

*Anna Moszyńska*

Uniwersytet Mikołaja Kopernika w Toruniu

## Politics and Inheritance Law. Endeavours to Keep Classical Rules of Inheritance Law in the Polish Civil Code\*

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### 1. Introduction

The inheritance law seems to be a field of little interest to the world of politics and arousing far less social emotions than family or criminal law. However, after Second World War the Polish authorities used the inheritance law in order to actively shape and consolidate the socialist system. As it was stressed on many occasions inheritance is inseparably connected to ownership that determines the nature of all other property institutions. It was considered that in the capitalist system inheritance law was one of the instruments that facilitated amassing wealth in the hands of the owning classes and increased the economic inequality<sup>1</sup>. Completely different functions were assigned to it in the socialist system.

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\* This article is English and revised version of my text: *Polityczne uwarunkowania prawa spadkowego. Prace nad zmianami w prawie spadkowym w latach 1947–1964*, to be published in „Miscellanea Historico-Iuridica” 2013, Vol. 13, Białystok.

<sup>1</sup> J. Gwiazdomorski, *Dziedziczenie ustawowe w projekcie kodeksu cywilnego PRL*, in: *Materiały dyskusyjne do projektu kodeksu cywilnego Polskiej Rzecz-*

In order to fully assess the history of the codification of Polish inheritance law after Second World War one should, at least in general, have a look at the evolution of inheritance law in Bolshevik Russia and the USSR. In the *Communist Manifesto* Karl Marx and Friedrich Engels proclaimed the demand to abolish inheritance. Soon after the outbreak of the October Revolution a decree of 27 (10) April 1918 was issued that put this postulate in practice. Article 1 of the decree abolished inheritance both by act of law and by testament stating that at the moment of death of the bequeather his property was transferred under state ownership<sup>2</sup>. However it was allowed that property of low value – under 10 thousand roubles – was inherited only by the spouse and children of the deceased<sup>3</sup>.

After a sudden and drastic solution of abolishing inheritance the basic institutions of inheritance law were gradually restored in the following years. In 1922 the right to inherit property up to the value of 10 thousand roubles in gold by the spouse and descendants of the bequeather was clearly introduced<sup>4</sup>. This concerned both statutory and testament inheritance. The basic difference in comparison to the 1918 decree was that it introduced inheriting as a rule and not as an exception<sup>5</sup>. The civil code published less than half a year later upheld inheritances, however in a very limited scope<sup>6</sup>. Inheriting was still restricted to only a part of the property – the limit of 10 thousand roubles in gold was kept. Moreover the group of legal heirs

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*pospolitej Ludowej. Materiały sesji naukowej 8–10 grudnia 1954 r.*, Warszawa 1955, p. 221.

<sup>2</sup> S. Szer, *Z zagadnień kodyfikacji prawa spadkowego (Uwagi ogólne)*, „Państwo i Prawo” 1951, Vol. 5–6, p. 913.

<sup>3</sup> A. Lityński, *Prawo Rosji i ZSRR 1917–1991, czyli historia wszechzwiązkowego komunistycznego prawa (bolszewików). Krótki kurs*, Warszawa 2010, p. 237.

<sup>4</sup> Article 6 of the decree of 22 May 1922 on the fundamental private property rights, acknowledged in the Soviet Union, secured with its acts and protected before the courts of the Soviet Union, Collection of Acts of the Russian Soviet Federative Socialist Republic (RSFSR) No. 36, item 423.

<sup>5</sup> A. Lityński, *Prawo Rosji i ZSRR*, p. 239.

<sup>6</sup> Article 416–435 of the Civil Code of the Russian Soviet Federative Socialist Republic (RSFSR) of 31 October 1922.

was very small<sup>7</sup>, the freedom of making wills was restricted and the institution of legitime was not provided. Persons not qualified as statutory heirs were unable to inherit on the base of a will. In many cases the inheritance was transferred to the state<sup>8</sup>.

