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Rejecting succession in Polish and Slovakian law

Introduction

The EU regulation on succession matters (Regulation (EU) No. 650/2012¹ of the European Parliament and of the Council, applicable from August 17, 2015) is one of the basic legal acts regulating the issue of cross-border succession. The Regulation introduces conflict-of-law rules related determining court jurisdiction, applicable law, unification of succession documents, recognition and enforcement of succession decisions. However, this act does not unify the norms of substantive succession law². Therefore, the legal constructions in substantive succession law – such as the basis of succession, the sequence and parts of succession from the deceased, the rules of liability for debts, as well as the declaration of acceptance or rejection of the succession – still differ within individual Member States of the European Union (succession law is not fully harmonized in the European Union).

¹ Regulation (EU) No. 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201 of 2012, hereinafter the Regulation), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0107:0134:EN:PDF> (accessed: 17.02.2014), more about see: R. Frimston, *The European Union Succession Regulation No. 650/2012*, „Estates, Trusts and Pensions Journal” 2013, No. 1, pp. 100–ii; M. Artigot-Golobardes, *Will Regulation 650/2012 simplify cross-border successions in Europe?*, „European Property Law Journal (EPLJ)” 2015, No. 1, pp. 22–55.

² I. Moryc, *Pojęcie sprawy dotyczącej spadku w prawie UE*, „Folia Iuridica Universitatis Wratislaviensis” 2017, Vol. 6(1), pp. 61–76; I. Nicolae, *Aspects of private law which are not enforced by the Regulation (EU) No. 650/2012*, „AGORA International Journal of Juridical Sciences” 2015, No. 4, pp. 60–67.

Although the discussion and work on the harmonization of succession law – due to the difficulties this process encounters (historical differences, social conditions, etc.) and current world events – have been postponed, it is still desirable to undertake research in this direction. This paper systematizes the provisions regarding the rejection of succession in Polish and Slovakian law.

Rejecting succession is an important issue because, similarly to the acceptance of succession, it is functionally related to the subsequent judicial confirmation of the acquisition of succession or the notarial certification of succession. This paper discusses the rejection of succession, recalling the main theses of jurisprudence and literature. The considerations carried out may be an incentive for further analyses, as well as serve legislators in improving the applicable regulations. The study also has a practical dimension, because it can be used in a situation where a Polish/Slovakian citizen is an heir in another country, in Slovakia or Poland, respectively³.

Declaration of acceptance or rejection of succession

Polish law

According to the provision of art. 925 of the Act of April 23, 1964, of the Civil Code⁴, the estate is acquired by an heir on the opening of the succession, that is on the moment of death of the deceased (Art. 924 of the PCC)⁵. This means that the estate is acquired by operation of law – regardless of the heir's knowledge of the fact and title of his or her appointment. However, taking into account the superior principle of civil law, i.e. the principle of autonomy of will, the acquisition of rights and obligations against the will of the interested entity is not possible. Therefore, based on art. 1012 and 1015 § 1 of the PCC, such an acquisition of the estate at the time of opening is temporary, and the final acquisition depends on the will of the person entitled to an inheritance⁶. The heir (a civil law entity appointed to inherit), within six months of the date on which he or she learns of the title under which he or she is named, may

³ In accordance with the rule expressed in art. 4 of the Regulation, the authority dealing with the succession applies the law of the country where the testator resided at the time of death, unless pursuant to Art. 22 of the Regulation, the testator made a will, in which, next to the testamentary dispositions, he included a statement on the choice of applicable law.

⁴ Act of April 23, 1964, The Civil Code (consolidated text, Journal of Law of 2020, item 1740, as amended), hereinafter: the PCC (Polish Civil Code).

⁵ E. Skowrońska-Bocian, *Prawo spadkowe*, Warsaw 2008, p. 36.

⁶ And as well, in two cases, also conditional, i.e., succeed by a conceived child (Art. 927 § 2 of the PCC) and by a foundation established by the testator in a testament (Art. 927 § 3 of the PCC); J. Ignaczewski, *Prawo spadkowe. Art. 922–1088 KC. Komentarz*, Warsaw 2004, p. 242; M. Pazdan, [in:] K. Pietrzykowski (ed.), *Kodeks cywilny*, Vol. II: *Komentarz do artykułów 450–1088*, Warsaw 2011, p. 1021.

submit a declaration of acceptance or rejection of succession. The final acquisition of the succession becomes effective, among other times, when the heir does not submit a declaration of rejection of the succession in accordance with the requirements set out in the PCC (e.g. as to the date and form). Lack of an heir's declaration within the indicated 6-month period from the opening of the succession is synonymous with accepting the succession under benefit of inventory (Art. 1015 § 2 of the PCC). Therefore, if an heir does not wish to inherit, it is essential to know the rules on rejection of the succession.

The PCC regulates the rejection of the succession in Book Four. Succession, Title V. Acceptance and Rejection of Succession (Art. 1012–1024 of the PCC). As seen, the content of the aforementioned articles refers to the rejection of the succession, and concerns the declarations themselves (their features, legal requirements, etc.), but as well as the rules for their submission and their effects, such as the defects in declaration of intent apply to both declarations, i.e. accepting or rejecting succession (Art. 1019 of the PCC), transmission (Art. 1017 of the PCC). Further considerations concern the rejection of succession.

Slovakian law

According to provision of Art. 460 of the Act. No. 40/1964 Call., of the Civil Code (hereinafter referred only as “Civil Code” and “CC”), inheritance is acquired upon the death of the deceased, which means, that under the Slovakian law, no legal act or decision of the entitled person to inherit is needed to acquire the inheritance⁷. This principle is called the principle of devolution, according to which no legal act of the heir or any decision is needed to acquire the inheritance; the transfer of rights and obligations from the testator to the heirs occurs at the moment of the death of the testator⁸.

