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## INHERITING ACCESS TO A SOCIAL NETWORK ACCOUNT

### Abstract

**Background:** In the digital age, social networks bring new opportunities, but also legal challenges. One of them concerns the death of a social network user. This study analyses the Lithuanian legal framework to assess whether an heir has the right to inherit, along with the deceased's estate, access to the deceased's social networking accounts.

**Research purpose:** Examine the possibility of inheriting access to a social network account under Lithuanian law.

**Methods:** The study was carried out predominantly using the comparative method, analysing how foreign legal systems regulate the inheritance of access to the deceased's social network account. The study also applied the systematic method to the analysis of legal sources, and the analytical method to the formulation of the author's positions and conclusions.

**Conclusions:** Access to the deceased's social networking account can be inherited by universal succession under Lithuanian law, as the social networking service contract is purely technical and does not relate to the personality of the social network user.

**Keywords:** social network account, principle of universal succession, *intuitu personae*.

### 1. Introduction

Currently, 4.95 billion people use social networks worldwide,<sup>1</sup> with an average of 8 social network accounts per person.<sup>2</sup> This impressive statistic shows that social networks have become an integral part of everyone's life today. This enormous popularity of social networks brings not only new opportunities

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<sup>1</sup> STATISTA, Number of internet and social media users worldwide, 2023, <https://www.statista.com/statistics/617136/digital-population-worldwide/>; accessed: 10.11.2023.

<sup>2</sup> BACKLINKO, Social Network Usage & Growth Statistics: How Many People Use Social Media in 2023?, <https://backlinko.com/social-media-users>; accessed: 10.11.2023.

for communication, content sharing, business and other opportunities, but also a number of legal challenges. One of them concerns the death of a social network user. Around 2005, the first discussions and legal disputes started over whether an heir is entitled to inherit the deceased's assets along with access to his/her social network accounts. This debate arose because social network accounts are managed by social network administrators who control access to the social network account and set the terms and conditions for the using the account, which in many cases stipulate that the social network user's account is non-transferable, both during the lifetime of the user and after the death of the user. This legal debate and increasing legal disputes have led some countries to enact separate and specific laws governing the succession of access to a social network account. Meanwhile, in Lithuania, as in many other countries around the world, this issue is not regulated by any separate and specific law. The question arises whether access to the social networking account of a deceased person in Lithuania can be inherited and, if so, in what form and to what extent the heir should be granted such access. These questions are important, especially given that access to a deceased's social networking account may have both emotional and financial value for the heir.

## 2. The concept of social networks and the reasons for inheriting access to a social network account

Social networks first emerged in the 20th century and attracted millions of users who integrated them into their daily lives.<sup>3</sup> In a relatively short period of time, social networking has become a global cultural phenomenon, which is why social networking has been identified by some scholars as one of the most successful developments in the history of the Internet.<sup>4</sup> Today, there are many and varied social networks around the world. According to statistics from 2023, the most popular social network worldwide was "Facebook", with more than 3 billion active users; the second was "Youtube", with more than

<sup>3</sup> **D.B. Boyd, N.B. Ellison**, *Social Network Sites: Definition, History, and Scholarship*, *Journal of Computer-Mediated Communication* 2007/13.1, p. 210, <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1083-6101.2007.00393.x>; accessed: 20.11.2023.

<sup>4</sup> **M. Kacimi et al.**, *Anonymous Opinion Exchange over Untrusted Social Networks*. Proceedings of the second ACM EuroSys workshop on social network systems, Association for Computing Machinery, New York, NY, USA, 2009, p. 26, <https://www.inf.unibz.it/~mkacimi/eurosys2009.pdf>; accessed: 20.11.2023.

2.49 billion active users; the third was “WhatsApp”, with more than 2 billion active users.<sup>5</sup> Although these social networks currently have the largest number of users worldwide, they are different in terms of their functionality and nature. For example, “Facebook” is a social network for users to share texts, photos, videos and other content on their timeline; “Youtube” is a social network mainly focused on users sharing videos; “WhatsApp” is a private messaging platform where users can send messages, photos, audio and video clips, *etc.* to each other. Moreover, unlike “Facebook” or “Youtube”, “WhatsApp” is based on the phone numbers of its users.<sup>6</sup> Thus, each social network has its own specificities, a different basis of operation and is often geared towards meeting different needs.

