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Forgiveness under Polish Civil Law from a Psychological Perspective

Abstract

Forgiveness is of interest to ethicists, sociologists and psychologists and – since it can produce specific legal effects in various legal systems – also to civil law scholars. In almost all European legal systems, the fact that the testator has forgiven the heir means that the heir may not be declared unworthy to inherit. The nature of forgiveness remains in dispute, as evidenced by the now decades-long debate among scholars. Resolving this problem is important because it is necessary to correctly identify an event as an instance of forgiveness in order to ascertain whether the legal effects stipulated by the above-mentioned provisions arise. Moreover, the way this issue is resolved affects other legal questions, for example the possibility of revoking forgiveness, the possibility of granting conditional forgiveness, or the effects of forgiveness resulting from mistake or deception. The aim of the paper is to systematize the views expressed in the literature and to develop a coherent theory of the institution. The doctrinal and comparative legal methods were employed, and the findings of empirical psychology in the area of forgiveness were taken into consideration in the study. The fact that similar regulations may be found in many other European legal systems lends the present considerations a universal dimension to some extent.

KEYWORDS: forgiveness, inheritance law, donation, intrapersonal process, conventional act

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1 Introduction

Forgiveness is of interest to ethicists, sociologists, theologians and psychologists and – since it can produce specific legal effects in various national legal systems – also to civil law scholars.

In almost all European legal systems – with the exception of the Netherlands and Luxembourg – the fact that the testator forgave the heir means that the heir may not be declared unworthy to inherit.[1] Although the formal conditions of an effective forgiveness may take various forms depending on the national legal system, the remarkable similarity of the meaning, legal effects and construction of the provisions, as well as the uniform understanding of forgiveness in European culture, justify the conclusion that in all instances it is probably the same legal event of the same nature. The institution of forgiveness is likewise present in Polish legislation – it appears three times

1 Data from the website of the Max Planck Institute for Comparative and International Private Law (German: *Max-Planck-Institut für ausländisches und internationales Privatrecht*). http://hwb-eup2009.mpipriv.de/index.php/Erbrecht. [accessed: 30.06.2025]. Cf. also the following provisions: § 532 BGB: Der Widerruf ist ausgeschlossen, wenn der Schenker dem Beschenkten verziehen hat oder wenn seit dem Zeitpunkt, in welchem der Widerrufsberechtigte von dem Eintritt der Voraussetzungen seines Rechts Kenntnis erlangt hat, ein Jahr verstrichen ist. Nach dem Tode des Beschenkten ist der Widerruf nicht mehr zulässig; § 2337 BGB: Das Recht zur Entziehung des Pflichtteils erlischt durch Verzeihung. Eine Verfügung, durch die der Erblasser die Entziehung angeordnet hat, wird durch die Verzeihung unwirksam; § 2343 BGB: Die Anfechtung ist ausgeschlossen, wenn der Erblasser dem Erbunwürdigen verziehen hat; § 773 Abs. 2 ABGB: Konnte der Verstorbene die Enterbung auf Grund fehlender Testierfähigkeit nicht mehr widerrufen, so ist die Enterbung unwirksam, wenn der Verstorbene zu erkennen gegeben hat, dass er dem Enterbten verziehen hat; § 539 ABGB: Wer gegen den Verstorbenen oder die Verlassenschaft eine gerichtlich strafbare Handlung begangen hat, die nur vorsätzlich begangen werden kann und mit mehr als einjähriger Freiheitsstrafe bedroht ist, ist erbunwürdig, sofern der Verstorbene nicht zu erkennen gegeben hat, dass er ihm verziehen hat; Art. 540 *in fine* ZGB: Durch Verzeihung des Erblassers wird die Erbunwürdigkeit aufgehoben; or Art. 856 of the Código Civil: La reconciliación posterior del ofensor y del ofendido priva a éste del derecho de desheredar, y deja sin efecto la desheredación ya hecha. In the last case, the provision literally mentions reconciliation, yet according to the view prevailing in the doctrine, the same effects should be associated with forgiveness granted by the testator – José Manuel Busto Lago, "Artículo 856," [in:] *Comentarios al Código Civil*, ed. Rodrigo Bercovitz Rodríguez-Cano (Elcano: Editorial Tecnos, 2001), 1010.

in the Civil Code.[2] Under Article 899(1) k.c., a gift may not be revoked due to ungratefulness if the donor forgave the donee. Pursuant to Article 930(1) k.c., the heir may not be declared unworthy if the testator forgave them, and Article 1010(1) k.c. stipulates that the testator may not disinherit a person entitled to a reserved share of the estate if the testator forgave the entitled person. Additionally, all the above-cited provisions stipulate that forgiveness is effective if granted with sufficient insight.

Still, the nature of forgiveness remains in dispute, as evidenced by the now decades-long debate among scholars. It should be emphasized that finding a solution to this problem is not merely art for art's sake, because it is necessary to correctly identify an event as an instance of forgiveness in order to ascertain whether the legal effects stipulated by the above-mentioned provisions arise. Moreover, the way this issue is resolved affects other legal questions, for example the possibility of revoking (withdrawing) forgiveness, the possibility of granting conditional forgiveness, the effects of forgiveness resulting from a mistake, deception, or threat, and the choice of provisions that could apply to this institution.

The aim of the present paper is to systematize the views expressed in the literature and to develop a coherent theory of the institution. The study employs the legal dogmatic method (mainly within the framework of the derivative concept of interpretation) and the comparative method (analysing primarily the views of German scholars). The findings of empirical psychology on forgiveness were also taken into account. The fact that similar regulations may be found in many other European legal systems lends the present considerations to some extent a universal dimension.

2 Act of 23 April 1964 – Civil Code (Journal of Laws 2020, item 1740, as amended), hereinafter: "Civil Code" or "k.c.".

2 | Syntactic Analysis and the Meaning of the Term "Forgiveness"

According to some Polish legal scholars, forgiveness is "an emotional act",[3] "an expression of feelings",[4] "a moral and volitional act, […] an outwardly expressed decision not to act any further on the grievance suffered",[5] "an act of a moral nature",[6] "an act of an emotional nature consisting in forgetting harm and resentment",[7] "a voluntary act",[8] "an act similar to legal acts",[9] or "a normative conventional act".[10] The theory that forgiveness is a legal act (a declaration of intent) has definitely not gained much support among Polish scholars.[11] Furthermore, it is difficult to tell whether any of the above concepts have been accepted by the majority of scholars. In German legal scholarship, in turn, the prevailing view at the moment seems to be that forgiveness is a purely factual event (German: *rein tatsächlicher*

3 Elżbieta Niezbecka, "Komentarz do art. 930 KC," [in:] *Kodeks cywilny. Komentarz*. Vol. IV. *Spadki*, ed. Andrzej Kidyba (Warszawa: Wolters Kluwer, 2015), 67; in case law, see also the resolution of the Supreme Court of 19 October 2018, file ref. no. III CZP 37/18, OSNC 2019, no. 7–8, item 75.

4 Grzegorz Karaszewski, "Komentarz do art. 899 KC," [in:] *Kodeks cywilny. Komentarz*, ed. Jerzy Ciszewski, Piotr Nazaruk (Warszawa: Wolters Kluwer, 2019), 1528.

5 Roman Trzaskowski, "Darowizna," [in:] *Kodeks cywilny. Komentarz*. Vol. V. *Zobowiązania. Część szczegółowa*, ed. Jacek Gudowski (Warszawa: Wolters Kluwer, 2017), 703.

6 Andrzej Stelmachowski, *Zarys teorii prawa cywilnego* (Warszawa: Wydawnictwo Prawnicze PWN, 1998), 71.

7 Probably the first person to characterize forgiveness in this manner was Jan Gwiazdomorski, *Prawo spadkowe* (Warszawa: Wydawnictwo Naukowe PWN, 1959), 71.

