Order of statutory inheritance in the Polish legal system

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For citation: Wojcieszak, Agnieszka. 2021. Order of statutory inheritance in the Polish legal system. *Pravovedenie* 65 (2): 221–235. https://doi.org/10.21638/spbu25.2021.206

This article presents a comprehensive analysis of the order of statutory inheritance in the Polish legal system. Undoubtedly, the issue of inheritance has always aroused interest among representatives of legal scholarship and executors of the law. Death is an integral element of every person's life. For this reason, it seems justified to consider the issue of the grounds for inheritance, especially given that Polish legal provisions provide for two grounds for inheritance — by will and by law. The introduction of the article outlines the main provisions that manifest the principle of "universal succession" in Polish inheritance law. Next, the doctrinal grounds of statutory inheritance in Polish civil law are considered. Statutory inheritance, comprehensively regulated by the Civil Code of Poland, is based on the so-called "concept of the implied will of the testator", the justification of which is the assertion of justice in society. It is believed that heirs by law are both the most suitable heirs from the point of view of morality of a given society, and the most suitable heirs from the point of view of the alleged will of the testator. Thus, a group of persons entitled to inheritance is established. However, such an approach is more logically explained by the so-called "theory of debt" and "theory of social interest" than by the "concept of the implied will of the testator". The purpose of this article is to present the prerequisites for calling for inheritance, as well as a way to determine the group of subjects entitled to inheritance by law, indicating the size of the shares to which heirs are entitled. The author separately examines the grounds and procedure for calling spouses, children and other descendant testators, as well as his parents and other ascenders, as well as brothers and sisters and some other categories of heirs to inheritance. The issue of inheritance by a local community or State Treasury is considered separately. The article concludes with a summary in which the author evaluates the current legislative decisions.

Keywords: statutory inheritance, law of inheritance, heir, testator, succession.

Introduction

Under Polish law, the regulation of inheritance law is based on so-called universal succession, which means that the heir accepts the general rights and obligations formerly attributable to the testator[1]. These rights and obligations are transferred by statutory inheritance or a will[2]. The legislator gives priority to inheritance according to a will[3]. When a will is invalid or ineffective, has been lost or destroyed[4], the testator did not leave a will[5],

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[1] See: Art. 922 § 2 of the Civil Code.

[2] See: *Rzetecka-Gil A.* Glosa do wyroku Sądu Najwyższego — Izba Cywilna z dnia 13 lutego 2004 r., II CK 444/02 // Orzecznictwo Sądów Powszechnych. 2007. No. 4. P. 51.

[3] *Łączkowska M.* [Untitled] // Kodeks cywilny: in 2 vols. Vol. II: Komentarz. Art. 450–1088 / ed. M. Gutowski. Warszawa: C. H. Beck, 2016. P. 1484; *Skowrońska-Bocian E.* Prawo spadkowe. Warszawa: C. H. Beck, 2018. P. 53.

[4] *Borysiak W.* [Untitled] // Kodeks cywilny. Komentarz. Spadki: in 6 vols. Vol. IV A / ed. K. Osajda. Warszawa: C. H. Beck, 2019. P. 220.

[5] Ibid.; *Wierciński J.* Uwagi o teoretycznych założeniach dziedziczenia ustawowego // Studia Prawa Prywatnego. 2009. No. 2. P. 85. — See also: *Kucia B*. [Untitled] // Kodeks cywilny. Komentarz: in 6 vols. Vol. VI: Spadki (Art. 922–1087) / eds M. Habdas, M. Fras, Warszawa: Wolters Kluwer Polska, 2019. P. 192.

or the persons appointed in the will cannot or do not want to be heirs (and the substitution or increment does not apply[6]), the provisions of statutory inheritance apply. The estate will be inherited according to the law also when the testator did not appoint any heir to a given part of the estate or when the appointment of an heir was revoked by the testator or was invalidated.

Statutory inheritance is therefore subsidiary[7]. Only "lack, invalidity or impossibility of executing (the will. — *A. W.)* paves the way for statutory inheritance"[8]. In this way, on the one hand, the legislator ensures the fulfilment of the will of the testator, who can best dispose of their property in the event of death, and on the other hand the legislator guarantees the implementation of the *hereditas nihil novil aliud est* principle.

Importantly, the estate is opened only after the death of the testator, i. e. all the rights and obligations formerly attributable to the testator are assumed by an heir or heirs. If there are several heirs, they acquire the property rights and obligations from the testator in shares. It applies to both statutory (intestate) and testamentary inheritance.

The statutory order of succession still raises legal doubts. There are problems that arise, for example, while determining the impact of the matrimonial property regime on the estate[9] or on the shares, or in relation to the consequences that arise when applying the filiation rules[10]. The above issues inform this article as it seems that only a detailed analysis of the current normative solutions concerning the premises for appointment to statutory inheritance and the order of statutory inheritance will facilitate a clear presentation of the binding order of statutory inheritance under current Polish legal system[11].

1. Premises for appointment to inheritance under the Act

It is currently assumed that the statutory order of inheritance is based on the implied will of the testator. The testator usually does not decide to draw up a will, accepting the order of inheritance provided for in the act[12]. It happens, however, that a testator is unaware that they may dispose of their property in the event of death (e. g. mental disorders prevent a testator from adequately assessing the reality) or that the drawn-up will is invalid (e. g. it is not signed by hand). As a result, the testator's will is not implemented at all and the rules of statutory inheritance supplant it[13]. On the other hand, it may be assumed that the legislator wanted to guarantee in this way the inheritance right to the persons with whom the deceased was in the so-called family relationship of kinship, marriage or adoption[14].

