



Inheritance Law in the Republic of Poland and Other Former Eastern Bloc countries: Recodification of the Circle of Statutory Heirs

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1. The time may well have arrived to undertake a fundamental discussion about reshaping Polish civil law. Poland's Civil Code was adopted in 1964, during the communist era, and many believe change is long overdue. Of course the idea of updating Polish civil law is not a recent phenomenon only. Attempts at improving the situation go as far back as the early 1990s. Since that time, at least two major changes have occurred in Poland. The first one is the abandonment of the communist system, the second one Poland's entry into the European Union. Both events have led to modification of many regulations, causing an essential transformation of the Civil Code. As a result, Polish civil law is neither uniform nor transparent. Probably that is why there is consensus among Polish lawyers that additional changes are called for.

The situation with respect to inheritance law is no different, or if it is, it is worse. Civil Code regulation on inheritance law is based on the solutions prepared by the inheritance law sub-commission established in 1919 within the Codification Commission of the Republic of Poland. Although the Commission's ideas were valuable, the novelties and changes since introduced by the Polish legislator to inheritance law are anything but spectacular. That is why the suitability and practicability of the old solutions in today's context should be considered. It is also a good moment to discuss the status of Polish civil law in view of the publication by the independent Civil Law Codification Commission (CLCC), acting under the Minister of Justice of its Green Paper on the Polish Civil Code at the end of 2006.¹ And last but not least, thorough studies of European civil law have become available, and if anything is to be added to this body of knowledge, now would be a good time.

2. Polish law belongs to the German legal family. It originally developed from German and Austrian laws. It was strongly influenced by Roman law and displayed many similarities to the traditional German legal conception. When, after World War I, the Polish territories were reunited and combined into one state, civil law did not follow suit. The Polish legal system contained as many as five legal areas pertaining to this field of law. This situation persisted until 1 January 1947, when Poland returned to the traditional German legal

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¹ *Green Paper – An Optimal Vision of the Civil Code of the Republic of Poland*, (edited by Z. RADWAŃSKI), Warszawa 2006, pp. 1-152 (*passim*).

conception. An inheritance law decree of 8 October 1946 had come into force, giving Poland its first inheritance regulation after the restoration of independence. At the time it was a very modern regulation.²

This traditional conception was, however, significantly disrupted during the so-called “socialist recodification of private law” process, carried out primarily in the 1950s and 1960s. Under this process, civil law became more closely aligned with Soviet doctrine and was fragmented into various branches of law regulated by an immense number of individual laws. The introduction of the communist system caused many difficulties in the creation of a new and uniform private law, and some drafts of the Civil Code created in the early 1950s were a major step back from the preceding law. This was particularly noticeable in the area of inheritance law. For example, the circle of people entitled to inheritance and the freedom of testation were significantly reduced. It was under these circumstances that the Civil Code of 1964 was adopted. And even if it was based on the inheritance decree of 1946, it was also heavily influenced by the communist system. This situation lasted until the early 1990s when political and social changes prompted attempts to rectify this undesirable situation and bring the entire legal system back to European standards.

This characterisation is typical of almost all the countries of the former Eastern Block.³ The new situation from the early 1990s onwards necessitated new legislation, which had to suit democratic states with a market economy and be in line with the standards of developed European countries. Circumstances in Estonia, Hungary and the Ukraine were very similar to those in Poland. In all four countries, a government-sanctioned recodification process began.

Three stages can be identified in the process of recreating private law in these countries: 1) a preparatory stage, during which a body was established whose purpose was to supervise the creation of a regulatory draft; 2) a decision-making stage, aimed at choosing the private law system for a new regulation and at preparing a draft of that regulation; and 3) an implementation stage, during which legislation was passed.

The work on the Ukrainian and Estonian Civil Codes was similar since these two countries are former Soviet Republics. Some of the tasks were completed before the two countries became independent, at which time they decided to opt for restoration of an independent state law. After their secession from the Soviet Union, Special Working Groups were established and got to work. After a brief period of discussion and deliberations Germanic law was chosen as the basis of their respective civil codes. When the drafts had been prepared, the second stage can be characterized as a long discussion that resulted in the adoption of the codes (2002 in Estonia, 2003 in the Ukraine). Remarkably, Estonia adopted a succession of individual laws (beginning with the Law of Property, the General Part of the Civil Code Act, the Family Law Act, the Law of Succession Act and finally the Law of Obligations Act). The Ukraine civil code, on the other hand, had been drafted as single document, but adopting it proved more difficult. On 18 July 2000, the Verkhovna Rada adopted the Civil Code on the second reading and the third and final reading was expected to take place in the autumn of 2000. However, it actually took another three years for the legislation to be passed.⁴

² K. GRZYBOWSKI, *Reform and Codification of Polish Laws*, *American Journal of Comparative Law* 1958/7, pp. 393-402.

