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Faktora *donatio* tiesiskā problemātika līgumiskajā mantošana

Anotācija. Pamatnoteikums, kas veido līgumiskās mantošanas institucionālo sistēmu, juridiskajā zinātnē saucama ar terminu "mantojuma īpašuma provizoriskā iegāde". Savukārt persona, atkarībā no zināma nosacījuma, ir ieguvusi singulāra mantinieka tiesisko statusu. Faktoru, kas izmantoja šo konstrukciju, saņēma formulu *donatio mortis causa*. Šobrīd formula *donatio mortis causa* mantojuma un saistību tiesībās izmantojama par pamatu dāvinājuma līguma pārejai mantojuma līgumam. Līdz ar to par šī raksta mērķi ir noteikts identificēt būtiskos nosacījumus, kas veicina minēto pārejas procesu saskaņā ar tiesībām.

Atslēgas vārdi: dāvinājuma līgums, līgumiskā mantošana, mantojuma līgums, pārejas forma.

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Правовые вопросы фактора *donatio* при договорном наследовании

Аннотация. Основным положением, формирующим институциональную систему договорного наследования, является принцип, именуемый в правовой науке «провизорное приобретение наследственного имущества». В свою очередь, лицо упомятое в соответствующем договоре приобретает правовое положение сингулярного наследника. Определяющий признак для использования такого подхода формулируется как *donatio mortis causa* (дарение на случай смерти). В настоящий момент формула *donatio mortis causa* используется как основание для перехода договора дарения в договор наследования. Целью статьи является выделение существенных условий, правомерно способствующих процессу перехода.

Ключевые слова: договор дарения, договорное наследование, договор наследования, переходная форма.

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Legal issues of *Donatio* factor under contractual succession

Abstract. The the basic provision forming the institutional contractual succession system is the principle termed in legal science as the *provisional acquisition of hereditary property*. In turn, the person, involved in the event, acquired the legal status of a singular heir. The determining feature for the use of such an approach is formulated as *donatio mortis causa*. At the moment, the formula *donatio mortis causa* is used as the basis for modification (transition) of the gift contract into succession agreement. Accordingly, the aim of the paper is to identify the essential conditions which lawfully contribute for transition process, mentioned above.

Key words: gift contract, contractual succession, succession agreement, transitional form.

Introduction

The *donatio* factor being an essential part of the contractual succession instruments, creates a rather complex and ambiguous situation – depending on its position relative to mandatory rules of inheritance and obligations law, this factor makes possible the recognition of the donation contract as succession contract or another institute of the contractual succession *donatio* factor forms a transitional form of the testamentary disposition. This is evidenced by the provisions of the Civil Law of the Republic of Latvia (hereinafter – Civil Law) (section 1926), the German Civil Code (paragraph 2301), Law of Obligations Act (Estonia), (article 262), the General Civil Code of Austria (paragraph 956).

Collision factors of the inheritance contract and the donation contract, mediated in a situation which unstable due to factor *res apud formare* by factors *successio testamentaria* and *successio per donatio*, for the purposes of recognition and execution, undoubtedly need to be delineated, ascertained and, undoubtedly, in correction.

This statement is justified by the fact that the obligations arising from *intention mortis causa* agreements are established in two ways (obligations of relative nature and obligations of absolute nature) and the absence of delineation, ascertaining and necessary correction leads to undue legal consequences in the form of possible overlapping of the legal effect of the obligations *inter vivos* and *inter vivos intention mortis causa*.

Construction of *mortis causa* agreements provides that the obligations of the parties are established in such a way that one of the directions of inheritance law leads to the establishment and satisfaction of rights and obligations attributed to the imperative *mortis causa* of the parties to the mixed contract, therefore the other direction leads to the establishment and satisfaction of rights and obligations characterized by *inter vivos* factor. The fact that the agreements based on the norms mentioned above are mixed, there is no doubt – this rule prescribed by that a *promise of a donation made subject to the condition that the donee survives the donor is governed by the provisions concerning dispositions mortis causa* (concretely – *if the donee will outlive the donor – the prescriptions for testamentary dispositions apply*) (German Civil Code, paragraph 2301), factor *donation of a future property – is recognized by inheritance contract* (Civil Law, section 1926), the factor *donation contract is concluded in the event of the death of the donor – the contract governed by the provisions on inheritance under the will* (Estonian Obligatory Law, article 262) .

