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Abstract:

The article discusses the conditions of the applicability of the abuse of right regulated in article 5 of the Polish Civil Code to a compulsory portion claim. After a brief examination of the general conditions of the applicability of article 5 of the Polish Civil Code to compulsory portion claims, the conditions for reducing the amount payable under a compulsory portion under article 5 of the Polish Civil Code are discussed. In particular, three grounds for the reduction are considered in details: a difficult economic situation of the person liable for the compulsory portion, a change of the value of the estate due to an independent from the person liable for the compulsory portion phenomenon and the person entitled to a compulsory portion's act that is contrary to the principles of community life and took place during the deceased's (testator's) life. In that context, the author proposes allowing the reduction of the amount of the compulsory portion under article 5 of the Polish Civil Code under the first two grounds mainly on the basis of an economic analysis of the case circumstances. The author of the article advocates allowing reducing the amount of the compulsory portion also due to an act of the person entitled to the compulsory portion that is contrary to the principles of community life and was directed towards the deceased (testator).

The following parts of the article are dedicated to discussing the need for indication of fault of the person entitled to a compulsory portion and identifying the principles of community life that would have been violated, if the compulsory portion was paid in full, in the process of reducing the amount of the compulsory portion. With regard to these issues, the author opts for conditioning the role of the fault of the person entitled to a compulsory portion on the case circumstances and on the grounds for the reduction of the amount of the compulsory portion. Moreover, the author supports the position that identifying the circumstances justifying the reduction of the amount of

the compulsory portion in a court ruling is sufficient and rejects the position requiring identifying the exact principles of community life that would have been violated, if the amount of the compulsory portion was not reduced.

Finally, the principles determining the amount by which a compulsory portion should be reduced under article 5 of Polish Civil Code are reviewed. However, the author concludes that it is always necessary to take into account all the facts of a particular case and it is impossible to provide any abstract principles determining the amount by which a compulsory portion should be reduced.