

Cases at the Hungarian Curia

Round-table discussion

Part I.

Dr. Pál Solt

We welcome our viewers to the first round-table discussion of cases at the Hungarian Curia. My name is Pál Solt, former president of the Hungarian Supreme Court. I will be moderating this discussion.

A few words about why we have started this series. The Hungarian Supreme Court, the Curia, delivers final judgment in thousands of review cases a year. These judgments mean the end of the case for the parties, but they provide valuable information for other courts and for the public. To help the Curia's work become better known to the public, Dr. Péter Darák, President of the Hungarian Curia initiated this series of discussions. For each session we will choose two cases, which may be of public interest or have already become the focus of public attention, and we will discuss them with our three guests. Our guests are not only lawyers, but also other professionals. The first case chosen for today's discussion is an inheritance case, dealing with private life and relations within a family. The second case is the environmental disaster caused by the red toxic sludge spill back in 2010, which has returned to the centre of public attention recently.

I. Disinheritance and forgiveness

Dr. Pál Solt

Our first case is about disinheritance. Let me welcome our expert guests: Dr. Éva Csűri, senior/retired Curia judge, Dr. Orsolya Szeibert habilitated associate professor at ELTE University, Faculty of Law and toxicologist Dr. Gábor Zacher.

Let me summarise the gist of the case briefly: the parents, who were quite well-off and had considerable assets, adopted an 18-month-old-boy, who later on had various difficulties in life, such as alcohol and drug problems. The father wrote a will leaving all his property to his wife, the adoptive mother, and disowned his son from inheriting, claiming that he had been leading an immoral life.

I would like to ask first Orsolya Szeibert to tell us what exactly disinheritance is about and who can be disowned from inheriting an estate?

Dr. Orsolya Szeibert

Disinheritance means that the testator's wishes that a certain person or persons shall not inherit anything from his estate, not even a minimal amount. We must also mention the so-called forced share. The forced share is a minimum share that Hungarian law, like many other European legal systems, provides for close relatives, *inter alia* children. If the testator

wants to deprive his or her children of the forced share, they can do this by disowning the child from inheritance. To do so, quite a few criteria must be met in relation to the will and testament and disinheritance as well.

Dr. Pál Solt

There are several reasons for disowning a child, could you list a few? In this case immoral lifestyle is one possible reason.

Dr. Orsolya Szeibert

That's right. Reasons for disinheriting someone have proliferated in the new Hungarian Civil Code, which was adopted in 2013 and entered into force in 2014. There are now 10 such reasons, including unworthiness, committing a crime, immoral lifestyle, gross ingratitude in respect of both parent and child, or when the child or the parent has not properly fulfilled their parental obligations. The categories are more or less blurred here. The testator only referred to an immoral lifestyle in this specific case.

Dr. Pál Solt

We shall come back to the concept of an immoral lifestyle later on, but now I would like to ask Éva Csúri to briefly speak about the lawsuit, the case and the court's decision.

Dr. Éva Csúri

The facts of the final judgment rendered by the Curia are the following: the claimant was born in 1983 and when he was one and a half years old, he was adopted by the testator and his surviving spouse, the defendant in the lawsuit. A particularly good emotional relationship developed between the parents and the child.

Problems in their relationship first occurred when the child started school, where he had various problems integrating, and in order to remedy this, the parents sent him to private classes, employed a private tutor and took him to a psychologist. Nevertheless, the child still had behaviour disorders. The parents and teachers agreed that a change in his environment might help him so he was sent to a new school. He could still not adapt. At the age of 14, his alcohol problems became regular in the new school. He got used to drinking. The parents managed to make him finish a vocational school and he got his diploma. However, he did not want to continue his studies, and did not want to get a job, either. The parents employed him in their private limited company for a while, but he did not actually do any work for them.

