

On the Notion of the Competent State Agency as the Unit Authorized to Demand the Fulfillment of Testamentary Burden, if it is in the Public Interest (Art. 985 of the Civil Code)*

Pursuant to Art. 982 of the Civil Code „the testator, in a will, may impose on a heir or legatee the obligation to carry out a specific action or to refrain from carrying out of specific action without making anyone a creditor (testamentary burden)”. The institution of testamentary burden allows the testators to produce legal effects mortis causa which achieving would not be possible in the way of other testamentary disposals (for instance legacy). This paper relates to testamentary burden (done in the public interest), the fulfillment of which may be demanded – apart from testator and last will executor – also by a competent State agency (Art. 985 of the Civil Code). Author defines the notion of the competent State agency. This notion raises interpretation doubts as the principle of the uniform system of state power was given up. Furthermore, he discusses the issue of the prosecutor’s right of action to demand the fulfilment of the testamentary burden. The author also states de lege ferenda comments, based on the analysis of the institution of the testamentary burden in German, Swiss and Austrian law according to which the notion of „a competent State agency” should be replaced with the notion „a competent authority”.

Tomasz Jasiakiewicz

*PhD of Juridical Science
Nicolaus Copernicus University in Toruń*

ORCID - 0000-0003-4679-0442

Key words:
inheritance law, last will, testamentary dispositions, testamentary burden in the public interest, State agency authorized to demand the fulfillment of testamentary burden, the prosecutor’s right of action in the case concerning fulfillment of testamentary burden

<https://doi.org/10.36128/priw.vi31.99>

1. Introduction

Pursuant to Art. 982 of the Civil Code the testator, in a will, may impose on a heir or legatee, the so called testamentary burden, i.e. the obligation to carry out a specific action or to refrain from carrying out a specific action, without making anyone a creditor. It could appear that testamentary disposition of such content, due to lack of the creditor, may result in moral duty only. However, the content of Art. 985 of

* The publication was financed by Nicolaus Copernicus University (grant number 1087 – P).

the Civil Code testifies to the contrary, as the legislator protects the fulfillment of the testamentary burden by entrusting the right to demand the fulfillment thereof to the heir, the executor of the will and, exceptionally also to the competent State agency, if the testamentary burden is in the public interest. The fulfillment of the testator's will expressed in the testamentary burden depends thus on the activities of a very narrow group of persons, among which, the competent State agency, as the unit guarding social interest has a special position. It must be noticed, by the same, that pursuant to the quoted article, the competent State agency has at its disposal a particular capacity to be a party in civil cases and the title to appear before the court in case to fulfill the testamentary burden, which means that in the court proceeding the agency appears in their own name and not in the name of the Treasury of State (Fiscus) or the unit of local government¹. In this context, proper definition of the notion competent agency shall be conclusively decisive which of the agencies has the right of action and has the right to demand the enforcement of the sentence issued in the case, in the executive proceedings.

Doubts accompanying the interpretation of the notion competent State agency are connected with the necessity to answer the question whether *de lege lata* each public institution fulfilling public functions may be recognized as the competent State agency. Furthermore, it should be decided if the units of the local government may also have the status of the competent State agency. A separate attention should be focused on determining the legal position of prosecutor in the light of Art. 985 sentence 2 of the Civil Code.

However, within *de lege ferenda* remarks the suggestion of the amendment of Art. 985 sentence 2 of the Civil Code shall be presented; it assumes

1 Compare the decision of the Supreme Court of 30th October 2013, V CSK 509/12, Legalis No. 877783, relating to the capacity to be a party in the civil cases and the title to appear before court of the Minister of Internal Affairs and Administration Matters in the case with reference to declaring the contract of sale of real estate concluded by a foreigner invalid. Compare also on the background of the decree Inheritance Law Bronisław Walaszek, „Polecenie testamentowe w polskim prawie spadkowym” *Studia Cywilistyczne*, Vol. 1 (1961): 176, footnote 45; contrary Mariusz Zelek, „Commentary on Art. 985 of the Civil Cod”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088*, ed. M. Gutowski (Warszawa: C. H. Beck, 2016), Art. 985, sentence 6, 1674, in the opinion of whom „state or local government bodies, themselves, do not have the capacity to be a party in civil cases or the title to appear before court”, that is why „it is the Treasury of State (Fiscus) or the unit of the local government that may demand the testamentary burden be implemented in accordance with the principles arising from Art. 67 of the Code of Civil Procedure”.

replacing the notion „competent State agency” with another notion, which would better reflect the system transformation which took place in the 1990s².

2. Testamentary burden on the background of other testamentary dispositions

It is difficult to overestimate the meaning of positive regulation of testamentary burden in the Polish law. It is enough to point out that the lack thereof would cause significant limitations for the testator in shaping of the legal relations in case of death³. The testamentary burden allows to implement the purposes, which could not have been implemented by appointing the heir or establishing of a legatee⁴. Mostly, the testamentary burden, contrary to other testamentary dispositions, gives the possibility to impose a duty on heir or legatee, without any pecuniary character. Such type of testamentary burden is involved in situations when, for instance, the testator indicates the manner of conducting funeral ceremony, chooses the type of headstone, imposes the duty to take care of their animal till the end of its life or imposes the duty to make their collections of paintings available to the public⁵. In all such situations, the after-death relations are regulated, although they are not of pecuniary nature (non-pecuniary testamentary burden). Such formulated duties are included, however, in the inheritance debts, which is confirmed by the content of Art. 922 § 3 of the Civil Code.