However, the estate is not always acquired by the person entitled to inheritance. The reasons for such a situation are varied and depend on objective circumstances which arise irrespective of the intention of the person entitled to inherit (e.g. disinheritance, will), as well as on the subjective circumstances, where the person entitled to inherit excludes himself from inheritance by his own action (e.g. refusal of inheritance, incapacity to inherit)⁹.

Although the death of the testator has constitutive effects in relation to the acquisition of inheritance, it is a precondition for the acquisition of the inheritance that it is examined and confirmed by the court in the succession

⁷ I. Fekete, *Občiansky zákonník. Veľký komentár, 1. zväzok.– Všeobecná časť*, Žilina 2015, p. 14.

⁸ Decision of the Supreme Court of Czech Republic of June 5, 2002, reference No. 30 Cdo 2174/2000.

⁹ K. Raková, *Spôsoby uplatnenia dedičského práva prostredníctvom žaloby*, [in:] K. Gešková, *Žalobné právo. Zborník z medzinárodného vedeckého kongresu Trnavské právnické dni*, Trnava 2020, p. 114.

proceeding, which is regulated by Act No. 161/2015 Coll., Code of Extra-Contentious Litigation (hereinafter referred to as the “CMP”)¹⁰. According to the CMP, the person entitled to examine and confirm the acquisition of the inheritance is the notary, who acts as a court commissioner in the succession proceeding, exercising the powers of the court of the first instance. It is legally possible that, during the succession proceeding, certain circumstances arise that cause the person originally entitled to inherit will be excluded from inheritance. The purpose of the succession proceeding is therefore not only to determine the estate of the testator, identify the persons entitled to inherit, but also to examine whether there are the grounds for exclusion from inheritance and to confirm the inheritance. However, the confirmation of inheritance has only a declaratory effect and has no effect on the acquisition of the inheritance which takes place at the time of the deceased’s death.

In the succession proceeding, the notary will, based on the investigative principle applied in the CMP, ascertain the circumstances which cause the exclusion of the person entitled to inherit from succession. These circumstances will be declaration of rejecting the succession (Art. 463–468 CC), succession incapacity (Art. 469) and declaration of disinheritance (Art. 469a CC).

Comparative analysis results

The above content regarding the declaration of acceptance or rejection of succession allows to conclude that both laws constitute that acquisition of the inheritance take place at the time of the deceased’s death. At the same time, this specific automaticity of the acquisition in both systems is not absolute, namely the legal regulations provide for the possibility of submitting a declaration of rejection of succession, respectively in Polish law in the provisions of Art. 1012–1024 of the PCC, and in Slovakian law Art. 463–468 CC.

Declaration of rejecting the succession

Entities authorized to submit a declaration rejecting the succession

Polish law

Only the heir appointed to succession is entitled to submit a declaration of rejection of the succession. It can be a civil law entity, i.e. a natural person, as well as a legal person or an organizational unit without legal personality (a declaration rejecting the succession is submitted in accordance with the

¹⁰ Also relevant provisions of Act No. 323/1992 Coll. Act on notaries, applies.

rules of representation applicable to the given entity). In the case of statutory succession, the commune and the State Treasury cannot reject the succession (Art. 1023 of the PCC), which is connected with the so-called the principle of non-existence of heirless succession. Moreover, the succession cannot be rejected by the foundation established in the will, in the case of which such behavior would be contrary to the purpose of its establishment¹¹.

It should be emphasized that persons who succeed in the second and further order (so-called people less entitled to succession) cannot effectively reject the succession “in advance”, i.e. before they are appointed to succeed, i.e. when persons with a stronger succession are unwilling or unable to be heirs. Rejecting succession (anticipatory rejection) by a person who has not yet been appointed to succeed, and therefore less called to success, is a legal act performed on condition that the rejector becomes an heir. Such an act is absolutely invalid (Art. 1018 § 1 of the PCC)¹². Submission of a declaration of rejection of the succession by a person in relation to whom the period referred to in Art. 1015 § 1 of the PCC, is ineffective¹³.

The heir appointed to succeed may submit a declaration of rejection of the succession in person, but also through a proxy, and in certain situations only through a statutory representative. A power of attorney should be in writing with an officially certified signature (Art. 1018 § 3 of the PCC *in fine*). The legislator did not specify the scope of the power of attorney to reject the succession. The doctrine considers whether, apart from a special power of attorney¹⁴ (indicating not only the type of action, but also the testator), it is permissible to grant a generic power of attorney¹⁵ (including the authorization to submit declarations on the rejection of all successions for which the principal will be appointed). However, according to the prevailing opinion, it should be a special power of attorney¹⁶.

In the case of minors and fully or partially incapacitated persons (i.e. persons deprived of legal capacity and persons with limited legal capacity), a declaration of rejection of succession may be submitted by a statutory repre-

¹¹ J. Kremis, *Komentarz do art. 1012*, [in:] E. Gniewek (ed.), *Kodeks cywilny. Komentarz*, Warsaw 2008, p. 1593.

¹² Wider: T. Jasiakiewicz, *O dopuszczalności antycypującego odrzucenia spadku w prawie polskim*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2021, No. 3, p. 93 et seq.

¹³ Resolution of the Supreme Court of October 19, 2018, case reference No. III CZP 36/18, OSNC 2019/7-8/74.

¹⁴ Polish term „pełnomocnictwo szczególne”.

¹⁵ Polish term „pełnomocnictwo rodzajowe”.