Allegation of collision factors *successio testamentaria* and *successio per donatio* possible by virtue of the provisions of section 1926 of the Civil Law (factor *giving the future of the property as the basis of a transitional form of the donation agreement into the inheritance contract*), paragraph 520 of the German Civil Code (factor *obligation ceases with his (donor) death, if only because of a promise should not be given* (in this situation the subfactor *does not follow otherwise* fix the conflict factor *successio testamentaria*), other norms regulating the legal status of the transitional form, leads to a conflicting legal status of property, parties to the contract and, as a consequence, to the conflict status of obligations.

This is confirmed by the following example. Ownership conflict status is defined by section 989 of the Civil Law – *successio* factors *testamentaria* and *successio per donatio* under the situation of the united testamentary tool create competing base – factor *successio testamentaria* allows alienation of objects of real rights, ranked as *res futura* (factor *future inheritance, or part thereof*, Civil Law, section 639).

In turn, the mandatory provisions inherent to the factor *successio per donatio* not afford such deal (complex factor *the present property of the donor as the basis of future property, based on the acquisition of property in increments*. Civil Law, section 1926).

For the purposes set out above, an analysis of the modification of the statute of contractual inheritance according to *successio* factors *per donatio* and *successio testamentaria* will be made.

Modification of the statute are inevitable due to the presence of conflict situations, generated by a different interpretation of the *donatio* and *res apud formare* factors concerning the norms of the right of donation and the right of contractual inheritance.

Modification of the statute of contractual inheritance in the context of this article means "weaving" the factors of one sphere of legal regulation into the factors of another sphere of legal regulation. Specifying the subject matter of the analysis indicated above, means the study of the impact of contractual inheritance factors on the factors of the right of donation and, in turn, the impact of the right of donation factors on the factors of contractual inheritance, the degree of admissibility of reciprocity and the compatibility of these factors.

This analysis is justified by the need to constitute and to eliminate the conflict situations inherent in the *donatio* factor in the process of transferring the rights of gift (*successio per donatio* factors) into the factors of contractual succession (*successio testamentaria* factors). *Successio per donatio* and *successio testamentaria* factors exist as a design, the main feature of which is the substantial divergence in concrete period of time legal facts mentioned above factors, which contributes to the emergence and, in some cases, to the increase in the degree of influence of the factor called the *significant change in testamentary/donation circumstances*. The latter circumstance leads to unpredictable consequences.

In the understanding of this article, the term *form* used in the text of the section, is understood as a form of disposition *mortis causa* in its broadest sense.

Complications in modification according to *successio per donatio* factors

Admissibility of the transfer of the donation agreement into the contract of inheritance means a retroactive change in the content of the gift contract as a result of recognition of *successio per donatio* factors as a part of the *successio testamentaria* factors and norms. The first condition for this recognition must be legitimation of this procedure.

Donation exists in civil law in three main forms: the institution of ordinary donation (Civil Law, section 1912), the promise of the gift of *mortis causa* (German Civil Code, paragraph 520) and the gift as exemption from the property obligation (German Civil Code, paragraph 2301). Donation in moderate amounts is used in legal regulation as an institution designed to give a person for the purpose of increasing his property or property rights. As a general rule, the donor must be the owner of the property in order to present it immediately, but from the point of view of contractual succession this provision is controversial – the object of the gift may be the things that the donor undertook to acquire or purchase (German Civil Code, paragraph 524). Subfactor *obliged to acquire* position legitimacy of factor *successio per donatio* for *successio testamentaria* factor purposes into question – the grammatical interpretation of the terms *undertook/obliged* classifies the essential parts of the contract into the future by creating an obligation with *res formare* nature (*futurae* factor). However, whether the *futurae* factor will mean inheritance is unclear

– the foundations of the intersystem statutory interpretation described by Abbe R. Gluck suggest an introduction to the process of interpreting a key evidence (extrinsic evidence), which in relation to the legitimation of the *successio per donatio* factor to ensure *successio testamentaria* goals is absent as of the present day. Harmonized standards interweaving factors *successio testamentaria* factors in standards *successio per donatio* are not feasible.

