

SELECTED INSTITUTIONS OF INHERITANCE LAW
IN JUDICIAL PRACTICE – ON THE EXAMPLE
OF DECLARATION OF ACCEPTANCE OR REJECTION
OF INHERITANCE (IN RELATION TO ACHIEVEMENTS
OF PROF. J. GWIAZDOMORSKI

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Summary. The Civil Code and the regulations of the inheritance law during the period of its validity, stopped being only „*law on book*” and became „*law in action*”, including proceedings of making the statement about heredity acceptance or rejection. They created a specified jurisprudence, making the patterns of civil legal behavior for citizens, to which the works of Professor Jan Gwiazdomorski contributed. Their thoroughness of the analyses, the high quality of phrasings, the clearness of terminology desygnatum, fidelity to the law and completeness of scientific documentation as Polish as a foreign, remains the model for the future generation of the civil lawyers.

Key words: Jan Gwiazdomorski, non-litigious proceedings, inheritance, heredity acceptance and rejection, appeal, amendment

I. I do not feel competent enough to speak on many subjects, although they are certainly vital for scientific representatives of civil law. However, the purpose of my discussion is first to clarify the issues in the field of rules of procedure, but because the boundaries are fluid, therefore, I must mention some of the issues that lie at the interface of these two fields

II. Commonly emphasized are associations of inheritance law and family law, which were constantly stressed by J. Gwiazdomorski, and he expected that these standards would bond and strengthen family ties¹. Therefore, while drafting the Bill of inheritance law², the Author argued that these elements must be reflected in determining criteria for deciding on, *inter alia*, the statutory succession, the circle of legal heirs, the order of succession, the freedom of disposition *mortis causa*, or any statutorily authorized restrictions on that freedom. He re-

¹ J. Gwiazdomorski, *Prawo spadkowe*, Warszawa 1959, p. 20.

² In 1945, J. Gwiazdomorski prepared, at the request of the Ministry of Justice, the Bill of Inheritance Law, which became the basis for the Decree of 8 Oct. 1946 unifying this area, and then, the Civil Code of 1964 adopted most of those solutions.

ferred in this regard to E. Till³, who stressed the close relationship of the property relations with the individual's rights, which are calculated for a time, independent of the usually random length of human life. He believed, at the same time, that the death of the entitled person should not lead to their termination, and each potential testator should be granted the freedom of disposition of their property, and in case of absence of such a disposition intestate succession (*ab intestato*) of a relative should be provided for. That is why J. Gwiazdomorski⁴ consistently put forward the proposal that the group of the heirs should include the so-called foster-children, considering the scale of this phenomenon in Poland. A step in the right direction, whose precursor was J. Gwiazdomorski (see Art. 46 of the Bill of Inheritance Law of 1946 of His authorship), was to broaden the circle of heirs by stepchildren (Article 934¹ of the Civil Code (CC)), which was dictated not only by fairness, but also by the belief that it would serve strengthening of family ties, and it was consistent with the idea of the proper economic use of the testator's property⁵.

As a subject of theoretical discussions, there is also legislation on joint property of inheritance, which has been the object of criticism. It was already J. Gwiazdomorski⁶ who alleged that the solution adopted in the Civil Code was excessively brief and certain provisions were vague (e.g., Art. 1036 of the CC). The source of many doubts and difficulties, both interpretative and practical, is also the provision of Art. 1035 of the CC, with reference to the provisions on co-ownership in fractional parts. Additionally, the institution of liability for inheritance debts is regulated in the binding Civil Code in an insufficient way. It does not provide the heirs with the instruments enabling them to be able to have liability only within the limits specified in the statute. The judicial practice shows cases where heirs are liable for individual inheritance debts not equally, and some debts are not known at all. The institution, which would remove the danger to contribute to the property debts out of own assets while protecting creditors at the same time, could be convocation of the inheritance creditors, proposed by J. Gwiazdomorski⁷. This role cannot be met by the truncated provi-

³ E. Till, *Prawo prywatne austriackie*, Vol. VI, Lwów 1904, p. 2.

⁴ J. Gwiazdomorski, *Dziedziczenie ustawowe w projekcie kodeksu cywilnego PRL*, in: *Materiały dyskusyjne do projektu kodeksu cywilnego Polskiej Rzeczypospolitej Ludowej. Materiały sesji naukowej 8–10 XII 1954*, ed. J. Wasilkowski, Warszawa 1955, p. 230.

⁵ S. Wójcik (*Ochrona interesów jednostki w polskim prawie spadkowym w zakresie powołania do dziedziczenia*, „Zeszyty Naukowe UJ – Prace Prawnicze”, Kraków 1981, Vol. 98, pp. 177–178 and 180–181) postulated, developing to some extent the thought of J. Gwiazdomorski, to include into the circle of the statutory heirs foster-children, both minors and adults, who remained dependent on the testator for a long time, at least for one year. These individuals would be statutory successors similarly to the children of the testator.

⁶ J. Gwiazdomorski, *Dwa problemy z zakresu wspólności spadkowej*, PiP 1977, No 3, pp. 137 et seq.