The inheritance law regulations included in the Civil Code were amended on numerous occasions towards gradual removal of the abovementioned restrictions, among others in 1926 the 10 thousand roubles limit was repealed<sup>9</sup>. In 1936 the right to inherit private property of citizens was raised to the constitutional level. Despite the confirmation of the right to inheritance in the constitution of the USSR, it was strictly limited to personal property<sup>10</sup>.

The most important changes to the inheritance law included in the Civil Code of 1922 were introduced in 1945<sup>11</sup>. The circle of statutory heirs was extended by introduction of three groups of heirs, in turn appointed to inheritance<sup>12</sup>. In the scope of testament inheritance a rule was in force that the testator could appoint any person to inheritance only if he or she did not have legal heirs. In other cases the freedom of testation was restricted to the choice of one or several persons from among the statutory heirs. However there were no restrictions concerning making a will in favour of state authorities, political or social organizations. A legitime was also included in favour of minor descendants and other heirs unable to work. The construction of the legitime provisions – contrary to the name – in fact meant the introduction of a reserve system.

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<sup>7</sup> All the legal heirs were appointed to inheritance jointly and inherited in equal parts, so there were no several separate groups of heirs that excluded one another (compare S. Szer, *op.cit.*, p. 915).

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

<sup>9</sup> *Ibidem*, p. 916.

<sup>10</sup> A. Lityński, *Prawo Rosji i ZSRR*, p. 241.

<sup>11</sup> Decree of the Supreme Soviet Presidium of the USSR of 14 March 1945, Journal of the Supreme Soviet of the USSR No. 15 and the decree of the Supreme Soviet Presidium of the Russian Soviet Federative Republic (RSFR) of 12 June 1945, Journal of the Supreme Soviet of the RSFR No. 38.

<sup>12</sup> S. Szer, *op.cit.*, p. 916.

This legal status was in force until the 1960's. In the act of 1961<sup>13</sup>, and later in the new Civil Code of 1964<sup>14</sup> a further extension of the statutory heirs circle was introduced. The freedom of testation was much increased, every citizen was able to transfer the inheritance to any person. The institution of reserve was upheld, formally still under the name of legitime. The obligatory part amounted to of the intestacy portion.

And what was the course of development of inheritance law in Poland? After passing inheritance law and other unification acts in 1946 intensive works on the preparation of a civil code were undertaken. However, the breakthrough that took place at the August–September plenum of the Central Committee of the Polish Workers Party (PPR) in 1948, caused a complete change of the codification works concept. The future code was to thoroughly change the content of previous law. Jan Wasilkowski – the head editor of the project self-critically stated that the civil law requires “a fundamental revision of its ideological assumptions” and “an extensive reconstruction”<sup>15</sup>. This concerned also the inheritance law of 1946, which – in his opinion – showed “significant influences of bourgeois ideology”<sup>16</sup>. Another participant of the codification works – Seweryn Szer, put it more emphatically pointing out that “Undoubtedly, the current inheritance law of 1946 [...] staying under the influence of bourgeois ideology does not protect the interest of the working world properly, it shows little consideration for the socialist idea, according to which if acquiring material goods does not result from one's own work, then it should be based on exceptional premises”<sup>17</sup>.

However, finally many of the solutions from the 1946 decree were transcribed into the new regulation of the inheritance law

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<sup>13</sup> Act of 8 December 1961 including the rules of civil legislation of the Soviet Union and its republics, Journal of the Supreme Soviet of the USSR No. 50, item 525.

<sup>14</sup> Civil Code of the USSR of 11 June 1964.

<sup>15</sup> J. Wasilkowski, *Kodyfikacja prawa cywilnego w Polsce*, „Nowe Prawo” 1950, No. 12, p. 4 and 6.

<sup>16</sup> *Ibidem*, p. 7.