The problem of changing the criterion of the collision standard attachment formula in the modification situation *successio per donatio* is connected with the fact that the attachment formulas can be either variables or constants. By the constant formulas are acknowledged connections which are tied to specific legal fact and cannot be changed over time. In particular these formulas contain such categories as a place, where is situated immovable property objects especially for the purposes of *successio per donatio*, a statement of the legal status of immovable property discrete objects, defined as *res apud formare* for *successio per donatio* purposes. Variable attachment formulas include the location of movable property, citizenship and domicile. The last two bindings are leading in the right of inheritance. In this position last two bindings in regard to *successio per donatio* conflict with identical bindings under the situation *successio testamentaria*.

Assuming mentioned above situation modification procedure according to *successio per donatio* factors, carried out in a situation with a loss and collision *successio testamentaria* and *successio per donatio* factors will be carried out in accordance with the unstable legal nature of the bindings that should be determined the applicable law of donation, together with the conflict bindings that determine the applicable succession law, which are unstable due to its variable upon requirements obstacles, nature. It is difficult to imagine, that the factors of donation contract as a contract designed to give a person for the purpose of increasing his property or property rights committed under the collision formula *res apud formare* and non-obviousness of the subject [unapparent subject] will be perceived as essential constituents of the inheritance contract by virtue of the factor *inheritance – a legal entity*.

In view of this factor (inheritance – a legal entity), the legal nature of the addressee of the rights of claim put forward by authorized persons, becomes unclear. The legal nature of the requirement in this case is also not defined with respect to the scope of legal regulation – whether the right of demand will be the nature of the claim from the right of inheritance (obligatory or/and mandatory heirs put forward a claim against the heir under the inheritance contract) or from the obligation law factors inherent in the factor *successio per donatio* (mandatory or/and mandatory heirs put forward a claim in relation to the heir or donee under the contract of donation *mortis causa*) is unclear – the concept of *lex specialis* in relation to contractual succession is not worked out, which seems to be an omission – by all means *lex specialis* must be the basis of the right of claim. In addition, it is possible internal conflict into the body of legal norms within the sphere of the obligation law, inherent in the law of donation and the law of succession under the contract – the right to the closest contract regulates a different order of execution *ex ante* (qualification of the subject, object and content of the contract *mortis causa*, and, respectively, *ex post* (a statement of the execution process, organically related to the qualifications set forth above). Without *lex specialis* factors' selection the following consequences are undoubtedly possible: conflict of statuses (conflict of norms that determine the individual legal status of the person participating in the contract), conflict of status of relative obligations, conflict of absolute obligations. It is also possible inner sphere conflict about the transition grounds *mortis causa* instruments, mediated by a *successio* factor, the consequences of which is the difficulty in determining *successio*

descentum – the inheritance agreement is a priority form in relation to succession by the law and by will. Will this priority should be recognized regarding to the donation agreement recognized by inheritance agreement, according to *successio per donatio* factors. This situation needs to clarify – enforcement authority should to apply testamentary dispositions and this fact puts law enforcement authority in an ambiguous position.

Complications in modification according to *successio testamentaria* factors

The unclear legal nature of the obligation law norms, which is present in the factors *testamentaria* relatively *successio* in the collision factors of contractual inheritance, undoubtedly affects the legal status of *persona extraneus* and, according to *causae obligationum*, needs a division of obligations with mandatory priority in the direction of *causae successionis* - conflict factors *successio testamentaria* should promote for objectification of the legal status of *persona extraneus*, objectively separating certain categories of succession law from the law of donation, in general, and the law of donation *mortis causa* in particular. In the situation of fulfillment of obligations by a person whose legal status is not objectified and additionally obtaining with status in relation to the inheritance of *persona extraneus* complex enforcement (enforcement, including fulfillment of obligations and corresponding execution to obtain with teleologically adequate rights according to imperatives of *ex post* procedure) is complicated due to the possible lack of individual objectification of *persona extraneus* in the substantive law of the state *loci solutionis* – *lex successionis* collision norm establishing hereditary statute, pretends for legal regulation of the main part of hereditary legal relations arising on the basis of the contract of donation, raises the need for research retroactive effects of modifying the shape of the hereditary device.

