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SOCIAL VALUES AS SUCCESSION LAW LIMITS: Focus on the Succession Law of Slovakia**

Abstract: *The paper examines the intricate relationship between social values and succession law, specifically focusing on the Slovak legal system. Drawing on Thomas Hobbes's notion of law as society's collective moral compass, the paper argues that social values not only form legislation but can also be shaped and redefined by the law. The paper begins with an overview of the Slovak succession law, grounded in Act No. 40/1964 Coll. the Civil Code. The paper then delves into the role of social values as both limits and frameworks within which succession law operates. Five vital social values are examined in detail: liberty, family relationships, equality, responsibility, and community welfare. The paper scrutinises how these values are manifested in the Slovak succession law, illustrating both the alignment and tension between social values and legal norms. In particular, the author explores the balance between individual liberty and family relations in succession, the evolving recognition of various family forms, the implications of equality within the context of succession, the moral and legal responsibilities of heirs, both towards the deceased and towards third parties, as well as the broader societal implications of succession law in promoting community welfare. While the Slovak Civil Code has been subjected to ample and substantial amendments in the past years, the analysis reveals that it still reflects the societal norms of its time of origin. In response to societal shifts, further revisions may be necessary to align it with contemporary social values and family structures. The paper may contribute to understanding the dynamic interplay between law and society within Slovakia's succession law framework, but the presented insights may also pertain to other jurisdictions.*

Keywords: *social values, succession law, Slovakia, family, liberty, equality, community.*

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1. Introduction

In *The Leviathan*, discussing the concept of man's conscience and judgement, Thomas Hobbes states that man in civil society “*has no other rule to follow but his own reason; yet it is not so with him that lives in a Common-wealth; because the Law is the publique Conscience, by which he hath already undertaken to be guided*” (Hobbes, 1951).¹ Hobbes's quote emphasises the role of law as the collective moral compass of society. On the one hand, social values are the basis for the legislator's considerations about the appropriateness of specific legislation for a given society, but the interaction of social values and law is mutual. The law can fundamentally influence society as a whole and reshape its values, both in a negative direction (e. g. Nazi Germany) and in a positive direction (secularisation, liberty guarantees). On the other hand, social values have an enormous influence on the law and often represent frameworks and limits within which the legislator has to standardise the legislation. Succession law² is an integral part of each legal system, just as death and the subsequent distribution of one's property is an inevitable part of life. Succession law, as a complex area of law which includes both testate and intestate succession rules governing the distribution of a testator's or deceased person's assets among heirs or beneficiaries, is linked with the social values of each society far more than any other area of law (except maybe family law). Based on these premises, after providing a brief overview of the Slovak succession law legislation, the paper aims to analyse the impact of social values on succession law, focusing on the Slovak legal system.

2. Brief background to the Slovak succession law

In Slovakia, the legal basis of succession law is laid down in the Civil Code (Act No. 40/1964 Coll., as amended) (hereinafter: the Civil Code), which has undergone ample modifications in all areas of civil law³ although many residual socialist influences and relicts cannot be overlooked. The amendments

1 See: Hobbes Thomas: *Leviathan: The Matter, Forme and Power of a Common-Wealth Ecclesiastical and Civil*, London, 1651; <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=eebo;idno=A43998.0001.001>

2 For clarification purposes, *succession law* is a broader term covering both testacy and intestacy rules, while *inheritance law* commonly refers to intestate succession rules.

3 The most complex changes have been performed after the fall of the communist regime during the Velvet Revolution (17 November 1989), which were related to the reaffirmation of civil rights and freedoms, the development of private enterprise and the transition to a market economy, including the reprivatization of assets. See: Explanatory notes to Act No. 509/1991 Coll.(p.2), available in Czech at: http://www.psp.cz/eknih/1990fs/tisky/to685_07.htm

introduced in succession law have not been revolutionary either.⁴ For further research and understanding of social values as limits of succession law, we should briefly look at the principal features of Slovak succession law.

Succession law is closely related to individual property rights (Cirák, 2009: 13). The Slovak Civil Code (CC) currently distinguishes two types of succession titles: intestate succession (by operation of statutory laws of descent and distribution) and testate succession (under the operation of the last will and testament), or a combination of both (Section 466 (1) CC), whereby testacy rules have priority in the distribution of assets (Section 461 (2) CC). In Slovakia, the basic principles of succession law are the principle of universal succession, the delation system (the succession is acquired directly by operation of law to the moment of death of the deceased person) (Section 460 CC), and the principle of non-heir representation and accretion of shares (depending on the intestate succession group).