In turn, the institution of pecuniary testamentary burden, as indicating some similarities to legacy by damnation could be seemingly recognized as unnecessary. Thus, the following question is valid: what are the differences between these two, similar and yet still not identical constructions, the

-
- 2 Compare the 8th March 1990 Act on Commune Local Government, Dz. U. 1990, No. 16, item 95; 5th June 1998 Act on Powiat Local Government, Dz. U. 1998, No. 91, item 578; 5th June 1998 Act on Province Local Government, Dz. U. 1998, No. 91, item 576.
 - 3 Walaszek, „*Polecenie testamentowe*” 155, pays attention to „the different type of social relations to which testamentary burden relates and for which testamentary burden exists in the Act”. On *ratio legis* of the institution of testamentary burden see Konrad Osajda, „Commentary on Art. 982 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom IVA. Spadki*, ed. K. Osajda (Warszawa: Wydawnictwo C. H. Beck, 2019), Art. 982, sentence 6-8, 807 and next.
 - 4 Compare Sylwester Wójcik, Fryderyk Zoll, „Rozrządzenia testamentowe”, [in:] *System prawa prywatnego. Tom 10. Prawo spadkowe*, ed. B. Kordasiewicz (Warszawa: C. H. Beck: Instytut Nauk Prawnych PAN 2015), 461, point 76.
 - 5 More examples of non-pecuniary testamentary burden are indicated by Walaszek, „*Polecenie testamentowe*”, 155.

existence of which made the crucial impact on deciding to introduce by legislator the separate regulation with reference to pecuniary testamentary burden.

Analyzing the issue formulated as above, first of all, it must be stated that testamentary burden is the source of „duty” and not obligation⁶. Bearing in mind such qualification, the duty resulting from testamentary burden may not be the *causa* for the legal acts performed by the person burdened with the testamentary burden⁷. Thus, to fulfill the testator’s will it becomes necessary to contract the obligation. The source thereof may be for instance a contract of donation which shall be concluded to transfer the right of ownership determined in the testamentary burden to the beneficiary. In case of a legacy, which is, as is known, an autonomous source of obligation such steps are not necessary. It is worth noticing, at this point, that the testamentary burden is not the source of natural obligation either⁸.

-
- 6 Polish regulation of testamentary burden, as to the essence, does not thus differ from constructions known to other European legislations. Compare in the Swiss law: Stephan Wolf and Gian Sandro Genna, „Zulässige Inhalte der Verfügungen von Todes wegen (Verfügungsarten)”, [in:] *Schweizerisches Privatrecht. Band IV. Erbrecht. Band 1*, ed. Stephan Wolf (Basel: Helbing Lichtenhahn Verlag, 2012), 322; Daniel Staehelin, „Commentary on art. 482 of the Civil Code”, [in:] *Basler Kommentar. Zivilgesetzbuch II. Art. 457-977 ZGB. Art. 1-61 SchlT ZGB*, ed. H. Honsell, N. P. Vogt, T. Geiser (Basel: Helbing Lichtenhahn Verlag, 2015), Art. 482, point 14, 147; compare in the Austrian law – Peter Apathy, „Commentary on § 710 of the General Civil Code”, [in:] *Kurzkommentar zum ABGB*, ed. H. Koziol, P. Bydlinski, R. Bollenberger (Wien-New York: Springer, 2010), § 710, point 3, 608; compare in the German law – Dieter Leipold, „Commentary on § 1940 of the Civil Code”, [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch. Band 10. Erbrecht*, ed. S. Kessal-Wulf (München: Beck C. H., 2013), § 1940, point 2, 206.
- 7 Differently, Michał Niedośpiał, „Zasadnicze rozrządzenia testamentowe” *Studia Prawnicze*, book 2 (1997): 73 et seq., in the opinion of whom the duty resulting from the testamentary burden may fulfill the role of *causa* of legal deed due to similar application of Art. 156 § 2 of the Civil Code and Art. 510 § 2 of the Civil Code. It is difficult to ascertain construction gap in the analyzed case, which questions the possibility to apply analogia legis *in casu*. The more so, the testamentary burden cannot inflict effects concerning rights in rem, compare Leipold, “Commentary on § 1940 of the Civil Code,” § 1940, point 7, 208.
- 8 The same also Walaszek, „Polecenie testamentowe”, 170, who rightly notes that both constructions show only some similarities; Maksymilian

Furthermore, testamentary burden, contrary to legacy, may impose the duty to conclude the contract of mutual nature (for instance tenancy contract, lease contract, sale contract, contract of exchange, contract for life rent, etc.) on a heir (legatee)⁹. Both the legacy and appointing of a heir are dispositions, which within the admissible content of the will may be performed only

Pazdan, "Commentary on Art. 982 of the Civil Code", [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088. Przepisy wprowadzające*, ed. K. Pietrzykowski (Warszawa: Wydawnictwo C. H. Beck, 2018), Art. 982, sentence 11, 1161; Elżbieta Niezbecka, "Commentary on Art. 982 of the Civil Code", [in:] *Kodeks cywilny. Komentarz. Tom IV. Spadki*, ed. A. Kidyba (Warszawa: Lex a Wolters Kluwer business, 2015), Art. 982, sentence 2, 233; Wójcik, Zoll, "Rozrządzenia testamentowe", 461, point 76; Paweł Książak, "Żądanie wykonania polecenia" *Przegląd Sądowy*, No. 4 (2006): 56 et seq.; Osajda, "Commentary on Art. 982 of the Civil Code" Art. 982, sentence 70-71, 818; Mariusz Zelek, "Commentary on Art. 982 of the Civil Code", [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088*, ed. M. Gutowski (Warszawa: C. H. Beck, 2016), Art. 982, sentence 4, 1666. Differently, the Supreme Court in its decision of 19.04.2002, III CZP 19/02, *Orzecznictwo Sądów Polskich*, No. 10 (2003): item 123; Elżbieta Skowrońska-Bocian, Jacek Wierciński, "Commentary on Art. 982 of the Civil Code", [in:] *Kodeks cywilny. Komentarz. Tom VI. Spadki*, ed. J. Gudowski (Warszawa: Wolters Kluwer, 2017), Art. 982, sentence 1, 244; the same Józef Kremis, "Commentary on Art. 982 of the Civil Code", [in:] *Kodeks cywilny. Komentarz*, ed. E. Gniewek, P. Machnikowski (Warszawa: Wydawnictwo C. H. Beck, 2013), Art. 982, point 2, 1669, who, however, in the subsequent editions of Commentary waived from his opinion, see Józef Kremis and Joanna Kuźmicka-Sulikowska, "Commentary on Art. 982 of the Civil Code", [in:] *Kodeks cywilny. Komentarz*, ed. E. Gniewek, P. Machnikowski (Warszawa: Wydawnictwo C. H. Beck, 2017), Art. 982, point 2, 1885; Jarosław Turłukowski, "Instytucja polecenia testamentowego w prawie krajów Wspólny Niepodległych Państw na tle prawa polskiego", [in:] *Non omnis moriar. Osobiste i majątkowe aspekty śmierci człowieka. Zagadnienia wybrane*, ed. Jacek Gołaczyński, Jacek Mazurkiewicz, Jarosław Turłukowski, Daniel Karkut (Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego; Oficyna Prawnicza, 2015), 798, is of the opinion that "the rights of the creditor in the institution of testamentary burden were divided between beneficiary (receives benefits) and those authorized to demand (they demand the testamentary burden be implemented although it is not for their benefit)".