<sup>17</sup> S. Szer, *op.cit.*, p. 918.

included in the Civil Code of 1964<sup>18</sup>. Regulations of this decree were based on traditional solutions of inheritance law. The output of the Codification Commission of the interwar period was considered in the works on this decree<sup>19</sup>. In turn this Commission prepared its projects on the basis of regulations which were previously in force on Polish territories – BGB, ABGB and the Napoleonic Code. For those reasons, the decree of 1946 considered classical civil law rules of the great 19<sup>th</sup> century codifications, regarded later as “bourgeois”. From the perspective of changes of the inheritance law that took place in Bolshevik Russian and the USSR and the above opinions one could have expected that much more significant changes of the inheritance rules would take place in Poland. Why didn't it happen? Why during the creation of a new socio-economic formation solutions based on the previous system were used?

The credit goes to the researchers involved in the codification works. They tried to preserve the classic institutions of the inheritance law by manipulating the political doctrine. By questioning the Soviet patterns they skilfully chose arguments in order to achieve their goal and not to expose on repressions from the authorities. Thanks to ideological justification of the proposed solutions, in fact they were able to keep most classical inheritance law regulations, in the form close to Western European solutions, in the 1964 Civil Code.

The defence of the current legal solutions was often justified by the level of development of the socialist system in Poland pointing to the fact that at the contemporary stage of socio-economic transformation the current regulations are not an obstacle for the implemented changes<sup>20</sup>. They argued that the content of inheritance regulations is of no significance for the realisation of socialist

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<sup>18</sup> Komisja Kodyfikacyjna przy Ministrze Sprawiedliwości, *Projekt kodeksu cywilnego oraz przepisów wprowadzających kodeks cywilny*, Warszawa 1962, p. 213.

<sup>19</sup> L. Górnicki, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, Wrocław 2000, p. 310–311.

<sup>20</sup> J. Gwiazdomorski, *Prawo spadkowe w kodeksie cywilnym PRL*, „Państwo i Prawo” 1965, Vol. 5–6, p. 707; compare with statement of J. Marowski (*Materiały dyskusyjne*, p. 267).

objectives. The types of property that are inherited are much more important<sup>21</sup>. After thorough nationalisation and parcelling out of property by way of the land reform most of the citizens were deprived of almost everything, apart from minor personal properties. In such a situation current inheritance law regulations were not – as they convinced the decision-makers – a threat for the socio-economic system as in practice inheritance was restricted only to personal property. This fight for keeping the traditional solutions of the inheritance law ended with almost complete victory. It was impossible only to prevent “radical intervention of the legislator”<sup>22</sup> in reference to inheriting farms.

The fact that it was possible to keep the previous solutions of inheritance law in Poland does not mean that they were not criticised or that there were no attempts to implement Soviet solutions. By 1950's there was no discussion on the abolition of inheritance law but there were attempts at implementation of significant amendments to this law in four main areas:

1. increase of the spouse's inheritance share,
2. limiting the group of statutory heirs,
3. restriction of freedom of testation,
4. introduction of the reserve system in place of legitime<sup>23</sup>.

The increase of the spouse's inheritance share was a demand least connected to the political determinants of the inheritance law. For this reason the above issue shall be omitted in the further part of this work. The demand of introduction of the reserve system was connected to aspirations to implement the Soviet model. The inheritance reserve system was known also in Western European codices – among other in the Napoleonic Code. However, plans of changes in this scope were directed for implementation of the system according to the Soviet design, with complicated regulations that aroused much doubt.

The implementation of the Soviet model was also the motivation behind other propositions of change, which in addition aimed

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<sup>21</sup> J. Gwiazdomorski, *Prawo spadkowe w kodeksie cywilnym PRL*, p. 707.

<sup>22</sup> Ibidem, p. 707, footnote 1.

<sup>23</sup> A. Lityński, *Historia prawa Polski Ludowej*, Warszawa 2005, p. 198.

at implementation of significant restrictions to inheritance law. Government worked – initially in secret – in parallel to official codification works, on introduction of changes to regulations on inheritance of farms.