As in other jurisdictions, the prerequisites for acquiring property under the succession rules are: the death of the testator (natural person), the existence of a succession estate (property and debts which are the eligible subject matter of succession), an eligible heir or beneficiary (who is not incapable of succession or who is not disinherited, including a *nasciturus*), and a title of succession (Section 460, 461, 469 CC).

The last will and testament may be made in several forms: holographic will, allographic will, in the form of a notarial deed,⁵ but not in electronic or video testamentary form, where authentication issues need to be considered in the first place (Križan, Čipková, 2022: 212).

Intestate succession is the transfer of property to heirs directly under the operation of the statutory laws of descent and distribution. Slovak Civil Code ranks heirs into four intestate succession groups (lines of succession).⁶

4 For more details on subtle changes in Slovak succession law after the Velvet Revolution, see part 3.1. of this paper on Liberty as a social value.

5 Section 476 of the Civil Code: “*The testator may either write the will in his or her own hand or draw it up in another form with the presence of witnesses or in the form of a notarial record.*”

6 The first intestate succession group includes the deceased person’s children and spouse, each of whom inherits an equal share. If a child cannot inherit (in case of death), his/her share shall be acquired by his/her descendants by equal shares (Section 473 CC). The spouse cannot be a single heir. The second group (line of succession) includes the deceased person’s spouse, parents and cohabitants (those who had lived with the deceased person at least one year before his/her death in a shared household and took care of the shared household or were dependent on the deceased person due to maintenance). A cohabitant cannot be a single heir; the surviving partner has to acquire at least half of the inheritance (Section 474 CC) while others inherit equal shares. In case there is no surviving spouse or parents, the third group (line of succession) includes the deceased person’s brother or sister and cohabitating persons, who inherit equal shares. In case they are deceased, his/her share

If none of the heirs inherits, the state will acquire the succession as *caducum* (Section 462 CC).

3. Social values as limits within the Slovak succession law

Social values are a set of shared cognitive representations and normative beliefs within a given society or cultural group that influence individual and collective attitudes, behaviours, and decision-making processes. These values are derived from a complex interplay of historical, sociological, economic, psychological, religious and anthropological factors and serve as guiding principles that shape a community's moral framework and social norms. They are dynamic, evolving in response to societal conditions, technological advancements, and cultural shifts. Social values play a pivotal role in determining the priorities of a society, influencing policy decisions, ethical considerations, and the overall social fabric, and are often used as benchmarks to evaluate societal progress and well-being. Generally accepted by society as essential or desirable, social values serve as limits on the law and play a significant role (*inter alia*) in shaping succession law in each country. Social values can influence the distribution of a deceased person's property in a number of ways. Considering their importance as the limiting factor of succession law, the paper focuses only on some social values: liberty, family relationships, equality, responsibility, and community welfare. Due to the page limit, the impact of other relevant social values may not be addressed in this paper.

3.1. Liberty as a social value in succession law

The research on social values and the limits they pose not only to succession law but also to the legal order should inevitably start from the term "liberty". Liberty is not only a social value but a fundamental principle which permeates, or at least should permeate, the entire legal order, all branches of law, all rights and obligations arising from the text of legal norms, insofar as the rights and liberties of others are not interfered with. It is intrinsic that the Slovak legal order, which had an enormous deficit of this fundamental value ("non-freedom") during socialism, had to return to respecting this value as much as possible after the revolutionary events of 1989. After all, liberty was the main reason and symbol that led to the fall of the socialist regime. More than 30 years later, the legal order does not grant the same liberties to all. The extent to which liberty is manifested in Slovak private law is also questionable, given the fact that the Civil Code (as the fundamental source of private law) was enacted in

will be acquired by their children in equal shares (Section 475 CC). The fourth group (line of succession) includes the deceased person's grandparents; in case they are deceased, their children will inherit equally (Section 475a CC).

