

The succession manager institution's legal nature.

Summary of doctoral dissertation

The Act of 5 July 2018 on the succession management of a natural person's enterprise and other facilities related to the succession of enterprises regulates the temporary rules of managing the enterprise after death of the entrepreneur, who was pursuing the economic activity, based on the entry in the register of business activity in their own name, as well as continuation of the economic activity pursued by means of that enterprise. On the bases of the above mentioned act a "new" (previously unknown) institution of the "succession manager" has been introduced to the legal system. The succession manager is implementing the succession management encompassing the obligation to run the enterprise in succession, that belongs to the owners of the enterprise in succession and is empowered to juridical and extrajudicial acts related to the management of the enterprise in succession. Succession manager implements the rights and obligations of the deceased entrepreneur rising from the economic activity they used to run, as well as the rights and obligations outcoming of the management of the enterprise in succession. They are acting in their own behalf and on the account of the owner of the enterprise in succession. Such regulation of the institution of the succession manager causes that its legal nature raises fundamental doubts in the doctrine. The aim of the present thesis is to determine it.

Two basic groups of issues have been distinguished, focusing on the answers to the following questions: 1) is the succession manager an indirect representative? 2) what is the position of the succession manager in the structure of the organizational unit, supposing that it is admissible to treat the enterprise in succession as an organizational unit?

Within the scope of the solutions aiming to answer the first question, Chapter I presents the general category of representation; in Chapter II, within the systematic frames of the indicated category, the institution of the succession manager has been qualified based on the analysis of the legal relations arising therefrom; in Chapter III, with the intention of capturing structural similarities, it has been compared to selected managers' institutions from the perspective of their legal position as administrators of assets and their procedural position in proceedings involving them, primarily in terms of the goals that these institutions are to pursue and in terms of features important from the point of view of the above qualification. The answer to the second question however, required demonstrating that perceiving the succession manager

solely as a manager of a separated asset is insufficient due to the characteristics of the enterprise in succession and the mechanisms of its functioning, typical to organizational units. For this purpose, Chapter IV analyzes the basic elements of the structure of an enterprise in succession, revolving around the concept of “ownership of an enterprise in succession”. In turn, the considerations contained in Chapter V concern the qualification of an enterprise in succession as an organizational unit, aiming to present the position of the succession manager in the structure of such an organizational unit.

The following detailed research hypotheses have been confirmed in the dissertation:

- 1) the systematics of the general category of indirect representation adopted by the doctrine, which consists in distinguishing the categories of typical and atypical indirect representation according to the criterion of direct legal effect in the legal sphere of the representative or replaced person, is inadequate to describe the legal situation of managers of other person’s assets, including the succession manager;
- 2) the institution of the succession manager is based on the structure of indirect representation, which allows the possibility to establish a legal relationship between the replaced person and the contractor;
- 3) despite the establishment of a legal relationship between the replaced person and the contractor, the institution of succession manager implements the principle of openness of the replacement;
- 4) the element of indirect representation construction expressed by the concept of “acting on behalf of” does not resolve the legal sphere of the realization of direct legal effect;
- 5) the model of the legal relationship established on the basis of a legal act performed by the succession manager implies the separation of the attributes of the right or obligation exercised;
- 6) the obligations arising under the legal act performed by the succession manager exhibit the characteristics of joint claim and joint debt;
- 7) the procedural position of the succession manager in terms of standing is formed on the principle of absolute substitution (subrogation);
- 8) the procedural position of the succession manager in terms of passive standing is formed on the principle of relative substitution;
- 9) three meanings of the concept of “enterprise in succession” can be distinguished: objective, functional and subjective, differing from the analogous meanings of the concept of “enterprise”;

- 10) the “enterprise in succession” in the subjective sense means an organizational unit without legal capacity;
- 11) the concept of an enterprise in succession as an organizational unit has explanatory value for the complex structure of an enterprise in succession and the mechanisms of its functioning;
- 12) perceiving the enterprise in succession through the prism of separate entity allows to see this institution as an organization that unites members to achieve a common economic goal, resembling a civil partnership;
- 13) the source of the succession manager’s obligation to run the enterprise in succession is legislation, not the contract;
- 14) the obligation of the succession manager to run the enterprise is an organizational obligation, constituting an element of the structure of the organizational unit;
- 15) participation in an enterprise in succession has a specific meaning - it constitutes a membership right of the owner of the enterprise in succession in an organizational unit;
- 16) the “indirect representation” is a structural category, while “private office” is a functional category;
- 17) the “private office” theory is complementary to the theory of indirect representation and serves a functional interpretation, helping to determine the legal position of the succession manager in the structure of an organizational unit, emphasizing the similarity to the position of the management body that it usually occupies in the structure of an organizational unit with legal capacity;
- 18) the concepts of “fiduciary representation” are not useful for explaining the legal position of the succession manager.