¹⁶ K. Żok, *Komentarz do art. 1018*, [in:] M. Gutowski (ed.), *Kodeks cywilny. Komentarz*, Vol. I–III, 2021, Legalis; A. Stempniak, *Przyjęcie i odrzucenie spadku*, [in:] A.J. Szereda (ed.), *Notariat. Czynności notarialne*, 2021, Legalis, contrary: G. Górczyński, *Komentarz do art. 1018*, [in:] M. Fras, M. Habdas (eds.), *Kodeks cywilny. Komentarz*, Vol. VI: *Spadki (art. 922–1087)*, 2019, Lex.

sentative acting on the basis of a guardianship court permit¹⁷. Obtaining the consent of the guardianship court is required because the legal effects of the declaration of rejection of succession exceed the scope of ordinary activities, and may also threaten the property of the represented person (see: Art. 156 of the Family and Guardianship Code¹⁸ and this article in connection with Art. 178 § 2 of the Family Code)¹⁹. The need to obtain a guardianship court permit means that the statutory deadline for submitting a succession declaration (Art. 1015 § 1 of the PCC) may not be met (applying for a permit and obtaining it does not replace a succession declaration)²⁰. The legislator does not regulate this issue, and the judiciary indicated that the time limit provided for in Art. 1015 § 1 of the PCC may not end before the final conclusion of the proceedings for permission for the minor heir to submit a declaration of rejection of the succession. After the final completion of these proceedings, the minor's statement should be submitted immediately, unless this period has not yet expired²¹.

Slovakian law

Similarly, according to Slovakian law, only the heir appointed to the succession²² is entitled to submit a declaration of rejection of the succession. It can be a civil law entity, i.e. a natural person, as well as a legal person. In case of the inheritance of the State (the State according to Civil Code can inherit only by testamentary succession), the State is entitled to reject succession. In case the State receives the succession as a reason of non-existence of any heir (Art. 462 CC), the State cannot reject the succession.

The heir appointed to the succession may submit a declaration of rejection of the succession in person, but also through a proxy. The Civil Code specifies that for rejection of the succession there must be special power of attorney issued, authorizing specifically for rejection of the succession, therefore it's not sufficient to have the general power of attorney issued (Art. 463 sect. 2 CC). Also, doctrine many times stated that once having a special power of attorney

¹⁷ D. Celiński, *Oświadczenie o przyjęciu lub odrzuceniu spadku złożone przed notariuszem – wybrane zagadnienia praktyczne*, „Nowy Przegląd Notarialny” 2014, pp. 317–336.

¹⁸ Act of February 25, 1964, The Family and Guardianship Code (consolidated text, Journal of Law of 2020, item 1359, as amended), hereinafter: the Family Code.

¹⁹ B. Swaczyna, *Odrzucenie spadku nabytego przez dziecko*, [in:] E. Pecyna, J. Pisuliński, M. Podrecka (eds.), *Rozprawy cywilistyczne. Księga pamiątkowa dedykowana Profesorowi Edwardowi Drozdowi*, Warsaw 2013, p. 569 et seq., resolution of the Supreme Court of May 22, 2018, case reference No. III CZP 102/17, OSNC 2018, No. 12, item 110.

²⁰ G. Gorczyński, op. cit.

²¹ Resolution of the Supreme Court of May 22, 2018, case reference No. III CZP 102/17, OSNC 2018/12/110.

²² Art. 461 Sect. 2 of the Civil Code: „Inheritance is acquired by the will or by the law, or by both of them”.

granted for rejection of the succession, it doesn't authorize for the representation in the whole succession proceeding²³.

In the case of minors and incapable persons, declaration of rejection of the succession must be executed by a legal representative and approved by the court at the same time²⁴. Also according to the doctrine²⁵, such an approval must always assess the nature, type and value of the testator's property, particularly because the rejection of the succession is an irrevocable act, with extensive consequences for the heir.

The existence of conflict of interest between the heir and his representative is always assessed individually by a notary during the succession proceeding²⁶. If there is a conflict of interest between the heir and his representative, the notary must carry out an in-depth examination, which may lead to the exclusion of the representation. As for the representation of the minors in the declaration of rejection of the succession, different rules apply. According to the Civil Code, representation of the minors is excluded every time, if there is a risk of conflict of interests between the minor and his representatives. According to the doctrine, the possibility of existence of conflict of interests is always presumed in the proceedings involving both parent and a minor²⁷. It therefore results that in the case of representation of a minor in the declaration of rejection of the inheritance, the minor cannot be represented by any of his parents²⁸.

Comparative analysis results

Analyzing entities authorized to submit declaration of rejection of the succession in Polish law and in Slovakian law, it can be concluded that there are no significant differences in the regulations of both countries. It should be noted that, first of all, both regulations do not provide for the possibility of anticipatory rejection, and also both regulations limit the possibility of rejecting the inheritance by the State Treasury, i.e. when State Treasury is the only statutory heir. It is worth noting that in Polish law the legislature has not resolved the issue of the scope of the power of attorney, whether it should be a special power of attorney to reject the succession or it is permissible to grant a general power of attorney, leaving it to the interpretation and practice.

²³ R 12/81 (Z I, s. 516).

²⁴ I. Fekete, op. cit., p. 14.

²⁵ R 46/76.

²⁶ K. Raková, *Spôsob a rozsah zastúpenia dediča – hmotnoprávne východiská*, [in:] A. Szakács, T. Hlinka (eds.), *Bratislavské právnické fórum 2020: zastúpenie ako spôsob uplatňovania subjektívnych práv* [online], Bratislava 2020, p. 114.

²⁷ Decision of the Supreme Court of the Czech Republic of October 9, 2003, case reference 21 Cdo 890/2003.

²⁸ Art. 22 sect. 2 of the Civil Code.

However, according to the dominant view, it should be a special power of attorney. Meanwhile, in Slovakian law it is indicated that in this case it must be a special power of attorney (Art. 462 CC).