As of the present moment, the retroactivity of the main part of hereditary relations arising on the basis of the donation contract according to the *successio testamentaria* factors has not been studied and is not fixed either in legal acts or in judicial procedure. In connection with this circumstance, the problem arises of determining the permissible degree of variability of the essential conditions of the hereditary instruments – seems that in the term *the main part of hereditary legal relations* lies the main problem consisting in this case in determining the legal status of a *persona extraneus* in relation to the complex process of ascertaining, modifying, executing and eliminating the conflicting component with respect to the substance of the admissibility of the degree of variability of essential conditions in principle – the admissibility of variability as a factor in the modification of the form of the hereditary instrument in accordance with the norms of *successio testamentaria* can and without a doubt certainly give rise to an additional degree of instability and the possibility of non-recognition in the relevant jurisdictions.

Due to the normatively indefinite scope of the above mentioned term and its corresponding institution, the legal status of *persona extraneus* might be excluded from *lex successionis* in favor of a different sphere (or spheres) of legal regulation. Perhaps recognition as *donatarius externum* [Johannis Voet, 1778]. This is possible, in particular, in the situation of the application of Swiss law – the concept of *hereditatis futurae* is enshrined in the Swiss Civil Code by introducing *future rights of inheritance* factor (Swiss Civil Code, article 527) – subfactor *future* able to connect donation law due to *successio per donatio* factor.

To objectify the legal grounds for the modification of the form of the hereditary instrument, it is necessary to localize the legal relationship in relation to the moment of occurrence of obligations within a particular jurisdiction. The localization of the legal relationship in time with the help of the temporal category,

expressed by the factor *the moment of occurrence of obligations* will lead to its ordering in relation to *successio testamentaria* factors interpreted with respect to the *donatio* factor and, most importantly, resolve conflict question – given the circumstances, which was founded by Robert Leflar the basis for his method of solving the issue of the applicable law, could not be better engage the safety melts when using categories, indicating the s higher in relation to the conflict factors *successio per donatio*, contained in factors *successio testamentaria*. In this case that the issue of legal status will be resolved, in regard to natural person, as well as property in relation to both legal opportunities, which arise from inheritance under contract, and in the case of relationships of obligations, arising from the contract of donation.

Investigating the issue of legal possibilities and legal grounds for modification, it is necessary to balance the issues with the need to avoid collision norm splitting with respect to the implementation of the modification process – modification procedure can rise unclear perspective in the essential conditions of static efficiency [6]. Collision norm splitting in the case, when legal relationship as a whole is subjected to the same rule of law, and, simultaneously, its individual issues subjected to another law order is very dangerous for modification of the form of the hereditary tool, formed according to the *successio testamentaria* factors in the situation of the need to ascertain *donatio* factor. *Donatio* factor which rise to the splitting of the collision norm, will cause conflict of collisions between the identical concepts of the law of donation and the law of contractual succession – this collision may be caused by a conflict of factors contained in statement *the person grants some property value to another gratuitously* (Civil Law, section 1912). In this case, the modification of the form according to *successio testamentaria* factors can be attributed *successio procedure* to donation and, reciprocally, to donation agreement.

In turn, *inheritance contracts can also be concluded in favor of a third party* factor (Civil Law, section 654) in a situation of modification of the form according to the *successio testamentaria* factors can relate the legal relationship, both to succession contract and to contract of donation *mortis causa* – third party person due to the factor of *gratuitousness* (the basis of the factor is the formula *without his participation in them*). On the basis of this formula it is presumed that a third person participates in the contract on the basis of the rights, which have not adequate objectification (*an independent right* factor).

The hypothetical factors on the basis of which an alternative is created are expressed in terms *future property or part of future property* (Civil Law, section 1926., German Civil Code, paragraph 310).

Accordingly, the property mass left after the physical death of the donor passes as a mass qualified according to the essential conditions of *successio per donatio*.

Essential parts variability permissible degree

To determine the significant degree of variability of the essential conditions its' necessary to carry out essential parts for qualification of the testamentary device transitional form. To effect this it is important to introduce into the qualification process a complex concept named with term *actual interests – potential interests*. This concept connected with continuity of a person's status – the aggregate of certain characteristics acquired by the presence of a specific set of legal facts of status without prejudice to the acquired set of legal facts that ascertain the new status of a person characterized by a *statuta mixta* factor allows to enter *successio per donatio* factors and instruments into *successio testamentaria* factors structure or vice versa.