8 Paweł Księżak, "Przebaczenie w polskim prawie cywilnym" *Państwo i Prawo*, No. 11 (2006): 58.

9 Krzysztof Mularski, "Jeszcze w sprawie charakteru prawnego przebaczenia (na marginesie uchwały SN z 19.10.2018 r., III CZP 37/18)" *Rejent*, No. 4 (2020): 55; Krzysztof Mularski, *Czynności podobne do czynności prawnych* (Warszawa: Wolters Kluwer, 2011), 419.

10 Stanisław Czepita, "O pojęciu czynności konwencjonalnej i jej odmianach" *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, No. 1 (2017): 94–95.

11 This view was first presented by Adam Kozaczka, "Na marginesie przebaczenia w projekcie kodeksu cywilnego PRL z 1960 r." *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, No. 1 (1962): 108, who later abandoned it: Adam Kozaczka, "Charakter prawny przebaczenia w prawie cywilnym" *Nowe Prawo*, No. 10 (1972): 1549.

Vorgang),[12] although some scholars argue that it is a moral act (*sittlicher Akt*), an expression of feelings (*Empfindungsäusserung*), or a declaration of intent (*Willenserklärung*).[13] The multiplicity and diversity of the theories of forgiveness prompt a thorough analysis of the concept.

In traditional logic, the term "forgiveness" is treated as an abstract name referring to a relation in the logical sense (and not as a genuine name, which can denote only persons or things, or something that we imagine as persons or things).[14] This approach corresponds to the so-called surface layer of the language. From the perspective of the deep layer of language and modern logic (in particular according to the predicate calculus), the expression "forgiveness" is a predicate, because it cannot be treated as a predicative clause in a sentence without rendering the utterance unnatural. To be more precise, it is a predicate of three arguments (a sentence-forming functor of three nominal arguments), because "*x* forgives *y* for the act of *z*".[15] It seems, however, that in order to analyse the institution of forgiveness from the perspective of civil law, it is perfectly sufficient to treat the expression "forgiveness" as an abstract name.

Moving on to the semantic explication of the term "forgiveness" present in the Civil Code, it should first be noted that according to the methodological paradigm of interpretation adopted in this research, in order to ascertain the meaning of particular words used in a legal text, one should first of all refer to the so-called pragmatic linguistic directives of interpretation,[16]

12 Maurad Ferid, Michael Cieslar, [in:] *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen. Erbrecht §§ 2229–2264*, ed. Maurad Ferid (Berlin: Sellier – de Gruyter, 1983), 425 and 511; Knut Werner Lange, "Pflichtteil," [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch. Erbrecht §§ 1922–2385*, ed. Gerhard Schlichting (München: C.H. Beck, 2004), 2020–2021; Helmut Kollhosser, "§ 532," [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch. Schuldrecht. Besonderer Teil I §§ 433–610*, ed. Wolfgang Krüger (München: C.H. Beck, 2004), 1331.

13 Alfred Manigk, *Das rechtswirksame Verhalten* (Berlin: de Gruyter, 1939), 497.

14 Zygmunt Ziembiński, *Logika praktyczna* (Warszawa: Wydawnictwo Naukowe PWN, 2012), 26–27.

15 For more about the predicate calculus, see e.g. Wojciech Patryas, *Elementy logiki dla prawników* (Poznań: Ars Boni et Aequi, 2002), 44–72; Peter Bruce Andrews, *An Introduction to Mathematical Logic and Type Theory: To Truth Through Proof* (Berlin: Springer, 2002), *passim*.

16 Pragmatic interpretation rules specify what should be done in a specific case, and in particular e.g. which of the apragmatic rules of interpretation should be applied, i.e. which apragmatic rule of interpretation determines the understanding of the expression, see Maciej Zieliński, *Wykładnia prawa. Zasady – reguły – wskazówki* (Warszawa: Wolters Kluwer, 2017), 237.

which aim to activate one of the apragmatic directives (that is, directives which indicate directly how a specific expression is understood in a certain language).[17] Therefore, it should be verified first whether a legal text contains a legal definition of the given word. In this case, the Polish legislature (like the legislatures in other countries) has provided no legal definition of forgiveness in any piece of legislation. Consequently, it should be examined whether the expression has an established meaning in the legal language. An established meaning in the legal language is one that is generally and unambiguously adopted in the legal language, i.e. there is complete uniformity in the doctrine with regard to its content.[18] When it comes to forgiveness, it should be pointed out that the only aspect which seems to be undisputed is that it does not constitute a declaration of intent (a legal act).[19] That being said, as has been made clear above, there is no consensus among legal scholars as to what forgiveness is – what the expression means exactly. Therefore, the meaning of the analysed expression needs to be ascertained in reference to general language.

In Polish, "przebaczenie" ("forgiveness") is a verbal (gerundial) noun formed from the verb "przebaczać", "przebaczyć" ("to forgive"). According to the semantic rules of general Polish, "przebaczać" ("to forgive") means "to stop feeling anger or resentment towards somebody for some reason, to stop blaming somebody"[20] or "to stop being angry with somebody for a wrong they have done and to give up the intention to punish them".[21] A similar explanation can be found in other languages, e.g. in English, "to forgive" is to "no longer have the wish to punish somebody; no longer have hard feelings towards somebody,"[22] while in German, "verzeihen" is defined as "erlittenes

17 Ibidem, 291.

18 Ibidem, 294–295.

19 This view was once supported by Kozaczka, "Na marginesie przebaczenia", 108, who abandoned it in his later works, cf. Kozaczka, "Charakter prawny przebaczenia", 1549.

20 Entry: «przebaczać», [in:] *Mały słownik języka polskiego*, ed. Stanisław Skorupka, Halina Auderska, Zofia Łempicka (Warszawa: Państwowe Wydawnictwo Naukowe, 1968), 638.

21 Entry: «przebaczać», [in:] *Wielki słownik języka polskiego*, ed. Piotr Żmigrodzki. https://wsjp.pl/index.php?id_hasla=20554. [accessed: 30.06.2025].

22 Entry: <forgive>, [in:] *Oxford Advanced Learner's Dictionary of Current English*, ed. Albert Sydney Hornby (Oxford 1974; reprinted Warszawa: Wydawnictwo Naukowe PWN, 1981), 338.

Unrecht o.Ä. den Urheber nicht entgelten lassen, nicht grollend, strafend usw. darauf reagieren; vergeben".[23] It follows from the cited explications that in general language, forgiveness is understood as a mental process, that is a phenomenon subject specifically to psychological studies. This is noted also by P. Rafałowicz, who believes that forgiveness is a "natural action" taking place "in the human psyche (in their heart)".[24]

Therefore, it seems justified to examine the findings of this discipline in order to fully grasp the essence of forgiveness and to analyse statutory regulations from that angle.

3 Forgiveness from the Perspective of Psychology

In psychology, scholars have understood forgiveness as an intrapersonal process occurring usually, but not necessarily, in an interpersonal context.[25] This approach is evident in the definition proposed by McCullough, Pargament and Thoresen, where forgiveness is understood as "intraindividual prosocial change toward a perceived transgressor that is situated within a specific interpersonal context".[26] In turn, Enright and his team defined forgiveness as "a willingness to abandon one's right to resentment, negative judgment, and indifferent behavior toward one who unjustly injured us, while fostering the undeserved qualities of compassion, generosity and even love toward him or her".[27]

Forgiveness is a psychological process that ends with emotional, cognitive, motivational, and behavioural changes.[28] Psychologists adopt different

23 Entry: «verzeihen», [in:] *DUDEN – Die deutsche Rechtschreibung*. https://www.duden.de/rechtschreibung/verzeihen. [accessed: 30.06.2025].

24 Paweł Rafałowicz, "O naturze przebaczenia i skuteczności przebaczenia wydziedziczonemu" *Forum Prawnicze*, No. 5 (2019): 47.

25 Everett L. Worthington, "Understanding Forgiveness of Other People: Definitions, Theories, and Processes," [in:] *Handbook of Forgiveness*, ed. Everett L. Worthington, Nathaniel G. Wade (London: Routledge, 2019), 11.

26 Michael E. McCullough, Kenneth Ira Pargament, Carl E. Thoresen, "The Psychology of Forgiveness: History, Conceptual Issues, and Overview," [in:] *Forgiveness: Theory, Research, and Practice*, ed. Michael E. McCullough, Kenneth Ira Pargament, Carl E. Thoresen (New York: Guilford Press, 2000), 9.