Declaration period

Polish law

A declaration on the acceptance or rejection of succession may be made within six months following the day when an heir (statutory and testamentary) became aware of the title of his succession entitlement (Art. 1015 § 1 of the PCC). Such a moment is usually the moment of learning about the death of the testator, i.e. the date of the testator's death (opening of the succession, Art. 924 of the PCC)²⁹ together with the awareness of the family relationship between the heir and the testator, and in the case of testamentary succession – knowledge about the existence and content of the will (about the appointment to succession in the testament)³⁰. What is important is that the heir is not informed by the court or other authority about the title of his appointment to succession, and no one instructs the heir on the possibility of submitting a declaration of rejection of succession.

As follows from Art. 1015 § 1 of the PCC, the indicated six-month deadline for submitting the declaration is not fixed (depends on finding out about the title of succession entitlement). Its course may start at a different time for each heir, e.g. it does not start if the heir, knowing about the existence of persons more strongly appointed than him, at the same time does not know that they do not want or cannot succeed³¹. It can be pointed out that in the case of a child, the time limit for submitting a declaration of rejection of succession begins to run when one of the parents has become aware that a person under his parental authority has been appointed to succeed. If a child succeeds as a result of the rejection of the succession by one of the parents, there is no doubt that it is this parent who first learns about the appointment of his successor to succeed³².

It is important that if the heir does not know about the death of the testator, the time limit for submitting a declaration of rejection of the succession does not start to run. Therefore, if the circle of heirs appointed to the succession includes a person whose place of residence is unknown, and therefore it

²⁹ Decision of the District Court in Gdańsk of November 11, 2012, case reference No. III Ca 205/12, Lex No. 1714945.

³⁰ J. Ignaczewski, *op. cit.*, p. 244.

³¹ *Ibidem*, p. 245.

³² Wider: A. Kallus, *Zezwolenie na odrzucenie spadku przypadającego osobie małoletniej*, „Przegląd Sądowy” 2016, No. 7–8, pp. 112–120.

is not possible to conclude that the time limit for submitting a declaration of rejection of the succession for such a person has started at all (especially since it has expired), then the proceedings for confirmation of succession acquisition cannot be completed (it seems that they should be suspended, e.g. pursuant to Art. 176 of the Civil Procedure Code³³). *De lege ferenda*, it is necessary to include the indicated circumstance in the provision regulating the declaration period, which could consist in introducing the fiction of the expiration of the deadline for submitting the declaration, while specifying the conditions for its adoption.

The discussed deadline for submitting a declaration of rejection of succession is a mandatory deadline for substantive law. That's why the provisions of Art. 110–116 of the PCC apply to it³⁴. The expiry of the deadline results in the loss of the right to effectively submit a declaration of rejection of the succession. In order to meet the deadline for submitting a declaration of rejection of succession, a declaration must be made in court or before a notary public. The formal submission of the declaration document to the probate court may take place later³⁵. In accordance with the applicable provisions of the PCC, the absence of the heir's declaration within the indicated time limit shall be tantamount to acceptance of the succession with the benefit of inventory (Art. 1015 § 2 of the PCC).

Slovakian law

According to Slovakian law, if the person appointed to succession wants to inherit, no declaration of acceptance is needed. However, if he doesn't want to do that, the declaration of rejection of the succession has to be issued and addressed in the form and within the period set by the law. The Civil Code sets one month period for declaration of rejection of the succession, following the date when the heir was notified by the notary about his right to reject the inheritance and of its consequences. This period runs separately for each heir, so if there is more than one heir, each heir must be notified and submit declaration of rejection of the succession individually.

The purpose of the time-limit for rejection of the succession is to set a time-limit within which the heir may reject the succession, the expiry of which gives rise to the fiction of an unrejected succession and, at the same time, to the loss of the right to make an effective declaration of rejection of the succession.

³³ Act of October 31, 2016, Code of Civil Procedure (consolidated text, Journal of Law of 2021, item 1805, as amended), hereinafter: the Civil Procedure Code.

³⁴ Decision of the Supreme Court of May 25, 2012, case reference No. I CSK 414/11, Lex No. 1254617.

³⁵ Decision of the Supreme Court of September 24, 2015, case reference No. V CSK 686/14, Lex No. 1816581; decision of district court in Gdańsk of November 11, 2012, case reference No. III Ca 205/12, Lex No. 1714945.

For the rejection to cause the consequences referred above, it must be submitted to the notary on the last day of the prescribed period at the latest, any delay cannot be excused. According to the doctrine, after the expiry of the time limit given for the rejection, it cannot be extended. However, this does not apply to the extraordinary situations, when it can be extended by the notary providing that the extension was executed prior to its expiration. The assessment of the extraordinary situations depends, according to the doctrine, on the individual circumstances of the case. According to the doctrine, it might be serious circumstances on the part of the heir which prevented him from refusal, such his serious illness, or permanent residence in the territory of another state, causing him difficulties to decide within a given period³⁶.

If there is a person who is reasonably presumed to be the testator's heir but is either not identified or whose address is unknown, the notary shall issue a public notice, including information on the right of that person to reject the succession, within a period not less than one month from its publication on the official notice board of the notary's office as well as on the electronic notice board. A person who fails to do so will not be considered in the succession proceeding, which will then continue without her. However, the court-appointed guardian may not refuse the succession on behalf of her³⁷.