1964. Although the Civil Code has undergone many changes and amendments (including even the legal principles), minimal changes have been implemented in succession law (e. g. adding a fourth intestate group of successors, details on different types of wills, or reducing the mandatory share in case of an adult descendant from at least $\frac{3}{4}$ to at least $\frac{1}{2}$ of the intestate share).⁷

In succession law, liberty is primarily embodied in the freedom to inherit. It is closely related to the right to property ownership, which is guaranteed in Article 20(1) of the Constitution of the Slovak Republic⁸ in the form of a fundamental human right: the right to succession (Article 20(1) of the Constitution). Nevertheless, in Slovak succession law, there are various limitations to the seemingly absolute social value of liberty, resulting from a clash between personal liberties and liberties of others or a clash between liberty and other social values (family, equality, responsibility, community welfare), which are assessed further on in this paper.

In the law of testate succession, liberty is mainly manifested through the autonomy of the will, particularly the autonomy of the testator's will (testamentary disposition). The testator is free to decide how the succession estate will be distributed after his/her death. However, the testamentary freedom is not an absolute one. Although the Slovak succession law prioritises testate succession over intestate succession, it does not recognise any other form of succession titles, such as succession contracts or gifts *mortis causa* (Bajánková, 2019: 1629). A fundamental limitation of testamentary freedom is the so-called mandatory (statutory/legal) share for the deceased person's descendants in the first line of descent (Section 479 CC).

On the other hand, the testator has *de facto* absolute freedom to dispose of his/her property during his/her lifetime (*inter vivos*, not *mortis causa*); he/she is allowed to dispose of his/her property solely based on his/her will and convictions without the limits mentioned above. In the context of autonomy and liberty in the law of succession, we may also mention the autonomy of the heir, which entails the heir's freedom to decide whether to accept or reject the succession (Section 463 CC). Based on this brief overview of the current state of succession law in the Civil Code, a preliminary conclusion may be that it does not sufficiently reflect the modern society of the 21st century, its values and, ultimately, the principle of liberty.

7 See: Section 475a, Sections 476a to 476f and Section 479 of the Civil Code in version before and after amendment of the Civil Code by Act. No 509/1992 Coll.

8 Constitutional Act No. 460/1992 Coll., the Constitution of the Slovak Republic as amended, available online in English on webpage of Constitutional Court of Slovak Republic: <https://www.ustavnysud.sk/en/ustava-slovenskej-republiky>.

3.2. *Family relationships as a social value in succession law*

The protection of family relations is a fundamental social value in most societies. For this reason, the family and family life enjoy the highest protection not only at the national level (e.g. Article 19(2) of the Constitution of the Slovak Republic, which guarantees the right to protection against unjustified interference in family life, and Article 41(1) of the Constitution, which protects marriage, parenthood and the family) but also at the international level (e.g. Article 8 of the Council of Europe's European Convention on Human Rights, regulating the right to respect for family life). Being considered as relations of primary importance, functional family relations are given legal priority over other relations. An excellent example of such a perspective is succession law, the fundamental aim of which is (among other things) to preserve intergenerational relations through the transfer of property between ancestors and descendants. Although many legal systems, including the Slovak one, prefer the autonomy of the testator's will and his/her freedom of testamentary disposition, some consider that testamentary freedom is an arbitrary right of the testator because the testator has the exclusive right to determine the content of this unilateral expression of his/her will (Fekete, 2015:129), but this is not entirely true. The testamentary freedom is limited in many legal systems by family relations as a fundamental social value in the interest of preserving at least the closest family ties (between parents and children). Under the Slovak Civil Code, this limit is the aforesaid mandatory share for descendants.

Despite the legislator's preference of testamentary succession, it is the legislator's task to enact legal provisions which would appropriately reflect the family relations in line with contemporary social developments. In particular, it refers to the intestate succession rules, which are applied in situations where the deceased person has not left a will or when the succession estate is not distributed under a will for other reasons (e. g. nullity). The testator may also *de facto* tacitly agree to the intestate succession rules envisaged by the legislator and, therefore, not make a will. Thus, the intestate succession gives the legislator a unique space to reflect on the importance of individual family ties observed in society. As summarised by Luby, the bard of the Slovak private law: "*The intestate heirs are selected by the law from among persons who are related by blood and marriage to the testator, based on the assumption that everyone will leave his property to relatives (and of those, especially close relatives) rather than to strangers*" (Luby, 2002: 255).