The relevant literature refers to a reasonable conviction that "the group of statutory heirs corresponds to the hypothetical will of all persons to whom the inheritance law applies in a given legal system"[15]. It results from the need to respect the principle of equity

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[6] *Księżak P.* Kilka słów o przyroście (Art. 965 k. c.) // Przegląd Sądowy. 2014. No. 1. P. 68–76.

[7] See: Supreme Court judgment of 3 January 1997. II CUK 58/96; Supreme Court judgment of 6 February 1998. I CKU 206/97.

[8] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1485.

[9] Ibid. P. 1505–1507.

[10] See: *Haberko J.* Ustawa o leczeniu niepłodności. Komentarz. Warszawa: Wolters Kluwer Polska, 2016. P. 406–418.

[11] *Skowrońska-Bocian E.* Prawo spadkowe. P. 54.

[12] Ibid.; *Łączkowska M*. [Untitled] // Kodeks cywilny: in 3 vols. Vol. III: Komentarz. Art. 627–1088 / ed. M. Gutowski. Warszawa: C. H. Beck, 2019. P. 1143.

[13] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1485.

[14] *Skowrońska-Bocian E.* Prawo spadkowe. P. 54.

[15] *Borysiak W.* [Untitled] // Kodeks cywilny. Komentarz. Spadki. Vol. IV A. P. 221.

in society[16]. It is assumed that in the absence of a will, the estate should be inherited by "persons who, according to the aforementioned principle, are considered the most predestined for this purpose"[17]. It should be clearly emphasized here that not always those remaining in the so-called family relationships are those to whom the estate should be given. The legislator provided a very narrow definition of the group of entities eligible for inheritance according to the provisions of the act. For example, the *de lege ferenda* situation, when a person remaining in an informal relationship (cohabitation) with the testator would inherit under the act was not taken into consideration. It is obviously agreed that the deceased could, by way of a will, appoint a cohabitee to inherit. Moreover, statutory inheritance based on the implied will of the deceased is not according to the *ignorantia iuris nocet* principle[18]. Therefore, the legislator treats in the same way those who are aware of the rules of statutory inheritance and those who do not have such knowledge.

It seems therefore justified to depart from the so-called theory of duty and the theory of social interest[19]. The theory of duty is based on the investigation of the testator's intention. On the other hand, the theory of social interest assumes that "the rules of statutory inheritance both reflect social norms and contribute to developing and maintaining these rules"[20]. Both the above theories completely ignore the need to establish the actual will of the testator, focusing respectively on "what is expected of a testator or what satisfies wider social needs"[21]. As a consequence, the implied will of the testator is reasonably treated as a premise (criterion) for appointment to an inheritance under the Act.

2. Order of statutory succession

2.1. Introductory remarks

Statutory inheritance depends on the existence of family ties between the testator and the heirs[22]. Consequently, the Civil Code provides for the inheritance by: the spouse, children (i. e. descendants) — without a limitation by the degree of kinship, the testator's parents, the testator's siblings and their descendants, the testator's grandparents and their descendants. Additionally, after the 2009 amendment, the group of statutory heirs has been extended to encompass the testator's relatives, i. e. children of the testator's spouse, whose parents did not live until the estate was opened[23]. If there are no aforementioned heirs, the commune of the last place of residence of the testator or the State Treasury is appointed to the inheritance (the so-called compulsory heirs, or necessary heirs)[24].

As mentioned above, demonstrating family and legal ties is of significant importance for establishing the group of potential statutory heirs. The provisions of the Civil Code first refer to kinship in a straight line and to collateral relatives. However, in the case of stepchil-

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[16] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1485.

[17] Ibid.; *Wierciński J.* Uwagi o teoretycznych założeniach dziedziczenia ustawowego. P. 85.

[18] *Borysiak W.* [Untitled] // Kodeks cywilny. Komentarz. Spadki. Vol. IV A. P. 221.

[19] See: *Wierciński J.* Uwagi o teoretycznych założeniach dziedziczenia ustawowego. P. 86–87; *Skowrońska-Bocian E., Wierciński J.* [Untitled] // Kodeks cywilny. Komentarz: In 6 vols. Vol. VI. Spadki / ed. J. Gudowski. Warszawa: Wolters Kluwer Polska, 2017. P. 80; *Łączkowska M*. [Untitled] // Kodeks cywilny. Vol. III. P. 1144.

[20] *Wierciński J.* Uwagi o teoretycznych założeniach dziedziczenia ustawowego. P. 86.

[21] Ibid.

[22] See: *Kucia B*. [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 195.

[23] *Witczak H., Kawałko A.* Prawo spadkowe. Warszawa: C. H. Beck, 2010. P. 105.

[24] See: *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1487; *Czerwińska H.* Gmina jako spadkobierca ustawowy // Gdańskie Studia Prawnicze. 2015. Vol. 34. P. 395–404; *Kucia B*. [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 189.

dren, inheritance follows an affinity relationship. In practice, the most important thing is to determine the order to inheritance.

When analyzing the law, the above regularity can be noted that the legislator primarily takes into consideration whether the testator was married and then whether he had children (i. e. descendants). Subsequently it is determined whether a testator has parents, siblings and their descendants, grandparents and their descendants, children of the testator's spouse, neither of whom has lived until the estate was opened. If there are no descendants in a category of heirs, there is a change concerning the inheriting entity. The aim is to make sure that in the absence of heirs in the nearest group, heirs belonging to the following group could inherit. For example, the testator's siblings inherit when the spouse, the descendants and parents of the testator are dead at the time the estate is opened[25].

At the same time, it is worth noting that Polish inheritance law precisely defines the shares of individual heirs[26], assigning a fixed share (e. g. in relation to the testator's spouse inheriting together with the testator's parents) or depending on the number of heirs (e. g. the testator's children). On the other hand, the share of the heirs appointed in place of the testator's deceased relatives is determined by tribes (e. g. when one of the testator's sons died before him and was survived by four daughters, the son's share is allocated to these daughters in equal shares). In this way, the legislator made it possible to precisely determine the order of inheritance for those entitled to it and determined the assigned share.