- 9 Differently, Elżbieta Niezbecka, *Zapis* (Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 1990), 124 et seq., who admits the

donandi causa. The view which defines the will as the act performed *obligandi vel acquirendi causa* or *solvendi causa*¹⁰, should be rejected, at least in the scope relating to establishing of heir and legatee. The validity of the will made under the influence of this type of non-standard motivation would depend upon the assessment of its compliance with the content of Art. 945 § 1 point 2 of the Civil Code (error of law).

Testamentary burden is also a helpful disposition from the point of view of persons (testators) who are entrepreneurs. In practice, there are often discrepancies occurring between heirs as to manner of further running of business activity (enterprise)¹¹. Entrepreneurs, being aware of these threats, may, with the use of testamentary burden, burden their heirs with the duty to conclude a certain contract of partnership, which, even in case of a dispute, shall allow for a more efficient taking up of business decisions and continue activities in the new organizational legal form¹². The possibility of precise indicating of these decisions by the testator himself (for instance the decision as to make the scope of activities broader, to merger with another company, etc) should not be excluded. Legacy, understood as merely obligation to fulfill a certain property performance, is utterly inadequate when compared to the construction of a non-commercial partnership or commercial companies (partnerships)¹³, which are not founded *donandi causa*, but with the aim to acquire „the status of the participant of created private legal organization and membership rights connected therewith”¹⁴.

possibility to oblige the heir or legatee to conclude contract of reciprocal nature, in the way of legacy.

- 10 Differently, Maciej Rzewuski, *Podpis spadkodawcy na testamencie własnoręcznym* (Warszawa: Lex a Wolters Kluwer business, 2014), 32 et seq.
- 11 See also 5th July 2018 Act on Succession Managing the Enterprise of a Natural Person, Dz. U. 2018, item 1629.
- 12 See Leipold, “Commentary on § 1940 of the Civil Code”, § 1940, point 6, 208.
- 13 Differently Niezbecka, *Zapis*, 124, who expresses the view that the institution of legacy by damnation may be the source of the obligation to conclude the partnership contract with the legatee.
- 14 The same with reference to a civil partnership Andrzej Herbet, „Spółka cywilna”, [in:] *System prawa prywatnego. Tom 16. Prawo spółek osobowych*, ed. A. Szajkowski (Warszawa: C. H. Beck: Instytut Nauk Prawnych PAN, 2016), 765 and next, point 71, who is of the opinion that civil partnership is founded for *societatis causa*, thus, under the influence of special form of *acquirendi causa*. It seems that the view formulated by A. Herbet may also be transferred to other types of partnerships; compare

The boundary separating the institution of testamentary burden from legacy by damnation, legacy by vindication and from appointing the heir is thus distinct and yet the possibilities offered by the institution of testamentary burden are still not noticed. At the same time, the implementation of the testator's will expressed in the testamentary burden is relatively less certain, as it depends upon narrow circle of persons, for whom the testamentary burden may only be an additional burden.

3. Rationale of including public institutions performing public functions in the scope of the notion „competent State agency”

In the doctrine, the opinion is presented that the question whether *de lege lata* every public institution performing public functions may be recognized as competent State agency should be answered positively¹⁵. Such opinion, however, leads to exceeding the literal wording of Art. 985 sentence 2 of the Civil Code. Apart from State agencies (central and local), the analyzed notion is referred, for instance, to: beneficiary of the testamentary burden (if the activity thereof comes down to the implementation of some important public functions and the testamentary burden fulfills this activity)¹⁶, Polish Red Cross (if the testamentary burden was established for charity purposes

also with reference to professional partnership Dominika Nowak, *Wadliwa spółka partnerska* (Warszawa: Wolters Kluwer Polska, 2010), 56, who is of the opinion that civil partnership is founded for *obligandi vel aquirendi causa*. Compare also P. Antoszek, *Cywilnoprawny charakter uchwał wspólników spółek kapitałowych* (Kraków: Oficyna Wolters Kluwer business, 2009), 232.

- 15 The same, on the grounds of Art. 894 of the Civil Code Leopold Stecki, *Darowizna* (Toruń: TNOiK „Dom Organizatora”, 1998), 140 et seq.; Roman Trzaskowski, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom V. Zobowiązania. Część szczegółowa*, ed. J. Gudowski (Warszawa: Wolters Kluwer, 2017), Art. 894, sentence 25, 649 et seq.; compare also Marek Safjan, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088. Przepisy wprowadzające*, ed. K. Pietrzykowski (Warszawa: C. H. Beck, 2018), Art. 894, sentence 5, 899, for whom the unit demanding the testamentary burden be implemented must have the status of „state institution” (for instance National Library, Polish Academy of Science, etc.).
- 16 The same on the grounds of Art. 894 of the Civil Code, as it seems, Stecki, *Darowizna*, 140. As an example the author indicated the museum and university if appropriately denominated sculpture (painting) and defined part of books collection, are to be transferred of the sake thereof.

but the beneficiary thereof was not clearly appointed) and the association of war-disabled veterans (if the testamentary burden beneficiary is distinguished war-disabled veteran)¹⁷.