In order to join and become a user of a particular social network, a person must first create a social network account. A social network account is understood as a social network user’s personal page, where the user publishes personal information, shares content created by him or herself or others, and connects and interacts with other users of the same social network.<sup>7</sup> On the social network, a user can see his or her personal messages in the account he or she has created, receive messages from other users of the same social network or from the communities of which he or she is a member, as well as follow various news items and perform other functions depending on the social network in question. Thus, a social network account is like a person’s “virtual face” that is visible to other users of the same social network. A social network account consists of two elements: firstly, authentication information, which is necessary for the social network service provider to authenticate the user. This information consists of a username and a password. Second, the account is linked to a database on the service provider’s server where the account information is stored.<sup>8</sup>

In the digital age, where almost everyone has a social networking account, there is a new need for heirs to inherit access to the social networking accounts of the deceased along with the deceased’s estate. This need has arisen for a number of reasons. One of the main reasons is that inheriting access to a deceased person’s social networking account allows for the preservation of a variety of the deceased’s memories, thus helping to cope with the loss of

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<sup>5</sup> STATISTA, Most popular social networks worldwide as of October 2023, ranked by number of monthly active users, 2023, <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>; accessed: 10.11.2023.

<sup>6</sup> WHATSAPP, How to register your phone number, [https://faq.whatsapp.com/684051319521343/?helpref=hc\\_fnav&cms\\_platform=android](https://faq.whatsapp.com/684051319521343/?helpref=hc_fnav&cms_platform=android); accessed: 10.11.2023.

<sup>7</sup> **K. Nekit**, *Fiduciary management of a social media account*, *Trusts & Trustees* 2020/26.4, p. 296.

<sup>8</sup> *Ibidem*.

a loved one. As mentioned above, social networks have become an integral part of everyone's life. People use social networks to share their life highlights, personal experiences and other moments in their personal and professional life. Among other things, traditional ways of remembering a person, such as sentimental items, printed photos, handwritten letters, are becoming less and less common, as most memories of the deceased are nowadays expressed in digital form and are either posted on the deceased person's social networks, or the deceased person has stored his/her memories (photos, videos, other digital files) in various other online accounts. Therefore, the possibility for heirs to inherit access to the deceased's social network account, where various memories of the deceased's life are posted, can be used as a means of coping with the deceased's bereavement.<sup>9</sup> This reason is well illustrated by relatives' litigation against social networking companies in order to gain access to the social networking account held by the deceased.

One of the first such disputes, which was widely publicised around the world, took place in 2005 in the United States in the case *Justin Ellsworth v. Yahoo*. The issue in this case was whether *Yahoo's* social network had a duty to provide parents with access to the *Yahoo* e-mail account held by their deceased son. According to the parents, their son had regularly used *Yahoo's* social network to write emails about the ongoing war in Iraq while serving there. The parents wanted to obtain these emails in order to make them public and thus show current and future generations how a soldier stationed in Iraq perceived and felt about the whole situation at that time. However, *Yahoo* refused to give the parents access to their deceased son's e-mail account, citing its privacy policy. The case resulted in the court ordering *Yahoo* to hand over the deceased son's emails to the parents.<sup>10</sup> Another case in the United Kingdom addressed the question of whether a spouse is entitled to inherit access to an Apple ID account held by her deceased husband. The deceased had kept 4,500 photographs and 900 videos on that account. The spouse wished to inherit access to this account in order to preserve memories of her deceased father for their daughter.<sup>11</sup> After 4 years of litigation, this case finally resulted in the court ordering Apple to give the spouse

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<sup>9</sup> **S. Agarwal, A. Nath**, *A Comprehensive Study on Scope and Challenges in Digital Inheritance*, International Journal of Scientific Research in Computer Science Engineering and Information Technology 2021/7.2, p. 100.

<sup>10</sup> **M. Perrone**, *What Happens When We Die: Estate Planning of Digital Assets*, CommLaw Conspectus: Journal of Communications Law and Technology Policy 2012/185, pp. 195–196.

<sup>11</sup> DAILYMAIL, Judge orders Apple to give widow access to her late husband's online photos after four-year legal fight – so their daughter, 10, can remember her father, 2019, <https://www.>

such access. These are just a few examples of how heirs are seeking to inherit access to a deceased person's social network accounts in order to preserve their memories of them. This reason also reflects the growing public awareness that various memories of a person's life and the most important moments of his or her life are increasingly being stored in a digital rather than a tangible format.

Social networking accounts can also have real economic value or generate income, even if they are not actively used after the death of the deceased, rather than just sentimental value. Therefore, heirs may wish to inherit access to a social network account held by the deceased for economic reasons as well. For example, if the deceased had a *Youtube* social networking account on which videos uploaded by the deceased were monetised, this account may continue to generate income from ad views even after the deceased's death, as it does not require any active contribution from the social network user.

Thus, there may be a variety of reasons why heirs may wish to inherit access to a social networking account held by the deceased. However, they are all essentially related to the increasing involvement of everyone in virtual life. In this context, the succession process today should no longer be confined to material objects owned by the deceased but should also include objects used by the deceased in virtual space.