27 Robert D. Enright, Suzanne Freedman, Julio Rique, "The Psychology of Interpersonal Forgiveness," [in:] *Exploring Forgiveness*, ed. Robert D. Enright, Joanna North (Madison: University of Wisconsin Press, 1998), 46–47.

28 Worthington, "Understanding Forgiveness", 11.

endpoints of forgiveness that are linked with a distinction between its dimensions – the "negative" (e.g. reduction of unforgiving emotions such as anger, vengefulness or fear) and the "positive" (e.g. increase in compassion, love, pity or mercifulness).[29] On the one hand, the endpoint of forgiveness is achieved when the victim ceases to experience negative emotions, thoughts or behaviours towards the person who hurt them.[30] On the other hand, some scholars believe that positive feelings, thoughts and behaviours directed at the offender are prerequisites for forgiveness.[31]

Forgiveness requires a psychological process consisting of a cognitive decision and emotional changes.[32] Accordingly, Worthington distinguished two different experiences of forgiveness – decisional and emotional.[33] *Decisional forgiveness* is a conscious choice to abandon revenge, avoidance, and other negative behaviour towards the offender. The decision to forgive is linked to treating the perpetrator as a valuable person. A person who makes the decision to forgive may still, however, maintain negative emotions and harbour a grudge against the perpetrator. This is the so-called "hollow forgiveness".[34] In turn, *emotional forgiveness* is a process in which unforgiving emotions (e.g. anger, resentment, passion, reluctance, hate, bitterness) are gradually replaced with neutral and finally positive other-oriented emotions (e.g. empathy, compassion, sympathy, mercy). Emotional forgiveness may lead to unilateral forgiveness, when the offender is absent (e.g. when they have

29 Peter Strelan, Tanya Covic, "A Review of Forgiveness Process Models and a Coping Framework to Guide Future Research" *Journal of Social and Clinical Psychology*, 25 (2006): 1059.

30 Laura Yamhure Thompson et al., "Dispositional Forgiveness of Self, Others, and Situations" *Journal of Personality*, 73 (2005): 313.

31 Enright, Freedman, Rique, "The Psychology of Interpersonal Forgiveness", 46–47.

32 Worthington, "Understanding Forgiveness", 11; Enright, Freedman, Rique, "The Psychology of Interpersonal Forgiveness", 46–47; Richard P. Fitzgibbons, "The Cognitive and Emotive Uses of Forgiveness in the Treatment of Anger" *Psychotherapy: Theory, Research, Practice, Training*, 23 (1986): 629–633.

33 Worthington, "Understanding Forgiveness", 11.

34 Don E. Davis et al., "Making a Decision to Forgive" *Journal of Counseling Psychology*, 62 (2015): 280–288; Stephanie Lichtenfeld et al., "Forgive and Forget: Differences between Decisional and Emotional Forgiveness" *PLoS ONE*, 10 (2015): e0125561; Everett L. Worthington et al., "Interpersonal Forgiveness as an Example of Loving One's Enemies" *Journal of Psychology and Theology*, 34 (2006): 32–42.

died, are missing or cannot be contacted) or when there is no wish to continue the relationship with them.[35]

Worthington proposed a model of decisional and emotional changes leading to forgiveness (REACH).[36] The model consists of five steps. R stands for recalling the hurt, E stands for empathizing with the offender, A stands for giving altruistic gifts of forgiveness, C stands for committing to the emotional forgiveness one experienced, and H stands for holding on to forgiveness when doubts arise. First, the victim decides not to take revenge and to treat the wrongdoer as a valuable person. Next, the victim tries to understand why the offender might have wronged them and to develop compassion and empathy. In the last step, the victim writes a note to themselves: "Today, I forgave them for hurting me". The offender does not have to be informed about it.

In psychology, forgiveness is distinguished from forgetting, pardoning, denial, forbearing, approval or excusing of wrongdoing.[37] Forgiveness may lead to forgetting, but these are different processes. As a result of the forgiveness process, the person stops thinking about the harmful event and intrusive thoughts subside.[38] Sometimes people show forbearance towards the offender and do not allow unforgiving emotions, thoughts and motivations to appear, which precludes the initiation of the forgiveness process.

Forgiveness is also distinguished from reconciliation. This distinction is based on understanding forgiveness as an intrapersonal process, while reconciliation is a relational experience.[39] From the psychological point of view, especially in clinical psychology, the distinction between forgiveness and reconciliation is beneficial. It gives the victim the opportunity to postpone the decision to resume or continue the relationship with the offender and to focus only on changing negative emotions, thoughts, and motivations towards the

35 Michael E. McCullough, Everett L. Worthington, "Models of Interpersonal Forgiveness and Their Applications to Counseling: Review and Critique" *Counseling and Values*, 39 (1994): 2–14.

36 Worthington, "Understanding Forgiveness", 11.

37 Mark S. Rye et al., "Evaluation of the Psychometric Properties of Two Forgiveness Scales" *Current Psychology*, 20 (2001): 260.

38 Galena Kline Rhoades et al., "Forgiving the September 11th Terrorists: Associations with Coping, Psychological Distress, and Religiosity" *Anxiety, Stress, and Coping*, 20 (2007): 109–128.

39 Worthington, "Understanding Forgiveness", 11.

wrongdoer. However, in lay conceptualizations of forgiveness, reconciliation is viewed as a part of forgiveness[40] or its desired endpoint.[41]

Moreover, forgiveness does not absolve the perpetrator from legal accountability and does not remove punishment and sanctions.[42] A person who has forgiven may still seek justice or expect various forms of reparation and atonement. Identifying forgiveness with abandoning the pursuit of justice would make it easier for the wrongdoer to hurt again.[43]

Forgiveness as a process is determined by many different predictors, both personality-related and situation-related, which enable an individual to undergo genuine psychological change. The former include all personality traits proven to be related to the level of forgiveness, while the latter include all contextual variables related to a particular offence. Taking personality traits into account, the Five-Factor Model[44] has been most explored in the context of forgiveness.[45] The model includes five domains of personality, often referred to as the Big Five: neuroticism, extraversion, openness to experience, agreeableness and conscientiousness. Although few studies show significant associations between all the Big Five and forgiveness,[46] some of these personality factors have been shown to be especially related to the

40 Myron D. Friesen, Garth J. Fletcher, "Exploring the Lay Representation of Forgiveness: Convergent and Discriminant Validity" *Personal Relationships*, 14 (2007): 209.

41 Terry D. Hargrave, "Families and Forgiveness: A Theoretical and Therapeutic Framework" *The Family Journal*, 2 (1994): 339.

42 Julie J. Exline, Ann Marie Yali, "Heaven's Gates and Hell's Flames: Afterlife Beliefs of Catholic and Protestant Undergraduates" *Research in the Social Scientific Study of Religion*, 17 (2006): 235.

43 Julie J. Exline, Everett L. Worthington, Peter C. Hill, Michael E. McCullough, "Forgiveness and Justice: A Research Agenda for Social and Personality Psychology" *Personality and Social Psychology Review*, 7 (2003): 337.

44 Paul T. Costa, Robert R. McCrae, "Domains and Facets: Hierarchical Personality Assessment Using the Revised NEO Personality Inventory" *Journal of Personality Assessment*, 64 (1995): 21.

45 Etienne Mullet, Félix Neto, Sheila Rivière, "Personality and Its Effects on Resentment, Revenge, Forgiveness, and Self-Forgiveness," [in:] *Handbook of Forgiveness*, ed. Everett L. Worthington (New York: Routledge, 2005), 159.