2.2. Inheritance by the testator's spouse

The spouse may be considered a statutory heir only provided: 1) at the time of the opening of the estate this person was married to the testator; 2) separation was not legally ruled upon; 3) the marriage was neither invalidated nor declared non-existent; 4) the person has not renounced the inheritance[27]; 5) the person was not disinherited by the testator; 6) this person was not considered unworthy; 7) the testator did not apply for divorce or separation due to this person's fault[28]. The above demonstrates that remaining in a valid marriage at the time of opening of the succession does not guarantee an inheritance. There are numerous circumstances that may exclude a spouse from statutory inheritance from the deceased.

In this context, it is worth emphasizing that in order to determine the estate, it is necessary to determine the matrimonial property regime the testator and his spouse had before the death[29]. If the spouses had a joint marital property regime, upon the death of

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[25] This applies if the heir died before the testator, the heir rejected the inheritance or renounced the inheritance, was declared unworthy or if there were never any heirs (e. g. when the testator did not get married).

[26] *Skowrońska-Bocian E.* Prawo spadkowe. P. 57; *Witczak H., Kawałko A.* Prawo spadkowe. P. 94–107; *Kucia B*. [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 191.

[27] The statutory heir, by agreement with the future testator, may disclaim his inheritance. Such an agreement should be concluded in the form of a notarial deed (Art. 1048 of the Civil Code). The disclaimer of inheritance also affects (all) descendants of the person submitting a disclaimer, unless otherwise provided in the agreement. The person submitting a disclaimer and his descendants, who are included in the disclaimer of inheritance, are excluded from inheritance, as if they did not live until the opening of the estate (Art. 1049 of the Civil Code). The parties to such an agreement are therefore the future statutory heir and the future testator. The disclaimer of inheritance does not exclude appointing a potential heir to inheritance by way of a will — see Supreme Court resolution of 15 May 1972. III CZP 26/72. Legalis No. 16258.

[28] Art. 940 of the Civil Code, see*: Stecki L.* Wyłączenie małżonka od dziedziczenia ustawowego (Art. 940 k. c.) // Ruch Prawniczy, Ekonomiczny i Socjologiczny. 1990. No. 1. P. 79–92.

[29] Subject of matrimonial property regimes in Polish family law, see especially: *Sokołowski T.* Prawo rodzinne. Zarys wykładu. Poznań: Ars boni et aequi, 2013. P. 70–119; *Ignatowicz J., Nazar M.* Prawo rodzinne. Warszawa: Wolters Kluwer Polska, 2016. P. 239–335; *Jędrejek G.*: 1) Intercyzy. Pojęcie. Treść. Dochodzenie roszczeń. Warszawa: Wolters Kluwer Polska, 2010. P. 23–451; 2) Postulaty "de lege ferenda"

one of the spouses, the joint marital property regime is transformed into a fractional joint ownership and each spouse receives, as a rule, an equal share[30]. As a result, half of the existing joint marital property becomes part of the estate. Therefore, the spouse remains entitled to the second half constituting his share in the joint property and besides receives at least one fourth of the estate, i. e. the second half of the existing joint marital property[31]. For important reasons, however, it is possible to determine unequal shares in the joint property, taking into account the contribution to the establishment of the property.

On the other hand, when the spouses had a separate marital property regime with the equalization of their properties[32], this system ceases upon the death of one of them and there may be an equalization of properties between the heirs of the deceased and the spouse. After the separate regime of property ceases to exist, i. e. after the death of the testator, the heirs of the deceased, whose possessions was smaller than that of the other spouse, may demand that the estate be compensated by payment or transfer of rights, and conversely. The testator's spouse is also entitled to inherit when there was a separate regime of property between the spouses.

In addition, the spouses may stipulate in the marital property agreement that they extend or constrain the joint marital property regime. In this way, they can define shares in the joint property differently, e. g. in case of death of any of them. Obviously, at the request of each of the spouses or their heirs, the contractual shares in the joint property will be changed by a final court decision[33].

Considerations concerning the inheritance of the testator's spouse should include the analysis of Art. 931 of the Civil Code[34] (hereinafter CC). The provision says that, in the first place, the children of the testator and the spouse who inherit in equal parts are appointed by law to inherit[35]. At the same time, the spouse's share may not be less than a quarter of the total estate. In other words, if the testator had a spouse and five children, their shares will be: one-fourth for the spouse and three-twentieth of the total estate for each of them.

However, the inheritance share of the spouse who inherits with the testator's parents, siblings and descendants of the testator's siblings is half of the estate, "which is a permanent share regardless of the number of people inheriting with the spouse"[36]. In the absence of the aforementioned heirs, the spouse is the sole heir and inherits the entire estate[37]. Accordingly, the spouse is appointed to inherit both in the first group together with the descendants, and in the second and third groups of heirs together with the parents or the parent and siblings or the siblings themselves, or their descendants.

The doctrine draws attention to the problems that arise in case of inheriting an estate from a person remaining in a bigamist relationship[38]. It is assumed that when the estate is

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dotyczące składu majątków małżonków w ustroju ustawowym // Przegląd Sądowy. 2004. No. 5. P. 100–113; *Kucia B*. [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 198.

[30] See in the first place: *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1493–1494.

[31] *Skowrońska-Bocian E.* Prawo spadkowe. P. 59; different opinion: *Dyoniak A.* Ochrona rodziny w razie śmierci jednego z małżonków. Warszawa; Poznań: Państwowe Wydawnictwo Naukowe, 1990. P. 19–20.

[32] The income of each spouse is an increase in the value of his or her property after the conclusion of the property contract.

[33] Supreme Court decision of 19 December 2012 r. II CSK 259/12. Legalis No. 550174.

