

ON CERTIFICATION OF SUCCESSION AND THE NEED FOR FURTHER CHANGES IN THE LAW OF SUCCESSION

1. Introductory comments

The last two decades or so in Polish law have been a period of constant changes in legal provisions that impact on practically every sphere of life. Many of these changes and new legal regulations have been embedded in the post-1989 process of system transformation. Some of them, unfortunately, have been caused by negligence that occurred in the legislative process, whereas others, have been a consequence of excessive formalism and a dangerous tendency to “over-regulate” law.

The law of succession, the same as the whole system of law, is not separate from the state system. Thus a change of the system created the need to revise the provisions of succession law, since it too is a part of civil law. In the system of the so called people’s democracy, the law of succession was one of the instruments aimed at shaping socialist ownership relations. The idea that the basic source of livelihood should be hired labour as opposed to the ideologically extraneous concept of inherited property, was of key importance. It should be emphasized that the State consistently controlled the inheritance of agricultural property and related provisions were structured to favour those firmly connected with the socialist system.

As emphasized in subject literature, the State in principle does not interfere directly in civil law relations¹. It sometimes happens, however, that a legislator finds it necessary to directly regulate specific relations in the field of civil law. The law of succession, where a legislator decides who is to inherit property where the deceased did not leave a binding disposition in case of death, serves here as an example. However, the issue of administering granted rights of succession is left to the interested parties themselves. This includes making a decision whether to accept or waive succession and whether or not to establish the rights to succession.

1 A. Stelmachowski, *Zarys teorii prawa cywilnego*, Warsaw 1998, p. 43.

The law of succession is based on relatively stable legal institutions but this does not mean that it should not be adjusted according to changing social and economic conditions. Considering when the effects of specific legal norms should become apparent, A. Stelmachowski, accurately observed that the efficiency of the law of succession would on average occur after the lapse of a lifetime of one generation, because most estates would in some way be shaped under the influence of this law². However, this observation does not specifically refer to certification of succession since it regards only a procedural sphere, therefore it does not change any legal institution in the scope of the rules of succession.

On 02.10.2008, provisions introducing the institution of a certificate of succession issued by a notary came into force (Act of 24.08.2007 changing the Act on Public Notaries and Some Other Acts).³ On this basis, a new institution, i.e., of a certificate of succession issued by a notary, apart from a confirmation of inheritance issued by a court in the form of a decision, started to become binding in Poland. Generally, it can be said that according to Art. 95a of the Public Notaries Act, a notary may draft a certificate of succession in case of both statutory and testamentary succession.

It should be noted that the scope of applying the institution of a certificate of succession had already raised doubts during talks on the draft. It was argued that limiting the application of provisions on a certificate of succession to statutory succession was justified. Nevertheless, such opinions were not taken into consideration in further legislative works.⁴ As M. Pazdan⁵ emphasizes, it is a legal solution that has been applied in other foreign legal systems for a long time. A certificate of succession realizes the principle of prompt proceedings by providing the possibility to arrange all formalities related to the inheritance without major difficulties and additional costs.⁶ An alternative use of the institution of a certificate of succession results from the content of Art. 1025 of the Civil Code.

2 A. Stelmachowski, *Zarys teorii...*, p. 23.

3 *Journal of Laws* No. 181, *item* 1287.

4 K. Grzybczyk, M. Szpunar, *Notarialne poświadczenie dziedziczenia jako alternatywny sposób stwierdzenia prawa do dziedziczenia*, *Rejent* 2006, no. 2, p. 44 and next.

5 M. Pazdan, in: E. Kremer, Z. Truszkiewicz (ed.), *Przesłanki dopuszczalności notarialnego poświadczenia dziedziczenia*, *Rozprawy i studia. Księga pamiątkowa dedykowana Profesorowi Aleksandrowi Lichorowiczowi*, Kraków 2009, p. 193.

6 L. Kwaśnicka, B. Porębska, *Notarialne poświadczenie dziedziczenia – wybrane zagadnienia praktyczne*, *Monitor Prawniczy* 2008, no. 24, p. 1344.

2. A notary's deed certifying succession against a confirmation of inheritance acquisition issued by a court

Drafting a deed certifying succession is considered as a separate notary transaction. It is neither a notary deed nor does it belong to existing categories of certification. It is treated as a separate notary transaction even though its elements are similar to both categories of a transaction indicated therein.⁷

It should be noted that according to Art. 95j of the Public Notaries Act, a registered deed certifying succession carries the same legal force as a decision confirming acquisition of inheritance issued by a court. However, in case of conflict, precedence is given to a confirmation of inheritance acquisition issued by a court. According to Art. 6691 of the Code of Civil Procedure, a court of inheritance annuls a registered deed certifying succession where a prior court decision confirming inheritance acquisition has been issued.

If two or more deeds certifying succession were registered with regard to the same inheritance, a court of inheritance annuls all deeds certifying succession and issues a decision confirming acquisition of inheritance upon the motion of an interested party (Art. 6691 of the Code of Civil Procedure). A presumption resulting from the registered deed certifying succession does not act against a presumption resulting from a confirmation of inheritance acquisition (Art. 1025 § 3 of the Civil Code).