Later on, he left home and lived with his girlfriend in a rented apartment. Then he contacted his parents again and moved back to their house. The parents bought him a flat so that he could start an independent life. The parents let him use the apartment, paid his bills, and what's more they even supported him. They provided a more than average standard of living for their son, just like their own. The estate to be inherited was, relatively speaking, a considerable fortune.

In 2002, at the age of 19, then later on in 2007, he was suspected of drinking and driving and criminal proceedings were started against him. In the first prosecution, he was under psychiatric treatment and doctors found that he was addicted to alcohol and drugs. He also got addicted to gambling and slot machines. He was released from the psychiatric ward only on the condition that he would agree to a one-year-long rehabilitation. After a few months, however, he gave up on treatment and left the rehab centre without permission.

In his will and testament dated in 2003, the father disowned his son from inheriting his estate because of his immoral lifestyle, and even deprived him of his forced share. His reasons were that his son was addicted to alcohol, drugs and slot machines, and he was basically considered an addict. On top of all that, he was work-shy, reluctant to continue his studies, was not willing to accept parental advice, refused to cooperate with his parents in order to help him recover and guide him in the right direction. In 2007, when a second criminal prosecution started against him, he was under psychiatric treatment again, had a similar medical record, but he undertook rehabilitation only for a year, and he remained abstinent for a very short period of time after completing rehabilitation.

He did not change his lifestyle until February 2010, when his father died. The public notary first handed over the estate to him on grounds of lawful inheritance, more precisely, by way of settlement. A few months later, the mother found her husband's will and the inheritance was transferred to her on grounds of testamentary inheritance in a new probate proceedings. In the judicial proceedings, the first and second instance court as well as the Curia ruled alike: the courts dismissed the action and found for the defendant. The reason was that the claimant's immoral lifestyle could be established based on the facts of the case.

It appears from the reasoning of the judgement that an immoral lifestyle cannot only be established based on such facts as regular drinking or addiction, since an addicted person behaves differently than a healthy one. However, in the present case, these three kinds of addictions were accompanied by other conditions, such as giving up on studies and a work-shy attitude. Furthermore, he refused to co-operate with his parents and he did not accept their suggestions despite the fact that his parents had constantly supported him both emotionally and financially. He had all the support to set off in the right direction.

Dr. Pál Solt

I would like to ask our toxicologist expert to tell us what he understands by immoral lifestyle and whether the claimant's lifestyle can be considered immoral in his view?

Dr. Gábor Zacher

This story is really interesting and I think it is not uncommon in this country, we could find many similar stories. As Orsolya mentioned earlier, there are quite a lot of things we can list. I assume that in the present case, a judicial expert was also involved, a psychiatrist who examined the claimant's status, and probably concluded that this person had a pathological personality structure, was addicted to alcohol, drugs and gambling. This is how experts can help the court's work. An expert cannot conclude that a particular person is immoral, and thus make the judge's decision easier. From the medical point of view, the

concept of being immoral cannot be imagined as a cube, in which you add 3 units of something, 2 units of something else, 8 units of another, and you end up being immoral and if you have 2 units less, then you are not immoral. It very much depends on subjective elements, on the person who is presiding over the case.

As an expert you can only establish that a person is an addict, or has a personality disorder, a person who cannot properly evaluate his own situation, since he finds himself in his own circle of addiction, and he can only see his own side of the matter.

The addict can never see his own problems, but from outside, his parents might say: "My son, you are not doing the right thing". People can be really strange, because what people usually do in such cases is that they fight back. We won't admit that our mother might be right but take a deep breath and reply: "Is that you who's telling me this? you, who ..." and then we start listing all sorts of awful things that she's been doing, she's been a smoker for 45 years, etc, etc. This is very typical of addicts, whose values are distorted, in their life top priorities are drugs, alcohol or gambling. In our case, there was a considerable amount of money in the background, the son could have changed his life, he didn't have to steal for a living.

Dr. Pál Solt

Of course not, on the contrary...