## 2. The circle of statutory heirs

The circle of statutory heirs was not limited in the Civil Code of 1964 in comparison to the inheritance law of 1946. However this was not an automatic duplication of current regulations but a result of an intensive discussion during the codification process. During those works it was postulated to restrict the group of statutory heirs stating that inheriting by distant relatives would mean obtaining property without any work, which is in clear contradiction to the social co-existence rules<sup>24</sup>.

Following those calls the 2<sup>nd</sup> draft of the Civil Code of 1954 contained exclusion of the siblings descendants from among statutory heirs<sup>25</sup>. The above solution was criticised by Jan Gwiazdomorski at a special scientific session on this project in winter of 1954<sup>26</sup>. First he pointed to the arguments concerning emotional bonds stating that for the testator who does not have children of his own the descendants of his or her siblings are not only the nearest kin but most often persons who are really close and dear. However in case this argument proves inadequate J. Gwiazdomorski presented a broad ideological justification against the restriction of the legal heirs group. He also pointed to the fact that in the current stage of transformation of the socio-economic system inheritance consists mostly of personal belongings and inheriting such property is not likely to become a source of achieving income without work or any kind of exploitation of a man by another man<sup>27</sup>. In fact it was not

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<sup>24</sup> S. Szer, op.cit., p. 921–922. For exclusion of the siblings descendants from circle of legal heirs argued also J. Wasilkowski, op.cit., p. 7.

<sup>25</sup> Article 765 of the Civil Code draft of 1954 r. (*Projekt kodeksu cywilnego Polskiej Rzeczypospolitej Ludowej*, Warszawa 1954, p. 113–114).

<sup>26</sup> *Materiały dyskusyjne*, p. 226–229.

<sup>27</sup> *Ibidem*, p. 228–229.

only about sibling descendant inheritance rights but also blocking further attempts at narrowing the group of legal heirs.

Most of the participants of the working session supported J. Gwiazdomorski<sup>28</sup>. Only Jan Wasilkowski – the head editor of the Civil Code project and S. Szer – one of the editors and an avid supporter of Marxist ideas remained unconvinced. Jan Wasilkowski took up an intermediate stance, agreeing for siblings descendants to inherit on the basis of a testament, so that the emotional bond, invoked by J. Gwiazdomorski, was respected “in cases in which it exists”<sup>29</sup>. Seweryn Szer on the other hand strongly opposed the idea of enlarging the group of heirs, mainly quoting Marxist thesis. He considered a large group of statutory heirs as one of the “institutions distorting the function of family in a socialist society”. He put forward an argument that in the Soviet Union the group of statutory heirs is just as in the draft of the Civil Code, and “any other solution would not be in line with socialist morality”<sup>30</sup>.

The new edition of the 2<sup>nd</sup> Civil Code draft of 1955 only partly considered the results of the discussion – children of siblings were admitted as statutory heirs but their further descendants were not<sup>31</sup>. These were considered in the 3<sup>rd</sup> draft of the Civil Code in 1960<sup>32</sup>. Finally the Civil Code not only upheld the descendants of siblings as legal heirs but also this circle was broadened by inclusion of persons under full adoption.

### 3. The freedom of testation

In order to achieve specific social and economic objectives it was considered necessary to introduce some restrictions to the freedom of testation. During the discussion on this issue S. Szer reminded the words of Marx that inheriting under a will “is a lawless and

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<sup>28</sup> Ibidem, p. 258–272.

<sup>29</sup> Ibidem, p. 260. The 1954 draft assumed that the testator can bequest only personal property and only to the legal heirs (article 788).

<sup>30</sup> Ibidem, p. 280.

<sup>31</sup> Article 763 point 4 of the Civil Code draft of 1955.

<sup>32</sup> Article 1038 § 1 point 4 of the Civil Code draft of 1960.



exaggerated abuse [...] of the private property rules”<sup>33</sup>. In his opinion it was necessary to restrict the freedom of testation so that there are no forms facilitating the appropriation of property without work. The wide scope of the freedom of testation also raised much doubt on the part of J. Wasilkowski<sup>34</sup>. Through the introduction of these postulates the 1954 draft significantly increased the freedom of testation. The testator could include only his or her statutory heirs or socialist legal entities in the will<sup>35</sup>.