46 Mueen Abid, Iram Naz, Maryam Riaz, Sameera Shafiq, "Relationship between Personality Factors and Level of Forgiveness among College Students" *International Journal of Humanities and Social Science*, 5 (2015): 149; Hafnidar, "The Relationship among Five Factor Model of Personality, Spirituality and Forgiveness" *International Journal of Social Science and Humanity*, 3 (2013): 167.

ability and willingness to forgive. First, neuroticism is a well-documented factor inversely correlated with forgiveness, both as a state and as a trait.[47] Neurotic individuals are vulnerable to anxious rumination and inclined to experience negative emotions, which make forgiveness more difficult for them than for individuals who are emotionally stable. Second, agreeableness has consistently shown a positive association with both types of forgiveness.[48] Agreeable people are more trusting, empathetic and motivated to maintain conflict-free relationships, which makes them more determined and efficient in forgiveness.[49] Their trust, patience and tender-mindedness[50] help them not to see people's faults as intentional or malevolent, but rather as done by mistake or as situation-dependent.[51] Such an interpretation alleviates their negative thoughts and emotions, which is tantamount to forgiveness. Thus, people low in neuroticism and high in agreeableness are more willing to forgive. The same has been shown in the case of other personality traits,[52]

47 Patrick L. Hill, Mathias Allemand, Anthony L. Burrow, "Identity Development and Forgivingness: Tests of Basic Relations and Mediational Pathways" *Personality and Individual Differences*, 49 (2010): 497; Kinga Kaleta, Justyna Mróz, "Personality Traits and Two Dimensions of Forgivingness" *Annals of Psychology*, 21 (2018): 147; Lourdes Rey, Natalio Extremera, "Positive Psychological Characteristics and Interpersonal Forgiveness: Identifying the Unique Contribution of Emotional Intelligence Abilities, Big Five Traits, Gratitude and Optimism" *Personality and Individual Differences*, 68 (2014): 199.

48 Peggy Koutsos, Eleanor H. Wertheim, Jenny Kornblum, "Paths to Interpersonal Forgiveness: The Roles of Personality, Disposition to Forgive and Contextual Factors in Predicting Forgiveness Following a Specific Offence" *Personality and Individual Differences*, 44 (2008): 337; Ta-Wei Wang, "Forgiveness and Big Five Personality Traits among Taiwanese Undergraduates" *Social Behavior and Personality: An International Journal*, 36 (2008): 849.

49 Daniel Balliet, "Conscientiousness and Forgivingness: A Meta-Analysis" *Personality and Individual Differences*, 48 (2010): 259.

50 Costa, McCrae, "Domains and Facets", 21.

51 Kaleta, Mróz, "Personality Traits", 147.

52 Ryan Fehr, Michele J. Gelfand, Monisha Nag, "The Road to Forgiveness: A Meta-Analytic Synthesis of Its Situational and Dispositional Correlates" *Psychological Bulletin*, 136 (2010): 894.

like high empathy,[53] low narcissism,[54] high religiousness,[55] low vengefulness[56] and trait anger.[57] Thus, forgiveness is deeply rooted in the victim's personality. Some people are simply more willing to forgive and to use forgiveness as a way of dealing with difficult incidents.

On the other hand, a single act of forgiveness is strongly related to a particular transgression and all circumstances that occurred during and after the hurt. Among them, the severity of the wrongdoing, apology or remedial behaviours, relational closeness, commitment and satisfaction, value placed on the relationship with the offender, the passage of time, the offender's perceived responsibility or blame and intent, the frequency of the offence, and the expected likelihood of further offences by the transgressor turned out to be significantly associated with forgiveness of a specific offence.[58] The findings demonstrate that interpersonal forgiveness involves the interplay of intrinsic and extrinsic conditions.[59] The better the personality-related abilities and the more favourable the situational factors, the more likely a single act of forgiveness becomes. Thus, real psychological change involves the whole personality interacting step by step with various pieces of information related to the offence; from this point of view, forgiveness is a very complex process that takes effort and time. From this perspective, the process and the

53 Loren L. Toussaint, Jon R. Webb, "Gender Differences in the Relationship between Empathy and Forgiveness" *Journal of Social Psychology*, 145 (2005): 673.

54 Julie J. Exline et al., "Too Proud to Let Go: Narcissistic Entitlement as a Barrier to Forgiveness" *Journal of Personality and Social Psychology*, 87 (2004): 894.

55 Rye et al., "Evaluation of the Psychometric Properties", 260; Jo-Ann Tsang, Michael E. McCullough, William T. Hoyt, "Psychometric and Rationalization Accounts of the Religion-Forgiveness Discrepancy" *Journal of Social Issues*, 61 (2005): 785.

56 Seydi Ahmet Satici, Recep Uysal, Ahmet Akin, "Forgiveness and Vengeance: The Mediating Role of Gratitude" *Psychological Reports*, 114 (2014): 157.

57 Qinglu Wu et al., "Roles of Anger and Rumination in the Relationship between Self-Compassion and Forgiveness" *Mindfulness*, 10 (2019): 272.

58 Laura K. Guerrero, Guy F. Bachman, "Forgiveness and Forgiving Communication in Dating Relationships: An Expectancy-Investment Explanation" *Journal of Social and Personal Relationships*, 27 (2010): 801; Harry Durell Johnson, Molly Wernli, Joseph LaVoie, "Situational, Interpersonal, and Intrapersonal Characteristic Associations with Adolescent Conflict Forgiveness" *Journal of Genetic Psychology*, 174 (2013): 291; Kinga Kaleta, Justyna Mróz, "The Effect of Apology on Emotional and Decisional Forgiveness: The Role of Personality" *Personality and Individual Differences*, 168 (2021): 110310; Koutsos, Wertheim, Kornblum, "Paths to Interpersonal Forgiveness", 337.

59 Koutsos, Wertheim, Kornblum, "Paths to Interpersonal Forgiveness", 337.

consequences of forgiveness, if they have taken place, cannot be undone,[60] as intrapsychic changes cannot be reversed. This impossibility of withdrawing forgiveness must, however, be distinguished from withholding forgiveness, which often takes place. Victims may choose to withhold forgiveness or to refrain from communicating it – even after receiving an apology – for several reasons. They may find the offence unforgivable, retaliate against the offender for their wrongdoing and re-assert their power in the relationship,[61] or they may perceive the offender as not having put enough effort into making reparations.[62] Withholding forgiveness by victims can lead offenders who have offered an apology to feel like "victims" themselves and to reduce their further conciliatory efforts.[63] Such a situation becomes more complicated in terms of victim–offender roles, reveals problems with genuine forgiveness, and in fact, mirrors unforgiveness.

4 Legally Relevant Forgiveness

When using the concept of forgiveness, the legislature refers to the psychological phenomenon described above construed as an intrapersonal process that ends with emotional, cognitive, motivational, and behavioural changes, such as reduction of unforgiving emotions or increase in compassion, love etc., but the process does not necessarily have to end with forgetting the wrong. This understanding of forgiveness seems to be consistent with the *ratio legis* of the national provisions. The legislature forgoes the possibility of applying a broadly understood civil law sanction (in the form of disinheriting them, declaring them unworthy or revoking the donation) to the beneficiary of a benefit (i.e. an heir or a donee) precisely because the wronged individual – a testator or donor – has ceased to feel negative emotions towards said

60 Geoffrey Scarre, "On Taking Back Forgiveness" *Ethical Theory and Moral Practice*, 19 (2016): 931.

61 Heather Pearce, Peter Strelan, Nicholas R. Burns, "The Barriers to Forgiveness Scale: A Measure of Active and Reactive Reasons for Withholding Forgiveness" *Personality and Individual Differences*, 134 (2018): 337.

62 Debra L. Rapske, Susan D. Boon, Alishia M. Alibhai, Megan J. Kheong, "Not Forgiven, Not Forgotten: An Investigation of Unforgiven Interpersonal Offenses" *Journal of Social and Clinical Psychology*, 29 (2010): 1100.