### 3. Assessment of the possibility of inheriting access to a social network account

In order to answer the question whether the heirs can claim access to the deceased's social networking accounts along together with their estate, it is first necessary to answer the question whether such access can be inherited by the heirs at all. This issue has already been addressed directly by the legal system in some countries. One of the first is the United States of America. In 2015, the Uniform Law Commission, which aims to provide model legislation for all US states to ensure uniform application of the law in key areas,<sup>12</sup> published the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA),<sup>13</sup>

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[dailymail.co.uk/news/article-7020957/Judge-orders-Apple-widow-access-late-husbands-online-photos.html](https://www.dailymail.co.uk/news/article-7020957/Judge-orders-Apple-widow-access-late-husbands-online-photos.html); accessed: 25.11.2023.

<sup>12</sup> UNIFORM LAW COMMISSION, About Us, <https://www.uniformlaws.org/aboutulc/overview>; accessed: 14.02.2024.

<sup>13</sup> Fiduciary Access to Digital Assets Act, Revised, <https://www.uniformlaws.org/committees/community-home/librarydocuments?attachments=&communitykey=f7237fc4-74c2-4728->

which has now been adopted by almost all states.<sup>14</sup> The RUFADAA provides that digital assets held by a decedent, including access to social networking accounts held by the decedent, are inheritable.

This law establishes a three-step system that provides a clear procedure for this succession process. It first assesses whether the social network user has made use of the online tools developed by the social networks, which allow the user to decide, while alive, how his/her social network account should be managed after death. For example, “Facebook” allows its users to choose to have their social network account converted into a memorialised account after their death. This is an account where relatives and friends of the deceased can share their memories of the deceased.<sup>15</sup> A social network user can designate a legacy contact to manage their memorial account after their death in advance. This person has the right to delete posts made by others on the memorial account, update the profile and cover photo, *etc.* However, such a person does not have access to the deceased’s social network account and therefore cannot read the deceased’s correspondence with other social network users, delete friends from the deceased’s social network account.<sup>16</sup> Other social networks offer similar alternatives, such as Google’s inactive account manager.<sup>17</sup>

Thus, according to the RUFADAA, the first step is to assess whether the social network user has made use of the tools developed by the social networks to determine the fate of their social network account after their death. Second, the RUFADAA provides that if a social network user has not made use of the tools provided by the social network to determine the fate of his/her account after death, or if the social network does not offer such tools at all, the assessment is whether the social network user has expressed in his/her will or other legal document his/her intention regarding the fate of his/her social network account after death. Therefore, in such scenarios, the deceased’s will, if any, plays a crucial role. Finally, if a social network user has not made use of the

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81c6-b39a91ecdf22&defaultview=&libraryentry=e9f85d7c-13f3-4918-a000-0abe7fab7f62&libraryfolderkey=&pageindex=0&pagesize=12&search=&sort=most\_recent&viewtype=row; accessed: 24.11.2023.

<sup>14</sup> EVERPLANS, State-by-State Digital Estate Planning Laws, <https://www.everplans.com/articles/state-by-state-digital-estate-planning-laws>; accessed: 14.02.2024.

<sup>15</sup> FACEBOOK, What happens to your Facebook account if you pass away, [https://www.facebook.com/help/103897939701143?helpref=faq\\_content](https://www.facebook.com/help/103897939701143?helpref=faq_content); accessed: 25.11.2023.

<sup>16</sup> FACEBOOK, About legacy contacts on Facebook, <https://www.facebook.com/help/1568013990080948>; accessed: 25.11.2023.

<sup>17</sup> GOOGLE ACCOUNT HELP, About Inactive Account Manager, <https://support.google.com/accounts/answer/3036546?hl=lt&sjid=11112193509312664531-EU>; accessed: 25.11.2023.

tools offered by the social network and has not left any instructions in the will or in any other legal document concerning his or her social network accounts, the question of succession to the deceased's social network account is decided in accordance with the rules of use established by the social network itself.<sup>18</sup> Typically, such rules stipulate that access to the deceased's social network account is not inheritable and that the account is deleted upon the user's death. Legislation of a broadly analogous nature has been adopted in Canada.<sup>19</sup>

There is currently no legislation at the European Union level that directly regulates legal issues related to digital succession. However, individual European Union countries already regulate these issues, including France, Italy and Spain. In these countries, the issue of inheriting access to social networking accounts and other digital assets is approached through the prism of personal data protection, distinguishing digital inheritance from the general system of succession law. All three of these countries have chosen to extend the provisions of Articles 15–22 of the General Data Protection Regulation<sup>20</sup> beyond the death of the data subject.