⁷ J. Gwiazdomorski, *Prawo spadkowe w kodeksie cywilnym PRL*, PiP 1965, No. 5–6, p. 724.

sion of Art. 1032 of the CC⁸ and the interpretation of its contents raises important questions, which are not sufficiently reflected in judicial decisions⁹.

In direct connection with the institution of convocation remains the question of introducing joint and several liability of all the heirs for the inheritance debts, also after the division of the inheritance, regardless of its form. The present wording of Art. 1034 § 2 of the CC leads to a direct weakening of the liability that undermines the legitimate interests of the inheritance creditors, which was also stressed by J. Gwiazdomorski¹⁰. Similarly, the Supreme Court in its resolution of 1 Mar. 1968, III CZP 10/68¹¹ expressed the opinion that co-ownership, whether due to inheritance or due to another reason is not advantageous from the socio-economic view.

This perforce encyclopaedic overview of a certain segment of the main provisions of the CC in the field of the inheritance law rules clearly indicates that the ideas held by J. Gwiazdomorski, dating back to more than 40 years ago, are still alive, and have their direct impact on the views of the legislature and are used by the representatives of both the doctrine and the judicature. These ideas, in spite of some devastation of the Polish civil law in the days preceding the year of 1990, have proved timeless, due to their high professional level.

III. According to J. Gwiazdomorski, the legal position of the heir is significantly affected by three events: a) opening of the inheritance, b) making a declaration of its acceptance or rejection, and c) the court decision on the certificate of inheritance, and the consequences of these events are governed not only by the CC, but also by the Code of Civil Procedure (CCP).

A characteristic feature of the inheritance procedure is that this procedure consists of certain stages constituting the total¹², and that they can and normally are joined, especially by their effects. Independence of these stages is manifested

⁸ The decree on the Inheritance Law of 1946, whose co-author was J. Gwiazdomorski, while Professor K. Przybyłowski participated in the works on it (the letter of Prof. J. Gwiazdomorski of 2 Apr. 1946 to the Department Head in the Ministry of Justice, the Archive of New Records, pp. 336–337) provides for two institutions to protect the interests of both inheritance creditors and heirs, who have filed a statement of acceptance of the inheritance with the benefit of the inventory. This was called separation of estates – *separatio bonorum* (Art. 52–54 of the Inheritance Law (IL)) and liquidation of the inheritance (Art. 55–68 of the IL). These institutions were not introduced to the Civil Code of 1964, due to their non-functioning in practice, (E. Skowrońska-Bocian, *Komentarz do k.c. Księga czwarta. Spadki*, ed. 3, Warszawa 2001, p. 224).

⁹ In the doctrine some attempts have been made to determine the extent of the obligations of the heir accepting inheritance with the benefit of the inventory, who was obliged to pay the inheritance debts (*inter alia* J. Gwiazdomorski, *Prawo spadkowe*, Warszawa 1967, p. 202; J.S. Piątowski, *Prawo spadkowe*, Warszawa 1987, p. 223).

¹⁰ J. Gwiazdomorski, *Prawo spadkowe w kodeksie cywilnym PRL...*, p. 725; *idem auctor*, *Prawo spadkowe...*, p. 192.

¹¹ Zb. Urz. No. 4/69, Nowe Prawo 1968, p. 1428, with *glosses* by K. Kołakowski and B. Dobrzański.

¹² P. Osowy, M. Sawczuk, *Fazy (stadia) postępowania cywilnego*, in: *Wielka encyklopedia prawa*, ed. II, Warszawa 2005, p. 214.

especially when they end with a decision as to the merits, which is subject to a separate appeal¹³.

The subject of the court statement is a matter of procedure concerning acceptance or rejection of the inheritance.

It should be noted at the outset that supposedly in order to relieve the courts, in the years 1964–1991, the declarations of acceptance and rejection of the inheritance were entrusted to two bodies, courts of law and State Notary's Offices. The delegation was a flawed concept from the very beginning and was met with criticism by J. Gwiazdomorski¹⁴, who in 1968 officially discredited the validity of the transfer, *inter alia*, of this procedure to the State Notary's Offices, turning attention to the fact of a slight relief of the courts.

It seems, from today's perspective, that the real, and underlying purpose of this intervention was (following the model of the Soviet legislation) to minimize the objective scope of the non-contentious (non-litigious) procedure in the field of legal protection and exclusive recognition of litigations as the basis for the protection of civil legal rights of citizens.

The issues of the content and the form of the declaration of acceptance or rejection of the inheritance are regulated by mutually supplementary provisions of the CC and the CCP (Art. 1012–1024 of the CC and Art. 640–644 and 690 of the CCP). These provisions, although seemingly relatively implicit, in practice, cause many problems.