Comparative analysis results

With regard to the declaration of rejection of succession period, significant differences can be noted in the regulations in the countries in question. The only common rule is that the mentioned period is separately for each heir (may start at different time for each heir). The Polish law does not regulate the official way to inform (to notify) the heir about his right to reject the inheritance. Instead, providing that the declaration period starts following the day when an heir became aware of the title of his succession entitlement. Whereas, the Slovakian law provides that the declaration of rejection succession period starts following the date when heir was notified by notary about his right to reject. According to Slovakian law, establishing the beginning of the deadline is undoubted, which cannot be stated under Polish regulations. Finally, the time-limit for rejection also varies in both countries, it is respectively – six months in Polish law, and one month in Slovakian law. It is important to note, that according to the Polish law if the heir is a person whose place of residence is unknown it might be not possible to conclude that declaration period started, and what is more there is no special regulation for such situation. Whereas, according to the Slovakian law, this issue is settled, as indicated above.

³⁶ Decision of the Supreme Court of Czech Republic of December 12, 2011, case reference No. 21 Cdo 2149/2009.

³⁷ Art. 468 Civil Code.

Declaration submission procedure (competent authority)

Polish law

A declaration of a rejection of succession can be made both before the court (at or outside the hearing) and before a notary public³⁸. The heir has a choice as to where/before which authority he will make his declaration.

The competent jurisdiction of the court is provided for in Art. 640 § 1 and § 2 of the Code of Civil Procedure, from which it follows that the declaration is made in the district court in whose judicial district a declarant has his place of residence or stay, or in the court of succession in the course of proceedings for the determination of succession rights. Polish law does not regulate the competence of notaries, so the heir has full freedom to choose the notary to whom he or she will submit the declaration.

Slovakian law

As it was stated above, succession proceeding under the Slovakian law is regulated by the Code of Extra-Contentious Litigation in the Art. 158–219, whereby the notaries are authorized to act and decide as the court of the first instance. The Notarial Code is also a significant piece of legislation³⁹, which regulates the competences of the notaries in the succession proceeding. An important element of the succession procedure is its binding effect, the relatively strict approach given to the extra-contentious procedure is an indication of its importance and the level of protection, assigned by the legislator. Inheritance cannot be dealt with otherwise than through the intervention of the court⁴⁰.

At the beginning of the succession proceeding, the notary is obliged to notify the heirs appointed to the succession about their right to reject the succession and its consequences.

Comparative analysis results

As follows from the above, both analyzed regulations differ in reference to the competent authority before whom a declaration of a rejection of succession can be made. In the Polish law, the heir has a choice as to declare before the court or before a notary public, whereas under the Slovakian law only the notaries are authorized to act in such cases.

³⁸ B. Kordasiewicz, [in:] B. Kordasiewicz (ed.), *Prawo spadkowe*, series: System Prawa Prywatnego, Vol. X, Warsaw 2009, p. 402.

³⁹ Act No. 323/1992 Call. on Notaries, as amended (hereinafter „NP”).

⁴⁰ S. Ficová, a kol., *Občianske právo procesné. Základné konanie*, Bratislava 2008, p. 305.

Form of declaration

Polish law

A declaration of rejection of the succession is a unilateral legal act. The form of the declaration is specified in Art. 1018 § 3 of the PCC, according to which such a declaration may be made in two ways, i.e. orally or in writing with an officially certified signature, both in the case of its submission to the court and to a notary public⁴¹. Failure to comply with the requirement of a specific form of the succession declaration in the form of a letter with an officially certified signature renders the act invalid (Art. 73 § 2 of the PCC).

A record is drawn up of a declaration made orally in court (Art. 641 § 4 of the Code of Civil Procedure). If such a declaration has been made in a court other than the succession court, it should be sent immediately to the succession court, which is the final depository of the declaration of rejection of the succession (Art. 640 § 1 sentence 2 of the Code of Civil Procedure).

An oral declaration made before a notary takes the form of a notarial deed. Pursuant to the provision of Art. 1018 § 3 of the PCC, it is also permissible to submit a declaration to a notary in the form of a letter with a notarized signature, i.e. hypothetically, there may be a situation in which the heir officially certifies the signature in one notary public in a letter containing a declaration of rejection of the succession, and then this declaration – already in a special form – will be submitted to another notary⁴². It seems that in practice, submitting a declaration of rejection of succession in writing with a signature officially certified before a notary public is not applicable. The notary, both in the case of receiving the declaration in oral form and in the form of a letter with a notarized signature, is obliged to send a declaration of rejection of the succession to the probate court (Art. 640 § 1 sentence 2 of the Code of Civil Procedure)⁴³.

Slovakian law

A declaration of rejection of the succession is a unilateral legal act which cannot be revoked by the heir. The form of declaration is specified in the Art.

⁴¹ G. Karaszewski, *Komentarz do art. 1018*, [in:] M. Balwicka-Szczyrba, A. Sylwestrzak (eds.), *Kodeks cywilny. Komentarz*, 2022, Lex.

⁴² Wider: G. Gorczyński, op. cit.; K. Robaczewska, *Oświadczenie o odrzuceniu spadku w praktyce notarialnej*, „Rejent” 2019, No. 5, pp. 96–107; Resolution of the Supreme Court of November 22, 2013, case reference No. III CZP 77/13, OSNC 2014, No. 9, item 86; Decision of the Supreme Court of July 2, 2015, case reference No. V CSK 641/14, Lex No. 1762492; compare: Decision of the Supreme Court of November 10, 2006, case reference No. I CSK 228/06, OSNC 2007, No. 7–8, item 123.

⁴³ Wider: W. Borysiak, P. Księżak, *Forma złożenia oświadczenia o przyjęciu lub odrzuceniu spadku przed notariuszem*, „Rejent” 2011, No. 7–8, pp. 67–85.

463 of the CC, according to which such a declaration may be issued either personally at the notary office or in writing form send the notary⁴⁴, that was appointed to hear the succession proceeding. If the declaration is addressed to a notary which was not appointed by the court, the notary must forward this declaration to the relevant one⁴⁵.