In France, as a general rule, data protection ends upon the death of the data subject. However, the data subject has the right, before his or her death, to contact the administrator of the social network, indicating that, after his or her death, the data contained in his or her social network account may be accessed by a specific person, such as the heir to his or her estate. Thus, in France, in order for the heirs of a deceased person to have access to the data contained in his or her social network account, the user of the social network must take active steps by contacting the administrator of the social network in question and requesting that such access be granted to the named person after the user's death. Such an instruction by the data subject to the administrator of the social network is mandatory and must be complied with.<sup>21</sup>

<sup>18</sup> Fiduciary Access to Digital Assets Act, Revised, [https://www.uniformlaws.org/committees/community-home/librarydocuments?attachments=&communitykey=f7237fc4-74c2-4728-81c6-b39a91ecdf22&defaultview=&libraryentry=e9f85d7c-13f3-4918-a000-0abe7fab7f62&libraryfolderkey=&pageindex=0&pagesize=12&search=&sort=most\\_recent&viewtype=row](https://www.uniformlaws.org/committees/community-home/librarydocuments?attachments=&communitykey=f7237fc4-74c2-4728-81c6-b39a91ecdf22&defaultview=&libraryentry=e9f85d7c-13f3-4918-a000-0abe7fab7f62&libraryfolderkey=&pageindex=0&pagesize=12&search=&sort=most_recent&viewtype=row); accessed: 24.11.2023.

<sup>19</sup> **E. Harbinja**, *The inheritance of digital media*, Cambridge University Press, Cambridge 2019, p. 15.

<sup>20</sup> Regulation 2016/679 of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119).

<sup>21</sup> **D.S. Kadenic**, *Planning for a digital death*. Property law – challenges of the 21 century. International Scientific Conference, Union University School of Law, Belgrad 2021, pp. 42–43;

In contrast, the situation in Italy and Spain is the opposite. After the death of a data subject, his or her data, such as those contained in the deceased's social networking account, are accessible to the deceased's heirs without any specific request from the data subject to the social network administrator. In order to prevent this from happening, the data subject must, contrary to the French legal framework, take active steps before his or her death by contacting the social network administrator, indicating that his or her heirs must not have access to his or her data after his or her death and that the data contained in his or her social network account must be deleted.<sup>22</sup>

In Lithuania, the issue of digital succession is not directly regulated by law. Therefore, the answer to the question of whether inheritance of access to social networks is even possible under Lithuanian law must be found in the general rules of inheritance law.

In Lithuania, the law of inheritance is regulated in Book 5 of the Civil Code of the Republic of Lithuania (CC).<sup>23</sup> Article 5.1(1) of the Civil Code provides a legal definition of inheritance, stating that inheritance is understood as the transfer of property rights, obligations and certain personal non-property rights of a deceased natural person to his/her heirs by operation of law or (and) to his/her heirs by testament. Article 5.1(2) of the CC provides for a definition of heritable property, according to which heirs inherit the tangible and intangible things belonging to the deceased at the time of their death, as well as the rights and obligations of a contractual or other nature which the deceased had. Heirs may not inherit only those property rights and obligations which are intrinsically linked to the person of the deceased (Article 5.1(3) CC).

According to this legal regulation, it can be concluded that Lithuanian inheritance law, as well as that of many other European Union countries, is based on the principle of universal succession of rights, which has been established as

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France Law No. 78-17 of 6 January 1978 on data processing, data files and individual liberties, <https://www.legifrance.gouv.fr/loda/id/LEGISCTA000037817604>; accessed: 26.11.2023.

<sup>22</sup> **D.S. Kadenic**, *Planning for a digital death...*, p. 43.

Decreto legislativo 30 giugno 2003, n.196 recante il “Codice in materia di protezione dei dati personali” (in S.O n. 123 alla G.U. 29 luglio 2003, n. 174), <https://www.garanteprivacy.it/documents/10160/0/Codice+in+materia+di+protezione+dei+dati+personali+%28Testo+coordinato%29>; accessed: 14.02.2024.

Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales, <https://www.boe.es/eli/es/lo/2018/12/05/3/con>; accessed: 14.02.2024.

<sup>23</sup> **Civil Code of the Republic of Lithuania**, Valstybės žinios 2002/36-1340.



early as the Roman law.<sup>24</sup> This principle states that upon death, all the rights and obligations of the deceased are transferred to his heirs. The estate passes to the heirs unchanged, i.e. in the same condition as it was in at the time of the deceased's death, as an integral set of rights and obligations.<sup>25</sup> In other words, the heir who accepts the inheritance enters into all the deceased's legal relations at the time of death. Thus, in order to determine whether the heir is entitled to inherit access to the deceased's social networking accounts, it is necessary to ascertain in which legal relationship the deceased was at the time of his/her death with the administrator of the particular social network and on what legal basis the deceased used the social networking account.