³ See: K. GRZYBOWSKI, *Reform of Civil Law in Hungary, Poland, and the Soviet Union*, *American Journal of Comparative Law* 1961/10, p. 253.

⁴ A. DOVGERT, *The New Civil Code of Ukraine 2003: Main Features, Role in the Market Economy and Current Difficulties in Implementation*, University of Illinois at Urbana Champaign Conference Materials, 2006, p. 2.

In Hungary, a former communist country, but not a former Soviet republic, work started later. The government decided as late as 1998 to have a new civil code drafted. Following the 2002 decision to continue the Austrian legal tradition, the first document was issued by the Codification Committee. It was titled “Conception of the new Civil Code”. Its publication prompted a public discussion. Based on the outcome of this debate, the Codification Committee published a new version (“Conception and Regulatory Syllabus of the New Civil Code”) in February 2003.⁵ After another round of discussion the Civil Code was revised once more and the new Civil Code books were finally published (the last one in December 2006),⁶ with the Code entering into force in two phases. Books One and Two entered into force on 1 May 2010, the remainder is expected to become binding on 1 January 2011.

3. The circle of statutory heirs differs in these three countries. The following persons belong to that circle in Estonia: the deceased’s spouse, their children, the parents of the deceased and their descendants, and the grandparents of the deceased and their descendants.⁷ If there are no living statutory heirs, the local government will succeed to the estate. If there is no other successor and a succession is opened in a foreign state and Estonian law applies to the succession, the Republic of Estonia will gain title to the estate as intestate successor.⁸ The partner of the deceased can inherit only if a will so stipulates. Estonian law does not grant the partner inheritance rights. In the Ukraine, the deceased’s descendants, spouse, siblings, grandparents, their descendants, persons who have lived in the same household with the deceased for at least five years before his or her death (for example: a decedent’s cohabitor), and other relatives of the deceased are to be considered statutory heirs.⁹ If there is no other successor, the estate will go to the government. In Hungary, when the deceased died without a will, the following persons are their heirs: the descendants, the parents (or their descendants) and spouse of the deceased.¹⁰ If there is no other successor, the estate will go to the government. It is worth noticing that Hungary was the fifth country in the world to legalize same-sex partnerships. The Hungarian Parliament on 21 April 2009 passed legislation, the Relationship Registry Act 2009, which allows same-sex couples to register their relationships so they can claim the same rights, benefits and entitlements as opposite-sex couples. These changes to the law of succession have given registered partners of the same sex the same legal status as spouses. On the other hand, the law does not apply to the succession of non-registered partnerships, in which case the partner cannot therefore inherit. Generally then, the role of the local government or the State Treasury in statutory heir’s rights is not vital and the government does not claim title to an estate at the decedent’s relatives’ expense.

4. This analysis shows that the inheritance law regulations are as a whole a part of continental European legal culture and essentially follow the traditions of German and Dutch law without being mere copies of German or Dutch law. They have been influenced by

⁵ An English translation of this version is available at: <http://irm.gov.hu/>.

⁶ See P. GÁRDOS, *Recodification of the Hungarian Civil Law*, *European Review of Private Law* 2007/5, pp. 710-711.

⁷ U. LIIN, *On the Development and Objectives of Statutory Share Law in Estonia*, *Juridica International* 2005/10, p. 88.

⁸ According to, e.g., Article 104 of the Estonian law of succession.

⁹ Art. 1261-1265 of the Ukrainian Civil Code.

¹⁰ According to the Civil Code regulation.

Austrian law, Swiss law and other laws.¹¹ It can be said that generally they represent actual trends in this field of law. They have greatly developed since Soviet times, when the law of inheritance was mostly neglected because of the limitation of ownership of natural persons.¹² The process of codification has many undisputed advantages. “The core advantages of codification are typically seen as being that the system is made explicit and that rules can more easily be found.”¹³ Abstract and systematised, codified norms can more efficiently respond to a variety of unpredictable and sometimes swift social changes than a labyrinth of custom-made norms.