If the rejection is issued in writing, no signature verification is required⁴⁶, however for both forms of rejection the general requirements for its validity under the Civil Code must be met. Firstly, the person who declares the rejection of the succession must have full legal capacity (Art. 38/1 CC) and the declaration must be exercised freely, i.e. without pressure, seriously, clearly and certainly, otherwise it shall be deemed null and void. The same applies to failure to comply with the form prescribed by law (Art. 40/1 of the CC).

As regards the prescribed form of the declaration, the law does not specify it any further.

Comparative analysis results

It can be concluded that in the form issue, the analyzed national regulations do not differ in general. In both systems, the declaration in question may be made either orally or in writing. However, if a written declaration is submitted to a notary (Polish law) or to a notary that was not appointed by the court (Slovakian law), this declaration should be forwarded immediately to the competent authority, respectively to the succession court (Polish law), or to the notary that was appointed to hear the succession proceedings (Slovakian law). It is important that in the Slovakian law, the rejection that is issued in writing, does not provide any signature verification.

Content of a declaration of rejection of succession

Polish law

The content of the declaration of rejection of the succession is specified outside the substantive provisions of civil law (outside the PCC), namely it has been indicated in the provision of Art. 641 of the Code of Civil Procedure. According to aforementioned regulation, a declaration of rejection of the succession should contain: 1) the name and surname of the testator, the date and place of his death and the place of his last residence; 2) the title of the succes-

⁴⁴ Art. 463 Sect. 1 of the Civil Code: „Heir may refuse inheritance. Refusal must be executed either by the oral declaration at the court or by a written declaration sent to the court”.

⁴⁵ J. Bajánková, [in:] M. Števček, J. Bajánková, F. Sedlačkov, M. Tomašovič, a kol., *Občiansky zákonník II. § 451–880. Komentár*, Praha 2015, p. 1633.

⁴⁶ Z I (p. 524).

sion appointment; and 3) content of the submitted declaration (§ 1). In addition, the declaration should include a list of all persons belonging to the circle of statutory heirs known to the person making the declaration, as well as any wills, even if the person making the declaration considered them invalid, and data on the content and place of storage of the wills (§ 2). It can be added that when submitting a declaration of rejection of the succession, it is also necessary to submit a copy of the testator's death certificate or a final court decision on declaring him dead or confirming death, if such evidence has not already been submitted (§ 3).

Slovakian law

The Slovakian law doesn't specify the content of the declaration of rejection of the succession, however the general requirements mentioned above for the validity of the legal act must be met.

According to the law, the heir may not attach any objections or conditions to the declaration of rejection, otherwise this would cause the declaration to be ineffective⁴⁷. The same applies to the presumptions or reservations included in the declaration of rejection. The heir who has rejected the succession cannot designate the person who will acquire a share in the succession instead of him, since the succession cannot be rejected in favor of a particular person. If that were the case, such a rejection would not have the effect of a rejection of the succession⁴⁸. The most common reasons why people reject the succession includes overdebteness of the deceased, personal reasons, but also the fact that the object of the inheritance is not attractive to the heir.

Comparative analysis results

On the basis of the content of a declaration of rejection of succession, it should be stated that the Polish law regulates this issue in detail (Art. 641 of the Code of Civil Procedure), whereas Slovakian law leaves it to general legal rules, exactly the general requirements for the validity of the legal act. Therefore, in this respect, the provisions of Polish law significantly formalize the declaration of rejection of succession.

⁴⁷ Art. 466 of the Civil Code: „The heir may not attach reservations or conditions to the rejection of the succession; nor may he reject the succession only in part. Such declarations shall not have the effect of a refusal of succession”.

⁴⁸ *Ibidem*.

Other features of a declaration of rejection

Polish law

Apart from the features of the declaration of rejection of succession discussed above, it should be pointed out that this declaration may not be submitted on condition or subject to the deadline (Art. 1018 § 1 of the PCC). Such limitation is justified because the declaration of rejection of succession is to stabilize the succession, first of all, it leads to the determination of the legal succession.

In addition, a declaration of rejection of succession cannot be revoked (Art. 1018 § 2 of the PCC). Such a declaration from the moment of its submission – if it is valid – has legal effects. Therefore, the declaration intended to amend the previously submitted declaration should be considered non-existent. On the other hand, if two different declarations are submitted within the deadline (i.e. a declaration of rejection of the succession and a declaration of acceptance of the succession), the declaration made later is considered non-existent⁴⁹.

Another important feature of the declaration of rejection of the succession is – in principle – its indivisibility. However, the legislator regulated situations in which partial acceptance and partial rejection of succession is allowed (Art. 1022 of the PCC, Art. 1014 § 1 and § 2 of the PCC)⁵⁰. Pursuant to the provision of Art. 1022 of the PCC, an heir called to the succession both by a will and by the law may reject the succession as a testamentary heir and accept it as a statutory heir. Then, in accordance with Art. 1014 § 1 of the PCC, a share in the estate falling to the heir under substitution may be accepted or rejected regardless of whether the share in the estate which falls to that heir under another title is accepted or rejected. Finally, in accordance with the provision of art. 1014 § 2 of the PCC, an heir may reject the share in the estate falling to him by way of accrual, and accept the share falling to him as a named heir. The indicated cases concerns various titles of invocation to succession (Art. 1022 of the PCC), substitution (Art. 963 of the PCC) and accrual (Art. 965 of the PCC). Apart from those discussed above, the heir cannot partly accept the succession and partly reject it. The rule is that the heir, by virtue of a single act, enters into all the rights and obligations of the deceased.

It is also worth noting that the most common motive for rejecting the succession are economic reasons (rejection of the succession is considered as the best way to avoid liability for debts), and less often moral and personal reasons (e.g. injury to the person of the testator). Actually, from the point of

⁴⁹ W. Borysiak, *Komentarz do art. 1018 k.c.*, [in:] K. Osajda, W. Borysiak (eds.), *Kodeks cywilny. Komentarz*, 2022, Legalis.