In accordance with Art. 925 of the CC, the acquisition of the inheritance, taking place at the moment of opening of the inheritance, is not definitive (contrary to the popular belief) until the heir has not submitted a statement of acceptance of the inheritance (or some grounds have not arisen to believe that such statement was made or where such a declaration was not submitted within a period of six months). According to Art. 1015 of the CC the heir may make such a declaration within six months from the date on which they learned about the title of their appointment, that is, they received reliable knowledge of the facts, which show that they became such an heir. This includes knowledge of the death of the testator, or events or circumstances, evidencing that they are the heir of the deceased. With the statutory succession it can be the knowledge of exclusion from the inheritance of the primary heirs, for example, because of the inheritance waiver, disadvantage or rejection of the inheritance or invalidity of the last will¹⁵. In order to meet the deadline, which bears the characteristics of a strict time limit of the substantive law it is sufficient to submit, before its lapse, to a court (even locally incompetent – Art. 640 § 1 and 2 of the CCP) or a notary, a declaration of acceptance or rejection of the inheritance, signed by the heir and con-

¹³ W. Siedlecki, Z. Świeboda, *Postępowanie nieprocesowe*, Warszawa 2001, p. 207.

¹⁴ J. Gwiazdomorski, *Prawo spadkowe*, Warszawa 1968, p. 158.

¹⁵ Resolution of the Supreme Court of 15 Jan. 1991, III CZP 75/90, OSNCP 1991, Vol. 5–6, item. 68.

taining the necessary data¹⁶. Pursuant to Art. 981⁵ of the CC, the provisions on acceptance or rejection of the inheritance apply respectively to the provisions of vindication. The statement by the heir on acceptance or rejection of the inheritance is made under a unilateral act; it does not have a specified addressee. An heir may make a declaration of intent to accept or reject the inheritance only when they are entitled to inherit¹⁷. In contrast, the legal heir may waive inheritance by agreement with the future testator in the form of a notarial deed under the clause of nullity. This issue looked different under the old law of inheritance (the decree of 8 Oct. 1946, which in Art. 13 provided for the possibility of an agreement with the testator on a waiver of inheritance in favour of another person; it should be noted that the Bill by J. Gwiazdomorski did not provide for such a possibility). One should note that the legal heir, who by an agreement waived the inheritance, can be the testator's heir under the will, which was consolidated in the judicial decisions¹⁸. The Polish Law of Inheritance does not provide for vacant succession. Therefore, a) the Treasury and municipalities may not reject the inheritance attributable to them under the law (Art. 1023 § 1 of the CC), and b) a bankrupt if they were appointed to inheritance after its opening following the bankruptcy – Art. 119 par. 1 of the Bankruptcy Law (BL); a statement of a bankrupt rejecting an inheritance is ineffective in relation to the bankruptcy estate if it is filed after the bankruptcy declaration (Art. 123 of the BL). In contrast, there are no legal obstacles for these entities to reject an inheritance under a will¹⁹, (extremely rare examples), except for the case where these entities would be the only legal heirs because of the rejection. One must agree with L. Stecki²⁰ that a foundation created in a will cannot reject the attributable inheritance (Art. 927 § 3 of the CC), as this would be contrary to the juridical model of such an organization. The partial acceptance and the partial rejection of the inheritance should be regarded as admissible, when one and the same heir has been entitled to several parts of the inheritance due to different titles. Although the literal interpretation of the wording of Art. 1022 of the CC does not give a clear answer to such a possibility, in the reference literature, *inter alia* J. Gwiazdomorski²¹ considered such a possibility, provided, however, that they have performed any legacies, orders and other dispositions of the testator imposed on them in the will of the deceased (Art. 967 § 1 of the CC)²².

¹⁶ Decision of the Supreme Court of 29 Feb. 1963, I CR 109/63, OSNCP 1964, Vol. 3, item 51.

¹⁷ Decision of the Supreme Court of 13 Nov. 1990, III CRN 365/90, OSNC 1991, No. 11–12, item 136.

¹⁸ Decision of the Supreme Court of 15 May 1972, III CZP 26/72, OSNCP 1972, No. 11, item 197.

¹⁹ Similarly M. Sychowicz, in: *Kodeks cywilny. Praktyczny komentarz z orzecznictwem*, Vol. II, Art. 353–1088, Warszawa 2005, p. 915 and the Supreme Court in the Decision of 10 June 1964, III CR 81/64, OSNCP 1965, Vol. 3, item 47.

²⁰ L. Stecki, *Fundacja*, Toruń 1996, part II, pp. 52–53.

²¹ J. Gwiazdomorski, *Prawo spadkowe*, Warszawa 1967, p. 153.

²² Similarly E. Skowrońska-Bocian, *Komentarz do k.c.. Księga czwarta. Spadki...*, p. 202.