It is impossible to agree with the opinion that the status of the competent State agency may be obtained both by State agency and many institutions fulfilling certain public functions, according to the not clearly defined criteria. State agency not only „fulfills” the activities in the scope of public authority but most of all they are the carrier of this authority. In other words, the State agency is the institutional reflection of public authority, which may not be said about the above mentioned institutions, even if they fulfilled such authority based on agreement (for instance the tasks ordered to a foundation or association) or based on a statute¹⁸. Given the strictly defined structure of the authority, the catalogue of units authorized to demand the fulfillment of the testamentary burden is thus of a closed nature. However, as a result of re-definition of the notion „competent State agency”, which gives rise to doubts and which is not founded in the statute¹⁹, this catalogue becomes open. Widening interpretation of Art. 985 sentence 2 of the Civil Code is possibly the attempt to additionally secure the public interest in case the competent State agency was not interested in enforcing the testamentary burden. It seems however, that the solution is not the application of extensive interpretation but the activity of the testator himself, who is entitled to entrust the fulfillment of their will, also in the scope relating to the testamentary burden, to the executor of the will. The executor in turn, is not only authorized, but also obliged to demand the testamentary burden be fulfilled.

4. Admissibility to demand the testamentary burden be fulfilled by the units of local government

The opinion relating to the possibilities to demand the fulfilling of testamentary burden by the unit of local government presented in the doctrine²⁰, is basically based on the literal wording, whereas such result is corrected

-
- 17 The same on the grounds of Art. 894 of the Civil Code Stecki, *Darowizna*, 140 et seq.
- 18 Compare Osajda, „Commentary on Art. 985 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom IVA. Spadki*, ed. K. Osajda (Warszawa: Wydawnictwo C. H. Beck, 2019), Art. 985, sentence 16-17, 829 and next, who, distinguishing the institutional and functional approach towards the body of the state chooses the first solution.
- 19 Compare on the grounds of Art. 894 of the Civil Code Stecki, *Darowizna*, 140 et seq.
- 20 The same Maksymilian Pazdan, „Commentary on Art. 985 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088. Przepisy wprowadzające*, ed. K. Pietrzykowski (Warszawa: Wydawnictwo C. H.

with the use of historical interpretation²¹. In consequence, sometimes, not only the State agencies are included in the notion of competent State agency but also the units of local government which are not part of the state administration. Indeed, the codification of the civil law, which was crowned by the adoption of the Civil Code in 1964 was carried out in the period when the principle of the uniform system of state power was binding. Given the fact that local government was not existing at that time, the whole authority at central and local level was exercised by State agencies. In the Civil Code from 1964 this new system structure was respected and the notion „competent authority” (known in the decree Inheritance Law²²) was replaced with the notion „competent State agency”. At that time, it was not anticipated that the local government would be restored and it would replace the State agencies at local level and the catalogue of competent State agencies would be significantly reduced. It is due to these historical reasons that it is suggested to include in the analyzed notion also the units of local government, the tasks of which, until 1990 were performed by the local units of State agencies²³.

The view presented above should be recognized as pertinent although the justification thereof requires some supplementing information. The notion „competent State agencies”, as strictly connected with the principle of the uniform system of state power became, really, outdated. It is not an exceptional situation when the Civil Code is concerned. The institution of „principles of community life” which does not suit the reality of the current system may serve as an example. This is thus a broader problem of inadequacy of network of notions of the Civil Code with the changed system, social and economic conditions. Pursuant to generally adopted rules of preference, linguistic interpretation may be replaced by system or functional interpretation, if the literal

Beck, 2018), Art. 985, sentence 3, 1163. Differently on the grounds of Art. 894 of the Civil Code compare Safjan, “Commentary on Art. 894 of the Civil Code,” Art. 894, sentence 5, 899.

- 21 See Bogusław Lackoroński, „Commentary on Art. 894 of the Civil Code”, [in:] *Komentarze prawa prywatnego. Tom III B. Kodeks cywilny. Komentarz. Zobowiązania. Część szczegółowa. Ustawa o terminach zapłaty*, ed. K. Osajda (Warszawa: Wydawnictwo C. H. Beck, 2017), Art. 894, sentence 2, 1211, who looks for the justification in the dynamic historical interpretation (the view expressed on the grounds of Art. 894 of the Civil Code); Osajda, „Commentary on Art. 985 of the Civil Code” Art. 985, sentence 14, 829, revokes on the other hand both to historical and functional interpretation.
- 22 8th October 1946 decree Inheritance Law, Dz. U. 1946, No. 60, item 328.
- 23 Osajda, „Commentary on Art. 985 of the Civil Code”, Art. 985, sentence 14, 829.

wording of a given provision is contrary to the hierarchically higher norm²⁴. The notion „competent State agencies” seems to show such controversy as it expresses the rule of the uniform system of state power which is contrary to the provisions of Art. 163 of the Constitution of the Republic of Poland establishing local government in Poland. By the same, the controversy that is involved is the controversy which justifies the interpretation of Art. 985 sentence 2 of the Civil Code on the basis of functional interpretation. Due to the presumption of constitutionality of the indicated provision the mentioned „controversy” may not be, however, automatically identified as being unconstitutional.

The application of the functional interpretation is related to the necessity to determine the purpose of regulation of Art. 985 sentence 2 of the Civil Code which consists in full securing of public interest implemented within the testamentary burden. By the same, from the point of view of functioning of the state, the so called „competent State agency” fulfills an important role of the guardian of public interest which has its source in the last will of the testator.

Given the two-degree limitation of the scope of competence of „competent State agency” the attainment of the above mentioned purpose exclusively with the use of literal interpretation is not, however, possible. As this agency may demand the fulfilling of testamentary burdens taking into consideration public interest (limitation of the first degree) as long as these activities are included in the scope of the competence thereof (limitation of the second degree). Meanwhile, the competence of State agencies in the exact meaning does not include the competence reserved for the agencies present at the local government stage. Thus, the attainment of the purpose described above requires, within admissible functional interpretation, the adoption of a broad meaning of the notion “competent State agency” which includes in its scope the whole range of spectrum of agencies, both state and local government. Therefore, in accordance with *ratio legis* of Art. 985 sentence 2 of the Civil Code, the protection of the social interest, should be full, not just fragmental and as the result thereof not uniform. Moreover, there is no rational justification for choosing some social interest over the other. It is difficult to assume that in 1990, with reference to the introduction of vertical division of the authority and the creation of the local government, the legislator gave up this just assumption.