These decisions were criticised by, among others, J. Gwiazdomorski even before the Civil Code draft was published<sup>36</sup>. During the winter discussion of 1954 the restriction of freedom of testation introduced into the draft was also challenged by other participants of the discussion – either openly (Adam Szpunar), or by cautiously presenting technical reservations or pointing to problems with using the norms in practice (Jan Policzkiwicz, Alfred Ohanowicz)<sup>37</sup>. Stefan Breyer categorically voiced the need to broaden the freedom of testation, arguing that “the freedom of making will is one of the material stimuli of economical and productive way of life”, which in his opinion was one of the causes of inheritance law revival in the Soviet Union<sup>38</sup>.

The critique of the draft did not achieve instant results – its new version of 1955 did not significantly change the discussed issue. Significant changes were made in 1958. At the meeting of the Codification Commission Kazimierz Przybyłowski made a much more resolute statement against the restrictions of testation than almost 4 years before<sup>39</sup>. This time the argument justifying abandoning

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<sup>33</sup> S. Szer, *op.cit.*, p. 921.

<sup>34</sup> J. Wasilkowski, *op.cit.*, p. 7.

<sup>35</sup> Article 788 of the Civil Code draft of 1954.

<sup>36</sup> J. Gwiazdomorski, *Prawo spadkowe*, Vol. 2, Warszawa–Wrocław 1952, p. 339–341.

<sup>37</sup> *Materiały dyskusyjne*, p. 257–270.

<sup>38</sup> *Ibidem*, p. 264.

<sup>39</sup> Minutes from the meeting of the Material Civil Law Group of the Codification Commission of 13 May 1958, team No. 285 New Acts Archive – Ministry of Justice in Warszawa, file signature 5407, pages 57–58 (further quoted as: AAN 285/5407, p. 57–58). Compare with: J. Gwiazdomorski, *Prawo spadkowe w kodeksie cywilnym PRL*, p. 715–716.

the Soviet model was not the different level of people's democracy development in Poland, but moving the possible restrictions of testation to special rulings. It was also important that S. Szer – the advocate of transplanting the Soviet model to Poland – was not present at the meeting. The proposals of K. Przybyłowski were supported by other participants of the discussion. Even J. Wasilkowski withdrew from his previous position.

A regulation of inheritance law, that still is the essence of unlimited freedom of testation, was passed at the mentioned meeting: “The testator may appoint one or more persons to the whole or part of the inheritance”<sup>40</sup>. Accordingly, the testator was able to give the inheritance to any natural or legal person. Restrictions introduced in special rulings had an incomparably smaller scope than those proposed in the drafts of 1954 and 1955. The freedom of testation was returned in the scope provided for in the decree on inheritance law of 1946. The solution was entered into the Civil Code in the same form.

#### 4. Legitime or reserve?

The works on the inheritance law were accompanied by discussion whether to keep the current institution of legitime or to introduce the reserve system in order to protect the so called forced heirs. For S. Szer it was “obvious”, that “legitime as an expression [...] of a bourgeois law tendency is impossible to keep in the future Polish inheritance law”<sup>41</sup>. The legitime, by granting to the entitled party a money claim instead of the right to *in natura* inheritance allows preventing the division of capitalist property: factories, lands, etc. Seweryn Szer persuaded that “only the reserve, based on just treatment of all the heirs is appropriate”. However, his main argument was that the Soviet legal system favoured the reserve.

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<sup>40</sup> Article 791 of the Civil Code draft of 1955 in the new version of 1958. It is identical with Article 959 of the Polish Civil Code which is still in force.

<sup>41</sup> S. Szer, *op.cit.*, p. 924.