[34] The Act of 23 April 1964 — Civil Code, consolidated text Dz. U. [Journal of Laws] of 2019. Item 1145.

[35] See: *Miotła D.* Dziedziczenie ustawowe małżonka spadkodawcy // Edukacja Prawnicza. 2018. No. 3. P. 31; *Babiarz S.* Spadek i darowizna w prawie cywilnym i podatkowym. Warszawa: Wolters Kluwer Polska, 2012. P. 59.

[36] *Bagan-Kurluta K.* [Untitled] // Kodeks cywilny. Komentarz / ed. M. Załucki. Warszawa: C. H. Beck, 2019. P. 1941.

[37] Ibid.; *Skowrońska-Bocian E., Wierciński J.* [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 94.

[38] See: *Kucia B*. [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 197.

opened, both the first and the second spouse become heirs[39]. However, a question arises about the determination of their shares. Since the legislator, in the provision of Art. 931 of the CC, provides that the spouse with the testator's descendants receives no less than a quarter of the inheritance, it should be assumed that both spouses jointly have half of the estate[40]. This solution is evidently detrimental to the remaining heirs[41]. Therefore, it seems that the right solution is informing the prosecutor about the case of bigamy, as the prosecutor may initiate proceedings for annulment of one of the marriages that should be considered bigamist. At the same time, the notary public should also refuse to issue an inheritance certificate and notify the prosecutor about the situation[42].

2.3. Inheritance by the testator's children (descendants)

Polish law of inheritance regulates the legal status of the testator's descendants in a special way. Art. 931 of the CC stipulates that the testator's descendants inherit only with their spouse. This therefore excludes the possibility of inheritance by other relatives, i. e. parents, siblings or grandparents of the testator. This legal structure favours, above all, the protection of the close family ties with the testator. Thanks to this, it is the children who are appointed to inherit under the act in the first place. Only when one of them does not want to or cannot inherit, can further descendants take their place (i. e. grandchildren, great-grandchildren, great-great-grandchildren of the testator).

The rules of statutory inheritance do not differentiate between children born within marriage and outside of marriage. As a result, they inherit equally. In this case, the share is the same and the number of shares depends on the number of children. The same rule applies to further descendants, when the share that would be acquired by the testator's child who did not survive the opening of the estate passes to his descendants in equal shares. For example, if the testator had four children and one of them did not survive the opening of the estate, leaving two of their own children, the heirs' shares are assigned as follows: each of the testator's children who were alive at the time the estate was opened receives a quarter of the estate, whereas the testator's grandchildren inherit one-eighth of it.

A few remarks should also be made about reconciling the legal status with the biological one and its impact on the selection of the group of heirs. Motherhood or paternity established after the birth of a child does not always reflect the actual state. For this reason, Polish family law provides for the renunciation and determination of motherhood, renunciation and determination of paternity, recognition of paternity, and declaration of the recognition ineffectiveness[43].

The filiation regulations were made in such a way that if the indicated procedures took place after the confirmation of the acquisition of the estate, the order of statutory inheritance can be changed (to be more precise, this concerns changing the decision on the confirmation of inheritance acquisition)[44].

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[39] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1492.

[40] See: *Miotła D.* Dziedziczenie ustawowe małżonka spadkodawcy. P. 31.

[41] *Piątowski J. S., Witczak H., Kawałko A.* [Untitled] // System Prawa Prywatnego. Prawo spadkowe: in 20 vols. Vol. 10 / ed. B. Kordasiewicz. Warszawa: C. H. Beck, 2015. P. 274.

[42] *Baran-Kozłowski W.* Dziedziczenie ustawowe w Polsce. Piotrków Trybunalski: Wydawnictwo Instytutu Historii i Stosunków Międzynarodowych, 2014. P. 50–51; *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1492.

[43] More on the mentioned procedures i. e.: *Borysiak W.* [Untitled] // Kodeks cywilny. Komentarz. Spadki. Vol. IV A. P. 224–226; *Łączkowska M*. [Untitled] // Kodeks cywilny. Vol. III. P. 1156, 1160–1161.

[44] See: *Kuźmicka-Sulikowska J*. [Untitled] // Kodeks cywilny. Komentarz / eds E. Gniewek, P. Machnikowski. Warszawa: C. H. Beck, 2019. P. 1866–1867.

Inheritance by children and further descendants is based on the principle of equality, i. e. all of them inherit equally. The estate or its part intended for children should be divided into equal shares, the number of which depends on the number of children. The same is true if the inheritance concerned other descendants (so-called division by tribe)[45].

Inheritance in the case of adoption is a separate issue that merits a brief comment (Art. 936–937 of the CC). In the case of the so-called full adoption, the adoptee inherits from the adopter and his relatives as if he were a child of the adopter, and the adoptive parent and his relatives inherit from the adoptee as if the adoptee were the parent of the adopter. At the same time, the adopted person does not inherit from his natural ascendants and their relatives, and these persons do not inherit after him. In other words, the adoptee and his descendants inherit from the adopter according to the same terms as between natural relatives.

Nevertheless, in the event of incomplete adoption, the adoptee inherits from the adopter and his children, the descendants of the adopted child inherit from the adopter according to the same terms as the further descendants of the testator. On the other hand, the adoptee and his descendants do not inherit after the relatives of the adopter, and the relatives of the adopter do not inherit after the adoptee and his descendants. The parents of the adopted person do not inherit from the adopted person, and instead of them, the adopter inherits from the adopted person; besides, adoption does not infringe on the appointment to inheritance resulting from kinship. The relation established between the adopted and the adopter in the context of incomplete adoption means that the adopted child does not inherit from the relatives of the adopter, and they do not inherit after him and his descendants[46]. Moreover, the person who had incomplete adoption still inherits from his natural parents, as indicated in the doctrine[47]. Under the current regulations, an incomplete adoptee is also permitted to inherit after the natural parents if the adoptive parent has died before them[48].