Based on the theory of the government's interest by Brainerd Currie [Alfred Hill, 1960] as the legal basis of the allowable recognition donation agreement as a succession contract or other instrument of contractual succession and transferring qualification procedure from collision and substantive law norms into their allowable aggregates, qualification procedures must be implemented with assistance of goal setting policy instruments, standing on substantive law, concentrated in law norms annotations. Goal setting policy which tools contained in the abstracts of legal acts is a reliable tool for determining degree of variability of the essential conditions – abstract is a brief statement that contains the most important points of a long legal document or of several related legal papers. Due to this acceptance of the qualification of the complex concept *actual interests – potential interests* in *lex loci solutionis* situation, the transitional form of the testamentary device will be achieved in general and in the private plan, because qualification results will not lead to mutual lack of interest in legal norms recognition and enforcement.

Clarification of the legal meaning of potential interest for *lex loci solutionis* situation is sufficient important – persons under situation of a continuing legal relationships, which mediated by *successio per donatio* and *successio testamentaria* factors attributable in this case to contractual succession must create rules correlated in its meaning and aimed to avoid undue interpretation and conflict situations in the qualification of complex concepts *actual interests – potential interests*. This statement appears as equitable in situations of application and intra-interaction rules inherent to succession law, as a components of branches of civil law, and in the situation of interlocation of norms of general and special part of obligations law (donation contract) and the law of succession (succession contract) in regard to permissible degree of variability essential conditions of *successio per donatio* and *successio testamentaria* factors. The main difficulty in understanding the meaning of the category of *potential interests* consists in the absence in contractual succession the traditional elements attributed by legal doctrine to legitimate interests – mutual for the heir and the testator social good arising and possibility for interested persons adequate jurisdictional protection – the concept and the existing practice in the situation of *hereditatis futurae* is transfer social benefits emergence in the future, bearing essential imperatives of its occurrence for an heir to the inheritance law. Meanwhile hereditary obligation, intrinsic for *successio per donatio* factor occur depending on the beginning of the preemptory norms of family, inheritance and obligations law, which are projected on the donation law instruments. Thus, *potential interests* category turns out to be in the state of imbalance, subordination, possible alternative in connection with the category of actual interests.

Among other things, above mentioned situation can cause content conflicts - in the situation where it is necessary to find *lex specialis* norms for the procedures for recognizing and executing competent jurisdiction, this may cause incorrect clarification of the norms of law because to undue interpretation of the complex notions of *actual interests – potential interests* category factors.

To clarify this situation seems necessary to analyze example as follows.

Legislation, in particular Civil Law, does not contain an exhaustive list of persons who may be interested in both hereditary matters using *successio per donatio* factor devices, in general, and in execution by *ex ante* and *ex post* procedures. This conflict basis is law applicable to execution due to the uncertainty of the beginning and the termination of obligations, resulting from *successio per donatio* and *successio testamentaria* factors. In this situation, seems necessary to apply for qualification of complex concepts situational concepts' devices which transformed into situational norms. This will give *lex loci solutionis* qualification certainty and tie ex

ante and *ex post* enforcement procedures with the norms of *lex specialis* with national peremptory norms.

Conflicts associated with a different understanding of the identical terminology should not lead to a significant restriction of the interests of neither the testator (testator) nor the third person.

As of now, by virtue *hereditatis futurae* concept applicable devices using to qualification *lex loci solutionis* instruments in *ex ante* and *ex post* execution situation, as an imperative factor *contra proferentum* rule can be applied. This measure conform to the principles of fairness set forth in Civil Law section 1508 and German Civil code paragraph 2087 and understanding donee as a debtor under the provisions of German Civil Code paragraphs 157, 397, 2084, 2087. Simultaneously donee person presumes as a heir in the part of hereditary privileges, generated by a complex of legal regulation of material obligation law, while also taking into account the requirements of comparative qualification in respect of *successio per donatio* and *successio testamentaria* devices.

In turn, *hereditary privileges* factor must determine permissible degree of variability of the essential conditions – hereditary formation introduced as a qualifying concept mediated by *donatio* in its' meaning as a preferable treatment in relation to persons whom authorized person (creditor) attracted to *successio* procedures.