Normally, in order to create an account on a particular social network and become a user of that social network, a person needs to enter into a service contract with the administrator of the social network. This contract defines the terms and conditions of use of the social network and the rules to which a person must necessarily agree in order to create a social network account and become a user of the social network. The conclusion of such an agreement is often the click of a button, e.g. by ticking a box indicating that the user accepts the terms of service and the rules of using the social network. The use of a social network account is therefore contractual. Therefore, when a user of a social network dies, it must be decided whether his or her successors have the right to take over this contract with the administrator of the social network. As stated above, as a general rule, according to the principle of universal succession, the heir inherits exactly the same legal position as the deceased was in at the time of his death. However, in the present case, it is necessary to assess whether the service contract concluded by the deceased with a social network administrator is not intrinsically linked to the deceased's personality. In other words, it is necessary to determine whether the social networking contract does not fall within the exception referred to in Article 5.1(3) of the Civil Code, under which, as mentioned above, rights and obligations which are intrinsically linked to the person of the deceased may not be transferred to heirs.

This exception to the principle of universal succession is based on the fact that the heir is prohibited from inheriting the personality of the deceased. Whether a particular obligation is intrinsically linked to the personality of the deceased (*intuitu personae*) is determined by reference to whether the obligation

<sup>24</sup> **G.A. Pelletier, M.R. Sonnenreich**, *A Comparative Analysis of Civil Law Succession*, Villanova Law Review, 1966/11/323, p. 329; **M. Jonaitis**, *Romėnu privatinė teisė: vadovėlis*, Mokolo Romerio universitetas, Vilnius 2014, p. 148.

<sup>25</sup> **L. Kamarauskienė et al.**, *Paveldėjimo teisė*, Lietuvos notarų rūmai, Vilnius 2018, p. 13.

cannot be discharged without the personal participation of the deceased. In other words, it is assessed whether the personal characteristics of the deceased, such as his qualifications, skills, legal status, *etc.*, are relevant to the performance of the obligation.<sup>26</sup> If the obligation held by the deceased is of a personal nature, as mentioned above, it is not inherited by the heirs and is therefore deemed to have been extinguished (Articles 5.1(3) and 6.128(1) of the CC).

The social networking service contracts concluded between the social network administrator and the users of the social network do not contain any contractual provisions that are exclusively related to the unique and personal characteristics of a particular social network user, such as his/her qualifications, skills, abilities, legal status *etc.* Contracts for the provision of social networking services shall always be of a standard nature and shall be concluded on the same terms and conditions and in the same manner with each person who wishes to become a user of a particular social network. This means that the social network administrator, regardless of who the other party to the service contract is, provides exactly the same services to every user of the social network, regardless of his or her personal characteristics. In other words, if another person were to replace a party to a service contract with a social network operator for access to that social network account, the social network operator could provide exactly the same services to that person as to the original party to the contract, as no personal characteristics are required for the provision of that service. This is confirmed by the fact that the social network administrator does not require persons entering into a contract for the provision of social networking services to confirm their identity, which is provided by the social network user at the time of registration. Moreover, social networks often allow their users to change the name of their account. For example, the social network “Facebook” allows its users to change the name of their account every 60 days;<sup>27</sup> the social network “Youtube” allows its users to change the name of their account every 14 days,<sup>28</sup> *etc.* Some social networks also allow their users to use a pseudonym instead of their real name on the social network. All this shows that the social network service contract is focused on the provision of the services specified in the contract, regardless of the personality of the individual user of the social network. This flexibility in user identification underscores that social network

<sup>26</sup> V. Mikelėnas, *Prievolių teisė. Pirmoji dalis*, Justitia, Vilnius 2002, pp. 80–84.

<sup>27</sup> FACEBOOK, How to change your name on Facebook, <https://www.facebook.com/help/173909489329079>; accessed: 20.11.2023.

<sup>28</sup> YOUTUBE HELP, Manage your YouTube channel’s basic info, <https://support.google.com/youtube/answer/2657964?hl=en&co=GENIE.Platform%3DAndroid#zippy=%2Cname>; accessed: 20.11.2023.

service contracts prioritize the provision of services over the personal identity of the user. From this perspective, it can be argued that a service contract between a social network's administration and its user is not fundamentally tied to the user's actual identity.