If the legislator aims to give the status of legal heirs to those persons who can be considered "closest" to the testator, the legislator's task in these cases is to find those heirs and rank them in relevant intestate succession groups (statutory lines of descent and distribution). In case the deceased person has

not decided to distribute the property himself/herself (under the last will and testament), the redistribution of the deceased person's estate should be subject to the legislator's experience and equity, regardless of the decedent's reasons for designating heirs (e. g. kinship, love, sympathy, economic capacity, dependence on the deceased person, showing interest in the testator, further development of the estate). In the past, the emphasis was more on the broader family relations or the economic aspect. For example, in the Kingdom of Hungary succession law, the testator's property was classified into a directly acquired property (under the parentage principle) and laterally acquired property (inherited *in lineam*). Intestate succession was thus a combination of direct and lateral inheritance (if the deceased had no direct descendants) (Fajnor, Zátarecký, 1935: 493).

Today, the nuclear family and emotional ties are given preference. The Slovak Civil Code ranks heirs into four intestate succession groups (based on the lines of descent), whereby members of the extended family (more distant relatives) are granted inheritance rights based on hierarchical ranking, which favours closer relatives (next of kin). The list of extended relatives is not too extensive in the Civil Code (e.g. cousins or other distant relatives do not inherit). Thus, it may be appropriate to reflect on the importance of extended family ties in modern Slovak society and consider introducing provisions enabling cousins and more distant relatives to inherit, which is a preferable solution in comparison to the escheat of the state (*caducum*). It can also be stated that the Slovak Civil Code does not reflect the modern family trends in the nuclear family when it fails to envisage any provisions for unmarried partners, step-children, same-sex partners, and others who are not included in the intestate succession groups as eligible heirs. Thus, the quote "*explaining trust, intimacy and flourishing requires new vocabulary of love and gift and a way of thinking often persisting over more than one generation*", originally related to new family law, seems to be fully applicable to succession law as well (Brinig, 2021: 389).

3.3. Equality as a social value in succession law

It may be challenging to succinctly assess the principle of equality when considering social values in a particular society. There is no doubt that equality must be a fundamental social value in any legal order, which should provide the maximum guarantees and safeguards. Recent developments brought fundamental consideration of equality and abolition of all forms of discrimination (de Waal, 2019: 1065). Equality before the law is not a limiting factor, but inequality is. In the law of succession, equality or inequality can take several forms; they are reflected in the different status of heirs according to their sex or gender, the differences between legitimate and illegitimate heirs, or others. Many reasons underlying inequality in succession law are now a thing of the past, but elements of inequality can nevertheless be observed in Slovak

succession law even today. The principle of equality in succession law should not only prevent unequal treatment of heirs but also ensure a fair distribution of property among the beneficiaries (in case there is no will), thus promoting harmony and preventing conflicts between family members. The social value of equality in the Slovak succession law may be assessed as follows:

A. Equality ensures legal certainty

a) gender equality - the current succession law does not make any distinction, either explicitly or implicitly, between the rights of natural persons according to sex/gender, as was the case in the past, when male descendants had priority over female descendants;

b) equality of spouses - Slovak private law does not distinguish the status of spouses (husband and wife)⁹, either during marriage or after a spouse's death, when both the surviving husband and the surviving wife are entitled to the same succession rights. The surviving spouses also have an equal position vis-à-vis the decedent's descendants in the first intestate succession group after the spouses' joint property settlement. In the second intestate succession group, the legislator gives preference to the surviving spouse over the decedent's parents and cohabitants by specifying that the surviving spouse shall always inherit at least half of the deceased person's property (Section 474(2) CC).

c) equality of the testator's descendants - the current Slovak succession law does not make any distinction in the legal status of children, nor between children born in matrimony and children born out of wedlock (Article 41(3) of the Constitution). Despite the historical differentiation between legitimate and illegitimate children (in Roman law, Kingdom of Hungary), this distinction has become irrelevant since the adoption of the Family Act No. 265/1949 Coll. The current Civil Code does not make such a distinction either; all children have the same rights, and any discrimination on the grounds of birth, sex or some other status is prohibited.¹⁰ Adopted children are also placed on an equal footing with biological children. The Civil Code does not distinguish between biological children and adopted children because Section 97 of Family Act No. 36/2005 Coll. provides that adoption creates the exact relationship between the adopter and the adoptee as between parents and children, which also applies to the adoptee's relationships to other relatives (siblings, grandparents, and others). The legal parentage at the time of the decedent's death is decisive for the adopted child (descendant) to be treated as an heir in the first intestate