63 Michael Thai, Michael Wenzel, Tyler G. Okimoto, "Turning Tables: Offenders Feel Like 'Victims' When Victims Withhold Forgiveness" *Personality and Social Psychology Bulletin*, 49 (2023): 233–250.

beneficiary, and for no other reason. These emotional changes are the basis for the regulation. The fact that forgiveness is a process (a phenomenon spread over time) seems to be clearly recognized by modern German scholarship, which uses the word *Vorgang* (process), and not e.g. *Handlung* (act, activity, action), to define forgiveness.[64]

Taking into account the two dimensions of forgiveness (the "negative" and the "positive" one), it is reasonable to ask which of these dimensions is necessary in order to produce the legal effects specified e.g. in Article 899(1), Article 930(1) and Article 1010(1) k.c. Does it suffice if the testator or donor reduces their unforgiving emotions, thoughts and motivations, or is it indispensable that they start to develop positive feelings including compassion, mercifulness or benevolence, as well? In the popular understanding, forgiveness might be perceived as present already when resentment and negative emotions towards a person who committed something immoral subside. Yet as the institution of forgiveness appears in civil law in the context of broadly understood gratuitous financial benefits, it ought to be considered whether the development of positive emotions should not be a sine qua non of forgiveness, as well.[65] After all, life experience shows that gifts (especially considerable ones) are made rather to persons whom the donor perceives in a positive rather than just a neutral light. The same generally applies to dispositions of property upon death. In the case of testate succession, it seems that the testator names as their heirs persons who are important to them, towards whom they have positive rather than neutral feelings. As for statutory intestate succession, it is argued in legal theory that the statutory order of inheritance could be understood as based on the deceased person's implied will. This view is built upon the concept that the deceased is aware of the statutory order of inheritance, deems it consistent with their wish, and consciously refrains from making a last will.[66] If we agree that the purpose of the institution of forgiveness is for the legal situation to mirror the wish

64 Wolfgang Olshausen, "Kommentar zum § 2337," [in:] *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB – Buch 5: Erbrecht §§ 2339–2385 (Erbunwürdigkeit, Erbverzicht, Erbschein, Erbschaftskauf)*, ed. Gerhard Otte (Berlin: C.H. Beck, 2015), marginal No. 4. https://www.juris.de/jportal/allianz/nav/Staudinger-online.jsp. [accessed: 30.06.2025].

65 German case law seems to be opposed to the concept that positive emotions are necessary, cf. BGH FamRZ 1961, 437.

66 Elżbieta Skowrońska-Bocian, *Prawo spadkowe* (Warszawa: C.H. Beck, 2015), 53–54.

of the donor or testator, then we should probably come to the conclusion that the impossibility of revoking a donation, declaring an heir unworthy of inheritance or disinheriting them should be linked to the donor's or testator's positive feelings towards the donee or the heir, respectively.

Certainly, it can happen at times that the testator appoints as their heir a person towards whom they are completely indifferent only because they can find no better candidate for an heir in the given circumstances. Such cases, however, seem to be rare. Moreover, the prohibition of homonymous interpretation[67] generally prevents interpreting a legal text in such a manner that forgiveness in the context of inheritance law is construed as a process culminating solely in the reduction of negative feelings, and in the context of the revocation of a gift – as a process that additionally entails the emergence of positive emotions.

As indicated above, the understanding of forgiveness as a psychological process seems to be consistent with the values underlying this legal institution (in other words, this interpretation is supported by the assumption of the legislature's axiological rationality). In this context, Marcin Krajewski's statement that forgiveness as an emotional act (viz. an intrapersonal process) does not have to be expressed might seem accurate.[68] The author claims that the lack of an outward expression merely precludes the possibility to invoke forgiveness in a court trial, but does not render it ineffective. On the other hand, Paweł Księżak points out that this approach is too idealistic, as according to it, if an internal act takes place, the donor may not revoke the gift and the testator may not disinherit, and if they do, these acts are ineffective, although no one will know about that. As a result, a substantive legal status different from the factual one found by court decisions will emerge, yet it will remain unknown and not ascertainable at all.[69] In view of the above, it must be concluded that the requirement for externalization of forgiveness

67 The prohibition of homonymous interpretation means that the same word or expression occurring several times in a legal text should be consistently assigned the same meaning, cf. Zieliński, *Wykładnia prawa*, 202. This corresponds to the requirement imposed on Polish legal texts by § 10 of the Regulation of the Prime Minister of 20 June 2002 on "Principles of Legislative Technique" (*Identical terms shall be used to designate identical concepts, and different concepts shall not be designated by the same terms*).

68 Marcin Krajewski, "Przebaczenie i inne okoliczności wyłączające możliwość uznania spadkobiercy za niegodnego" *Państwo i Prawo*, No. 5 (1997): 69.

69 Księżak, "Przebaczenie w polskim prawie cywilnym", 57.

appears to be justified by the assumption of the legislature's pragmatic and epistemic rationality. Another argument in favour of this view is that internal ("emotional" etc.) acts as a category of legal events have been rejected by modern civil law theory.[70]

The requirement to give forgiveness an outward expression therefore stems primarily from pragmatic considerations. In order for forgiveness to have a legal effect, it should be expressed, because only in this way will other actors in civil law transactions be in a position to learn that such an intrapersonal process has taken place. Consequently, it appears that externalization has only an ancillary function, and therefore the requirement to express forgiveness externally should be treated liberally[71] (e.g. writing in a diary kept by the donor or testator that they have forgiven a specific person a given act should be deemed to meet this requirement, even though such a record is not addressed to anyone or even intended to be known to anyone at the time when it was drawn up; similarly, externalization of forgiveness in an invalid will should be deemed to be effective[72]).

The act of externalizing forgiveness may be classified as a conventional act or a sign.

The first thoughts related to the existence of conventional acts can be found already in the works of A. Reinach, who believed a declaration of intent to be an utterance constituting a separate type of the so-called social act, the meaning of which is completely different from reporting utterances, as its essence is to bind the person making the promise.[73] A comprehensive

70 This view is expressed in Zbigniew Radwański, Krzysztof Mularski, "Zagadnienia ogólne czynności prawnych," [in:] *System Prawa Prywatnego*, vol. II, *Prawo cywilne – część ogólna*, ed. Zbigniew Radwański, Adam Olejniczak (Warszawa: C.H. Beck, 2019), 49. German scholars likewise argue in favour of the need for forgiveness to be externalized, see Tiziana Chiusi, "Kommentar zum § 532," [in:] *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch: Staudinger BGB – Buch 2: Recht der Schuldverhältnisse: §§ 516–534 (Schenkungsrecht)*, ed. Sebastian Herrler (Berlin: C.H. Beck, 2021), marginal No. 3. https://www.juris.de/jportal/allianz/nav/Staudinger-online.jsp. [accessed: 30.06.2025]; and the case law: BGH NJW 1974, 1084, 1085: die Verzeihung ist der nach außen kundgemachte Entschluss, aus den erfahrenen Kränkungen nichts mehr herleiten zu wollen.

71 With the exception of those legal systems which provide for additional formal conditions of granting forgiveness.

72 Olshausen, "Kommentar zum § 2337", marginal no. 8.

73 Adolf Reinach, "Die apriorischen Grundlagen des bürgerlichen Rechtes" *Jahrbuch für Philosophie und phänomenologische Forschung*, vol. I, part II (1913): 725.

theory of conventional acts was for the first time presented by Polish legal theorists: Zygmunt Ziembiński, Leszek Nowak, Sławomira Wronkowska and Maciej Zieliński in the article titled *Czynności konwencjonalne w prawie*.[74] Then, the theory was developed and modified by, among others, Tomasz Gizbert-Studnicki,[75] Wojciech Patryas[76] and Stanisław Czepita.[77]

Generally speaking, we can say that a conventional act cA' is performed when, in accordance with certain rules – called the rules of sense of a conventional act – the performance of a certain psychophysical (natural) act C or a lower-rank conventional act cA by an appropriate person or persons in an appropriate situation is recognized as the performance of conventional act cA', which, although executed by performing a psychophysical (natural) act C or a lower-rank conventional act cA, is not reducible to it. For the rules of sense dictate that such a psychophysical (natural) act C or a lower-rank conventional act cA be ascribed a particular cultural meaning.[78] In other words, they direct thought to something other than the activity that is the material substrate of the conventional act cA'. These rules are part of the non-material (symbolic) culture adopted in a given community. Sometimes (especially in relation to legal acts – a special category of conventional acts), they may be explicitly established, but in many cases they emerge in a given community as a custom.[79]

The act of saying the words "I forgive you" is tantamount to more than just making some sounds or saying the words – it is also a conventional act indicating that the subject of the utterance has carried out an intrapersonal process of forgiveness and no longer holds a grudge against the addressee of the utterance because of their earlier negative behaviour. A similar meaning may be ascribed to acts of e.g. inviting someone to one's home, hugging this

74 Leszek Nowak, Sławomira Wronkowska, Maciej Zieliński, Zygmunt Ziembiński, "Czynności konwencjonalne w prawie" *Studia Prawnicze*, No. 2 (1972): 73–99.