Dr. Gábor Zacher

He had a lot of money.

Dr. Pál Solt

The parents tried their best in order to provide a good life for their son. In your view, how is the personality of an addict related to his attitude to work? Is it typical that these people do not really want to work?

Dr. Gábor Zacher

Absolutely. They don't want to work. If we examine the life of a drug, alcohol or gambling addict, we can say that even if they work, they live for the moment, it's this kind of classic "carpe diem" attitude. They take odd jobs, they typically spend their income on gambling for instance, they wait for the big hit, for 3 plums and a bonus and the butt, and they believe this will change their life. The problem is that this is not as easy as they imagine. Very few can really make it, and the majority slide into a vicious circle, more and more involved in a psycho-social ghetto, and they are unable to get out of it. Even if there is someone from outside, who would reach out to them and try to rescue them, they cannot get out because they are not really interested and this is exactly due to the pathological structure of their personality.

But I wonder if you can consider this an immoral lifestyle. In a country where you can find 800 000 alcoholics, 150 000 gambling addicts, where we don't even have data for people

addicted to the internet, there are about 70 000 people addicted to medicine, 100 000 addicted to laxatives, 25 000 people addicted to nose drops, 20 000 drug addicts, and we have not mentioned other addictions such as shopping, eating, sex, chocolate, physical training, etc. Where can you draw a borderline? When you are among friends, you can express your opinion, but a court case is different. The Curia had to deliver a judgement in this case.

Dr. Pál Solt

That's right.

Dr. Gábor Zacher

And it is a responsible decision.

Dr. Pál Solt

We shouldn't forget that the parents who created these assets had to make a decision of an economic kind. It wasn't just an emotional decision, whether to disown the child, whether not to talk to him any longer. His parents were waiting for a change in his attitude, they did not want him to squander the whole fortune in no time. I would like to ask Orsolya Szeibert to explain how disinheritance and forgiveness are related in the legal code.

Dr. Orsolya Szeibert

Let me refer to what we said earlier. Such a decision is not only an emotional kind of decision but it is about an estate, which in our case is a rather large estate and this leads us to define what inheritance is really about, about devolving property. Is inheritance really about supporting the person we would like to give to, or not supporting the person we're excluding from inheritance, which is a less severe step than disowning that person? Or is it rather about wanting to leave the estate to someone who takes good care of it, in this particular case a considerable sum that the testator had accumulated? So there is a really serious economic decision in the background. Disinheritance is strictly regulated in the Civil Code: a person can only be disowned from inheritance based on certain real causes that have actually occurred. It often happens that the testator finds a child, a spouse or a parent's behaviour unworthy, therefore he thinks that the person should not inherit any property at all. However, if the testator cannot show the person's behaviour matches any of the categories given in the Civil Code, then that person cannot be disinherited.

Dr. Pál Solt

There are certain causes, which are quite clearly defined. If someone committed a crime or is in prison, these circumstances are clearly determined. This is - as are so many legal concepts - a broad term, and it is left to the judge's discretion, specifically in the given case, because we cannot define what an immoral lifestyle is. As there is no definition, I think.

Dr. Orsolya Szeibert

I agree. Immoral lifestyle is a legal category in this sense, different from the interpretation given in any other field of the society or science. Lawyers are trying to define it in some way. It obviously involves moral deprivation. As I see it, the courts consider a work-shy attitude and reluctance to work as immoral.

According to the rules of Hungarian civil law, if the testator has forgiven the person's immoral behaviour or attitude, either before or after writing his will and testament, disinheritance shall be invalid and void. So the heir shall be entitled at least to his forced share.

Earlier, disinheritance was more closely related to the testator and the heir, their personal relationship, to a lack of affection. It did not really matter how the heir behaved with other people, but rather how he behaved with the testator. Forgiveness is a very complicated issue, because you can forgive someone without actually saying it, it is not linked to a specific form. It must be expressed, but it can also be implied. Therefore a lot depends on the evidence provided in the case.