9 Under Article 41(1) of the Slovak Constitution, marriage is exclusively a union between a man and a woman.

10 Such discrimination would be contrary to Article 12(2) of the Constitution of the Slovak Republic No 460/1992 Coll., and contrary to Article 14 of the European Convention on Human Rights and Article 21(1) of the Charter of Fundamental Rights of the European Union.

succession group. The Civil Code distinguishes between descendants only in terms of the amount of the mandatory (legal) share; thus, the minor descendants are granted the entire amount of the mandatory share (forced heirs' portion) of the estate, while the major (adult) descendants are granted at least half of their mandatory share (Section 479 CC).

d) equality in the position of heirs - all heirs have an equal position in succession proceedings; all heirs (in both intestate and testate succession) have the possibility to agree on the manner of distribution of the decedent's or testator's property (even if it differs from the testator's last will and testament) (Section 482 CC);

(e) equality in the equitable distribution of the testator's property - equality of heirs in terms of the distribution of the testator's property is not possible due to the very nature of the testamentary disposition, which is the discretionary right of the testator. However, many legal systems contain means of balancing apparent inequality of shares or property acquired by some of the heirs during the testator's lifetime. In Slovak succession law, the mandatory share (forced portion) of intestate heirs may be applied to balance the distribution of the testator's property intestate succession. It may be achieved by the instrument of collation. In the case of intestate succession, an heir is charged *ex-lege* with whatever he/she acquired as a donation from the donor during his/her lifetime, unless it is a customary gift. In case of testate succession, collation may only be applied if the testator has expressly ordered so in his/her will, or if a compulsory heir with a mandatory share (forced portion) would otherwise be unjustifiably discriminated in favour of the donee (Section 484 CC).¹¹ On this ground, some authors consider collation mandatory (Horony, 2022: 169).

B. Failure to ensure equality

(a) failure to provide equality for unmarried couples – cohabiting partners of different sexes do not have the same legal position as the surviving spouse (Dufalová et al., 2019: 158). Cohabitation is an increasingly common form of extramarital partnership, which implies a *de facto* matrimonial relationship, regardless of the partners' gender. It is not regulated in the Slovak legal order. The deceased person's partner may fall into the second intestate succession group and be entitled to inherit if he/she meets the cohabitation criteria only. If the testator has descendants, the partner is excluded from succession, even if the children/descendants of the deceased person are also the children/descendants of the surviving partner.

¹¹ Section 484 of the Civil Code: "...As for intestate succession, the heir shall be charged with what he or she acquired gratis from the testator; ... the heir shall be also charged with what the heir's ancestor acquired gratis from the testator. In case of testamentary succession, the collation is to be done if the testator ordered so in the will or if the heir with mandatory share is groundlessly discriminated in the donee's favour."

b) failure to provide for equality of descendants of cohabitating partners –equality is ensured only if both partners are the child’s biological parents or if the partner’s child has been adopted by the other partner (whereby the parents must be persons of different sex). The deceased person’s step-child (i.e. the child of the decedent’s spouse or unmarried partner who is not a biological or adopted child of the deceased) does not explicitly fall into any of the envisaged intestate succession groups. Hypothetically speaking, a step-child may fall into the second or third intestate succession group and become an heir only if he/she is a cohabitant, i.e. if the conditions for considering the decedent’s step-child as a cohabitating person have been fulfilled, which implies that the step-child lived with the deceased person in the same household for at least one year before the decedent’s death and took care of the joint household, or was dependent on the deceased person for maintenance.

c) failure to provide for equality of same-sex partners - the status of same-sex couples in the Slovak Republic is not regulated at all. Despite the Slovak Republic’s obligations under international conventions (Article 8 of the European Convention on Human Rights), same-sex couples are not allowed to enter any state-approved union (Hamřík, 2022: 97). In the current legal situation, same-sex partners are thus allowed to inherit from each other in the same way as unmarried different-sex partners; they may fall into the second inheritance group as cohabitating persons, provided that the aforesaid cohabitation conditions are fulfilled, and provided that the deceased person has no descendants. Like an unmarried different-sex partner, a same-sex partner can be a sole heir only in the third intestate succession group.

d) failure to provide for equality of descendants of same-sex partners – the legal position of children/descendants of same-sex partners is even more complicated than the position of children/descendants of different-sex partners because the Slovak legal system does not allow child adoption by a same-sex partner. Thus, a step-child of the deceased person who is not the child’s legal parent does not fall into any intestate succession group and cannot explicitly inherit. Nevertheless, hypothetically speaking, in analogy with the same situation involving different-sex partners, a child/a step-child of the same-sex partner may become an heir provided that he/she meets the above conditions for a cohabitating person.