⁵⁰ Wider: B. Kordasiewicz, [in:] B. Kordasiewicz (ed.), *op. cit.*, p. 402.

view of the law, it does not matter for what reason the heir decides to submit a declaration of rejection of the succession⁵¹. One type of exception is a situation where the heir rejected the succession to the detriment of creditors, because in this case the legislator granted each of the creditors whose claim existed at the time of rejection of the succession the right to demand that the rejection of the succession be considered ineffective in relation to the given creditor under the provisions of protection of creditors in the event of the debtor's insolvency (Art. 1024 of the PCC)⁵².

Slovakian law

A declaration of rejection of the succession is an irrevocable legal act, which means that it cannot be revoked once it has been issued. At the same time, the rejection applies to the entire estate of the deceased, even unknown to the heirs at the time of the succession hearing. The declaration of refusal of succession is also non-transferable, which means that it is a purely personal right of the heir concerned, to be exercised by him (*actus personalissimus*). The only exception is if the heir dies before his declaration of rejection of the succession, in this case the right to declare the rejection of the succession passes to his heirs.

The rejection must include the whole inheritance, the heir cannot reject only part of it, nor can he reject only part of his share of the succession. At the same time, the heir cannot reject only a testamentary inheritance and not an intestate inheritance and *vice versa*. Such a declaration of rejection would not have any effect.

A declaration of rejection of the inheritance cannot be validly revoked⁵³, even if the time-limit set by the law for the declaration of rejection has not elapsed. If the declaration is subject to the approval of the court (in the case of a minor), the declaration may be revoked until this approval⁵⁴.

At the same time, inheritance cannot be rejected by the heir who has made it clear by his conduct that he does not wish to do so⁵⁵. The assessment of the heir's conduct always depends on the individual circumstances, according to the case-law, it might be activities such as disposing with the testator's funds before the rejection, liquidating testator's property, receiving, or recovering the testator's claims⁵⁶. However, according to the doctrine, it does not include

⁵¹ *Ibidem*, p. 401.

⁵² Wider: E. Lewandowska, *Acceptance and rejection of succession and the detriment of creditors*, [in:] S. Ficova, M. Ivanco, K. Rakova (eds.), *Dedičské právo v hmotnoprávných a procesnoprávných súvislostiach*, Bratislava 2022, pp. 199–213.

⁵³ Art. 467 CC.

⁵⁴ J. Bajánková, [in:] M. Števček, J. Bajánková, F. Sedlačkov, M. Tomašovič, a kol., *op. cit.*, p. 1639.

⁵⁵ Art. 465 of the Civil Code.

⁵⁶ Decision of the Supreme Court Czech Republic of December 12, 2011, case reference No. 21Cdo 2149/2009.

activities by which the heir tried to prevent damage to the property left by the testator (e.g. keeping things in safe custody, taking care of animals kept by the testator, picking fruit, etc.)⁵⁷.

Comparative analysis results

Taking into account other features of a declaration of rejection, it can be concluded that both analyzed regulations do not allow revoking the submitted declaration. It is worth noting that in Polish law, although the general principle is the indivisibility of the mentioned declaration, depending on the title of inheritance, the heir may accept the inheritance success in one title and reject the inheritance in another (see: Art. 1022, Art. 1014, Art. 963, Art. 965 of the PCC analyzed above). Slovakian law does not provide for such a solution.

Consequences of rejecting succession

Polish law

The right to reject the succession provided for by law, although limited in time, creates the possibility of *ex tunc* annihilation of its acquisition under the law. As stipulated in Art. 1020 of the PCC the effect of submitting a declaration of rejection of the succession is the exclusion of the heir from inheritance as if he had not lived to see the opening of the succession. It should be understood that the person making the declaration is not entitled to any rights arising from the succession, nor is burdened with debts⁵⁸. It is therefore assumed that the heir who rejected the succession never acquired it, i.e., directly from the opening of the succession, it was passed on to the other heirs who finally succeeded it⁵⁹.

It should be emphasized that the rejection of the succession has an effect in relation to the specific title of the appointment to succession⁶⁰. This means that, for example, the effect of the child's rejection of the succession from the father does not extend to, for example, the child's inheritance from the father's parents (Art. 931 § 2 of the PCC) or the father's siblings (Art. 932 § 5 of the PCC). In the mentioned cases, the heir (child) inherits the succession under his own law, directly after the testator, and not after his ascendant (father).

⁵⁷ Ibidem.

⁵⁸ J. Ignaczewski, op. cit., p. 254.

⁵⁹ J. Kosik, [in:] J.S. Piątkowski (ed.), *System prawa cywilnego*, Vol. IV: *Prawo spadkowe*, Wrocław 1986, p. 288.

⁶⁰ Decision of the Supreme Court of June 15, 2016, case reference No. II CSK 529/15, Lex No. 2057350.

The effects of the declaration of rejection of the succession, apart from the fact that the heir is excluded from succession as if he or she had not lived to see the opening of the succession, include: a change in the title of succession (e.g. rejection of the succession by the sole testamentary heir will lead to succession by the statutory heirs), change in the size of the shares of individual heirs (as a result of an increase), as well as a change in the circle of persons seeking succession.

It is worth noting that Polish law does not provide for the rejection of the succession in favor of a specific person. The result of the rejection of the succession is always the application of the succession rules resulting from the law.

Slovakian law

As mentioned already, rejection of the succession is an irrevocable act which excludes the appointed heir from the succession. In such a case, instead of appointed heir inherits either testamentary heir or, if there are none, the intestate heir according to the intestate succession regulations.