Pursuant to Art. 641 § 1 of the CCP, a declaration of acceptance or rejection of the inheritance should include the name of the testator, the date and place of birth and the place of the last residence, the title of the heir's inheritance and the content of the statement that they have made²³. The above statement is usually submitted in writing²⁴, but it may also be made orally, and then the making of the statement must be recorded (Art. 641 § 4 of the CCP). A special form of a notarial deed is not required, unless such is the will of the person making this statement (Art. 91 of the Law on Notary's Office)²⁵. Acceptance or rejection of the inheritance must be notified to all parties who according to the content of the declaration and the submitted documents have been appointed to inherit in the next order (Art. 643 of the CCP)²⁶. It results from the content of Art. 1018 § 1 and 2 of the CC that a declaration of acceptance or rejection of the inheritance may only be unconditional; its effects may not be limited by the deadline, and it is irrevocable, although the notary and the court where it is submitted are not its addressees; it is subject to the rule of Art. 1014 § 3 of the CC, and is indivisible²⁷, except as specified in Art. 1014 § 1 and 2, Art. 1022 in conjunction with Art. 967 § 1 of the CC²⁸. Wrongful is the practice of making a declaration concerning a predetermined portion of the inheritance; regulations in relation to accumulation are not applicable. An inheritance may not be rejected in favour of a specific person or persons. Such a statement of will is devoid of legal signifi-

²³ Acceptance of the inheritance without clear identification of the contents should be considered as valid and it will be tantamount to accepting it unconditionally, except in cases of the heirs who may not accept the inheritance in this way; (more in S. Breyer, *Z problematyki oświadczeń o przyjęciu i odrzuceniu spadku*, „Nowe Prawo” 1958, No. 1, pp. 58 et seq.).

²⁴ J. Policzkiwicz, W. Siedlecki, E. Wengerek, *Wzory pism procesowych w sprawach cywilnych*, Warszawa 1980, p. 376, Template 130. It should be reminded that these templates, taking into account the doctrinal assumptions and optimal solutions ensuing from the experience, have had a huge impact on strengthening the effectiveness of civil proceedings, *inter alia* by disseminating uniform terms contained in the Codes of Civil Procedure of 1930 and 1964, contributing to standardization of the terminology, and thus to termination of local differences in drafting letters (M. Sawczuk, *Lubelski dorobek naukowy Edmunda Wengierka*, Annales UMCS Sectio G, Ius, 1992, Vol. 39, 10, p. 189).

²⁵ A different view was taken in this respect by the Supreme Court in its Decision of 10 Nov. 2006, I CSK 228/06, OSNC 2007, No. 7–8, item 123, with *glosses* by J. Pisuliński, in: OSP 2007, No. 11, item. 123 and by P. Książak, in: Rejent 2008, No. 5, pp. 163.

²⁶ More about it in B. Dobrzański, in: *Kodeks postępowania cywilnego. Komentarz*, Vol. I, ed. Z. Resich, W. Siedlecki, Warszawa 1969, pp. 924–925.

²⁷ J.S. Piątowski, *Prawo spadkowe. Zarys wykładu*, Warszawa 1979, p. 184, quoted after J. Kosik, *Złożenie oświadczenia o przyjęciu lub odrzuceniu spadku według art. 1017 k.c.*, in: *Studia z prawa cywilnego. Księga pamiątkowa dla uczczenia 50-lecia pracy naukowej Prof. dr hab. Adama Szpunara*, Warszawa–Łódź 1983, p. 284.

²⁸ More in J. S. Piątowski, *Prawo spadkowe. Zarys wykładu...*, p. 184 and J. Pietrzykowski, in: *Kodeks cywilny. Komentarz*, Vol. 3, Warszawa 1972, p. 1937, who notes that the content of Art. 1014 § 3 of the CC does not regulate directly the issue.

cance²⁹. With the statement, the original extract of the abbreviated death certificate of the testator, or the final judicial decision on the recognition as the deceased, or on the confirmation of death (Art. 641 § 3 of the CCP) must be submitted. A common mistake of omission made by the court is a situation where, after the declaration of acceptance of the inheritance with the benefit of the inventory and finding that the inventory has not been made, the court does not issue a decision *ex officio* to make such an inventory, in accordance with Art. 644 in conjunction with art. 637 § 2 of the CCP, except when the heir is the Treasury and the municipality, and where it is assumed that the inheritance has been accepted with the benefit of the inventory in the absence of a declaration³⁰. The decision on making the inventory is substantive on the merits within the meaning of Art. 518 of the CCP and it may be appealed³¹. In contrast, a cassation appeal from the decision of the second instance court is inadmissible (Art. 519¹ § 4 paragraph 3 of the CCP).

Difficult issues in practice concerning this procedure include 1) the determination of the beginning of the deadline, 2) the circle of persons entitled to its making, except the heir, and 3) the appeal from the statement on rejecting the inheritance.

In the first case, the difficulty lies in the fact that the authority (a court or a notary³²), before which the statement is made, receives it only and is not obliged to examine its validity, including meeting the relevant deadline. Thus, such a statement may not be revoked (Art. 1018 § 2 of the CC), unless by a lawsuit filed to the court to set aside the legal consequences of a declaration of intention made under the influence of an error or threats (Art. 1019 of the CC)³³. The prerequisite for the effectiveness of such a statement is its approval by the court, which issues a decision (Art. 516 of the CCP). The Bill of the Inheritance Law by J. Gwiazdomorski provided for a solution much more convenient for the heirs, while emphasizing the importance of the court of probate and absoluteness of its decisions, namely, in Art. 15 § 3 of the Bill, the opportunity to evade the legal consequences followed by submission of a declaration of intent in writing to the probate court. The currently binding solution should be considered as a regress.