3.4. Responsibility as a social value in succession law

Responsibility is indisputably a significant social value which shapes succession law. The concept of responsibility implies not only societal responsibility, which is manifested in community welfare, but also individual responsibility. In succession law, responsibility primarily entails moral and legal

responsibility towards the deceased person and legal responsibility towards third parties.

3.4.1. *Responsibility of heirs towards the testator/deceased person*

The responsibility of heirs/beneficiaries towards the testator/deceased person can be observed through the prism of the potential heirs' conduct towards the testator during the testator's lifetime and their conduct towards the testator or the testator's will and estate after the testator's death.

(a) Responsibility of potential heirs to the testator during the testator's lifetime

It is not customary for legal systems to regulate the specific forms of conduct of family members among themselves (perhaps except for the family law rules focusing mainly on the alimony obligation); thus, their conduct remains an issue of moral conduct. In the Slovak succession law, this issue is regulated in the provision on disinheritance, which entitles the testator to deprive an heir of his/her share in succession in case of irresponsible or immoral conduct (Section 469a CC). Disinheritance is limited to the testator's descendants because they are the only heirs entitled to a mandatory share (forced portion), even in testamentary succession, if the testator fails to include them in the will. The social value of the descendants' responsibility towards the testator is expressed in the provisions of Section 469a (1a) and (1b) of the Civil Code, which specify that the testator may disinherit a descendant if he/she, in contravention of the rules of good moral conduct, fails to provide due care and necessary assistance to the testator in sickness, old age or other important cases, or if he/she does not permanently show proper concern or genuine interest in the testator that he/she should show as a descendant. A descendant may also be disinherited if he/she permanently lives an inordinate life (Section 469a (1d) CC) and if he/she was sentenced to at least one year imprisonment for an intentional crime (Section 469a (1c) CC). The disinheritance document must contain the reason for disinheritance (Section 469a (3) CC).

(b) Responsibility of heirs to the testator after the testator's death

The heirs' proper conduct towards the testator after the testator's death is objectively impossible; in effect, it implies responsibility for the property entrusted by the testator (its preservation and further improvement) and preservation of the testator's last will (respecting his/her instructions, commands, requests). However, the Slovak Civil Code does not allow any of the above. According to Section 478 of the Civil Code, "*Any conditions annexed to the will shall have no legal relevance...*"; even less so are the testator's orders or conditions which are not part of the will. All these expressions of the testators will remain as recommended conduct of the heirs only at the moral level. As soon as the succession property is acquired, the heirs become the owners of the testator's

property in its entirety and without limitation, i.e. they can freely dispose of it (e.g. sell it or give it away) exclusively according to their will. The preservation of the testator's last will, as expressed in the testamentary document, is also a particular feature since it can also be overridden *de facto* if the heirs concerned agree to settle in succession proceedings on the settlement of the succession, the court distributes the testator's property among the heirs in a manner different from that provided in the testator's will. In the Slovak legal order, the heir's responsibility towards the testator after his/her death can thus be reduced only to the responsibility to preserve the testator's property until the final decision on the distribution of property in probate proceedings, which is supported by the instrument of an administrator of the succession estate (Section 182 et seq. of Act No. 161/2015 Coll. Non-dispute Civil Proceedings Code). The administrator of the succession estate performs the activities (within the scope defined by the court) necessary to preserve the succession assets. The administrator is obliged to exercise professional care in performing his/her duties and is liable for damage caused by the breach. It should be noted that the Slovak succession law is governed by the principle of delation, i.e. the heirs acquire the succession retroactively to the date of the deceased person's death (as opposed to the principle of addition).