The draft of the Civil Code of 1954 despite keeping the name of “legitime” in fact introduced the institution of inheritance reserve<sup>42</sup>. During the discussion the views on this matter were divided: some of the participants supported the new solution, however guided by economic, not political, purposes (A. Ohanowicz)<sup>43</sup>, others criticized the introduction of the reserve system<sup>44</sup>.

Another version of the Civil Code draft of 1955 upheld the reserve system. During further codification works the proposition of return to the legitime was made twice. First time in 1958 by J. Gwiazdomorski, but it was rejected by all the remaining participants of the discussion<sup>45</sup>. One month later the proposition was repeated by K. Przybyłowski, this time however the proposition was rejected with only one vote<sup>46</sup>. Paradoxically, K. Przybyłowski himself was in favour of the reserve system, however he considered the way of regulating the system in the draft as too intricate and proposed to keep the current inheritance law solutions made in 1946 – after some minor amendments<sup>47</sup>.

The final return to the legitime system took place in 1961 under the influence of public debate<sup>48</sup>. It turned out that even lawyers from areas where the reserve was known were in favour of legitime. Only several centres were defending the reserve<sup>49</sup>. As a result the Civil Code copied the solutions of current law in this matter – with minor amendments.

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<sup>42</sup> *Materiały dyskusyjne*, p. 254–255, 279.

<sup>43</sup> *Ibidem*, p. 259.

<sup>44</sup> *Ibidem*, p. 275.

<sup>45</sup> Por. J. Gwiazdomorski, *Prawo spadkowe w kodeksie cywilnym PRL*, p. 720.

<sup>46</sup> AAN 285/5407, p. 183.

<sup>47</sup> *Ibidem*, p. 176–177.

<sup>48</sup> At the meeting of 22 May 1961 (AAN 285/5413, p. 238–253). Compare with J. Gwiazdomorski, *Prawo spadkowe w kodeksie cywilnym PRL*, p. 720, *idem*, *Prawo spadkowe w zarysie*, Warszawa 1967, p. 27; *Projekt kodeksu cywilnego Polskiej Rzeczypospolitej Ludowej*, Warszawa 1961, p. 206.

<sup>49</sup> AAN 285/5413, p. 241.

## 5. Inheriting farms

The authorities considered “the increase of agricultural production” as the priority of new agricultural policy<sup>50</sup>. Two phenomena stood in the way of realization of this postulate: the progressing fragmentation of farms and excessive burdening of those farms with inheritance payments that impaired the investment capabilities of those farms<sup>51</sup>. Both phenomena were closely connected to the inheritance law currently in force: research made by the Agricultural Economy Institute showed that in 61% of cases inheritance was the cause for diminishing the area of farms<sup>52</sup>. This resulted in commencement of works leading to changes in the inheritance law that would on one hand prevent further partition of farms and on the other hand take the burden of inheritance payments off farmers – at least for some time.

Works on changes in the regulations on inheritance of agricultural lands were underway at least since 1958. In August 1958 the Minister of Agriculture handed over for acceptance thesis concerning inheritance to the Minister of Justice. The document was classified “secret”<sup>53</sup>. Eight short propositions covered revolutionary changes in the scope of the inheritance law: heirs that were of age and for at least 3 years worked in a profession granting them support, lost their inheritance rights (both as statutory heirs and heirs mentioned in testament)<sup>54</sup>.

Thesis formulated in this way were negatively received in the Ministry of Justice. Czesław Tabęcki, the Supreme Court Judge, in

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<sup>50</sup> Compare the resolution of III Congress of the Communist Party on party policy guidelines in the country („Nowe Drogi” 1959, No. 4, p. 716–744) and the resolution of Central Committee and NK ZSL on fundamental tasks of agriculture in the years 1959 to 1965 („Nowe Drogi” 1959, No. 8, p. 148–163).

<sup>51</sup> The substantiation of an Act on suspension of the payment of shares in inheritances, which include agricultural land (AAN 285/2425, p. 71).

<sup>52</sup> AAN 285/434, p. 184.

<sup>53</sup> AAN 285/2425, p. 28.