2.4. Inheritance by the testator's parents

In the absence of descendants, the testator's spouse and parents are appointed to the estate (Art. 932 § 1 of the CC). Whether the parents were married when the estate was opened is irrelevant[49], as is the method of establishing paternity or maternity[50]. It is similar with taking parental authority from both parents and entrusting parental authority to one of them[51]. On the other hand, the parents of the child who has been adopted are excluded from inheritance. Their rights and obligations cease upon the decision on the adoption and there is a legal family relationship between the adopted and the adoptive parent here,

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[45] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1496.

[46] Ibid. P. 1514.

[47] See: *Gajda J.* Tajemnica przysposobienia w polskim prawie rodzinnym // Prawne i pozaprawne aspekty adopcji / eds M. Andrzejewski, M. Łączkowska. Poznań: Wyższa Szkoła Nauk Humanistycznych i Dziennikarskich, 2008. P. 64.

[48] *Sokołowski T.* Dziedziczenie w związku z przysposobieniem // Rejent. 1996. No. 11. P. 94; different: *Winiarz J., Gajda J.* Prawo rodzinne. Warszawa: LexisNexis, 2001. P. 232.

[49] *Załucki M.* Krąg spadkobierców de lege lata i de lege ferenda // Przegląd Sądowy. 2008. No. 1. P. 104; *Mróz T.* O potrzebie i kierunkach zmian przepisów prawa spadkowego // Ibid. P. 86–87; *Pazdan M.* Projektowane zmiany w unormowaniu dziedziczenia ustawowego // Rejent. 2008. No. 4. P. 14–15; *Skowrońska-Bocian E., Wierciński J.* [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 95.

[50] *Kuźmicka-Sulikowska J.* [Untitled] // Kodeks cywilny. Komentarz / eds E. Gniewek, P. Machnikowski. P. 1866–1867; *Skowrońska-Bocian E.* Nowelizacja prawa spadkowego. Warszawa: LexisNexis, 2010. P. 31, 38; *Skowrońska-Bocian E., Wierciński J.* [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 95.

[51] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1499; *Łączkowska M.* Dziedziczenie ustawowe członków rodziny spadkodawcy // Rejent. 2012. No. 5. P. 36–37.

discussed in more detail during the analysis of the provisions of Art. 936 and Art. 937 of the CC (considerations of the succession of the testator's descendants).

Thus, the law provides that parents may inherit with the testator's spouse, who is entitled to half of the estate. Consequently, as a rule, the share of each parent's inheritance is one quarter. However, if the paternity of the parent has not been established, the inheritance share of the mother who inherits from the testator's spouse is one half (Art. 932 § 2 sentence 2 of the CC)[52]. However, when only one of the parents inherits with the spouse because the other parent is dead, and the testator has no siblings or siblings' descendants who could substitute the deceased parent, the inheritance share of the parent in this case equals one half. If the testator was not married or his spouse cannot or does not want to inherit, the entire estate is assigned to his parents in equal shares, provided one of the parents does not survive the opening of the estate, then the estate share attributable to the parent is inherited by the testator's siblings in equal parts (Art. 932 § 4 of the CC). For this reason, the testator's parents come before his siblings in the order of statutory inheritance[53].

Although the provisions do not regulate it directly, it is reasonably assumed in the literature that the entire inheritance is granted to the living parent only if the testator had neither a spouse nor siblings and one of his parents did not survive the opening of the estate[54]. Therefore, the estate share of each of the testator's parents depends, firstly, on whether they inherit with their spouse, secondly, on whether they lived until the estate was opened and, finally, on whether the testator's siblings and descendants lived until the opening of the estate.

2.5. Inheritance by the testator's siblings

The deceased's siblings inherit if one of the parents has not lived until the opening of the estate. In such a case, the share that would go to that parent is granted to the siblings in equal parts. This applies to so-called full siblings (persons with the same parents), half-siblings (persons who have only the same mother or father)[55] and persons fully adopted.

Hence, only in the event that the parent is dead or does not wish to inherit are the testator's siblings appointed to inherit. If any of the testator's siblings did not survive until the opening of the inheritance, leaving descendants, the inheritance share that would have been granted to them is assigned to their descendants[56]. The division of this share takes place according to the rules that apply to the division between the testator's further descendants (Art. 932 § 5 of the CC). Due to the lack of reservations concerning any restrictions in this matter, it seems that it concerns the inheritance of all descendants of siblings, regardless of their degree of kinship with the testator. As a result, for example, a great-grandson of the testator's siblings may be appointed to inherit under the act[57].

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[52] It results that when the maternity provision was not established, the provision of Art. 932 § 2 sentence 2 of the CC does not apply. See: *Witczak H.* Uprawnienia rodziców i dziadków spadkodawcy w dziedziczeniu ustawowym w nowym stanie prawnym // Monitor Prawniczy. 2009. No. 11. P. 586.

[53] *Wolak G.* Rodzeństwo przyrodnie jako spadkobiercy ustawowi // Monitor Prawniczy. 2013. No. 18. P. 995; *Witczak H.* Uprawnienia rodziców i dziadków spadkodawcy... P. 585.

[54] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1500; *Skowrońska-Bocian E., Wierciński J.* [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 95.

[55] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1500; *Łączkowska M.* Dziedziczenie ustawowe członków rodziny spadkodawcy. P. 39; *Kuźmicka-Sulikowska J.* [Untitled] // Kodeks cywilny. Komentarz / eds E. Gniewek, P. Machnikowski. P. 1870; *Skowrońska-Bocian E.* Prawo spadkowe. P. 62; *Wolak G.* Rodzeństwo przyrodnie jako spadkobiercy ustawowi. P. 996–998; *Skowrońska-Bocian E., Wierciński J.* [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 96.