3.4.2. *Responsibility/Liability towards third parties*

Part of the social value of liability in succession law is the legal responsibility (liability) of the deceased person or his/her heirs to third parties to whom the decedent had some liability, particularly under the law of obligations, which implies liability to the deceased person's creditors. Any obligations existing only in moral terms or in the form of social service cannot be implemented unless the testator has materialised them in the will. Slovak succession law is based on the principle of universal succession. The heirs are transferred all the rights and obligations of the deceased person and become his/her legal successors. In this case, the limit is the value of the decedent's property because the heirs are liable proportionally for the decedent's funeral costs and the decedents' debts which have passed on to them upon his/her death, but only up to the amount of the price of the succession acquired (Section 470 CC). Thus, legal regulation of the transfer of debts and the liquidation of the decedent's estate protects the interests of creditors, and it contributes to a smooth and orderly probate procedure *vis-à-vis* third parties, taking into account liability as a social value. Otherwise, the legal certainty of creditors would be jeopardised (Kupka, 2016: 174), and conversely, in the absence of the acquired inheritance limit, the legal certainty and property rights of the heirs would be endangered. In the context of the heir's legal responsibility (liability) towards third persons, it has to be noted that the Slovak Civil Code also regulates situations when the protection

of the so-called “rightful heirs” against “unqualified (wrongful) heirs” should take place, which is contrary to the principle of heir’s responsibility towards third parties. The rightful heir has only a limited period to file a lawsuit against the wrongful heir, contrary to one of the basic principles of private law: property-related rights are not statute-limited (Ficová, 2022: 314).

3.5. Community welfare as a social value within succession law

Community welfare is an attainment of the French Revolution (*fraternité*), which has spread across centuries and different political systems. In Slovakia, the degree of participation of an individual in the welfare of the community as a whole was most prominent in the period of socialism and embodied in the slogan “*The one who does not work shall not eat*”. However, in that case, we may not speak of community welfare in its standard sense but as a kind of megalomaniacal worship of the state as the supreme guarantor of welfare and well-being. With the uncontrolled rise of capitalism in the 1990s, community welfare took a back seat. Individualism and mutual alienation prevailed and largely persisted to this day. In recent years, especially in the context of numerous crises (the COVID-19 pandemic, the war in Ukraine, and others), society has been preserved in the sense of an almost mythical fraternity or religious help to one’s neighbour. These and many other situations suggest that a change of paradigms is gradually taking place, a return to community life which has existed in the Slovak territory for centuries, and which the new generations (who had no experience of socialism or the 1990s) are rediscovering, by increasingly focusing on the well-being and cohesion of the community, in addition to individual goals. Nevertheless, what is the relationship (and the boundaries) between community welfare and succession law?

In succession law, community welfare or the public interest can be observed at three levels:

(a) avoiding the acquisition of succession *contra bonos mores*

Generally speaking, it may be contrary to the community welfare if a person who has acquired the deceased person’s property by acting contrary to the principles of good moral conduct becomes a valid heir of the decedent’s estate. From the perspective of positive law, an act contrary to good morals is difficult to prove, just as it is challenging to demonstrate the intensity of the interference. For this reason, the law has to envisage situations in which the acquisition of a succession would be contrary to the public interest and the common good. Section 469 of the Slovak Civil Code includes some of these situations: the commission of an intentional crime (e.g. murder, bodily harm) against the deceased person, his/her spouse, children or parents; the commission of a punishable act against the deceased person’s will (e.g. destruction or forgery of a will or a disinheritance document). Any of these facts give rise

to incapacity to be heir directly *ex-lege*. Although one may forgive an heir for committing such an act, this will no longer be objectively possible in case of death. No one other than the testator can do so, demonstrating the observance of fundamental moral principles and ensuring an imaginary moral victory of the public interest over personal property acquisition. Section 469a(1c) of the Civil Code also envisages that the testator may disinherit a descendant sentenced to at least one year imprisonment for the commission of an intentional crime, which also favours the public interest.