The question of the inheriting access to a social networking account and its inherent relationship to the personality of the user has also been dealt with in the case law of the German Supreme Court. The case concerned the right of a mother to inherit access to her deceased daughter's Facebook account, which had been denied by the administrator of the social network. One of the grounds for the refusal was that the conditions of using the social network determined the indissolubility of the social network account from the person of the social network user, so that the contract for the provision of services to the social network user ceased upon their death. The German Court of Cassation has held in the present case that the rights and obligations arising from a social networking contract are not of a purely personal nature such that they can be considered to be intrinsically linked to the person. The Court points out that the social network "Facebook" undertakes, by virtue of a service contract, to provide the user of its social network with a communication platform on which they can share the content they want to share, communicate with other users of the same social network, *etc.*

In the light of the foregoing, the Court considers that the service provided by the administrator of the social network under the service contract is not of a personal nature but of a purely technical one. This means that, under the service contract, the obligations of the social network administrator can be performed by any person without any change in the content of the existing obligation. It is also interesting to note that in this case, the German Court of Cassation equated the content of a social network account and the communication of a social network user with other users to a personal diary and letters, which can be inherited under German law. According to the Court, there is no valid reason, from the point of view of the law of succession, why the inheritance of such digital objects should be interpreted and treated differently from that of tangible objects. Therefore, according to the Court, digital inheritance should be subject to exactly the same rules as inheritance of tangible objects. Thus, in the present case, the Court concluded that a social network account is not intrinsically linked to the person of the user. Therefore, when a social network user dies, the service contract concluded between the user and the administrator of the social network is part of the estate, in accordance with the principle of universal succession, and the heirs are therefore entitled to inherit the access to the social network account

of the deceased.<sup>29</sup> This case was the first in continental European law to deal with this type of issue. Subsequent cases of the same nature in other continental European countries have used substantially similar arguments to those of the German Court of Cassation discussed above. For example, these arguments were invoked in a case in Austria which dealt with the question of a spouse's right to inherit access to her deceased husband's Apple ID account.<sup>30</sup>

Thus, although there is no legislation in Lithuania directly regulating the inheritance of access to a social networking account, there is no good reason why the principle of universal succession should not apply to such inheritance. Moreover, the Lithuanian and German systems of succession law are essentially similar, based on similar principles. Therefore, in the event of a similar dispute in Lithuania, the author considers that Lithuanian courts could rely on the reasoning of the German Supreme Court to justify that a social network account is not intrinsically linked to the personality of the user of the social network.

#### **4. The relationship between the provisions of a contract for the provision of social networking services and the rules of succession law**

Most service agreements between social network administrators and social network users contain non-transferability clauses for social network accounts. These stipulate that the account is not transferable upon the death of a social network user. For example, such a contractual provision is contained in *Yahoo's* Social Networking Service Agreement, which states that all *Yahoo* accounts, except AOL accounts, are non-transferable and that any rights to them cease upon the death of the social network user.<sup>31</sup> A similar restriction on the non-transferability of a social networking account applies to *Facebook*, since notifying *Facebook* that a user of that social networking site is deceased may result in the user's social networking account being converted into a memorial tribute account, and access to that account becoming restricted, i.e. it becomes

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<sup>29</sup> Judgment of the German Federal Supreme Court in Case No III ZR 183/17, <https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Ffnjw%2F2018%2Fcont%2Ffnjw.2018.3178.1.htm&pos=1&hlwords=on#viewExport>; accessed: 11.15.2023.

<sup>30</sup> IMORE, Apple ordered to give iCloud access to relatives of deceased person in Austrian court case, 2020, <https://www.imore.com/apple-ordered-give-icloud-access-relatives-deceased-person-austrian-court-case>; accessed: 1.12.2023.

<sup>31</sup> YAHOO, Yahoo Terms of Service, <https://legal.yahoo.com/us/en/yahoo/terms/otos/index.html>; accessed: 1.12.2023.

impossible to log in to that account, even if one knows the login details.<sup>32</sup> Thus, non-transferability clauses in social networking service contracts already prevent heirs from inheriting access to the deceased's social networking account at the time of the conclusion of the contract, as when a social networking user dies, the account is often either deleted or access to the social networking account is restricted. In this context, the question arises as to the compatibility of such contractual provisions with the rules on succession, since such contractual terms restrict the subject-matter of the succession.