It should also be mentioned that in countries preparing a new civil code the main method used with regard to private law is the comparative method. The laws of Germany, the Netherlands, Switzerland, Austria, France, Italy, and the Scandinavian countries, as well as the Civil Codes of the State of Louisiana and the Province of Quebec are considered the most important examples. These are deemed to demarcate modern ideas in private law globally. Many of them are fairly closely related or indebted to the old German pandect system, which is characterized by concentrical systematism and the considerable importance of general principles.¹⁴ The functioning of general principles in a society can be determined when the cultural, moral and ethical values comprise the environment in which law functions are researched.¹⁵ Because of that, the law “lives” and is suitable in the context of the current needs of a society.

5. The situation in the Republic of Poland was very similar to the one sketched above and was for a long time considered unsatisfactory. Discussions over a new conception of private law are not new, since some attempts at the improvement of the situation in the field of private law were made long ago. However, almost 20 years have passed since the communist system was abolished and these years have not witnessed the re-codification of civil law. Unfortunately, legislators have limited their attention merely to amending the existing regulations, amending their amendments, etc. Some acts have been amended many times. As a result, such legal instruments have become highly complex and difficult to understand. That is why change is of the essence. Re-codification of civil law could lead to a stabilization of the legal system, the renewal of trust in the rule of law and the reinstitution of legal certainty.¹⁶ In the area of inheritance law recodification could also strengthen family relationships, encourage people to lead active lives and to accumulate property, while discouraging the waste of property, the latter being one of the goals of every modern inheritance law regulation. For these reasons, the direct aim of the revision of binding legislation in Poland should be the preparation of a modern civil code act, which measures up to international practice and expectations.¹⁷

¹¹ For example, the procedure by which a successor acquires the estate under the Estonian law of succession is similar to the estate acceptance system in Italian law.

¹² On the development of this field of law in Estonia, see, e.g., U. LIIN, *On Reform of Estonian Succession Law*, *Juridica International*, 1998/3, pp. 105-109.

¹³ S. GRUNDMANN, *The Architecture of European Codes and Contract Law – A Survey of Structures and Contents*, in: S. GRUNDMANN, M. SCHAUER (eds.), *The Architecture of European Codes and Contract Law*, The Hague 2006, p. 3.

¹⁴ K. ZWIEGERT, H. KÖTZ, *An Introduction to Comparative Law*, Oxford 1992, p. 150.

¹⁵ I. KULL, *Legal Integration and Reform – Innovations and Traditions in the Estonian Law of Obligations*, *Rechtstheorie* 2000/31, p. 374.

¹⁶ The same has occurred in the Czech Republic. See K. RONOVSKA, *Civil Law in the Czech Republic: Tendencies of Development (Some Notes on the Proposal of the New Civil Code)*, *European Review of Private Law*, 2008/1, p. 113.

¹⁷ The Civil Chamber of the Polish Supreme Court has voiced a different opinion. As the old Civil Code regulation has worked in practice for years there is no need to change the law and generate new interpretation

In the area of inheritance law, and more particularly in the context of statutory heirs, at least three things should be taken into consideration in defining a new regulation: 1) decisive criteria for statutory succession; 2) the circle of statutory heirs; and 3) the order of succession. Also, since the present Polish inheritance law has been in force for over 45 years, it should be considered whether Poland's membership of the European Union compels a reform of inheritance law in Poland and whether the changes in its social and economic system after 1989 should result in changes in inheritance law.¹⁸ But since the community law does not deal with substantive inheritance law, new Polish legislation ought to reflect, at least in its drafting stages, the latest developments in this field of law in other EU Member States.

6. As the Green Paper suggests, the institutions of inheritance law should encourage a person to lead an active life and to accumulate property, while discouraging the waste of property. Therefore, every potential testator should have a broad freedom of making *mortis causa* dispositions concerning his property; if there is no such disposition, then the succession *ab intestato* of his relatives should be defined in accordance with the rules corresponding to his hypothetical will. When the testator uses his right to make *mortis causa* dispositions, he opens a way to extending his earthly existence and influencing the future. Therefore, this is a form of a *post-mortem* self-fulfilment. In addition, the norms of the inheritance law should be used to enhance the safety of business, as they remove uncertainty as to the validity of property relationships when a counterparty dies.¹⁹

These considerations should be taken into account when projecting the new regulation of inheritance law and discussing decisive criteria for statutory succession, the circle of statutory heirs and the order of succession.