24 The same also, Lech Morawski, *Wykładowia w orzecznictwie sądów. Komentarz* (Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora”, 2002), 101.

5. The role of the prosecutor in the implementation of the testator's will expressed in testamentary burden

Apart from heirs, executors of last will and competent State agencies, the right to demand the testamentary burden be implemented is also vested with the prosecutor²⁵, although this right does not result from Art. 985 of the Civil Code but from Art. 7 of the Code of Civil Procedure. In accordance with Art. 7 of the Code of Civil Procedure: „The prosecutor may demand the proceedings be started in any case or take part in the proceedings already commenced if, in their assessment it is required based on the need to protect the rule of law, the rights of citizens or social interest”. Thus, the testamentary burden is included within prosecutor's general title to appear before the court to initiate civil proceedings, and to participate in the already initiated proceedings²⁶. In this situation, searching for the answer to the question whether in the meaning of Art. 985 sentence 2 of the Civil Code prosecutor is a „competent State agency” should be recognized as pointless. The only and, at the same time, the independent source of this right is thus Art. 7 of the Code of Civil Procedure. Moreover, this provision gives the prosecutor relatively more freedom and his role is not limited exclusively to testamentary burden, the aim of which is social interest but it includes also the testamentary burdens, the implementation of which serves to protect the rule of law or the rights of citizens. Thus, undoubtedly, the prosecutor may act in broader scope than, for instance, competent State agency. The possibilities thereof are not however as

-
- 25 The same on the grounds of Art. 894 of the Civil Code Leopold Stecki, „Darowizna”, [in:] *System prawa prywatnego. Tom VII. Prawo zobowiązań – część szczegółowa*, ed. J. Rajska (Warszawa: C. H. Beck: Instytut Nauk Prawnych PAN, 2011), 344, point 46; Safjan, „Commentary on Art. 894 of the Civil Code” sentence 5, 899; Trzaskowski, „Commentary on Art. 894 of the Civil Code” Art. 894, sentence 25, 650; Zdzisław Gawlik, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom III. Zobowiązania. Część szczegółowa*, ed. A. Kidyba (Warszawa: Lex a Wolters Kluwer business, 2014), Art. 894, sentence 5, 1352; Julian Jezioro, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz*, ed. E. Gniewek, P. Machnikowski (Warszawa: Wydawnictwo C. H. Beck, 2019), Art. 894, sentence 3, 1735; Krzysztof Mularski, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088*, ed. M. Gutowski (Warszawa: Wydawnictwo C. H. Beck, 2016), Art. 894, sentence 2, 1273 et seq.; the remarks of already historical character are formulated in this scope also by Walaszek, „*Polecenie testamentowe*”, 176.
- 26 The same on the grounds of Art. 894 of the Civil Code Mularski, „Commentary on Art. 894 of the Civil Code,” Art. 894, sentence 2, 1273 et seq. who underlines the general competence of the prosecutor.

broad as the possibilities of heir and executor of the will, who, being not bound by the above mentioned prerequisites, may basically demand the implementation of any testamentary burdens, with the exception of testamentary burdens with the aim of exclusive advantage of the person burdened with the testamentary burden.

The above considerations may not make up the basis to formulate the conclusion that both provisions, quoted above, remain fully autonomous. There is, however, a certain dependency between Art. 7 of the Code of Civil Procedure and Art. 985 of the Civil Code. It seems that, *in casu*, Art. 7 of the Code of Civil Procedure would be deprived of meaning if the legislator did not foresee the mechanism securing the execution of the testator's will in Art. 985 of the Civil Code. In consequence, seeking the fulfilling of a testamentary burden makes up „the case” in the meaning of Art. 7 of the Code of Civil Procedure, in which the prosecutor may demand the proceedings be started. Justifying their right of action prosecutor should therefore indicate Art. 7 of the Code of Civil Procedure in conjunction with Art. 985 of the Civil Code as the legal basis.

6. The body authorized to demand the implementation of the testamentary burden in German, Austrian and Swiss law

The hitherto considerations indicate the existence of the need to carry out appropriate amendment of Art. 985 sentence 2 of the Civil Code. The notion of “competent State agencies” in the current system of government lost its validity, which causes numerous and difficult to be solved interpretational problems. Looking for new legislative solutions, the terminology known already to the decree Inheritance Law, which in Art. 135 § 3 vested the right to demand testamentary burden implementation to “competent authority”²⁷ may be reached for. It is worth noticing that the content of the quoted provision is nearly exact translation of § 2194 sentence 2 of German Civil Code²⁸, which testifies to significant influence of the German law onto the shape of the hitherto Polish inheritance law²⁹.

27 Pursuant to Art. 135 § 3 of the decree Inheritance Law: „If the implementation of the testamentary burden is in public interest, the implementation thereof may be demanded by competent authority”.

28 See Mathis Rudy, „Commentary on § 2194 of the Civil Code”, [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch. Band 10. Erbrecht* (München: C. H. Bck, 2013), § 2194, point 8, 1111. In accordance with § 2194 sentence 2 of the German Civil Code: „Liegt die Vollziehung im öffentlichen Interesse, so kann auch die zuständige Behörde die Vollziehung verlangen”.

29 Legal comparative analysis relating to the personal scope of the persons authorized to demand the testamentary burden be fulfilled was carried

In turn, Swiss legislator, including in the scope of Art. 482 of the Swiss Civil Code³⁰ all persons having the interest in the implementation of testamentary burden³¹, rejected the concept of closed catalogue of those authorized to demand the testamentary burden be implemented. Swiss doctrine is, by the same, far from restrictive interpretation of the quoted provision and the attempts to limit its personal scope³². Such approach makes the demand to implement testamentary burden the right accessible to a wide range of persons, as the interest mentioned in the Act may also be of non-pecuniary nature. In consequence, apart from the beneficiaries of testamentary burden³³, potential mentees of the foundation which is to be founded in accordance with the content of testamentary burden, persons belonging to the circle of intestate successor missed out in the testament, members of the family, next of kin and friends to the testator, executor of the will and administrator of an inheritance, and, according to the doctrine also the appropriate authority, as long as the testamentary burden considers the public interest, may demand the implementation of the testamentary burden³⁴. However,

out by Walaszek, „*Polecenie testamentowe*”, 175, footnote 43.