²⁹ Decision of the Supreme Court of 28 Feb. 1950, C 11/50, PiP 1951, No. 2, pp. 331–334 with a favourable *gloss* by K. Przybyłowski and the Decision of the Supreme Court of 3 Oct. 1980, III CRN 180/80, OSNCP 1981, No. 2–3, item 45, with *glosses* by A. Oleszko and M. Sychowicz, „Nowe Prawo” 1983, No. 7–8, pp. 156 and 161.

³⁰ Resolution of the Supreme Court consisting of 7 judges (legal rule) of 20 May 1968, III CZP 78/67, OSNCP 1968, Vol.12, item 206.

³¹ Resolution of the Supreme Court of 23 Aug. 2006, III CZP 52/06, OSNC 2007, No. 5, item 72.

³² More in P. Reichel, *Treść i forma oświadczenia o przyjęciu lub odrzuceniu spadku*, Rejent 2013, No. 9, pp. 62 et seq.

³³ Supreme Court in its decision of 14 July 1986, III CZP 36/86, OSNCP 1987, Vol. 8, item 107, and A. Szpunar in a *gloss* to the decision in: „Nowe Prawo” 1989, No. 1, p. 112, recognized that the provision on an error induced by a deceit (Art. 86 of the CC) applies to a declaration of intent to accept or reject the inheritance.

The finding out referred to in Art. 1015 of the CC concerns the fact of the testator's death, and only later additional circumstances justify appointment to be the heir (e.g., knowledge of the contents of the will, knowledge of a family relationship, which is the ground for the title of the appointment – which in practice is often substantially hampered, such as foreign inheritance after Polish citizens). The term of Art. 1015 § 1 of the CC is the strict time limit for execution of the shaping right. Since the declaration of acceptance or rejection of the inheritance has been designed to remove the uncertainty of the fact whether the heir will become one definitively, or will be excluded from the succession, as if they did not live to see the opening of the inheritance, its submission on the condition or subject to a limit of time is invalid (Art. 1018 § 1 of the CC). It is complied when a letter with the statement has been filed in the court before its expiry³⁴.

Another problem concerns the situation where an heir dies prior to making a declaration of acceptance or rejection of the inheritance. In terms of the provision of Art. 1017 of the CC, a conclusion may be drawn that the heir, who has not made a declaration, is the real heir. Justified is also a conclusion that because of the heir's death, the so-called transmission takes place, which means that the inheritance after the first testator on the death of their heir (transmitent) passes with all the rights, from which the latter did not benefit, to their heir (transmission beneficiary), who in turn may accept or reject this inheritance³⁵. Reflecting on the possible acquisition by the transmission beneficiary of the rights under Art. 1017 of the CC, it is difficult to conclude that they are entitled to an independent right. They face the choice whether to accept or reject two inheritances – after the first testator and the transmitent. One cannot agree with the view that the transmission beneficiary may reject both inheritances, i.e. after the transmitent and the testator of the transmitent. In this case, such a person, contrary to the provision of Art. 1020 of the CC, not being the heir of the transmitent, would affect the composition of the inheritance estate after the transmitent that would have fallen to another one of their heirs (there would be a reduction in the share falling to the transmitent in the inheritance after the first testator)³⁶.

What is the deadline for making statements by the transmission beneficiary? According to Art. 1017 sentence 1 of the CC, when a transmitent did not exercise before their death the right to make a statement of intention after the first testator, the respective declaration may be made by the heirs of the transmitent, i.e. the transmission beneficiaries, within the time limit which may not end earlier than the deadline to make a statement on the inheritance after the

³⁴ Decision of the Supreme Court of 20 Feb. 1963, OSN 1964, item 51.

³⁵ More in J. Kosik, *Złożenie oświadczenia o przyjęciu lub odrzuceniu spadku według art. 1017 k.c....*, pp. 280–283.

³⁶ J. Pisuliński, *Niektóre problemy związane z terminem do złożenia oświadczenia o przyjęciu lub odrzuceniu spadku*, Rejent 1992, No. 6, pp. 54 et seq.; P. Reichel, *Treść i forma oświadczenia o przyjęciu lub odrzuceniu spadku...*, pp. 65–66, and the reference literature quoted there.