Declaration of rejection of the succession causes the heir is assumed as not alive at the time of the dead of the testator. The rejection of the succession applies not only to the testator's property known at the time of the rejection but also to the property which becomes apparent lately during the subsequent succession proceeding⁶¹. There is no excuse that the person who rejected the inheritance did not know the whole succession at the time of the declaration of the rejection of the inheritance.

Succession also cannot be rejected by a person who is restricted in this decision by law or by a court, i.e. who has been restricted in the right to dispose of his or her property. This includes the appointed heir whose property has been detained in criminal proceedings, or who has been sentenced to confiscation of his property. In the case of the heir whose property has been declared bankrupt, his right to reject the succession is subject to the consent of the trustee of the estate in bankruptcy⁶².

Comparative analysis results

The main and the common for both laws consequence of rejecting succession is treatment of the heir as he or she is not alive at the time of the dead of the testator (at the moment of opening of the succession). That's mean that heir who rejected the succession never acquired it, so he or she is excluded, what causes that the circle of heirs change.

⁶¹ R 37/1974.

⁶² Decision of the Supreme Court Czech Republic of June, 28, 2007, case reference No. 29 Cdo 1025/2005.

Summary and conclusions

The analysis carried out in this paper show transparently the rejection of succession in Polish and Slovakian law. Cited regulations, jurisprudence and views of the doctrine of both countries allow to the following conclusions. The idea of rejection of succession is equal. The main difference refers to the procedure. Above all, according to the Polish law, a declaration of a rejection of succession can be made both before the court (at or outside the hearing) and before a notary public, wherein the heir is the one who has a choice as to where/before which authority he will make his declaration. While, according to Slovakian law, the notaries are authorized to act and decide as the court of the first instance, also in case of rejection of succession.

What is worth to note, that Polish law in an imprecise way regulates a declaration of rejection period. Namely, such a declaration may be made within six months following the day when an heir (statutory and testamentary) became aware of the title of his succession entitlement, which basically means the moment of learning about the death of the testator, i.e. the date of the testator's death. On the contrary, the Slovakian law, precisely regulates indicated period. The law sets one month period for declaration of rejection of the succession, following the date when the heir was notified by the notary about his right to reject the inheritance and of its consequences. Although this solution may raise objections, e.g. in a situation where the person notified by the notary public is to be a person whose place of residence is unknown, it seems that the Slovakian law also provides an answer to this circumstance. As it was indicated, if there is a person who is reasonably presumed to be the testator's heir but is either not identified or whose address is unknown, the notary shall issue a public notice, including information on the right of that person to reject the succession, within a period not less than one month from its publication on the official notice board of the notary's office as well as on the electronic notice board. A person who fails to do so will not be considered in the succession proceeding, which will then continue without her. It seems that the Polish legislator should consider changes according to period of a declaration of rejection of succession, and it is desirable to refer to the situation when the heir's place of residence is unknown.

Furthermore, it is worth noting that the form of declaration of the rejection of succession differ in both countries. According to Polish law, such a declaration may be made in two ways, i.e. orally or in writing with an officially certified signature, both in the case of its submission to the court and to a notary public, whereas in Slovakian law such a declaration may be issued either personally at the notary office or in writing form send the notary, that was appointed to hear the succession proceeding. It is important that in the Slovakian law, the rejection that is issued in writing, does not provide any signature verification.

The difference in the discussed regulations is the lack of provision that create a detailed content of the declaration of rejection of the succession in the Slovakian law. There are general requirements, and as well accepted in practice. Meanwhile, the Polish law explicitly mentions what shall such a declaration contain (Art. 641 of the Code of Civil Procedure). It is difficult to judge which solution in this case is better – is it better leaving more freedom in the creation of the declaration, or, as in Polish law, determining its content.

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Summary

Rejecting succession in Polish and Slovakian law

Keywords: law, succession, rejection of succession, heir, harmonization of succession law.

The purpose of this article is to systematize the provisions regarding the rejection of succession in Polish and Slovakian law and to introduce the discussion but also to initiate the resumption of work on the harmonization of succession law in this area. Therefore this paper discusses the rejection of succession, recalling the main theses of jurisprudence and literature that are applicable for Polish and Slovakian regulations. In particular, attention was paid to the entities authorized to submit a declaration of acceptance or rejection of succession, the declaration period, the declaration submission procedure, the declaration form, the content of the declaration and finally other features, i.e. the declaration may not be submitted on condition, cannot be revoked, is non-transferable, must include the whole inheritance, etc. As a conclusion, it was noted that the idea of rejection of succession is equal, but the main difference refers to the procedure between regulations of both countries.

Streszczenie

Odrzucenie spadku w prawie polskim i słowackim

Słowa kluczowe: prawo, spadek, odrzucenie spadku, spadkobierca, harmonizacja prawa spadkowego.

Celem niniejszego artykułu jest usystematyzowanie przepisów dotyczących odrzucenia spadku w prawie polskim i w prawie słowackim, wprowadzenie do dyskusji, ale także zainicjowanie wznowienia prac nad harmonizacją prawa spadkowego w tym zakresie. Wobec tego w artykule zanalizowano odrzucenie spadku, przywołując główne tezy orzecznictwa i literatury, które mają zastosowanie do regulacji polskich i słowackich. W szczególności zwrócono uwagę na podmioty uprawnione do składania oświadczenia o przyjęciu lub odrzuceniu spadku, okres składania oświadczenia, tryb składania oświadczenia, formę oświadczenia, treść oświadczenia i inne cechy, tj. że oświadczenie nie może być złożone pod warunkiem, nie może być odwołane, jest niezbywalne, musi obejmować cały spadek itp. Zauważono, że idea odrzucenia spadku jest tożsama, ale zasadnicza różnica dotyczy trybu postępowania w przepisach obu państw.