In conclusion, it is important to note that qualification is an absolutely necessary stage for the recognition and correct execution of contracts characterized as legal transactions with an unstable and conflicting legal form (in the broad sense of the term). At the same time must be recognized that the correct qualification of the imperative categories using in contractual succession significantly complicated due to competition of the peremptory norms governing relations which subject is correlation subject of legal regulation positioned in present moment of time but referred to the future (*the present property as a basis for the future property* factor).

In this case, in order to provide qualifications by delimiting conflicting interests [7] it seems to introduce into the qualification process delimitation law devices [8]. This factor is based on splitting the statute of the legal relationship on contractual succession for *ex ante* enforcement procedures and procedures inherent to *ex post* devices. The introduction of a delimiting right is justifiable because of the need to prevent the effect of *dui generis* [9] – under the understanding of this section *dui generis* means uncontrolled translocation and the subsequent impact of succession law factors on the factors of another, recognized by the competent law of donation, containing *successio mortis causa* factors.

Conflict norms appear as norms with reference nature, improper qualification, conflict norms, which regulate *successio per donatio* devices can refer relationship to the norms, regulating *successio testamentaria* devices – *existing property as the basis of future property* subjected to the influence of *res apud formare* factor (Civil Law, sections 757, 762, 960., German Civil Code, paragraphs 946, 947).

The second reason states that the conflict norm does not directly regulate the rights and obligations of subjects of legal relations, but only contains a principle, guided by which persons can choose applicable law. The principle objectified in the form of a legal factor inherent in several specific sections of legal regulation. This objective may include the resolution of the conflict issue, both to the proper section and to the undue part – polysemantic combination *successio per donatio* – *successio testamentaria* does not possess with imperative direction. The effect of legal regulation by means of a conflict norm is achieved in conjunction with the substantive law norm toward collision norm refers. When sending to undue legal regulation regulating the goal will not be achieved, of course, the limits of variation in the

essential legal conditions of the transitional form of the testamentary order will not be achieved by reason, stated above.

In this context *hereditary nature privileges* factor interpreted according to norms which inherent to *successio per donatio* and *successio testamentaria* factors fix the limits of variation of essential components of a transitional form of testamentary disposition. In particular, this will help to use rights and enforce obligations arising from *person in legal contemplation* factor, limiting with law admissible order the effect of obligations arising from *inheritance – a legal entity* factor. For the donee this circumstance is quite important – right to claim application to the object recognized by the competent jurisdiction as a donation contract accepted as an inheritance contract would lead to the inclusion in the process of *successio donation, causing damage* factor and, as a consequence, to unclear consequences for the debtor under contract, as soon for creditors, which status defined by *inheritance – a legal entity* factor.

The ambiguity for the factor of privilege of a hereditary nature is the provisions of section 384 of the Civil Law. This provision states that *the right to enter into the whole of the rights and obligations pertaining to the estate of the deceased shall be called the right of inheritance*. Uncertainty is caused by the entry into the property rights of the deceased for the donee by donation *mortis causa* procedures. Donation agreement presupposes the entry into the aggregate of property relations of a person who is alive. Simultaneously, succession contract, concluded between the parties in the traditional form, has a similar legal nature.

However, succession contract complicated with recognition factor, outgoing from different legal form (donation contract or, donation *mortis causa* contract) introduces uncertainty factor to *hereditary privileges* factor due to of the subject matter of law of obligations: *subject matter of obligation should be expressed in certain criteria* (Civil Law, section 1417), and *nullity of the transaction, contrary to good morals* factor (German Civil Code, paragraph 136). Contradiction to good morals is ascertained due to the vice of the will expression made by donation agreement parties regarding the legal nature of the thing, defined as an agreement subject matter. Will expression of persons in this case falls under the criterion of a significant error (Civil Law, section 1445., German Civil Code, paragraph 119). Contradiction to good morals can also be ascertained in the intention which mediates donor purpose to make the donee as a heir (intention, circumventing the law (Civil Law, section 1438., German Civil Code, paragraph 117).

Conclusions

There is a need to determine the fields of influence inherent to collision norms – problematic situations associated with the evolution of legal relations in polysemantic factor *successio per donatio – successio testamentaria* from donation agreement towards succession contract dictate the need to identify the context categories that should be justified by the processes of merging and separation of conflict factors.