The circle of potential statutory heirs cannot be accidental. It must be determined by the function of inheritance law and, taking into account the close relation between inheritance law and family law, by some family law regulations. At the same time, the consequences of these regulations are not evident and may be various. The final settlement lies with the legislator, hence, the rules of inheritance *ab intestato* are the legislator's way of expressing a particular conception.

The character of this conception should reflect the views shared by society and strengthen family ties. Within inheritance law, as a branch of civil law, a crucial role is played by moral, personal and emotional considerations.²⁰ Passing over these considerations might lead to a situation that runs contrary to perceived social justice. Furthermore, such a state might cause the loss of citizens' confidence in the law. Hence, when establishing the circle of heirs, the first factor taken into account in the majority of cases is the table of consanguinity. Relatives by blood might be only distantly related. However, while a possibility to inherit by relatives in the direct line is limited by the human lifespan, that limitation does not exist in the case of relatives in the collateral line. Therefore, the conception of inheriting even by the most distant relatives, regardless of the degree of blood relationship, might be possible.²¹

issues. See *Projekt Kodeksu Cywilnego. Księga pierwsza. Sprawozdanie z dyskusji przeprowadzonej w Izbie Cywilnej Sądu Najwyższego* [Project of the Civil Code. Book One. Discussion Report from the Supreme's Court Civil Chamber], *Przegląd Sądowy* 2010/2, pp. 104-123.

¹⁸ As reflected in the Green Paper, p. 136.

¹⁹ M. PAZDAN, *Inheritance Law*, [in:] *Green Paper – An Optimal Vision of the Civil Code of the Republic of Poland*, (edited by Z. RADWAŃSKI), Warszawa 2006, p. 137.

²⁰ J. BIERNAT, *Ochrona osób bliskich spadkodawcy w prawie spadkowym* [Protection of persons that are close to the deceased in the law of succession], Toruń, p. 20.

²¹ U. DROZDOWSKA, *Nowelizacja KC z 2009 r. – prawo spadkowe* [The 2009 Amendment of the Civil Code - Inheritance Law], *Edukacja Prawnicza* 2009/11, p. 3.

However, the system of statutory inheritance based on the consanguinity with deceased has certain vices, because it highly limits a decedent's spouse's rights. There is one more possible conception according to which a spouse will retain inheritance rights only when there are no relatives from the decedent's family. The above-mentioned postulate might be tantamount to the conception assuming that the circle of statutory heirs indicated by kinship should not strive from more than the sense of blood ties. It concerns next of kin and spouses and simultaneously improves the situation of the latter.

Apart from the criterion of blood ties and the sense of strong family relations, the circle of statutory inheritance can also be extended to people that relate to the deceased in other ways. However, the actual relationship between a decedent and a particular heir should be analogous to the nature of family relationship. It concerns, e.g., disabled individuals who at the time of the decedent's death were dependent on the decedent's support or individuals who at the time of the decedent's death belonged to the same household.²²

The conception of the statutory heirs circle is usually based on the formal or financial relationship between a potential heir and a decedent. The formal character of the relationship is determined by references to particular marks of legal character (e.g., marriage). The financial relation, on the other hand, is expressed by factual closeness, regardless of legal ties between a decedent and a heir.

7. At this point it is worth noticing that the Polish Civil Code was quite recently changed in the area of statutory heirs in the face of criticism that the circle of statutory heirs was too small and could damage private property when it reverted to the State Treasury as the statutory heir. The circle only included the deceased's descendants, spouses, parents, siblings and their children. Since the collapse of the communist system calls for widening the circle of statutory heirs increased.²³ Finally, the idea of expanding the circle of statutory heirs was taken into consideration by the legislator in 2009 and resulted in some changes in law.²⁴

According to the new regulations, the first person to be considered next of kin and entitled to be recognised as intestate heir is the individual who is the decedent's legally married spouse, or child (Art. 931 §1 CC). It must be stressed that adopted children and biological descendants inherit in equal shares (Art 936 CC). The legal situation of children is not dependent on the time of birth, i.e., whether they were born within or outside their parents' marital union. If there is no spouse, the decedent's children exclude all other distant relatives from intestate succession. If none of the decedent's children live to the event of the opening of succession by intestacy, then, according to Art. 931 §2 CC, the inheritance will go to his grandchildren in equal parts. Hence, the decedent's grandchildren inherit directly from him but in the degree analogous to the situation in which a decedent's children would have been if they had lived to the event of the opening of succession. The rule is applied to the more remote degrees of kinship as well.