deceased heir, i.e. the transmitent. The legislator has not given a separate expression to this issue, as it was mentioned by J. Gwiazdomorski. In his opinion³⁷, in the wording of Art. 1017 sentence. 2 of the CC, there is a kind of suggestion that a later termination of this deadline should be taken into account, and the role of the legislator was to have predicted it, and if they had done it, the interpretation would be easier. The close link of this provision to art. 1015 § 1 of the CC should have been taken into account; the article contains a rule on the commencement of the six-month period from the date on which the heir learned about the title of their appointment. Without this knowledge, the period may not commence, so there is no premise for the application of the contents of Art. 1017 sentence 2 of the CC³⁸. In practice, there are two situations: a) the transmitent learned before their death about the title of their succession after the first testator; thus, the running of the period to make a statement has already begun³⁹, and b) the transmitent did not know about this fact; only the transmission beneficiary first learned about it, and in connection with the finding out about their appointment to the inheritance after the transmitent, and after the deadline to make a statement on the inheritance. In case of the first situation, it must be held that the deadline started during the transmitent's lifetime runs *a tempore scientiae* and passes (together with the temporary acquisition of the inheritance after the first testator) onto the transmission beneficiary. Thus, it does not run for them anew, even if they did not know about the appointment of the transmitent to the inheritance after the first testator. In the second indicated case if the transmission beneficiary learned at different times about the title of the transmitent's appointment to the inheritance after the first testator, and the title of their appointment to the inheritance after the transmitent, the running commencement of the period for submitting by the transmission beneficiary of the declaration of acceptance or rejection of the inheritance after the first testator is determined to fall on the day when the later knowledge was acquired⁴⁰.

The declaration of acceptance or rejection of the inheritance may be filed by an attorney or a trustee. The power of attorney must be specific and according to J. Gwiazdomorski, it should specify at least the type of the activities⁴¹.

The declaration of acceptance or rejection of the inheritance – as any legal action – may not be made by a person who does not have legal capacity. A statement on their behalf may be made by their legal representative. In this case, and when the inheritance falls to a legal person, only a statement of acceptance of the in-

³⁷ J. Gwiazdomorski, *Prawo spadkowe...*, p. 154.

³⁸ J. Kosik, *Złożenie oświadczenia o przyjęciu lub odrzuceniu spadku według art. 1017 k.c.*, p. 282.

³⁹ J. Pietrzykowski, in: *Kodeks cywilny. Komentarz*, Vol. 3, Warszawa 1972, p. 1932.

⁴⁰ J. Gwiazdomorski, *Prawo spadkowe...*, p. 154; J. S. Piątowski, *Prawo spadkowe. Zarys wykładu*, Warszawa 1979, p. 182; A. Kunicki, *Odrzucenie spadku przez transmitariusza*, NP. 1963, No. 12, p. 1358; J. Kosik, *Złożenie oświadczenia o przyjęciu lub odrzuceniu spadku według art. 1017 k.c.*..., p. 283.

⁴¹ J. Gwiazdomorski, *Prawo spadkowe...*, p. 151.

inheritance with the benefit of the inventory may be taken into consideration. General acceptance of the inheritance as contrary to Art. 1015 § 2 of the CC would be void (Art. 58 § 1 of the CC). Rejection of the inheritance by the legal representative with a legal effect for the minor or the incapacitated may be made only with a prior consent of the guardianship court (Art. 101 § 3, 156 and 178 § 2 of the Family and Guardianship Code (FGC)). A declaration made without the consent is void⁴², but it seems that assuming the existence of an exception to the rule, it will apply to the adoption of an inheritance with the benefit of the inventory, if such acceptance does not burden the property of that person. Since the statement is not an action of the management of the joint property of the heir and their spouse (Art. 32 of the FGC) and also in the situation where the testator stipulated that these items would come into the joint property (Art. 33 paragraph 2 of the FGC) – the statement does not require a consent of the spouse (Art. 37 § 3 of the FGC)⁴³.

Finally, contentious in the reference literature is the issue of the requirement to have the consent of the legal representative to submit a declaration of intent by the heir or the transmission beneficiary who is limited in their legal capacity.

According to one position, which also includes J. Gwiazdomorski⁴⁴, if the heir does not have full legal capacity, their legal representative after the consent of the guardianship court may make such a statement. The representative may also authorize making of a declaration of intent by the heir limited in their legal capacity. Another position, including M. Pazdan⁴⁵, shows that when making the statement, at stake is a statement of the legal representative, not their consent. It seems that the first position raises some concerns. The legal representative may, in relation to the entities mentioned in art. 1015 § 2 sentence. 2 of the CC make a statement only about the acceptance of the inheritance with the benefit of the inventory. Consequently, issuance of authorizations by the guardianship court to the legal representative for making such a statement would be a kind of a normative *superfluum*⁴⁶. Because of such authorization there would arise a specific right to which they would be entitled, regardless of the will of the guardianship court. It should be remembered that for the individuals having limited legal capacity the Civil Code confers the capacity to sue only on matters relating to legal actions, which they can make by themselves (Art. 20–22 of the CC). They

⁴² Resolution of the full composition of the Civil Chamber of the Supreme Court of 24 June 1961, 1 CO 16/61, OSNCP 1963 Vol. 11, item 187.

⁴³ J.S. Piąkowski, in: *System prawa rodzinnego i opiekuńczego*, part 1, Wrocław 1985, pp. 411 et seq.

⁴⁴ J. Gwiazdomorski, *Prawo spadkowe...*, p. 151; J. S. Piąkowski, *System prawa cywilnego, Vol. IV, Prawo spadkowe*, Wrocław 1986, p. 280.