- 30 Art. 482 of the Swiss Civil Code: „Der Erblasser kann seinen Verfügungen Auflagen oder Bedingungen anfügen, deren Vollziehung, sobald die Verfügung zur Ausführung gelangt ist, jedermann verlangen darf, der an ihnen ein Interesse hat”.
- 31 This applies to the interest which is worth being supported (*unterstützungswürdig*), see Stephanie Hrubesch-Millauer, „Commentary on Art. 482 of the Civil Code”, [in:] *Handkommentar zum Schweizer Privatrecht. Erbrecht*, ed. P. Breitschmid, A. Jungo (Zürich-Basel-Genf: Schulthess Verlag 2016), Art. 482, sentence 10, 59 et seq.
- 32 See Wolf and Genna, „Zulässige Inhalte der Verfügungen von Todes wegen (Verfügungsarten)”, 326, according to whom: „Der Kreis derjenigen Personen (...) ist (...) weit zu ziehen”. See also Harold Grüniger, „Commentary on Art. 482 of the Civil Code”, [in:] *Kurzkommentar ZGB*, ed. A. Büchler, D. Jakob (Basel: Helbing Lichtenhahn Verlag, 2018), Art. 482, point 9, 1484.
- 33 See the sentence of the Swiss Supreme Court of 13.12.1979, BGE 105 II 253, 260, in the opinion of which: „Ein solches berechtigtes Interesse hat in erster Linie der Begünstigte”.
- 34 See Wolf and Genna, „Zulässige Inhalte der Verfügungen von Todes wegen (Verfügungsarten)”, 326-327. The notion of „competent authority” is the reference to the content of Art. 246 subparagraph 2 of the Swiss Obligation Laws, which grants the right to seek the implementation of testamentary burden in case of the death of the donor to this competent authority, see Peter Weimar, „Commentary on Art. 482 of

prerequisite of the existence of generally understood „interest” on the side of the demanding party gives the possibility to demand fulfilling the testamentary burden by such wide range of persons, yet the claim to fulfill the testamentary burden does not have the nature of *actio popularis*³⁵.

Austrian Civil Code does not contain a provision that would, *expressis verbis*, define the catalogue of subjects authorized to demand the testamentary burden be implemented (compare Polish and German catalogue). Also, there is no criterion allowing to separate such catalogue (see Swiss model). In this scope the situation is thus not as clear as in the legislations presented above. Austrian doctrine however, has no doubts that such right is vested with the executor of the will, and to the heir, which is confirmed by general regulations contained in § 816 and § 817 of the Austrian Civil Code.³⁶ This short list of those authorized is sometimes supplemented by Treasury Prosecutors' Office (*Finanzprokuratur*³⁷)³⁸, as long as the interest contributes to

the Civil Code”, [in:] *Berner Kommentar. Kommentar zum schweizerischen Privatrecht. Band III. Erbrecht*, ed. H. Hausheer, H. P. Walter (Bern: Stämpfli Verlag, 2009), Art. 482, point 32, 301.

- 35 The same Wolf and Genna, „Zulässige Inhalte der Verfügungen von Todes wegen (Verfügungsarten)”, 327; Grüninger, „Commentary on Art. 482 of the Civil Code”, Art. 482, para 9, 1484; Michael Lüdi, *Auflagen und Bedingungen in Verfügungen von Todes wegen unter Berücksichtigung des deutschen Rechts* (Zürich-Basel-Genf: Schulthess Verlag, 2016), 244.
- 36 The same Rudolf Welser and Brigitta Zöchling-Jud, *Grundriss des bürgerlichen Rechts. Band II. Schuldrecht Allgemeiner Teil. Schuldrecht Besonderer Teil. Erbrecht* (Wien: Manz Verlag, 2015), 568, point 2086; Bernhard Eccher, „Commentary on § 709 of the Civil Code”, [in:] *ABGB Praxiskommentar. Band 3. §§ 531-858 ABGB*, ed. M. Schwimann (Wien: LexisNexis Verlag, 2006), § 709, point 5, 140.
- 37 Finanzprokuraturgesetz, BGBl. I No. 110/2008.
- 38 Winfried Kralik, *System des österreichischen allgemeinen Privatrechts* (Wien: Manz Verlag, 1983), 269, who stresses at the same time that the right to demand the fulfilling of the testamentary burden is not vested with other institutions, such as: churches or society for the animal welfare protection; Apathy, „Commentary on § 710 of the General Civil Code”, § 710, point 3, 608; Eccher, „Commentary on § 709 of the Civil Code”, § 709, point 2, 140. Compare also on the possibilities to enforce the testamentary burden be implemented by General Counsel's Office in times when the decree Inheritance Law was in force Fryderyk Zoll, „Polecenie obciążające osobę odnoszącą korzyść z czynności pod tytułem darmym” *Przegląd Notarialny*, book 5 (1948): 392.

public interest and vaguely defined public institutions appointed to safeguard the interest of testamentary burden beneficiaries³⁹.

7. *De lege ferenda* remarks

Considering possible amendment of regulation relating to testamentary burden two basic issues should be considered. Firstly, irrespective from the adopted regulation model (Polish/German, Swiss or Austrian model) in particular countries, on statutory or at least doctrine level, the need to protect the public or social interest, implemented by the testamentary burden, is rightly noticed. As the state has not the right but even duty to take care of its own interest. Secondly, from the legal comparative point of view, as to the principle, the protection of this interest is entrusted to „public authority”. Even Swiss doctrine uses this notion, although the legislator does not use the notion in the provisions relating to the testamentary burden. Only the Austrian law makes the exception in this scope.