[56] *Wolak G.* Rodzeństwo przyrodnie jako spadkobiercy ustawowi. P. 998.

[57] *Kuźmicka-Sulikowska J.* [Untitled] // Kodeks cywilny. Komentarz / eds E. Gniewek, P. Machnikowski. P. 1870.

As mentioned earlier, the testator's siblings inherit in equal shares. When they inherit from a deceased parent inheriting with their spouse, they are granted one quarter to share between themselves, and when neither of the parents lived until the opening of the inheritance, and the testator left a spouse, they are granted one half to share. On the other hand, the entire estate is granted to the siblings when neither the parents nor the spouse lived until the inheritance was opened. The share obviously depends on the number of siblings[58].

2.6. Inheritance by the testator's grandparents

The literature has long highlighted the need to consider the relationship between grandparents and grandchildren[59]. It has been often raised that the circle of statutory heirs should be extended to include the bequeather's grandparents, indicating "the proximity between grandparents and grandchildren and the lack of reciprocity in the situation of succession of grandchildren from grandparents"[60]. Therefore, in the current legal status, grandparents inherit the entire estate in equal parts when there are no descendants, spouse, parents, siblings, and descendants of the testator's siblings (Art. 934 § 1 of the CC). It is irrelevant whether the grandparents were married or how paternity and maternity were established[61]. Apart from that, grandparents will also be the parents of the adopter in a full or complete manner in relation to the adopter[62].

The succession of grandparents from their grandchildren applies to both father and mother. As the last entitled relatives, they inherit by law before their stepson, commune or the State Treasury[63]. The literature rightly points out that it is also for reasons of equity that the legislator has decided to extend the circle of statutory heirs to include grandparents and their descendants[64]. It is not surprising that from the perspective of a legal succession relationship, it seems more justified to leave the inheritance to the grandparents and their descendants than to transfer it to the commune or the State Treasury.

Grandparents inherit in equal parts, the size of their share depending on the number of grandparents (Art. 934 § 1 *in fine* of the CC). In a classic situation, each of them receives one quarter of the estate. Of course, it may happen that in connection with Art. 121^1 § 2 of the CC this amount is higher[65]. It is also important whether the grandfather who did

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[58] *Łączkowska M.* [Untitled] // Kodeks cywilny. T II. P. 1501.

[59] *Biernat J.* Ochrona osób bliskich spadkodawcy w prawie spadkowym. Toruń: Wydawnictwo Adam Marszałek, 2002. P. 39–40; *Pazdan M.* O potrzebie i kierunkach zmian dziedziczenia ustawowego w polskim prawie cywilnym // Rejent. 2005. No. 9. P. 44–45; *Żukowski W.* Projektowana nowelizacja przepisów regulujących dziedziczenie ustawowe // Kwartalnik Prawa Prywatnego. 2008. No. 1. P. 264–266; *Haberko J.* Dziadkowie — wnuki. Osobista więź prawnorodzinna i relacja prawnospadkowa // Ruch Prawniczy, Ekonomiczny i Socjologiczny. 2012. No. 3. P. 149; *Witczak H.* Uprawnienia rodziców i dziadków spadkodawcy... P. 586.

[60] *Borysiak W.* [Untitled] // Kodeks cywilny. Komentarz. Spadki. Vol. IV A. P. 247; see also: *Haberko J.* Dziadkowie — wnuki. P. 150.

[61] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1503; *Borysiak W.* [Untitled] // Kodeks cywilny. Komentarz. Spadki. Vol. IV A. P. 248; *Kuźmicka-Sulikowska J.* [Untitled] // Kodeks cywilny. Komentarz / eds E. Gniewek, P. Machnikowski. P. 1872; *Piątowski J. S., Witczak H., Kawałko A.* [Untitled] // System Prawa Prywatnego. Prawo spadkowe. Vol. 10. P. 280.

[62] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1503; see also: *Łączkowska M.* Dziedziczenie ustawowe członków rodziny spadkodawcy. P. 48; *Sylwestrzak A.* Sytuacja prawna dziadków w świetle norm prawa spadkowego // Gdańskie Studia Prawnicze. 2011. No. 2. P. 424.

[63] *Haberko J.* Dziadkowie — wnuki. P. 150.

[64] Ibid.; *Pazdan M.* [Untitled] // Kodeks cywilny: In 2 vols. Vol. II: Komentarz. Art. 450–1088 / ed. K. Pietrzykowski. Warszawa: C. H. Beck, 2018. P. 1059.

[65] *Kuźmicka-Sulikowska J.* [Untitled] // Kodeks cywilny. Komentarz / eds E. Gniewek, P. Machnikowski. P. 1872.

not live until the estate was opened left behind his descendants (who actually come from him[66]). If so, the share that would have accrued to them is that of their descendants (i. e. the children of the grandparents or further descendants, such as great-grandchildren[67]). This share is divided in line with the rules set out under Art. 931 § 2 of the CC. It should be noted that in the absence of descendants of the grandparents who have not lived to see the opening of the estate, the estate share that would have accrued to them is allocated to the remaining grandparents in equal parts (Art. 934 § 3 of the CC). Thus, in a classic situation, i. e. when the remaining grandparents are alive, each of them would receive one twelfth of the estate.

It is worth adding at this point that grandparents also have the right to claim means of subsistence from the heir if they are in short supply and cannot receive the means of subsistence due to them from persons who have a statutory maintenance obligation towards them (Art. 938, sentence 1, of the CC)[68]. Therefore, grandparents should not only be in a state of privation but also not benefit from a legal succession and have no chance to obtain funds from the maintenance debtor[69]. It is difficult to talk about a situation of privation if grandparents acquire the inheritance as statutory heirs. Taking the opposite position would result in a certain privilege of grandparents over other heirs, which the provision of Art. 938 of the CC ignores[70]. Moreover, there is no legal basis for charging other heirs with the obligation in the event of joint succession of grandparents[71].

