The Austrian matrimonial property law as applied in the practice of Cracow notary public offices (1918–1939)

Abstract

The article presents the process of applying the Austrian matrimonial property law in Poland based on the example of the interwar notary practice in Kraków. The subject of the analysis are the marital property agreements, which, in accordance with the legal provisions of the time, were mandatory and took the form of a notary deed. Based on the content of those contracts, an attempt is made to answer the question of whether and to what extent the marital property law included in ABGB affected the shape of the matrimonial property relations of the spouses. The analysis focuses in particular on the legal functioning of such notions as dowry, hope chest, bride price, dower or contract of inheritance.

Key words: Austrian law, matrimonial property law, marriage contracts, notary practice

The Allgemeines bürgerliches Gesetzbuch (ABGB), the civil code of Austria enacted in 1811, remained in force when Poland gained independence and covered matrimonial property law in the second part, chapter XXVIII, titled Von den Ehepakten (On Marriage Contracts). The articles referred mainly to the institution of matrimonial property contracts.1 As a result, there was no distinction between statutory and contractual law. In practice the latter was devoted much more attention.

The separation of property (Gütertrennung)\(^2\) was the statutory regime of the civil code of Austria, which was also described as “detachment” or “separation” of estate.\(^3\) According to paragraphs 1233 and 1237 of the code, matrimony did not influence the property relations of the spouses as a rule. Consequently, they maintained their former right or property as applying before entering into matrimony unless they had signed a marriage contract. In other words, the estates of the spouses remained their exclusive property, including the acquisitions during the marriage. The law did not provide for any exceptions, thus each of the spouses could enlarge or reduce their estate.\(^4\) To avoid any ambiguity of the ownership of each object acquired during the marriage, the code introduced a rebuttable legal presumption stating that the property is due to the husband (§ 1237 of ABGB \textit{in fine}). The presumption is similar to the Roman \textit{praesumptio Muciana} and was rebutted once the contrary had been proven.

In the Austrian system of property separation there was no full independence of the property administration by the spouses. A different solution was introduced – a presumed administration by the husband (Verwaltungs- und Vertretungsrecht des Mannes). According to § 1238 of ABGB, unless the wife objected, the husband was her legal representative with third parties. Which means he was authorised to take any actions on her behalf to properly manage the estate. The presumed power of administration was justified by the community of conjugal life and the relationship of particular trust between the spouses.

The property separation as a statutory system had also fundamental influence on the principles of the wife’s participation in lightening the expenses connected with the matrimonial union (ehelicher Aufwand) within ABGB. It included expenses connected with conjugal life, such as: household and living expenses, child support and education, medical expenses, etc. The act held the husband responsible for the expenses as a natural consequence of the fact that he was established the head of the family in § 91 of ABGB (Haupt der Familie), while the wife only assisted him in the housekeeping.

The Austrian act introduced some exceptions to the rule expressed in §§1233 and 1237 of ABGB that matrimony does not influence property relations. According to § 91 of ABGB not only was the husband responsible for supporting the family, but he was also responsible to procure a respectable maintenance (anständiger Unterhalt) according to his means (“nach seinem Vermögen”). Further exceptions dealt with inheritance, more specifically the legal succession (§§ 757–759 of ABGB), the possibility of making joint wills (§ 1248 of ABGB), inheritance contracts (§ 1249 of ABGB), the rights connected with the maintenance of the surviving spouse (§ 796 of ABGB), etc.

The core of the matrimonial property law of ABGB applied to marriage contracts (Ehepakte, § 1217),\(^5\) which were concluded “in regard to the property, and their object is especially: the dowry; the jointure; the gift on the morning after the nuptial day;