Dr. Pál Solt

A very difficult question came up in this case, and many people think that forgiveness or lack of forgiveness means that the testator wants to terminate the relationship. The claimant in the present lawsuit argued that after having been disowned from inheritance, his relationship with the parents survived, they kept in touch, organised programmes and took photos together, but the parents still did not forgive him. What was the court's view on this? Why can we not consider the parents' attitude as forgiveness if their relationship with their son survived?

Dr. Éva Csúri

Well, Orsolya already mentioned that disinheritance is not primarily an emotional decision, but economic considerations also play a part. So if the testator may freely dispose of his assets in the event of his death, then he cannot be expected to put up with the fact that someone consumes all the wealth he accumulated during his life in no time at all. Furthermore, this kind of lifestyle might be even harmful for the child.

If the testator leaves all his assets to his wife, who also took part in the acquisition of their estate as well as in bringing up and supporting their child, then the child will have more time to change and start a new life if he wants to...

Dr. Pál Solt

If I understand the court's position correctly

Dr. Éva Csúri

The court did not say this. I am only saying that this kind of consideration

Dr. Pál Solt

Yes, I see. But if I understand the court's position correctly, the court did not interpret the parent's behaviour as forgiveness even though the parents were still hopeful, the father set up a private fund to help children with similar difficulties. The court considered this as a situation in which it became clear that the behaviour no longer existed.

Dr. Éva Csúri

One of my colleagues put it correctly when saying that disinheritance is not the same as denial. Disinheritance has nothing to do with the fact that the parents still love their child, they're standing beside him, supporting him, helping him to find his way. It is always the family who can help. As far as I know addiction can not be medically cured.

Dr. Gábor Zacher

When you decide to adopt a child, it's not like you first go and check the child's gene map and if the genes are good, then you decide to adopt the child. I don't think this would be correct to do morally and ethically.

Dr. Pál Solt

In any case we should not forget that the law does not distinguish between an adopted and a biological child.

Dr. Gábor Zacher

That's right.

Dr. Pál Solt

I think that the court's decision was based on the economic aspect, on the question of who is going to dispose of the assets. Do you think we can state this?

Dr. Éva Csúri

Absolutely. The mother, who was the claimant's other parent, received everything. I suppose their relationship is not going to change until the mother's death. She is still alive....

Dr. Pál Solt

Shall we be optimistic that the child can inherit the estate after all?

Dr. Gábor Zacher

And what's going to happen then?

Dr. Éva Csúri

Unfortunately the parent would have to outlive the child in order to save the estate.

Dr. Gábor Zacher

This is quite uncommon though.

Dr. Éva Csúri

What I would like to say – and I find this really interesting – is that the court's decision should not be based on subjective points, such as the testator's subjective interpretation but on more objective circumstances, on a judgment based on public social agreement.

Before inheritance was invented, the deceased was often been buried together with all his assets, whatever those may have been. Ever since inheritance was devised, testators have been able to dispose of their wealth. Even before written laws existed, if a parent had two or more children, they were likely to leave their house to the one who took most care of them.

Dr. Gábor Zacher

Certainly.

Dr. Éva Csúri

Farmland to those who were able to cultivate it.

Dr. Gábor Zacher

One really important thing is what judge Éva Csúri said about social expectations. We forgive more easily an alcoholic than we do someone addicted to drugs. So it's quite interesting to see people's attitude to different kinds of addictions and immoral lifestyle and how this is continually changing over time.

Dr. Pál Solt

Well, it is changing, and we judges tend to think that it is our role and responsibility to live in the society of our age. Today a judge will decide the case according to current values and not the values of the 1980s. I must say that unfortunately – although we could talk about this much longer – our discussion time is over. I would like to thank our experts for taking part in the conversation and now we will turn to our second case.