In the author's view, such provisions in social networking service contracts raise serious doubts as to their legality and compatibility with the law of succession in many countries. According to Lithuanian law, any limitation of rights in relation to the object of inheritance can only be established by law or by the testator's own will (Article 5.19 CC). This means that in Lithuania, any agreements between the parties that have legal consequences upon the death of one of the parties are prohibited.<sup>33</sup> Thus, when assessing the legality of the non-transferability clauses in the terms of service of social networking services from the perspective of the legal norms regulating Lithuanian inheritance law, in the author's opinion, in the case of a dispute, such contractual clauses should be declared invalid as they limit the object of inheritance. Among other things, it should be noted that such contractual provisions also limit the application of the universal principle of succession, according to which, as mentioned above, the inheritance passes to the heirs unchanged, i.e. in the same condition as it was at the time of the deceased's death, as an integral set of the rights and obligations that belonged to the deceased.<sup>34</sup> This principle, being one of the foundations of the Lithuanian inheritance law system, is of a mandatory nature, therefore the application of this principle cannot be restricted by agreement between the parties (Article 6.157(1) of the Civil Code).<sup>35</sup> The only exception to the application of this principle, as mentioned above, is the impossibility of inheriting only those rights and obligations which are inextricably linked to the person of the deceased (Article 5.1(3) CC). However, as indicated above, the contract for the provision of social networking services does not fall within this exception. Consequently, the non-transferability clauses of the social

<sup>32</sup> FACEBOOK, Reporting a deceased person or a Facebook account that needs to be memorialised, <https://www.facebook.com/help/150486848354038>; accessed: 19.11.2023.

<sup>33</sup> L. Kamarauskiene et al., *Paveldėjimo teisė*, p. 87.

<sup>34</sup> E. Baranauskas et al., *Civilinė teisė bendroji dalis. Antroji laida*, Mykolo Romerio universitetas, Vilnius 2008, p. 477.

<sup>35</sup> L. Kamarauskiene et al., *Paveldėjimo teisė*, pp. 12–14.

networking accounts should also be considered unlawful in so far as they restrict the application of the principle of universal succession to the heirs.

A similar question concerning the lawfulness of non-transferability clauses in social networking accounts was also addressed in the German Court of Cassation case already mentioned above. In that case, a mother wished to inherit access to her deceased daughter's "Facebook" account, but the administrator of the social networking site refused to grant it to her. One of the issues at stake in the case was also whether the "Facebook" user rule, which provides that, upon the death of a social network user, his social network account is converted into a memorial tribute account and access to that account is restricted, is lawful, since the social network user necessarily agreed to that condition at the time they registered on the social network. The German Court of Cassation held that such a condition for using a social network is unlawful. According to the Court, the transformation of a "Facebook" social network account into a memorial account after the death of the user, and the restriction of access to such an account by any person, infringes the fundamental ideas of the principle of universal succession of rights, since it unreasonably restricts the legal position of the heirs. Moreover, according to the Court, the existence of a memorial tribute account also encourages the creation of a "data graveyard", since, after the death of a user of a social network, the user's account continues to be visible to everyone, but no one other than the administrator of the social network itself can access that account. The court in this case therefore concluded that the non-transferability clauses often used by social networking sites are unlawful and invalid.<sup>36</sup> This reasoning of the Court has even led to a legislative initiative in the German Parliament proposing a specific law to regulate the behaviour of online platforms and to provide that contractual clauses of this kind, which restrict the right of heirs to inherit access to online accounts held by the deceased, are to be considered void.<sup>37</sup> However, this legislative initiative was not supported, and the bill was rejected.<sup>38</sup>

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<sup>36</sup> Judgment of the German Federal Supreme Court in Case No III ZR 183/17, <https://beck-online.beck.de/Dokument?vpath=bibdata%2Fzeits%2Fnjw%2F2018%2Fcont%2Fnjw.2018.3178.1.htm&pos=1&hlwords=on#viewExport>; accessed: 15.11.2023.

<sup>37</sup> DEUTSCHER BUNDESTAG, Zugang zum digitalen Nachlass regeln und rechtlich in der Europäischen Union harmonisieren, 2019, <https://dserver.bundestag.de/btd/19/140/1914044.pdf>; accessed: 14.02.2024.

<sup>38</sup> **A. Fuch**, *What happens to your social media account when you die? The first German judgments on digital legacy*, ERA Forum, Journal of the Academy of European Law 2021/22, p. 6.