75 Tomasz Gizbert-Studnicki, "O nieważnych czynnościach prawnych w świetle koncepcji czynności konwencjonalnych" *Państwo i Prawo*, No. 4 (1975): 70–82.

76 Wojciech Patryas, *Performatywy w prawie* (Poznań: Wyższa Szkoła Zarządzania i Bankowości w Poznaniu, 2005).

77 Czepita, "O pojęciu czynności konwencjonalnej", 85–102.

78 Sławomira Wronkowska, *Podstawowe pojęcia prawa i prawoznawstwa* (Poznań: Ars Boni et Aequi, 2005), 12; Czepita, "O pojęciu czynności konwencjonalnej", 86–90.

79 Wronkowska, *Podstawowe pojęcia*, 12–13.

person or exchanging Christmas greetings with them, if they are performed in a specific context.

As S. Czepita aptly remarked, all conventional acts are signs of a special kind, namely signs-actions, in which the content is linked to a given sign-meaning on the basis of a certain convention – that is, they are conventional signs. Consequently, from a semiotic point of view, the externalization of the forgiveness process is likewise conceived as a sign of this kind. In other words, it is a perceptible arrangement of things or a phenomenon caused by someone because of the fact that some clearly established or customary rules dictate that thoughts of a certain type should be associated with this arrangement of things or phenomenon.[80]

It must be stressed that in the case of, for example, uttering the words "I forgive you", the cultural sense to which the rules of sense of the conventional act direct our thoughts (the content of the sign connected with uttering those words on the basis of a certain convention) is the intrapersonal psychological process of forgiveness together with the emotional effects it produces. When someone says the words "I forgive you", we understand them precisely to mean that this person has completed the psychological process of forgiveness and no longer harbours negative emotions towards the perpetrator of a certain reprehensible act (or, alternatively, that they have also begun to feel positive feelings towards them).

Against this background, it may be noted that the scholarly dispute as to the nature of forgiveness essentially boils down to a misunderstanding consisting in the fact that some scholars perceive forgiveness as an intrapsychic process, i.e. the cultural sense of the conventional act/the content of the sign (it seems they are the authors who use concepts such as "act of feelings", "emotional act", "mental phenomenon" or "internal act"), while others understand forgiveness only as the activity expressing this process externally, that is, a certain conventional act (the sign). Although, as stated above, only forgiveness conceived as a conventional act (sign) can be legally significant for pragmatic reasons, when analysing the various specific issues arising in the context of forgiveness, one cannot disregard the meaning of this conventional act, i.e. the psychological intrapersonal process. Moreover, it should be noted that even the authors who speak in favour of the necessity to externalize forgiveness point

80 For more about the concept of sign, see Ziembiński, *Logika praktyczna*, 14; Urszula Żegleń, *Wprowadzenie do semiotyki teoretycznej i semiotyki kultury* (Toruń: Wydawnictwo Uniwersytetu Mikołaja Kopernika, 2000), 39–40.

out that the condition of forgiveness is the existence of the will to forgive,[81] i.e. some de facto "internal" element. It is also often stressed that in determining whether forgiveness has been effected in a specific case, the court should carefully consider all the circumstances of the given state of affairs, because it may not be sufficient to focus on just one instance of behaviour taken out of context.[82] This is in line with the cited definition of the conventional act, according to which a given psychophysical act (or a conventional act of a lower rank) is recognized as a conventional act (or a conventional act of a higher rank) only if it was performed in a specific situation determined by the rules of sense of the conventional act. Thus, if the (even very remote) context of the performance of the conventional act of externalizing the forgiveness process contains any circumstance indicating that the subject in question had not actually previously carried out the intrapersonal forgiveness process (because, for example, they had only achieved so-called hollow forgiveness), such an act cannot be treated as a "valid" forgiveness. In view of the above, it seems that the rules of granting a legally relevant forgiveness may not contradict the rules concerning the psychological process itself.

In light of the above, the external behaviour of the forgiver should be interpreted using the individual-subjective methodology,[83] which is oriented at their will and the factual completion of the intrapersonal process of forgiving (and not the manner in which other participants of civil law transactions perceive such individual's behaviour). If a person has objectively, based on the perception of an average onlooker, granted forgiveness, but after some time declares they had not intended to forgive, as they had not undergone such an emotional transformation, then it appears that their opinion should be decisive.[84] It ought to be noted at this point that an expert psychologist should be able to establish beyond doubt whether forgiveness has been granted based on an interview with the potential forgiver. Yet naturally, such evidence can have practical significance exclusively in the case of disputes over a revoked gift.

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81 Księżak, "Przebaczenie w polskim prawie cywilnym", 58.

82 Ibidem, 62; Rafałowicz, "O naturze przebaczenia", 48.

83 A supporter of this method was Mularski, "Jeszcze w sprawie charakteru prawnego przebaczenia", 57.

84 A similar idea was proposed in the German literature, cf. Olshausen, "Kommentar zum § 2337", marginal no. 2: […] wobei auch der Blick auf die Rechtsfolgeseite durch den Erblasser von (wesentlicher) Bedeutung sein wird.

5 Admissibility of Conditional Forgiveness

When considering the possibility of forgiveness granted on a condition (e.g. that the wrongdoer apologizes or compensates for the harm), it should be borne in mind that the psychological process of forgiving appears to consist of two elements – the cognitive decision and the emotional changes. It seems that if an individual expresses conditional forgiveness, they merely inform the wrongdoer of their decision that they want to forgive (they express their readiness to forgive), but the other element – emotional change – is absent. It is true that a person who makes such an utterance may hope (or may be under the impression) that the emotional changes would take place after the indicated conditions are met, but they cannot be certain.

As a result, such a communication cannot be classified as legally relevant forgiveness.[85] A court hearing such a matter should examine also the attitude of the person granting conditional forgiveness after the perpetrator has met the conditions – it might turn out that the relevant emotional changes indeed took place and the victim forgave the wrongdoer, but it could be the case that only so-called hollow (legally ineffective) forgiveness is granted.

It cannot be ruled out, however, that the mere statement expressing conditional forgiveness will have certain legal effects in some situations. Namely, we should consider whether in a given case, such a statement might not constitute e.g. a declaration of intent to waive the donor's right to revoke the gift in the event that the donee fulfils certain conditions, in case that forgiveness is not granted. Obviously, not in every case can conditional forgiveness be automatically classified in this manner, but the donor's declaration should be interpreted in accordance with the rules of interpretation pertaining to declarations of intent applicable in the given legal system.

Incidentally, it should be pointed out that for the same reasons, forgiveness cannot be the result of mere rational calculation, reflection, or intellectual analysis, as is sometimes argued in the legal literature.[86]

85 A different view is represented by Kozaczka, "Na marginesie przebaczenia", 108; Olshausen, "Kommentar zum § 2337", marginal No. 14.

86 Authors in favour of admitting forgiveness as a result of rational calculation include Księżak, "Przebaczenie w polskim prawie cywilnym", 58; Kozaczka, "Na marginesie przebaczenia", 104.

6 Sufficient Insight of the Forgiver

All the Polish provisions regulating the effects of forgiveness are complemented with the same reservation that if the donor or testator had no legal capacity at the moment of granting forgiveness, forgiveness is effective when granted with sufficient insight (Article 899(1), sentence 2 k.c., Article 930(2) k.c., Article 1010(2) k.c.).