(b) the transfer of legacy for public benefit

Bequests of estate for various public benefit purposes (charities, education, health, social services, etc.) are common in many jurisdictions. Depending on the amount received from bequests (especially in cases involving solvent testators), many foundations and civic associations are able to enhance community welfare to achieve and further develop their public welfare objectives. In this context, there are several relatively standard options for testators: they may leave a bequest directly by appointing a legal entity as a testamentary heir or ensure that the legacy is managed through trusts. Many countries incentivise testators to make these forms of bequest for community purposes (via philanthropic tax reliefs and other instruments). In the Slovak legal system, neither the incentive scheme nor trust-related instruments and similar legal forms facilitate the aforementioned objectives. On the other hand, the Slovak Civil Code allows to bequeath property in the form of a will to any natural or legal person, and potentially to a person/entity whose activities pursue public benefit objectives, whereby the mandatory share has to be included in the part of the testament bequeathing the property to such a person/entity (e.g., NGOs or others).

(c) the transfer of succession to the state and the *caducum*

Leaving property to the state is a less common community-welfare or public-interest-oriented option. Generally, insofar as it acts in civil law relations, the state is considered a legal person (Section 18 CC). Thus, the state may be a potential heirs if the testator decides to leave part or all property to the state in his/her testament. Another case is the so-called *caducum* (Section 462 CC), where the state does not become an heir by one's will but acquires all the property of the deceased person in case the decedent has no heirs in any of the intestate succession groups provided in the Slovak Civil Code, or has not made a testamentary document, or the heirs do not inherit under the existing will due to its invalidity, the absence of appointed heirs, etc.

4. Conclusion

The author analysed the intricate relationship between social values and succession law in this paper by focusing on the Slovak legal system. As highlighted by Thomas Hobbes, law serves as a society's collective moral compass, which is particularly evident in succession law. In the Slovak context, the Civil Code (Act No. 40/1964 Coll.) lays the foundation for testate and intestate succession law, which is closely tied to individual property rights. In this context, the paper identified the fundamental social values based on the French Revolution motto (*liberté, égalité, fraternité*) and supplemented them (yet not comprehensively) with family relationships and responsibility. Those social values serve both as the framework and the limits for the legislator in shaping the law of succession. Despite ample amendments to the Slovak Civil Code since its adoption (and particularly after the Velvet Revolution), it may be concluded that the current legislation does not fully reflect the evolving social values of the 21st century and modern Slovak society. Due to the influence of tremendous societal changes and various other reasons (such as digitalisation), the Slovak succession law requires extensive conceptual changes. Succession law should benefit from further revisions that align more closely with the contemporary meaning of social values (liberty, equality, family, responsibility and community) and modern law principles. Those changes can be achieved by different means: extending inheritance titles, reorganisation of intestate inheritance groups, equal treatment for all types of family ties, digitisation of legal acts, introduction of trusts, and further specification of certain legal institutes (collation, disinheritance, and others).

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Legal acts

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ДРУШТВЕНЕ ВРЕДНОСТИ КАО ОКВИР НАСЛЕДНОГ ПРАВА: Осврт на наследно право Словачке

Резиме

У раду се разматра однос између друштвених вредности и наследног права, са посебним освртом на словачки правни систем. Ослањајући се на теорију друштвеног контакта Томаса Хобса и његово одређење права као колективног моралног компаса друштва, аутор указује да друштвене вредности не само да учествују у обликовању закона већ се и сâме могу обликовати и редефинисати законом. Раd почиње прегледом словачког наследног права, које је уређено Грађанским закоником (Део 7: Наследно право, чл.460-487, Закона бр. 40/1964, са бројним изменама и допунама). Аутор затим разматра улогу друштвених вредности, као што су слобода, породични односи, једнакост, одговорност и добробит заједнице у оквиру наследног права Републике Словачке, и даје детаљну анализу њихових нормативних оквира и ограничења у контексту законског и тестаментарног наслеђивања. У том погледу, аутор разматра равнотежу између индивидуалне слободе и породичних односа, наследна права супружника, деце и других рођака, признавање различитих видова породице, једнакост у контексту наслеђивања, моралну и правну одговорност наследника, као и шире друштвене импликације наследног права у унапређењу добробити заједнице. Иако је словачки грађански законик претрпео значајне измене, анализа открива да он и даље одражава друштвене нормe времена када је настао, па су неопходне нове измене и допуне у циљу његовог усклађивања са друштвеним променама, савременим друштвеним вредностима и новим породичним структурама. Раd може допринети разумевању динамичне интеракције између права и друштва у оквиру наследног права Словачке, али резултати могу бити од користи и у оквиру других јурисдикција.

Кључне речи: друштвене вредности, наследно право, Словачка, породица, слобода, једнакост, добробит заједнице.