It is necessary to clarify the problems of compatibility and reciprocity of conflict factors mentioned above. For the purposes of the above, it is necessary to analyze monosemantic and polysemantic pairs in situations of determining of the conflict factors arise from *successio per donatio* and *successio testamentaria*. To clarify the effect of the factors mentioned above for *successio mortis causa* general factor.

There is a need to provide norms that establish awareness of the complex nature of the status of persons participating in the legal relationship within the framework of *successio per donatio* and *successio testamentaria* factors in using the

rights and performance of obligations – the currently existing unauthenticated identification and subsequent translocation of factors does not enable us to determine properly the legal impact of *successio per donatio* factors on *successio testamentaria* factors. In particular, it is impossible to distinguish from *successio testamentaria* factors appropriate imperative norms which mediate inheritance by law and apply them to the norms which mediate *successio per donatio* devices. In the latter case, there is a possibility of the appearance of a content conflict and, as a consequence, the need to eliminate the conflict situation inherent in the legal regime of *successio per donatio* factor into the law, which secure succession by contract regime – in this situation a conflict of norms governing the mutuality or reciprocity of the will expression between the parties.

As follows from the subject of this article, the priority statutes in donation contract and inheritance agreement are the hereditary statute and the statute of obligations arising from donation (sometimes – donation *mortis causa*). These statutes contain concepts and instruments, without clarifying the legal meaning of which they acquire an evaluation value that has content relevant to a specific legal situation, not covering the situation in the complex.

However, in the situation of the transitional process, the specific legal form of *mortis causa* disposition is impossible to establish because the attribution factors of the instruments *successio testamentaria* and *successio per donatio* are not clear. The goal of the qualification is the search and comparison of the relevant specific legal situation determined by conflict binding and clarification of the actual content of the legal relationship. Contractual succession, combines the full range of civil law relations and has a complex character, undoubtedly, in the qualification, priority conflict issues must be resolved – the concepts recognized as evaluation units due to differences in the purpose of the spheres of succession law and law of obligations need attribution. Without this measure with respect to *successio testamentaria* and *successio per donatio* factors will be impossible to apply functional cleavage actions. This splitting is carried out on the basis of the goal setting policy instruments, which main terminology is contained in the annotations to legal acts that prescribe to specific subjects the rights and methods of their implementation that are in accordance with their legal position. Also, the spheres of legal regulation (donation and succession under contract) have different priorities, as mentioned by Thomas O. Main and unresolved nature of the above mentioned issues will lead to a misperception and undue fulfillment of succession rights and obligations.

Contractual succession (legislation and doctrine) has a number of appraisal concepts expressed in the following terms: the preferential share (Civil Law, section 424), future inheritance (Civil Law, sections 639, 646), reasonable quantities (Civil Law, Section 648), contract on transfer of future property (German Civil Code, paragraph 311b), excessive donations (gifts adversely affecting the contractual heir, German Civil Code, paragraph 2287), additional mandatory share (German Civil Code, paragraph 2305), potential interests, entry rights (Wills Act 1837, article 3), an agreement on the preparation of a will (testamentary disposition). Legal significance of these terminology which needs in understanding systematically (clarification in accordance with other spheres of legal regulation), and in terms of teleological interpretation. The assignment of the concepts mentioned above to undue tools of *successio testamentaria* and *successio per donatio* factors will lead to the appearance of a distorting element in the form of an undue succession right or the right of donation, leading to the legal regulation of a particular legal transaction in an undue direction.

Within this factor, the procedures for harmonizing the conflict factors of *successio per donatio* and *successio testamentaria* devices must be worked out.

Without the implementation of the measures outlined above, it seems impossible to determine the admissibility of legal facts peculiar to donation contract for the formation and subsequent determination of the legal facts of the succession contract. The reason for this statement is that the principle of direct proportionality, set out in *R. v. Oakes* [11], This principle establishes the admissibility of strengthening one factor at the expense of the other and the principle of inverse proportionality, which establishes a measure of weakening of the effect of a legal factor due to a different factor in the situation of absence and normative fixing of the stated categories will not allow to create the factors necessary for a single, non-competing basis for the transitional form of a testamentary order.

In the case of the application of *privilege of hereditary character* factor devices, the ability of individuals by implementing *mortis causa* discrete orders, including *successio per donatio* and *successio testamentaria* factors to create a non-competing form of testamentary device with complete *inter vivos – mortis causa* formula are sufficiently large.

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