The concept of acting with sufficient insight is subject to various interpretations by legal scholars. As has been accurately noted, forgiveness granted with sufficient insight is an act carried out by an individual who knows something or is familiar with something; however, this knowledge is not necessarily complete, but only sufficient, average.[87] Some doubts may arise – due to the fact that this is not expressly specified in the provisions – as to the matter into which the person is supposed to have insight. According to Krzysztof Mularski, the forgiver should (i) know about some act of another person and (ii) consider this act as reprehensible on the basis of their system of values, as well as (iii) perceive this act as harmful to them. Furthermore, they should (iv) understand the sense (meaning) of the act they are performing.[88] It seems that one more area of knowledge in which the forgiving individual should have sufficient insight in order to fulfil the statutory requirement should be added to this list. Namely, such a person should have knowledge of any other circumstances that are subjectively relevant to their forgiveness process. Suppose, for example, that the testator (apparently) forgave the heir because they thought that the heir showed remorse (e.g. tried to make amends for the wrong done), although in reality such a circumstance never occurred. Knowledge that the heir has shown remorse does not fall within any of the areas cited above. However, lack of this knowledge should probably rule out the possibility of a legally effective forgiveness, because if the testator had known the true attitude of the heir after the reprehensible act, they would not have undergone the forgiveness process (i.e. they would not have decided that they wanted to forgive or the emotional changes that forgiveness normally entails would not have occurred in them). Although it is rather awkward to use such an imprecise category as "any other circumstances subjectively relevant

87 Mularski, "Jeszcze w sprawie charakteru prawnego przebaczenia", 66–67; Mularski, *Czynności podobne*, 230–240.

88 Mularski, "Jeszcze w sprawie charakteru prawnego przebaczenia", 66–67.

to forgiveness", it seems that, given the complexity of the human psyche, such a category should be adopted.

It needs to be emphasized that the criterion of relevance for the forgiveness process will apply also when assessing whether the forgiving subject had sufficient (enough) knowledge of the circumstances of the act. To take an example from older German literature: forgiving a wife who – to the knowledge of the husband – had cheated on him with a coachman four times on one night could be considered legally relevant even if she had cheated on her husband five or three times that night. On the other hand, the forgiveness could not be regarded as effective if the relations with the coachman were not incidental, but continued for long months; moreover, the wife had such relations not only with him, but also with other members of the domestic service.[89] In the first case, it seems that the discrepancy between the true circumstances of the act and the forgiver's knowledge was not significant (it would not have affected the intrapersonal forgiveness process), while in the second situation, a fuller knowledge of the facts could definitely have affected the husband's forgiveness.

The considerations contained in this section can also be applied to a large extent to the legal systems which provide for no express requirement that forgiveness be effected with sufficient insight (as for example German law[90]). Knowledge of the act to be forgiven, the recognition of its reprehensibility and the perception of it as harmful as well as knowledge of any other facts relevant to the forgiver are immanent elements of the psychological process of forgiveness. If the forgiver has insufficient knowledge of the act, what they will forgive will be not really act X, but a non-existent act Y.

The requirement of forgiveness that the forgiving individual must initially have felt the act to be harmful may give rise to some doubts as to how to classify a situation in which the testator or the donor has never felt this harm or resentment. In our view, even if an act is committed which, in the eyes of the law, justifies the possibility of revoking a donation, disinheriting an heir or declaring an heir unworthy of inheritance, a situation in which the donor or the testator never feels hurt by the act is more improbable than a case in which the act is forgiven. Following the functional interpretation of these provisions

89 See the facts of the case in: Horst Neumann, *Die zivilrechtliche Natur und Behandlung der Verzeihung von Eheverfehlungen* (Marburg, 1930), 26.

90 The need for relevant knowledge is pointed out, for example, by Olshausen, "Kommentar zum § 2337", marginal no. 3: Verzeihung setzt grundsätzlich die Kenntnis des Sachverhalts der Verfehlungen voraus.

and the *a minore ad maius* argumentation, it would seem that the sanctions in question in the broad sense may not be applied to the benefactor or heir not only when the donor or testator forgave, but also when the donor or testator felt (despite having sufficient knowledge of all the relevant factual circumstances) that there was nothing to forgive, and as a consequence – when there was never any damage to the relationship between these individuals. This extensive interpretation is prompted by the fact that to adopt the opposite interpretation would seem to be in blatant conflict with the assumption of the legislature's axiological rationality.

7 The Object of Forgiveness

The requirement to act with sufficient insight implies that unknown wrongs cannot be forgiven. Admittedly, German legal scholars hold the view that all known and unknown wrongs can be forgiven if this is the forgiver's explicit wish,[91] but this opinion is incompatible with the knowledge of the forgiveness process. The concept of forgiving unknown wrongs contains an internal contradiction. For the same reason one cannot forgive actions that have not been performed yet.[92] Besides, any wrongdoing, even a very serious and severe one, can potentially be forgiven.

In this context, the idea that one can even forgive one's own murder – as long as one has sufficient time to forgive one's killer between the act (e.g. shooting a gun or pouring poison) and death[93] – is incorrect. In the above situation, the death has not yet occurred, so only a grievous wounding or attempted murder can be forgiven, not the murder itself.

91 Ferid, Cieslar, *J. von Staudingers Kommentar*, 425. A different view is supported by Olshausen, "Kommentar zum § 2337", marginal no. 3: man Unbekanntes nicht verzeihen kann.

92 This view is also supported by Julian Jezioro, "Darowizna," [in:] *Kodeks cywilny*, ed. Edward Gniewek, Piotr Machnikowski (Warszawa: C.H. Beck, 2017), 1655; Księżak, "Przebaczenie w polskim prawie cywilnym", 60–61.

93 Tobias Helms, "Schenkung," [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch. Schuldrecht. Besonderer Teil I §§ 433–610*, ed. Wolfgang Krüger, Harm Peter Westermann (München: C.H. Beck, 2004), 1223–1335.

8 | Vitiated Consent

It is almost universally accepted in the literature that the provisions on vitiated consent are neither directly nor adequately applicable to the conventional act (externalization) of forgiveness.[94] In principle, this view is correct. It would be highly inaccurate to apply the construction of avoidance of legal effects referred to in Article 88 k.c. to forgiveness.

It is impossible to forgive an act when in a state excluding conscious or free decision-making and expression of will (Article 82 k.c.) due to lack of the so-called sufficient insight. This is true also in those legal systems where no such requirement is expressly stipulated, because – as explained above – acting with sufficient insight is a prerequisite of the forgiveness process. One cannot forgive without being aware of what is being forgiven or without understanding the meaning of one's actions – and thus no forgiveness is granted at all. Similarly, not being able to freely make a decision (the cognitive decision mentioned above) prevents the forgiveness process from beginning.

The authors who support the understanding of forgiveness as a purely internal act believe it is impossible to grant forgiveness ostensibly within the meaning of Article 83 k.c.[95] However, bearing in mind that the provisions assign legal effects to externalized forgiveness only, clearly it is possible to imagine a situation in which there is an element of ostensible forgiveness analogous to vitiated consent regulated in Article 83 k.c. Naturally, such an element will not appear where the externalization of forgiveness was not addressed to any person (e.g. it took the form of a note in a diary). Otherwise, what could happen is not so much apparent forgiveness as sham forgiveness. An example could be a father who, with the son's knowledge, ostensibly forgives him in order to fulfil the will of the dying grandfather.[96] Although the grandfather (or another bystander in the room, e.g. a nurse) may perceive

94 Kozaczka, "Na marginesie przebaczenia", 108–109; Księżak, "Przebaczenie w polskim prawie cywilnym", 63; Mularski, "Jeszcze w sprawie charakteru prawnego przebaczenia", 58; Mularski, *Czynności podobne*, 341–415.

95 Maksymilian Pazdan, "Komentarz do art. 930," [in:] *Kodeks cywilny. Komentarz*, vol. II, ed. Krzysztof Pietrzykowski (Warszawa: C.H. Beck, 1998), 713; Jezioro, "Darowizna", 1655; Krajewski, "Przebaczenie i inne okoliczności", 70.