<sup>54</sup> *Ibidem*, p. 29–30.

his note for the Minister of Justice pointed out that the “Propositions sent by the Minister of Agriculture rise many doubts [...] also among other responsible personnel of the Ministry of Agriculture. [...] Thesis 1 is a significant restriction of the property rights. [...] it deprives the testator of the right to manage his own property through his testament. It leads to depriving the owner of one of the most important attributes of property right, namely the right to dispose his property. [...] Depriving some heirs of the right to inheritance and real estate attributed to them by way of division, included in the second thesis, seems unacceptable. It would be the confiscation of their property rights [...]”<sup>55</sup>.

Regardless of this critique, works on changes in the inheritance law progressed – by the end of 1958 an initial draft of the act on inheriting agricultural real estates was ready. Similarly to the abovementioned thesis it was widely criticized in the Ministry of Justice<sup>56</sup>.

At the same time works on the solution to the second problem standing in the way of new agricultural policy – the issue of inheritance payments – were underway. In January 1959 the Minister of Agriculture sent a short – including only 4 articles – draft act on suspension of inheritance payments concerning agricultural real estate, for the opinion of the Minister of Justice<sup>57</sup>. The draft provided for suspension until the end of 1963 of obligation of pay off a share in inheritance, due from heirs that inherited agricultural real estate and worked on it. Appropriate regulations were to be enforced retroactively (article 1 item 2 of the draft provided that the suspension applies to payments concerning inheritance opened both before and after the act came into effect). The draft was classified “confidential”. It went quickly through inter-ministerial consultations, then was handed over to the Parliament and in June 1959 – less than 4 days from its petition – it was passed<sup>58</sup>.

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<sup>55</sup> *Ibidem*, p. 13–14.

<sup>56</sup> *Ibidem*, p. 40.

<sup>57</sup> *Ibidem*, p. 69–70.

<sup>58</sup> Act on suspension of some inheritance payments of 18 June 1959 (J/L of 1959 No. 36 item 227)

However, the results of the regulation were far from expectations. It turned out that the act on suspension of some family payments had a practical effect only in families at variance. In harmonious families the payments were still made despite their formal suspension<sup>59</sup>.

As mentioned before, the authorities started to intensively fight the partitioning of farms, as this phenomenon was considered the main obstacle in improvement of farms' productivity. Paradoxically it turned out that according to the research of the Agricultural Economy Institute published in 1959<sup>60</sup> farms below 3 hectares were far more productive per hectare than larger farms (from 10 to 14 hectares), while the productivity was decreasing as the size of the farm increased<sup>61</sup>. However, this data was not surprising, as the comparison in both cases was made using farms that did not employ additional work force but the ones on which only a single family worked. As was argued "The less land to farm the more time consuming and lucrative works, in plant or animal production, can be undertaken"<sup>62</sup>. It does not mean that the fragmentation of farms was a positive phenomenon, but it should be assessed separately in every case. The statement that the search for the optimum size of a farm should be made according to economic factors and not stiff legal norms and that the determining of an optimum size of a farm is impossible might sound trivial nowadays. The representatives of the party had a different opinion – not discouraged by statistics they continued works on regulations that were to stop the agricultural land fragmentation process, mostly by changes to the inheritance law.

The 1961 Civil Code draft for the first time introduced special rulings on inheriting farms, however they mostly concerned the division of inheritance. If the inheritance included a farm then it

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<sup>59</sup> AAN 285/434, p. 44.

<sup>60</sup> Statistical Yearbook 1959, p. 190 and the following.

<sup>61</sup> AAN 285/434, p. 200.

<sup>62</sup> *Ibidem*, p. 200. Minimum size of a farm granting livelihood to a whole family was about 2 to 3 ha. The Ministry of Agriculture set this size as a minimum below which it was prohibited to divide land, but only in reference to several regions in which the fragmentation was most widespread. Whereas the research of the Agricultural Economy Institute concerned all regions.

could have been given only to the heir that chose the profession of a farmer or who was qualified to run a farm and undertook to do so<sup>63</sup>. This ruling was copied in the 1962 Civil Code draft with minor amendments.