⁴⁵ M. Pazdan, in: *Kodeks cywilny. Komentarz*, Vol. II, ed. K. Pietrzykowski, Warszawa 2011, p. 1197.

⁴⁶ K. Korzan, *Postępowanie nieprocesowe*, ed 2, Warszawa 2004, p. 293. For the doubtful need for such an authorization, see also J. Pietrzykowski, in: *Kodeks cywilny. Komentarz...*, pp. 1925–1926 and J.S. Piąkowski, *Prawo spadkowe. Zarys wykładu...*, p. 185.

do not include a statement of acceptance or rejection of the inheritance⁴⁷. If, however, there is a disagreement between the entities authorized to act independently as legal representatives (e.g. parents – one wants to accept the inheritance with the benefit of the inventory, and the other wants to reject the inheritance), the dispute is decided by the guardianship court (Art. 97 § 2 of the FGC).

Completely ignored in practice is a possibility to challenge a statement rejecting the inheritance. By rejecting the inheritance, the heir cuts off their creditors from the opportunity to seek satisfaction of their claims from the inheritance assets. In this case, the aggrieved creditors may demand that such a statement is rendered ineffective to them, subject to the following conditions: a) the debt to the creditor, requesting recognition of the declaration of the inheritance rejection as ineffective existed at the time of the inheritance rejection, although not necessarily payable, and b) the rejection was detrimental to the heir's creditors (Art. 1024 § 1 of the CC). This provision is particular in relation to the provisions on the protection of the creditor in the event of the debtor's insolvency (Art. 527–534 of the CC), and excludes their direct application. At the same time, this standard is not intended to protect future creditors. However, the Supreme Court in its decision of 7 June 1949,⁴⁸ with the approving *gloss* of M. Waligórski⁴⁹, found that the child might request recognition as ineffective of the inheritance rejection by his illegitimate father, even if it occurred before they were born. The view expressed in the decision is approved in principle also under the provisions of the CC⁵⁰. A creditor may request that the statement of the inheritance rejection is rendered ineffective by filing the shaping claim or pleading against the heir, as it is viewed by J. Gwiazdomorski, who became the heir as the result of the primary heir's rejection of the inheritance (Art. 1024 § 1 *in princ.* in conjunction with Art. 531 § 1 of the CC)⁵¹. By obtaining a favourable judgment, the creditor will be able to seek satisfaction of their claims from the inheritance assets, although the inheritance, as a result of the rejection, has ceased to be the property of the heir-debtor and has become the assets of the secondary heir (Art. 1024 § 1 *in fine* in conjunction with Art. 532 of the CC). The deadline to seek recognition of the rejection as ineffective is defined in Art. 1024 § 2 of the CC and is 6 months from the time of becoming aware of the fact that the inheritance has been rejected, but not later than three years from the rejection of the inheritance.

IV. The overall rating of the provisions of the Fourth Book of the Civil Code of 1964, even today – after more than 40 years of their validity – is positive. Moreover, this is largely due to Prof J. Gwiazdomorski, who being appointed

⁴⁷ P. Reichel, *Treść i forma oświadczenia o przyjęciu lub odrzuceniu spadku...*, p. 76.

⁴⁸ KrC 244/49.

⁴⁹ PiP 1951, No. 2, pp. 336 et seq.

⁵⁰ The opposite view was held by J. Gwiazdomorski, (*Prawo spadkowe...*, p. 106).

⁵¹ J. Gwiazdomorski, *Prawo spadkowe...*, p. 158.

a member of the Codification Committee participated in the work of two teams – of substantive civil law and of civil procedural law. He was therefore one of the main co-creators of the currently binding Civil Code, Code of Civil Procedure and Family and Guardianship Code⁵².

It is, *inter alia*, His merit that the adopted solutions of the issues in the field of non-litigious proceedings, including the law of inheritance, are humane and highly useful socially, emphasizing the autonomy of non-contentious procedure, and recalling the ideas of the Congress of Bologna (a remedy for the protection of fundamental human rights in non-litigious proceedings, consistently emphasized *inter alia* by M. Sawczuk)⁵³.

Currently, Poland has entered the path of doctrinal and legislative continuation of the pre-war achievements, and in the doctrine – in the framework of the discussion on the necessity of (need for) changes in the Civil Code, or even developing a new Code, in face of its „decomposition” – more institutions are indicated as ones that should be evaluated, including those covering standards of the inheritance law

However, there is a question whether they should be changed, except for those elements that are enforced by the future, bearing in mind the directive of the great scholar S. Grzybowski⁵⁴, [...] „Surely you cannot deny that in the dispute about the value and effectiveness of codification one should not forget about the past, about the development so far, and the achievements. You should nevertheless reserve the first place without any compromise for the requests imposed by the existing situation today when predicting the future.”

Especially in the field of legislation, introduction of too risky changes, not sufficiently tested or not arising from the native experience, may be as much a novel procedure as doubtful in the long run, which may be aggravated by clear „weakening” of complying with the rules of appropriate legislative technique.