## 5. The scope and form of inheritance of access to a social network account

If the heir is entitled to inherit access to the deceased's social network account by universal succession, the question arises to what extent the heir may continue to use the deceased's social network account. Also, in what form the administrator of the social network has to grant such access to the heir. The latter question as to the form in which access should be granted was addressed in the above-mentioned case of the German Supreme Court. After the Court of Cassation held that a social network account is not intrinsically linked to the person of the social network user and that the non-transferability clause of the account is considered unlawful, the Court of Cassation ordered the administrator of the social networking site "Facebook" to grant the mother access to her deceased daughter's social networking site account. The administrator of the social networking site did so by sending the mother a USB stick containing only a single pdf file and comprising more than 14 000 pages. According to the mother, this file was difficult to read, unstructured and difficult to perform any text search. The mother took the case to court again because of the incorrect execution of the judgment. The case reached the German Supreme Court for the second time, which found that the social network administrator had not properly complied with the court's decision. According to the court, the mother, as heir of her deceased daughter, was entitled to the social networking contract, with the rights and obligations set out therein, by way of universal succession. This means that the mother should have been granted the same access to her deceased daughter's account as had previously been granted to her daughter when she was alive.<sup>39</sup> In other words, the administrator of the social network "Facebook" had to allow the mother to see her deceased daughter's account, content, communications with other users of the social network, *etc.*, in the same way as the deceased daughter could have seen them. Thus, the principle of universal succession has been further elaborated upon in the present case by stating that the heir inherits exactly the same legal position as the deceased at the time of their death, i.e. that the heir must be able to access the deceased's social networking account in the same way as when they were alive.

However, in the present case, the Court of Cassation has not indicated to what extent the heir, having inherited access to the deceased's social network account, may continue to use that social network account – whether the heir may use the deceased's account to write messages to other users of the same social network,

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<sup>39</sup> A. Fuch, *What happens to your social media account when you die?...*, p. 5.

to share the content of his or her preference on the deceased's social network account, or to carry out any other activity on the deceased's account. According to the interpretation given by the German Court of Cassation, it may appear that the heir could perform such acts, since, according to the principle of universal succession, the heir inherits all the rights and obligations that the deceased had under the social networking service contract. However, in the author's view, once the heir inherits access to the deceased's social networking account, they should not be entitled to continue actively using that account. The heir's continued active use of the deceased's social networking account, for example, by messaging other users of the same social network, participating in discussions, sharing various content, or other active acts, may give the false impression that the deceased is doing so, when in fact it is the heir. Although in many cases heirs inheriting access to a decedent's social networking account do not intend to continue actively using the account, the author considers that heirs inheriting access to a decedent's social networking account should be subject to certain restrictions on the use of the account in advance, in order to avoid possible misleading of other persons and breaches of ethical standards. For example, a social network could set up a read-only mode for the heir to access the social network account in exactly the same way as the deceased/predeceased could have done, but the heir would not be allowed to perform any active actions on the account that could mislead other users of the same social network into believing that the deceased is the one performing those actions.

## 6. Conclusions

A social networking service contract is not intrinsically linked to the personality of the social network user, as it is purely technical in nature, focusing on the provision of the same services to an indefinite number of persons, irrespective of the unique and personal characteristics of the user in question. Therefore, under Lithuanian law, access to a social network account may be inherited by way of universal succession.

Provisions in social network service contracts that limit the object of succession and the legal position of the heirs must be considered unlawful and void, since such contractual provisions are prohibited by law and infringe the principle of universal succession.

The social network should allow the heir to see the deceased's social network account and its content in exactly the same form as the deceased himself.



However, the heir should be prohibited from actively using the deceased's social networking account in order to avoid misleading other users of the social networking site into believing that the deceased themselves is doing so.

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Eimantas KADYS

## DZIEDZICZENIE DOSTĘPU DO KONTA W SERWISIE SPOŁECZNOŚCIOWYM

### Abstrakt

**Przedmiot badań:** W erze cyfrowej serwisy społecznościowe przynoszą nowe możliwości, ale także wyzwania prawne. Jedno z nich dotyczy śmierci użytkownika sieci społecznościowej. Nieniejsze badanie analizuje litewskie ramy prawne w celu oceny, czy spadkobierca ma prawo do dziedziczenia, wraz z majątkiem zmarłego, dostępu do jego kont w sieciach społecznościowych.

**Cel badawczy:** Celem artykułu jest zbadanie możliwości dziedziczenia dostępu do konta na portalu społecznościowym zgodnie z prawem litewskim.

**Metoda badawcza:** Posłużono się metodą porównawczą, analizując, w jaki sposób inne porządki prawne regulują dziedziczenie dostępu do konta zmarłego na portalu społecznościowym. Do analizy źródeł prawa zastosowano również metodę systematyczno-analityczną, natomiast do formułowania stanowisk i wniosków – metodę analityczną.

**Wyniki:** Zgodnie z prawem litewskim dostęp do konta zmarłego na portalu społecznościowym może być dziedziczony w drodze sukcesji uniwersalnej, ponieważ umowa o świadczenie usług społecznościowych ma charakter czysto techniczny, a nie osobisty.

**Słowa kluczowe:** konto w serwisie społecznościowym, zasada sukcesji uniwersalnej, *intuitu personae*.