An heir may provide means of subsistence in that they will pay the bequeather's grandparents a sum of money corresponding to the value of one quarter of his estate share. The benefit to the grandparents is generally of a monetary nature. It should be noted that the heir's obligation may take the form of a periodic payment or a single payment of one quarter of the share of the estate. The amount of the benefit depends, on the one hand, on the legitimate needs of the grandparents and, on the other, on the value of the share in the estate[72].

The above considerations concerning the succession of the bequeather's grandparents should be supplemented by an analysis of the succession of the grandson from the grandfather. This is the case when a closer descendant does not want or cannot inherit. Pursuant to Art. 931 § 1 of the CC, the children and the bequeather's spouse are the first to be inherited. If one of the children does not live to see the moment when the inheritance is opened, their share in the inheritance is assigned to their children, i. e. the bequeather's grandchildren[73]. The solution adopted by the legislator only confirms the alimony nature of the statutory succession.

2.7. Inheritance of a commune or the State Treasury

The inheritance shall be assigned to the commune of the testator's last place of residence, which will be as a statutory heir in the absence of the testator's spouse, his relatives and children of the testator's spouse. The municipality is therefore the first compul-

[66] *Łączkowska M.* Dziedziczenie ustawowe członków rodziny spadkodawcy. P. 45.

[67] Supreme Court decision of 24 October 2013. IV CSK 69/13. Legalis No. 739731; Supreme Court decision of 19 December 2012. II CSK 259/12. Legalis No. 550174.

[68] See: *Łączkowska M*. [Untitled] // Kodeks cywilny. Vol. III. P. 1186.

[69] See: *Witczak H.* Uprawnienia rodziców i dziadków spadkodawcy… P. 588.

[70] See: *Sylwestrzak A.* Sytuacja prawna dziadków. P. 429; different: *Haberko J.* Dziadkowie — wnuki. P. 151; *Strzebinczyk J.* Roszczenia dziadków spadkodawcy według Art. 938 i 966 k. c. // Nowe Prawo 1980. No. 1. P. 74; *Witczak H.* Uprawnienia rodziców i dziadków spadkodawcy… P. 587.

[71] *Niezbecka E*. [Untitled] // Kodeks cywilny. Komentarz: in 4 vols. Vol. IV: Spadki / ed. A. Kidyba. Warszawa: Wolters Kluwer Polska, 2015. P. 97–98.

[72] *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1520.

[73] *Haberko J.* Dziadkowie — wnuki. P. 149.

sory heir[74]. Only if the bequeather's last place of residence in the territory of the Republic of Poland cannot be determined or the last place of residence was abroad, is the estate assigned to the State Treasury. The legal situation of necessary heirs is slightly different from that of the others. Firstly, the commune and the State Treasury cannot reject the inheritance assigned to them under the Act, because according to the Polish law of succession: "nobody dies without leaving an heir behind, even if it were a public law entity"[75]. Secondly, forced heirs cannot renounce the succession and the testator cannot draw up a negative will which would exclude them from the estate[76]. Thirdly, these entities are deemed to accept the inheritance with the benefit of inventory by virtue of law (Art. 1023 § 2 *in fine* of the CC).

2.8. Succession of stepchildren

In light of relevant provisions of law, when the bequeather has not left his spouse or any relative appointed to the estate under the law belonging to the circles of statutory heirs described above, the inheritance shall be assigned in equal parts to those children of the bequeather's spouse whose parents have not lived to see the opening of the estate (Art. 934^1 of the CC). In a word, the heirs are the testator's orphaned stepchildren, if the testator's and stepchildren's family situation is in favour. Only if the testator was not survived by a spouse or relatives entitled to inheritance and at the same time none of the natural parents of the stepchildren have survived the opening of the estate, in the literal sense of the word, does the latter inherit[77]. The stepchildren thus exclude the commune or the State Treasury from the inheritance. Their statutory inheritance results, on the one hand, from the need to respect the actual emotional bond existing between the spouse's child and the parent's spouse (so-called equity considerations)[78] and on the other hand from the fact that kinship continues despite the cessation of the marriage[79].

Naturally, the determination of paternity or maternity after the opening of the estate lifts the stepfather's status as heir. In the event the stepfather is adopted by the testator's spouse, the provisions on the adoptee succession (Art. 936 or Art. 937 of the CC, depending on the adoption type) apply accordingly. On the other hand, if the stepfather does not live to witness the opening of the estate, his share in the inheritance is not transferred to his descendants but increases that of the remaining stepchildren as long as they respond[80]. The stepchildren inherit equally, the size of their share depending on their number.

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[74] *Kuźmicka-Sulikowska J*. [Untitled] // Kodeks cywilny. Komentarz / eds E. Gniewek, P. Machnikowski. P. 1876.

[75] *Borysiak W.* [Untitled] // Kodeks cywilny. Komentarz. Spadki. Vol. IV A. P. 261–263; see also: *Skowrońska-Bocian E., Wierciński J.* [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 105.

[76] *Skowrońska-Bocian E., Wierciński J.* [Untitled] // Kodeks cywilny. Komentarz. Vol. VI. P. 105–106; *Łączkowska M*. [Untitled] // Kodeks cywilny. Vol. III. P. 1174.

[77] See: *Załucki M.* Dylematy regulacji dziedziczenia ustawowego dzieci małżonka spadkodawcy (Art. 934^1 k. c.) // Białostockie Studia Prawnicze. 2017. Vol. 22, no. 3. P. 58; different: *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1506; *Borysiak W.* [Untitled] // Kodeks cywilny. Komentarz. Spadki. Vol. IV A. P. 252–253.