It seems that further discussion on the personal scope of those authorized to demand the fulfillment of the testamentary burden will be based on German or Swiss model, whereas the Polish legislator will aim to gradually widen, even, possibly, open the catalogue in question. Given the limited framework of this paper, it should only be stated that, irrespective the choice made in this scope on statutory and doctrinal level, the notion „competent State agencies” should be replaced by the notion „competent authority”, which is universal and allows to make the legal provisions independent from changing system of government⁴⁰. This view is also confirmed in the remarks relating to chosen foreign legislations (compare also point 6). Furthermore, it seems that it is also the direction chosen by the Polish doctrine, which speaks for the notion „competent public body”⁴¹ or „competent body of public authority”⁴². Especially the second of the suggested notions deserves the attention, as the legislator has used it repeatedly also in the provisions of the

39 Welser and Zöchling-Jud, „*Grundriss des bürgerlichen Rechts*”, 568, point 2086.

40 Compare Zoll, „Polecenie obciążające”, 387, who, assessing critically the regulation of the decree Inheritance Law relating to testamentary burden, what is symptomatic, did not question the notion „competent authority”.

41 Osajda, „Commentary on Art. 985 of the Civil Code”, Art. 985, sentence 15, 829; Zelek, „Commentary on Art. 985 of the Civil Code”, Art. 985, sentence 6, 1674.

42 Pazdan, „Commentary on Art. 985 of the Civil Code”, Art. 985, sentence 3, 1163; Zelek, „Commentary on Art. 985 of the Civil Code”, Art. 985, sentence 6, 1674.

Constitution⁴³. Justification for the transfer of the notions characteristic for the constitutional law to the grounds of the civil law may be seen as the necessity to construct some terminological coherence within the Polish system of law. The implementation of this, again legitimate, assumption is however related with the necessity to adjust the terminology of the Civil Code to the network of system regulations each time, should they be changed. Thus, potentially there is a risk that the notion „competent body of public authority” suggested in the doctrine would become outdated, which, bearing in mind the hitherto negative experience with the interpretation of Art. 985 sentence 2 of the Civil Code should be avoided. Revoking to the notion „competent authority” which is absolutely autonomous and, at the same time, sufficiently precise, would allow to avoid the indicated threat⁴⁴.

Bibliography

- Antoszek Piotr, *Cywilnoprawny charakter uchwał wspólników spółek kapitałowych*. Kraków: Oficyna Wolters Kluwer business, 2009.
- Apathy Peter, „Commentary on § 710 of the General Civil Code”, [in:] *Kurzkomentarz zum ABGB*, ed. Helmut Koziol, Peter Bydlinski, Raimund Bollenberger, 608-609. Wien-New York: Springer, 2010.
- Eccher Bernhard, „Commentary on § 709 of the General Civil Code”, [in:] *ABGB Praxiskommentar. Band 3. §§ 531-858 ABGB*, ed. Michael Schwimann, 139-141. Wien: LexisNexis Verlag, 2006.
- Gawlik Zdzisław, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom III. Zobowiązania. Część szczegółowa*, ed. Andrzej Kidyba, 1350-1352. Warszawa: Lex a Wolters Kluwer business, 2014.
- Grüninger Harold, „Commentary on Art. 482 of the Civil Code”, [in:] *Kurzkomentarz ZGB*, ed. Andrea Büchler, Dominique Jakob, 1481-1485. Basel: Helbing Lichtenhahn Verlag, 2018.
- Herbet, Andrzej. „Spółka cywilna”, [in:] *System prawa prywatnego. Tom 16. Prawo spółek osobowych*, ed. Andrzej Szajkowski, 698-997. Warszawa: C. H. Beck: Instytut Nauk Prawnych PAN, 2016.
- Hrubesch-Millauer Stephanie, „Commentary on Art. 482 of the Civil Code”, [in:] *Handkommentar zum Schweizer Privatrecht. Erbrecht*, ed. Peter

43 See Art. 53, 61, 63, 72, 77, 80 of the 2nd April 1997 Constitution of the Republic of Poland (Dz. U. 1998, No. 78, item 483).

44 The remarks of, among others, Walaszek testify thereto in: Walaszek, „*Polecenie testamentowe*”, 155, expressed still in times when the decree Inheritance Law was in force; by making the scope of notion “competent authority” more precise, the author has no interpretational doubts rightly identifying the notion with the state office (body).

- Breitschmid, Alexandra Jungo, 56-61. Zürich-Basel-Genf: Schulthess Verlag 2016.
- Jeziorek Julian, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz*, ed. Edward Gniewek, Piotr Machnikowski, 1734-1736. Warszawa: Wydawnictwo C. H. Beck, 2019.
- Kralik Winfried, *System des österreichischen allgemeinen Privatrechts*. Wien: Manz Verlag, 1983.
- Kremis Józef, „Commentary on Art. 982 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz*, ed. Edward Gniewek, Piotr Machnikowski, 1669-1670. Warszawa: Wydawnictwo C. H. Beck, 2013.
- Kremis Józef, Joanna Kuźmicka-Sulikowska, „Commentary on Art. 982 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz*, ed. Edward Gniewek, Piotr Machnikowski, 1885-1886. Warszawa: Wydawnictwo C. H. Beck, 2017.
- Księżak Paweł, „Żądanie wykonania polecenia” *Przegląd Sądowy*, No. 4 (2006): 49-61.
- Lackoroński Bogusław, „Commentary on Art. 894 of the Civil Code”, [in:] *Komentarze prawa prywatnego. Tom III B. Kodeks cywilny. Komentarz. Zobowiązania. Część szczegółowa. Ustawa o terminach zapłaty*, ed. Konrad Osajda, 1210-1212. Warszawa: C. H. Beck, 2017.
- Leipold Dieter, „Commentary on Art. 1940 of the Civil Code”, [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch. Band 9. Erbrecht. §§ 1922-2385. §§ 27-35 BeurkG*, ed. Sibylle Kessal-Wulf, 206-209. München: Beck C. H., 2013.
- Lüdi Michael, *Auflagen und Bedingungen in Verfügungen von Todes wegen unter Berücksichtigung des deutschen Rechts*. Zürich-Basel-Genf: Schulthess Verlag, 2016.
- Morawski Lech, *Wykładnia w orzecznictwie sądów. Komentarz*. Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora”, 2002.
- Mularski Krzysztof, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088*, ed. Maciej Gutowski, 1273-1274. Warszawa: Wydawnictwo C. H. Beck, 2016.
- Niedośpiął Michał, „Zasadnicze rozrządzenia testamentowe” *Studia Prawnicze*, book 2 (1997): 65-86.
- Niezbecka Elżbieta, „Commentary on Art. 982 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom IV. Spadki*, ed. Andrzej Kidyba, 232-234. Warszawa: Lex a Wolters Kluwer business, 2015.
- Niezbecka Elżbieta, *Zapis*. Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 1990.
- Nowak Dominika, *Wadliwa spółka partnerska*. Warszawa: Wolters Kluwer Polska, 2010.