96 Facts of the case after Olshausen, "Kommentar zum § 2337", marginal no. 12. The author analyses the case and concludes that such pretended forgiveness is ineffective, not because of ostensibility as a vitiating factor (§ 117 BGB), but because of the lack of the will to forgive (German: *Fehlen eines Verzeihungswillens*).

the father's words "I forgive you" to his son as a sign that the father has undergone the forgiveness process and that he would not hold a grudge against his son from that moment on, the full context of the situation reveals that no intrapersonal process of forgiveness has actually taken place, so that the behaviour described above did not constitute the conventional act of its externalization.

In the case of a mistake (including maliciously induced mistake) regarding the (material) circumstances of the reprehensible act, it has to be concluded that the subject has forgiven not the relevant act X, but a non-existent act Y (i.e. in reality, they have simply not forgiven anything, as non-existent acts cannot be forgiven).[97] On the other hand, in the event of a mistake about other circumstances relevant for the forgiving person (e.g. regarding the perpetrator's remorse), one should also come to the conclusion that no forgiveness takes place, because if the person knew the perpetrator's real attitude, they would not have undergone the process of forgiveness (i.e. would not have taken the decision that they wanted to forgive or the emotional changes that forgiveness normally entails would not have occurred in them).

Furthermore, it seems obvious that no forgiveness is possible when the individual performs certain acts under threat. In those circumstances, there is no will to forgive and there is no chance for the emotional changes that characterize the process of forgiveness to take place.[98]

9 Admissibility of Revocation of Forgiveness

Forgiveness cannot be revoked.[99] As psychologists point out, once the psychological process of forgiveness has been performed, it cannot be

97 Similarly, it is pointed out in the German literature that even objectively unambiguous behaviour of the forgiving individual cannot be assessed as forgiveness if it is based on duress, fraud or a momentary emotional impulse (BGH 08.03.1957 – IV ZR 298/56, FamRZ 1957, 208, 209 *et seq*.).

98 Olshausen, "Kommentar zum § 2337", marginal no. 13.

99 The authors who support the view that forgiveness may not be revoked are: Ferid, Cieslar, *J. von Staudingers Kommentar*, 426; Elżbieta Skowrońska-Bocian, *Komentarz do kodeksu cywilnego. Spadki* (Warszawa: LexisNexis, 2003), 184; Pazdan, "Komentarz do art. 930", 713; Księżak, "Przebaczenie w polskim prawie cywilnym", 64; Józef Kremis, "Komentarz do art. 1010," [in:] *Kodeks cywilny. Komentarz do artykułów 535–1088*, vol. II, ed. Edward Gniewek (Warszawa: C.H. Beck, 2004), 933. A different opinion is presented by Kozaczka, "Na marginesie przebaczenia", 111;

undone.[100] The view that Article 61 k.c., which regulates in particular the effectiveness of revocation of a declaration of intent, is not applicable to the conventional act (externalization) of forgiveness is fully consistent with the above.[101]

If, after the act of forgiveness has been performed, new relevant information (e.g. a particularly negative motive of the perpetrator) comes to light, resulting in negative emotions towards the perpetrator resurfacing in the forgiver, the previous (apparent) forgiveness fails to produce any legal effects, because the forgiver lacked sufficient insight. This type of situation should be seen as similar to the one in which the forgiver was misled – namely, they forgave not the relevant act X, but a non-existent act Y.

10 Forgiveness and Reconciliation

German[102] as well as Spanish[103] legal scholars rightfully distinguish between forgiveness and reconciliation. While forgiveness should be construed in civil law as the externalization of an intrapersonal process, reconciliation is a relational experience and requires the cooperation of two individuals. In psychology, reconciliation is the desired end effect of forgiveness, but does not necessarily conclude every such process. Forgiveness does not have to involve e.g. restoring family relations.[104] At the same time, no reconciliation is possible unless forgiveness has taken place.

In view of the above, the claim made in the German literature that reconciliation without forgiveness is possible may raise some doubts.[105] The authors support their thesis with the example of a father who, for

Stefan Grzybowski, "Stosunek cywilnoprawny," [in:] *System prawa cywilnego. Część ogólna*, vol. I, ed. Stefan Grzybowski (Wrocław – Warszawa: Ossolineum, 1985), 205.

100 Scarre, "On Taking Back Forgiveness", 931.

101 As accurately argued by Mularski, "Jeszcze w sprawie charakteru prawnego przebaczenia", 57.

102 For many other works, see Ferid, Cieslar, *J. von Staudingers Kommentar*, 429.

103 Busto Lago, "Artículo 856", 1010: "La reconciliación exige una declaración de voluntad bilateral y reciproca de tipo social o familiar, manifestada a través del restablecimiento de las relaciones normales [...]. Aunque el precepto solo habla de la reconciliación, idénticos efectos le concede la doctrina al perdón o remisión unilateral de la ofensa llevada a cabo por el potencial desheredante."

104 This was accurately ruled in BGH NJW 1961, 1718.

105 Ferid, Cieslar, *J. von Staudingers Kommentar*, 429.

humanitarian reasons, accepts his son into his home, although he does not forgive his faults. It seems, however, that neither forgiveness nor reconciliation has taken place here despite the admission of the son into the home, because said admission was decided on purely pragmatic grounds. Of course, for the above act not to have the legal effect of forgiveness, it is necessary for the father to externalize the fact that he still holds a grudge against his son and that he has not forgiven him. A mere *reservatio mentalis* in this respect will not suffice.[106]

11 Conclusions

The institution of forgiveness is present in almost all European legal systems – mainly in the context of inheritance law. Because of the similar content of the regulations and similar legal effects as well as because of the uniform understanding of forgiveness in the European culture, one may risk a statement that it is the same legal event of the same nature in all European legal systems, although that nature remains disputed in many countries. The only thing that seems unquestionable is that the term "forgiveness" is construed as a certain psychological process, regardless of the ethnic language used for its semantic analysis. Thus, it appeared justified to refer to the achievements of empirical psychology in the course of the study in order to fully understand the essence of forgiveness and to analyse the statutory regulations from the perspective of these findings.

Psychologists understand "forgiveness" as an intrapersonal process that ends with emotional, cognitive, motivational, and behavioural changes such as reduction of unforgiving emotions or increase of compassion, love etc. There may be some doubts as to whether positive legal effects are supposed to arise when the testator or the donor merely reduces unforgiving emotions, thoughts and motivations, or whether it is also necessary for the victims to start developing positive feelings including compassion, mercifulness or benevolence. The axiological interpretation seems to lead to the conclusion that only in the second case should forgiveness have legal effects (gratuitous or other dispositions are usually made in favour of persons to whom one feels some positive emotions, and not in favour of subjects perceived only neutrally).

106 Similarly Księżak, "Przebaczenie w polskim prawie cywilnym", 62.

At the same time, in order for forgiveness to be legally relevant, it should be externalized. However, the requirement of outward expression of forgiveness should be treated liberally (unless the legislation of a given country provides for specific formal requirements in this respect). The externalization of forgiveness constitutes a so-called conventional act. In analysing the various specific issues that arise in the context of forgiveness, one cannot therefore ignore the unique characteristics of conventional acts on the one hand and the sense of this particular conventional act – the psychological intrapersonal process of forgiveness – on the other. Consequently, the rules of granting a legally relevant forgiveness cannot contradict the essence of the psychological process itself, and when interpreting the external behaviour of the (potentially) forgiving person, one should apply an individual-subjective method of interpretation, which is oriented at their will and the fact whether they have actually undergone the intrapersonal process of forgiveness (and not the manner in which other participants of civil law transactions perceive such individual's behaviour).

Given the above, the following conclusions, among others, may be drawn: (i) forgiveness cannot be granted on condition, (ii) forgiveness can only be granted if one has sufficient knowledge of the forgiven act and of any subjectively relevant circumstances (and this regardless of whether the legal system in question expressly provides for such a requirement), (iii) the rules on vitiated consent cannot be applied to forgiveness, (iv) forgiveness cannot be revoked (after new circumstances come to light, it may at most turn out that the act in question has never really been forgiven).

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