[78] *Pazdan M.* O potrzebie i kierunkach zmian dziedziczenia ustawowego… P. 45; *Łączkowska M.* [Untitled] // Kodeks cywilny. Vol. II. P. 1505; *Waszczuk-Napiórkowska J.* Opinia prawna o zmianie ustawy — Kodeks cywilny — zmiany w kręgu dziedziczenia nie testamentowego // Zeszyty Prawnicze Biura Analiz Sejmowych. 2009. No. 2. P. 170–171.

[79] *Skowrońska-Bocian E.* Nowelizacja prawa spadkowego. P. 65; *Żukowski W.* Projektowana nowelizacja przepisów regulujących dziedziczenie ustawowe. P. 262.

[80] *Bagan-Kurluta K.* [Untitled] // Kodeks cywilny. Komentarz / ed. M. Załucki. P. 1951; *Skowrońska-Bocian E.* Nowelizacja prawa spadkowego. P. 65; see also: *Pazdan M.* O potrzebie i kierunkach zmian dziedziczenia ustawowego… P. 44; *Mróz T.* O potrzebie i kierunkach zmian przepisów prawa spadkowego. P. 87–88.

Conclusions

The applicable provisions of Polish inheritance law envisage the possibility of inheritance assignment based on so-called implicit will of the testator. Thanks to this, also persons close to the deceased, provided they are alive at the moment of opening the estate, may become heirs. In this way, the legislator wanted to guarantee the protection of existing family ties resulting from kinship and affinity. In turn, the circle of statutory heirs extended by the amendments to include further relatives of the testator (i. e. grandparents and their descendants and stepchildren) is an expression of respect for equity considerations.

It cannot be denied that the legislator, among the entities entitled to inheritance from the Act, has treated the situation of the testator's spouse and the testator's descendants in a special way. As they are the first to inherit, it is sufficient for them to fulfil the condition of being married with, or a being a child of, the testator, respectively. Furthermore, importantly the spouse living in actual separation will be considered in light of the regulations a statutory heir inheritor in the first place, i. e. in conjunction with the descendants of the testator. This raises important doubts, which are pointed out by doctrine. It even raises the question of whether the testator's spouse's situation is not unduly privileged, especially since they may also inherit when the spouses have filed for property separation (i. e. when the spouse did not have any rights to the spouse's property during his or her lifetime).

On the other hand, with regard to the testator's descendants, problems arise with determination or denial of maternity or paternity. It should be borne in mind that the expiry of the time limits laid down for establishing paternity or for recognising it means that the children will not inherit from their biological father, even if such a natural affinity is not in doubt. The same is true in the case of an action to establish the ineffectiveness of the recognition of paternity or the denial of paternity, where children who are not related to their father will inherit from their biological father as if they had a biological connection.

Other relatives of the testator, i. e. parents, siblings and their descendants, are also rightly entitled to the succession. The situation of grandparents and their descendants should be taken into account, as should the stepfather in a statutory succession. This, in a way, relates to the idea of respecting family ties and to the best economic use of the testator's assets. As a result, the commune or the State Treasury inherits much less frequently under the provisions of the Civil Code. An excessively narrowly defined circle of persons appointed for inheritance under the Act would be conducive to the inheritance of the aforementioned public law entities.

Analysis of the applicable provisions of Polish inheritance law demonstrates that the legislator, when deciding to regulate the bequeather's financial situation, wanted both to ensure the permanence of family ties, despite the death of a loved one, and to guarantee a certain continuity, as it is customary to assume that the heir is regarded as a continuator of the bequeather as a person. Both of the above seem to have been assured in currently binding law.

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Received: November 1, 2020
Accepted: September 29, 2021

Порядок наследования по закону в польской правовой системе

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Для цитирования: *Wojcieszak A.* Order of statutory inheritance in the Polish legal system // Правоведение. 2021. Т. 65, № 2. С. 221–235. https://doi.org/10.21638/spbu25.2021.206

В статье представлен комплексный анализ порядка наследования по закону в польской правовой системе. Вопрос о наследовании всегда вызывал интерес у представителей юридической науки и правоприменительной практики. Смерть — неотъемлемый элемент жизни каждого человека. По этой причине представляется оправданным рассмотрение вопроса об основаниях наследования, особенно с учетом того, что действующие в Польше законодательные положения предусматривают два основания наследования: по завещанию и по закону. Во введении очерчиваются основные положения, манифестирующие принцип «универсального преемства» в наследственном праве Польши. Далее рассматриваются доктринальные основания наследования по закону в польском гражданском праве. Наследование по закону, всесторонне регулируемое Гражданским кодексом Польши, основано на так называемой концепции подразумеваемой воли наследодателя, обоснованием которой выступает утверждение справедливости в обществе. Считается, что наследники по закону являются наиболее подходящими наследниками как с точки зрения морали данного общества, так и с точки зрения предполагаемой воли наследодателя. Таким образом устанавливается группа лиц, имеющих право наследования. Однако подобный подход логичнее объясняется «теорией долга» и «теорией социального интереса», чем «концепцией подразумеваемой воли наследодателя». Цель статьи — представление предпосылок для призвания к наследованию, а также способа определения группы субъектов, имеющих право на наследство по закону, с указанием размера долей, на которые имеют право наследники. Автор отдельно рассматривает основания и порядок призвания к наследованию супругов, детей и иных нисходящих наследодателя, а также его родителей и других восходящих, а равно братьев и сестер и некоторых других наследников. Отдельно рассматривается вопрос о наследовании местной общиной или

государственной казной. В заключение автор оценивает текущие законодательные решения.

Ключевые слова: наследование по закону, наследственное право, наследник, наследодатель, наследство.

Статья поступила в редакцию 1 ноября 2020 г.
Рекомендована к печати 29 сентября 2021 г.

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