the latter, the assessment of both the heir's and the testator's side is a key element. In our view, it is clear that the courts will apply a strict interpretation of the law in interpreting the present ground for disinheritance, i.e. if the testator's need cannot be established in the case in question, they will not find that the ground for disinheritance based on a serious breach of the legal provide maintenance is valid.

The continuation of immoral lifestyle, as the fifth reason for disinheritance, is the most widely practised and most pervasive reason for disinheritance, and the range of behaviours that can be included is likely to change as social conditions change. Judicial practice appears to be consistent in that "the definition of an immoral lifestyle must be based on public perception, the subjective moral judgment of the testator cannot be accepted as a reason for disinheritance", and it must also be examined whether the testator was responsible for the disinherited heir's impugned lifestyle. On the one hand, it can be concluded from the cases described that disinheritance is predominantly an emotional decision, but it does not mean that, in addition to its intended effects in terms of succession law, the testator may also wish to make an emotional and physical break with the disinherited relative.

In our opinion, the unfinished imprisonment to be served - as the sixth reason for disinheritance - undoubtedly has a strong moral dimension: the testator may also disinherit a relative who has been convicted of a crime against the person or property of another person. This reason for disinheritance has not got subject, so that, to simplify the current rule, it could be any offence committed against

anyone and punishable by a custodial sentence which has not yet been completed. Given the final wording of the law, we believe that the emphasis is on enforceability, so that the outside world is likely to be informed of the conviction of the person entitled to the reserved portion, thus reinforcing the moral line of disinheritance.

Failure to expected render aid, as the seventh reason for disinheritance, is completely new in the legislation, so there is no established judicial practice in this area. We consider this reason for disinheritance to be meaningless in its present form, because in our view it regulates situations which fall within the scope of other reasons for disinheritance (gross ingratitude in the case of descendants, gross breach of spousal duty in the case of a spouse). We believe that it would be worthwhile to adapt this reason to the special disinheritance of parents who behave in an unworthy manner, which would be the reverse of the reason for gross ingratitude. Looking through the system of reasons for disinheritance in the case of the testator's parents, we do not find any category that would allow the testator to disinherit his or her unworthy parents in exceptional cases that are outside the criminal category, but which are still humanly understandable and justified. We would stress that a parent can commit unworthy, humanly and morally reprehensible conduct not only against a minor but also against his or her adult child, and therefore we believe that it would be justified to introduce a special disinheritance clause for parents who are in serious breach of the parent-child relationship, possibly by stating that "The testator may disinherit his or her parent for seriously objectionable attitude towards him or her." In our view, the seriously objectionable attitude does not overlap with the continuation of an immoral lifestyle, because that reason for disinheritance requires repeated occasions, continuous attitude, and the attitude must be contrary to and in violation of fundamental social expectations and moral standards. The solution we have outlined suggests the need for specificity and the need to examine whether the inheritor-testator relationship has been breached, but we believe that, as with the categories of gross ingratitude or immoral attitude, it would be possible to delimit the acts which constitute seriously objectionable attitude. In our view, seriously objectionable attitude could include, inter alia, turning away from the testator without good reason, refusal to communicate, intolerable behaviour, acts affecting the testator's honour, reputation or social image. In addition, the failure to expected render aid as a reason for disinheritance should, in our opinion, be removed from the legislation, mainly because the wording seems vague and imprecise and overlaps with other reasons for disinheritance.

With regard to gross ingratitude as the eighth reason for disinheritance, we consider that for more than a hundred years the jurisprudence has been calling for the introduction of a subjective category of disinheritance which is outside the criminal category and the serious breach of the legal provide maintenance. Practical analyses have shown that the courts have very often classified as a crime against the testator behaviour and cases which are far removed from the criminal law concept of

crime. This is precisely why it was stated in earlier practice that the starting point should not be the criminal law gravity of the behaviour committed, but that it should be classified in the light of the relationship between the inheritor and the testator, because the often humanly understandable situations of abandonment could not otherwise have been assessed as abandonment. The legislator sought to avoid these situations by introducing the category of gross ingratitude into the law.

In analysing the specific reason for parental disinheritance, we have found that it is likely to be very difficult to prove, given the length of time from the testator's childhood to his or her disinheriting in adulthood. The Civil Code states - (§ 7:75) - that "The testator may also disinherit a parent for attitude to his or her detriment which gives reason for termination of parental custody." It does not seem fair to us to qualify a situation which clearly existed in the past by the rules in force today, which may be completely different, and therefore the use of the expression "gave or could have given rise to" seems to us to be the most appropriate, because it is fair and appropriate to examine the parental attitude in question in the light of the legislation in force at the time it was carried out, and in the light of changes in the legislation. Nevertheless, we believe that the most objective way and legal terminology would in fact be to use the term "given cause" by stating that a decision declares the termination of parental rights.

In the case of gross breach of a spousal duty - as the last, tenth reason for disinheritance - the courts will consider disinheritance to be justified if there has been a breach of the spouses' mutual fidelity and support obligations, so it is almost impossible to deduce the content of the reason for disinheritance from the law in this case as well. The special disinheritance of the spouse has been taken over by the new legislation by means of a substantive amendment, since the registered partner is no longer included in the legislation. However, the registered partner can, by applying the relevant background legislation, claim the same rights to a reserved portion as the spouse and is also considered to be a legal heir. In our opinion, it would be worthwhile to reinstate the term 'registered partner' in the wording of the law, both as a legal heir and as person entitled to the reserved portion, and also in the wording of this special reason for disinheritance, because the rule would tend to give the impression that the registered partner of the testator is no longer a person entitled to the reserved portion or a legal heir.