On the other hand, a decedent's spouse will inherit by intestate succession if that individual was legally married to the deceased at the time of the decedent's death. A spouse inherits in case of convergence with both descendants and others relatives entitled to the estate. If there are no children and relatives, then the surviving spouse is entitled to the entire intestate estate (Art. 933 §2 CC), thereby excluding District and State Treasuries from intestate succession.

²² See also J. C. TATE, *Caregiving and the Case for Testamentary Freedom*, University of California Davis Law Review 2008/42, pp. 131-192.

²³ See M. ZALUCKI, *Krąg spadkobierców ustawowych de lege lata i de lege ferenda* [The circle of statutory heirs *de lege lata* and *de lege ferenda*], *Przegląd Sądowy* 2008/1, pp. 94-105.

²⁴ The new law was adopted by Parliament on 2 April 2009 and entered into force on 28 June 2009.

The second group of heirs is entitled to the inheritance solely if there are no descendants and consists of the deceased's spouse and the decedent's distant relatives. Nowadays, the group also includes the decedent's parents (Art. 932 §1 CC), or if they have died, their siblings (Art. 923 § 4 CC), or if these have died, the siblings' children (Art. 932 § 5 CC).

The third group of heirs, which only enters the picture when there are no heirs in the first two groups, consists of the deceased's grandparents (Art. 934 § 1 CC). If they have died, the inheritance will go to their children (Art. 934 § 2 CC).

The fourth group comprises the spouse's children by a previous relationship (Art. 934¹ CC).

The District and State Treasuries bring up the rear of the intestate heir column. In the light of Art. 935 CC, if there are no spouse, relatives or children of the spouse who stand to inherit a share of the decedent's property via the statutory provisions, then the entire estate will go to the district where the decedent last resided. If the decedent's final place of residence cannot be determined or if it is located abroad, then the property will revert to the State Treasury as the statutory heir of last resort.

8. The new regulations strengthen family ties and recognise the primacy of the decedent's children (including adopted children) in the process of succession. The prominent role of the decedent's spouse *prima facie* leads to the conclusion that a crucial category when identifying the circle of statutory heirs is that of the family. By contrast, the circle of statutory heirs does not include a decedent's cohabitor, as it does in for example Hungary, the Ukraine and – when thinking of crucial civil law regulations – the Netherlands or Germany. In Poland the same fate befell the decedent's grandparents and the decedent's stepchildren before the recent changes were effected.

Even after the changes of 2009, the circle of statutory heirs in Polish law seems incomplete. Same-sex partners are advocating a change in intestate succession regulations that will reflect their legitimate interests.²⁵ As far as succession is concerned, an argument for not implementing any additional changes is that the current rules haven't only just been consolidated in society and that any changes in this area would not strengthen the general public's trust in the law. However, if demands for the circle of statutory heirs to be extended are accepted, regulatory revision would be inevitable, as new categories of beneficiaries would have to be included. This could be considered an opportunity to adapt the scope of current regulations that in the view of many are not totally just.

The developments presented here lead to the conclusion that the District or State Treasury's entitlement to intestate succession has been relayed to a more modest ranking that is far less prejudicial to the decedent's relatives. There would also appear to be general consensus that when a deceased has left no will, then the widest possible range of heirs, including people that are closest to the decedent, should be entitled to statutory succession. Among proposals to amend the current regulations it is worth taking into account postulates that include the decedent's cohabitor in the circle of statutory heirs. Arguments in favour of these proposals do not only concern a sense of rightness but also a general conviction of strengthening family ties. This is a common trend in European inheritance law, as the examples of Hungary and the Ukraine, based on Dutch and German regulations, show.

²⁵ On some changes of the inheritance system in this area in other countries see: J. BECKERT, *The Longue Durée of Inheritance Law. Discourses and Institutional Development In France, Germany, and the United States Since 1800*, European Journal of Sociology 2007/48, pp. 79-120.

Generally, the Polish legislator has not been remiss in considering parties benefiting from inclusion in the circle of statutory heirs. The changes in Polish inheritance law haven been drastic and from a historical perspective revolutionary. But will they suffice? The Polish legislator will in the near future have to deal with at least one more issue, namely whether a decedent's cohabitor should be included in the circle of statutory heirs.

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