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Abstract:

The so-called principle of personal character of a testament becomes more and more often raised as an argument by Polish legal scholars. The text provides the first systematic analysis of the principle in Polish law. In order to verify the opinion that such a principle is a norm, two approaches have been used: a theoretical one (based on Dworkin’s and Alexy’s concept of principles and rules) and a practical one (based on concepts developed in the context of an academic analysis of Polish private law).

The validity of the principle of personal character of testament is unquestionable in the light of Article 944 § 2 of the Polish Civil Code, which prohibits making and revoking testaments by a representative. There is, however, a wide range of situations with no clear answer concerning the applicability of that principle, and these situations have been analysed in the text.

Basically, third party impact on testament content should be considered unacceptable, while such impact on testament effects is admissible. An example of the former might be a special purpose bequest (*zapis celowy*) instead of a bequest specifying an obligation. On the other hand, an example of an acceptable disposition might be letting a third party choose from among possible objects of a bequest. The latter would not be admissible by naming an heir (however, not because of the principle of personal character of a testament, but because of the regulations concerning the form of a testament), which made the issue controversial among Polish legal scholars (the so-called *variant* or *alternative bequest* (*zapis wariantowy* or *zapis alternatywny*) has been accepted by the Polish Supreme Court lately). The analysis presented in the text also affirms the admissibility of a third party aid in revoking a testament by destroying it with the intention of revoking (according to Article 946 of the Polish Civil Code).

Finally, the principle of personal character of a testament is used in the text to mark the boundaries of the allowed interpretation of a testament.

As a result, the analysed principle is accepted as valid (in both theoretical and practical sense of the notion of *a principle*) in Polish law. It has, however, smaller (than expected by some other authors) impact on the way of interpreting the provisions of Polish inheritance law.