We have devoted a separate sub-chapter to the institution of forgiveness, criticising the legal institution of prior forgiveness, which, in our view, is present in the legislation as an unjustified restriction on the testator's freedom of testamentary disposition. In our view, if the testator, after having forgiven the reason for the disinheritance, nevertheless decides to disinherit his or her relative from the succession, we feel that the testator has not forgiven the attitude, but nevertheless, according to the law, he or she must face the legal consequence that his or her will cannot be enforced because he or she must nevertheless allocate a reserved portion of his or her estate, and

we therefore believe that the legal institution of prior forgiveness should be removed from the legislation.

In relation to the existing rules on the basis of the reserved portion, we considered that the reduction from 15 to 10 years of the number of the provided free of charge assets that can be counted towards the basis of the reserved portion is not fair and not sufficiently justified, and that the protection of reserved portion claims is reduced from this approach, so we consider it justified to increase it to 15 years.

With the introduction of the Civil Code, the legislator has made a substantial change to the free gifts made by the testator before the establishment of the relationship giving rise to the reserved portion. According to the new legislation, free gifts made by the testator to any person before the establishment of the relationship giving rise to the reserved portion of the estate is not included in the basis of the reserved portion. In the case of children born of a marriage, the date of the first marriage will no longer be taken into account for the purposes of entitlement to the reserved portion, but the date of the marriage will be decisive for each child. For children adopted by a spouse, the date of the marriage has become the starting date for entitlement to the reserved portion. We do not agree with the commentary to the Civil Code that the change would be intended to put children adopted jointly by spouses in the same position as children born of that marriage, since under the previous rules all children of the testator were in the same position as regards the succession of the testator. With the change, the basis of the children's reserved portion will be different, so the new rule cannot be said to be fair on the grounds of property discrimination, but it is considered fair from the point of view of the liability for the basis of the reserved portion, since, unlike the previous rules, it does not establish an unduly long period of liability at the expense of the donee.

Among the potential problems and issues we have raised in subsection 7.1.4.1 with the newly introduced "two-year rule", the best solution would be to deal with contracts on a case-by-case basis to protect contractual supporters and the persons entitled to the reserved portion, but the huge workload makes it simpler to settle within a fixed period.

In our view, a solution that would make the acquisition of the aleatory contract analysed more effective than the current one would be to consider it as a charge back to the beneficiaries only up to the value of the service actually provided, and with a longer interval than the current rule, five years from the date of conclusion, because two years will not deter bad faith on the part of those wishing to contract with dependants. In our opinion, a solution that would be more effective than the current one would be one that would consider the acquisition resulting from the aleatory contract analysed as retroactive towards the persons entitled to the reserved portion only up to the value of the service actually provided, and with a longer interval than the current rule, five years from the

conclusion of the contract, because the two years, due to its short duration, will not deter bad faith persons wishing to contract with dependants.

We have established that the new legislation recognises the reciprocal nature of these aleatory contracts within two years of their conclusion, that in the case of legal transactions concluded after two years their full fortunate nature prevails, and that there remains no legal means protection of the claims of the reserved portion other than to bring an action for their invalidity, subject to the difficulties of proof outlined in subsection 7.1.4.

Further questions have been raised about the applicability of the "two-year rule" to aleatory contracts for the benefit of third parties and the protection of the reserved portion in this context. We have found that in contracts where the testator is also a dependent, the account is opened for the property concerned upon the death of the testator within two years, but the maintenance services continues to be provided for the benefit of the other dependent. In this respect, it is our view that the supporter finds himself at a disadvantage because of what is likely to be a largely gratuitous transaction, because he has to pay the persons entitled to the reserved portion for the value of the subject matter of the contract, while his obligations continues for an indefinite period. We conclude that, by introducing the 'two-year rule', the legislator has, in all likelihood, completely blocked the creation of aleatory contracts for the benefit of third parties, with the survivor's maintenance, since there is little likelihood that the obligation to pay and continue to pay will not be imposed on the future supporters. We assume that this will lead to the disappearance of this form of legal instrument before it has had a chance to take root in practice.

All in all, we believe that, despite its few weaknesses, the new system of disinheritance will serve the application of law well, and that the judiciary can confidently begin and continue its work on the basis of the previous judicial practice and the extensive and easily accessible literature.

We hope that with the information, findings, observations and suggestions gathered during the research we can help the practice and give some guidance and ideas to the application of law in the process of interpreting the reasons for disinheritance.

IV. List of publications related to the dissertation

1. The national register of wills from theoretical and practical side (Doktoranduszok Fóruma kari szekciókiadvány, 2016.)
2. Az európai öröklési bizonyítvány, mint határon átnyúló öröklési jogérvényesítési eszköz (Doktoranduszok Fóruma kari szekciókiadvány, 2017.)
3. Living Will in Practice (Doktoranduszok Fóruma kari szekciókiadvány 2018.)

4. A kötelesrész, mint az örökhagyó szabad rendelkezési jogának alkotmányos korlátja (Közjegyzők közlönye, 2018/2.)
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19. Some theoretical and practical questions about the joint wills (Doktoranduszok Fóruma kari szekciókiadvány, 2020.)
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29. Az érdemtelenség és a kitagadás jogintézményeinek rendezése Magyarországon a XX. század elején [Publicationes Universitatis Miskolcinensis Sectio Juridica et Politica, 2021/1.]

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