However, much more radical solutions, than those worked on since 1958, were implemented. The act of 1963 provided not only for omission of some types of statutory heirs when dividing a farm as an inheritance, but excluding them from inheriting in general<sup>64</sup>. The testator had no right to dispose of the farm in the testament in a way contrary to the act<sup>65</sup>. If there were no heirs entitled to inheritance, the farm would go to the State Treasury as a legal heir<sup>66</sup>. Solutions included in the act were later implemented in the Civil Code draft which was at the Parliamentary level at that time. The Civil Code passed on 23 April 1964 included special rulings on inheriting farms in the shape close to the regulation included in the act of 1963.

## 6. Conclusion

The influence of ideology and politics on Polish inheritance law was especially visible during the works on codification of civil law in the period from 1947 to 1964. However, as it turns out, most representatives of the doctrine were able to bypass the political determinants in order to keep a high legal standard. The only member of the Codification Commission who stood up for Marxist solutions was S. Szer. Jan Wasilkowski – the head speaker of the Civil Code assumed an intermediary stance. A clear majority of scholars and representatives of practice tried to save the classical inheritance law institutions by manipulating the political doctrine. By ideological justifications of the proposed legal solutions in fact

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<sup>63</sup> Article 1009 § 1 of the Civil Code draft of 1961.

<sup>64</sup> Act of 29 June 1963 on restriction of partition of farms (J/L No. 28, item 168).

<sup>65</sup> Article 18 item 1 of the act.

<sup>66</sup> Article 6 item 1 of the act.

they enabled to keep in the 1964 Civil Code most of the traditional inheritance law rules and at the same time opposed the transfer of the Soviet model.

Thanks to this struggle for keeping high standards of law most of the regulations of the Civil Code is valid until today. The Code of 1964 – despite the fact that it was created in difficult times for traditional civil law – derived its structure and most institutions from the inter-war period codification works. In countries that moved away from the classical concept of civil law (e.g. GDR or Czechoslovakia) the adaptation of civil codes to social and political transformations after 1989 was much more difficult or simply impossible<sup>67</sup>.

Unfortunately it was impossible to prevent the introduction of provisions on inheritance of farms into the Civil Code. Determination of authorities in conducting the new agricultural policy caused submission of inheritance regulations to the aim of increasing agricultural production.

## SUMMARY

### Politics and Inheritance Law. Endeavours to Keep Classical Rules of Inheritance Law in the Polish Civil Code

After the Second World War the Polish authorities used the inheritance law as a political instrument to shape and consolidate the socialist system. The influence of ideology and politics on Polish inheritance law was especially visible during the works on codification of civil law in the period from 1947 to 1964. Firstly, article presents a brief look at the evolution of inheritance law in Bolshevik Russia and the USSR. The author depicts attempts at implementation of the Soviet model to the Polish inheritance law in three areas: the group of statutory heirs, freedom of testation and in the reserve system. In all those areas endeavours to keep classical rules of civil law were undertaken. Most representatives of the doctrine were able to bypass the political conditions in order to keep a high legal standard. The author strives to show how the scholars tried to preserve the classical inheritance

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<sup>67</sup> W. Wołodkiewicz, *Na marginesie projektów zmian w polskim prawie spadkowym*, „Palestra” 2011, No. 1–2, p. 183–184.



law institutions by manipulating the political doctrine. By ideological justifications of the proposed legal solutions, in fact they enabled to keep in the Civil Code of 1964 most of the basic inheritance law rules of former regulation from 1946. Further remarks are devoted to the changes in inheritance of farms. Determination of authorities in conducting the new agricultural policy caused submission of inheritance regulations to the aim of increasing agricultural production.

**Keywords:** inheritance law, abolishing inheritance, freedom of testation, Civil Code of RSFSR, codification of civil law in Poland, Polish Civil Code from 1964.