This „Zeitgeist” of making amendments, this greed for originality at all costs leads to forgetting by both legislators and science representatives of a caution, formulated by J. Gwiazdomorski⁵⁵ already in 1935: „Continual changes to

⁵² J.S. Piątowski, Jan Gwiazdomorski (1899–1977), PiP 1978, No. 3, p.140.

⁵³ M. Sawczuk, *O celach i funkcjach postępowania cywilnego procesowego i nieprocesowego (niespornego)*, in: *Symbolae Vitoldo Broniewicz dedicatae. Księga pamiątkowa ku czci Witolda Broniewicza*, ed. A. Marciniak, Łódź 1998, p. 328.

⁵⁴ S. Grzybowski, (*Dzieje prawa*, Ossolineum 1991, p. 213) that is constantly referred to by, *inter alia*, M. Sawczuk, (*Idea ciągłości ustawodawstwa*, in: *Obywatelskie inicjatywy ustawodawcze Solidarności 1980–1990. Materiały i projekty ustaw Centrum Obywatelskich Inicjatyw Ustawodawczych „S” i Społecznej Rady Legislacyjnej*, ed. K. Barczyk, St. Grodziski, S. Grzybowski, Wyd. Sejmowe, Warszawa 2001, p. 581.

⁵⁵ J. Gwiazdomorski, *Umowa przedwstępna w k.z.*, „Czasopismo Prawnicze i Ekonomiczne” 1935, Vol. XXX, p. 469, quoted after (A. Mączyński, *Uwagi o stanie nauki polskiego prawa cywilnego*, PiP 2011, No. 6, p. 16) . A. Mączyński in that article also quoted E. Kwiatkowski (*Dysproporcje. Rzecz o Polsce przeszłej i obecnej*, Warszawa 1989, p. 372 (Edition 1 – Warszawa 1931): “Better results give laws and relations far from the ideal, but solid, commonly known and

the existing regulations lead to the chaos. They are especially undesirable in the great codification of the law applied in courts. Theory and practice can handle even less successful rules, if such provisions are binding for a long time. Whereas, frequent changes prevent scientific development of a statute and formation of a solid jurisprudence, and thereby they destroy the beneficial effects of even the best legislative works”.

Developing a little the thought of J. Gwiazdomorski, one should note that the Civil Code and the Law of Inheritance, during the period of their binding, ceased to be just „*law on book*” and became „*law in action*”. They paved the specific judicial practice, creating patterns of behaviour under civil law for citizens.

Therefore, especially today, the work of J. Gwiazdomorski on the law of succession of 1959 is of the fundamental importance. This work due to its rich theoretical background is of permanent value, despite the fact that it is based on the expired decree of 1946. Its benefits include unusual thoroughness of analysis, high precision of formulations, brightness of the used designates of terminology, faithfulness to legislation and fullness of scientific documentation, both Polish and foreign⁵⁶.

WYBRANE INSTYTUCJE PRAWA SPADKOWEGO W PRAKTYCE SĄDOWEJ
– NA PRZYKŁADZIE OŚWIADCZENIA O PRZYJĘCIU LUB O ODRZUCENIU
SPADKU (WOKÓŁ DOROBKU PROF. J. GWIAZDOMORSKIEGO)

Streszczenie. Kodeks cywilny i przepisy prawa spadkowe w okresie swego obowiązywania przestały być tylko „*law on book*” i stały się „*law in action*”, w tym w zakresie postępowania dotyczącego złożenia oświadczenia woli o przyjęciu lub o odrzuceniu spadku. Utorowały one określoną praktykę sądową, stwarzając wzorce zachowań cywilnoprawnych dla obywateli, do czego przyczyniły się prace Prof. Jana Gwiazdomorskiego. Ich niezwykła gruntowność analizy, wysoka precyzja sformułowań, jasność używanych desygnatów terminologii, wierność ustawie oraz pełność dokumentacji naukowej tak polskiej, jak i zagranicznej pozostaje wzorem dla przyszłych pokoleń cywilistów.

Słowa kluczowe: Jan Gwiazdomorski, postępowanie nieprocesowe, dziedziczenie, przyjęcie i odrzucenie spadku, zaskarżenie, nowelizacja

calculable rather than continuous displacement of one excellence by another. „These statements fully correspond with similar ones, *inter alia*, of A. Szpunar, or the ones in the field of law applied in civil courts, *inter alia*, of S. Gołąb, W. Siedlecki, M. Sawczuk, W. Broniewicz, K. Piasecki and A. Zieliński on protection of the idea of the continuity of law and refraining from unnecessary „reforms” that are costly, (P. Osowy, *Blaski i cienie nowelizacji prawa cywilnego sądowego (sędziowskie dylematy)*), „Administarcja. Teoria – dydaktyka – praktyka”, 2013, No. 3(32), pp. 24–52).

⁵⁶ J.S. Piątowski, *Jan Gwiazdomorski (1899–1977)*, PiP 1978, No. 3, p. 139.