- Osajda Konrad, „Commentary on Art. 982 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom IVA. Spadki*, ed. Konrad Osajda, 806-821. Warszawa: Wydawnictwo C. H. Beck, 2019.
- Osajda Konrad, „Commentary on Art. 985 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom IVA. Spadki*, ed. Konrad Osajda, 826-831. Warszawa: Wydawnictwo C. H. Beck, 2019.
- Pazdan Maksymilian, „Commentary on Art. 982 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088. Przepisy wprowadzające*, ed. Krzysztof Pietrzykowski, 1160-1161. Warszawa: Wydawnictwo C. H. Beck, 2018.
- Pazdan Maksymilian, „Commentary on Art. 985 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088. Przepisy wprowadzające*, ed. Krzysztof Pietrzykowski, 1162-1163. Warszawa: Wydawnictwo C. H. Beck, 2018.
- Rudy Mathis, „Commentary on § 2194 of the Civil Code”, [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch. Band 10. Erbrecht*, ed. Sibylle Kessal-Wulf, 1110-1112. München: C. H. Beck, 2013.
- Rzewuski Maciej, *Podpis spadkodawcy na testamentie własnoręcznym*. Warszawa: Lex a Wolters Kluwer business, 2014.
- Safjan Marek, „Commentary on art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088. Przepisy wprowadzające*, ed. Krzysztof Pietrzykowski, 898-899. Warszawa: C. H. Beck, 2018.
- Skowrońska-Bocian, Elżbieta, Jacek Wierciński, „Commentary on Art. 982 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom VI. Spadki*, ed. Jacek Gudowski, 244-246. Warszawa: Wolters Kluwer, 2017.
- Stahelin Daniel, „Commentary on Art. 482 of the Civil Code”, [in:] *Basler Kommentar. Zivilgesetzbuch II. Art. 457-977 ZGB. Art. 1-61 SchlT ZGB*, ed. Heinrich Honsell, Nedim Peter Vogt, Thomas Geiser, 142-157. Basel: Helbing Lichtenhahn Verlag, 2015.
- Stecki Leopold, *Darowizna*. Toruń: TNOiK „Dom Organizatora”, 1998.
- Stecki Leopold, „Darowizna”, [in:] *System prawa prywatnego. Tom 7. Prawo zobowiązań – część szczegółowa*, ed. Jerzy Rajski, 331-364. Warszawa: C. H. Beck: Instytut Nauk Prawnych PAN, 2011.
- Trzaskowski Roman, „Commentary on Art. 894 of the Civil Code”, [in:] *Kodeks cywilny. Komentarz. Tom V. Zobowiązania. Część szczegółowa*, ed. Jacek Gudowski, 631-655. Warszawa: Wolters Kluwer, 2017.
- Turlukowski Jarosław, „Instytucja polecenia testamentowego w prawie krajów Wspólny Niepodległych Państw na tle prawa polskiego”, [in:] *Non omnis moriar. Osobiste i majątkowe aspekty śmierci człowieka. Zagadnienia wybrane*, ed. Jacek Gołaczyński, Jacek Mazurkiewicz, Jarosław Turlukowski, Daniel Karkut, 794-810. Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego; Oficyna Prawnicza, 2015.

- Walaszek Bronisław, „Polecenie testamentowe w polskim prawie spadkowym” *Studia Cywilistyczne*, Vol. 1 (1961): 153-193.
- Weimar Peter, „Commentary on Art. 482 of the Civil Code”, [in:] *Berner Kommentar. Kommentar zum schweizerischen Privatrecht. Band III. Erbrecht, Art. 457-516 ZGB*, ed. Heinz Hausheer, Hans Peter Walter, 287-328. Bern: Stämpfli Verlag, 2009.
- Welser Rudolf, Brigitta Zöchling-Jud, *Grundriss des bürgerlichen Rechts. Band II. Schuldrecht Allgemeiner Teil. Schuldrecht Besonderer Teil. Erbrecht*. Wien: Manz Verlag, 2015.
- Wójcik Sylwester, Fryderyk Zoll, „Rozrządzenia testamentowe”, [in:] *System prawa prywatnego. Tom 10. Prawo spadkowe*, ed. Bogudar Kordasiewicz, 421-501. Warszawa: C. H. Beck: Instytut Nauk Prawnych PAN 2015.
- Wolf Stephan, Gian Sandro Genna, „Zulässige Inhalte der Verfügungen von Todes wegen (Verfügungsarten)” [in:] *Schweizerisches Privatrecht. Band IV. Erbrecht. Band 1*, ed. Stephan Wolf, 234-359. Basel: Helbing Lichtenhahn Verlag, 2012.
- Zelek Mariusz, „Commentary on Art. 982 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088*, ed. Maciej Gutowski, 1665-1669. Warszawa: C. H. Beck, 2016.
- Zelek Mariusz, „Commentary on Art. 985 of the Civil Code”, [in:] *Kodeks cywilny. Tom II. Komentarz. Art. 450-1088*, ed. Maciej Gutowski, 1672-1675. Warszawa: C. H. Beck, 2016.
- Zoll Fryderyk, „Polecenie obciążające osobę odnoszącą korzyść z czynności pod tytułem darmym” *Przegląd Notarialny*, book 5 (1948): 387-393.