Cases handed over to notaries' competence do not cover in principle such issues where an element of direct resolution of legal disputes would occur since in the light of opinions expressed both by doctrine and the Constitutional Tribunal, this aspect decides about the essence of judicial administration of justice.⁸ Nevertheless, these changes are a part of a wider trend aimed at "relieving" courts. Thus, much hope is rested on out of court mediations rather than mediations with courts' participation. The amicable settlement of cases has a lot of advantages as far as financial and non-financial aspects are concerned. In Poland, however, there is no tradition of using such institutions as yet. Many people are still convinced that bringing a case to a court carries more importance and is a more significant event than an out of court settlement.

It seems that such beliefs do not influence a choice of a court instead of a notary with regard to successions to a greater extent. Here, statutory requirements are of key importance as they significantly limit the possibility of a notary drafting a deed certifying succession.

⁷ G. Bieniek, *Notarialne poświadczenie dziedziczenia*, Rejent 2008, no. 9, p. 32.

⁸ Judgment of Constitutional Tribunal of 10.05.2000, K 21/99, OTK 2000, no. 4, *item* 109.

Theoretically, everyone has the right to choose a way of arranging these matters, i.e., either by using the services of a notary or by submitting a motion to ascertain acquisition of inheritance in a court. In practice, however, this right of choice is excluded where a large group of heirs is involved.

We should pay attention to the statutory limitations of applying a certificate of succession, as they give a more complete picture showing the scope and possible expectations connected with its introduction. Basic limitations regarding this institution are as following:

- firstly, a certificate of succession is possible only in indisputable cases when all parties in question which may act as statutory and testamentary heirs appear before the notary. Otherwise it is necessary to settle a case in court,
- secondly, informal wills are excluded,
- thirdly, the opening of succession before 01.07.1984 is also limited; in such a case, the acquisition of inheritance is carried out exclusively in court.

Closer analysis of these limitations may lead to the conclusion that a notary's certificate of succession as an alternative way to establish the right to succession⁹ is too far-fetched. It seems that in the sphere of obtaining a confirmation of succession rights, a certificate of succession plays only a complementary role at present as most cases are still settled by courts.

According to legal solutions presently adopted, a notary may draft a certificate of succession provided all parties to the proceedings submit a unanimous motion thereon. The parties should appear before the notary in person. It should be emphasized that this requirement applies to all persons in question that may act as statutory and testamentary heirs (Art. 95c § 2 point 1 and Art. 95b of the Public Notaries Act). In consequence, a certificate of succession covers only indisputable cases. If there is conflict between the heirs, or if conflict arises during drafting the minutes of inheritance before a notary, a deed certifying succession will not be issued since two fundamental features in providing the possibility of using a certificate of succession are voluntary and unanimous joint-action.¹⁰ Moreover, it should be noted that the necessity to gather all parties in person to the proceedings before a notary may frequently become a condition difficult to meet. Nowadays, parties to the proceedings may reside in different countries and even the most advanced communications technology will not help to solve this issue. Provisions on the rules of drafting a certificate of succession are absolutely binding. If such a problem

9 K. Grzybczyk, M. Szpunar, *Notarialne poświadczenie...*, p. 44.

10 M. Manowska, *Wybrane zagadnienia dotyczące poświadczenia dziedziczenia*, *Nowy Przegląd Notarialny* 2008, no. 3, p. 18.

occurs, then the only way of obtaining a confirmation of succession rights will be a court proceeding to ascertain the acquisition of inheritance.

A further point for consideration, is that the possibility of obtaining a notary's certificate of succession has been limited to statutory and ordinary testamentary successions (Art. 95a of the Public Notaries Act). Therefore a certificate of succession is possible only in cases of: a holographic testament (Art. 949 of the Civil Code), a testament made before a notary (Art. 950 of the Civil Code), an allographic testament (Art. 951 of the Civil Code). Thus succession on the basis of informal wills, i.e. oral wills (Art. 952 of the Civil Code), the so called traveler's wills (Art. 953 of the Civil Code), and military wills (Art. 954 of the Civil Code), have been excluded.

Special attention should be paid to oral testaments since they are the most common forms of informal testaments met in practice. The issue of oral testaments allows us to see the grounds for excluding cases covering succession on the basis of informal wills from notaries' competence in the best way. The subject literature stresses the fact that in the light of new regulations, a certificate of succession is not merely a simple answer of a notary as a service provider to a will of persons applying to him or her with the intention to make an appropriate statement with regard to the rules of succession.¹¹

Taking Art. 952 § 2 of the Civil Code into consideration, the content of an oral testament may be established provided one of the witnesses, or a third party, writes down the testator's statement within one year from its making indicating the place and the date at where and upon which the statement was made, as well as the place and the date where and upon which the statement was written down; whereas the testator and two witnesses, or all witnesses, then sign it. If the content of an oral testament has not been established in the abovementioned way, it may be ascertained during six months from the day when the succession was opened by unanimous testimonies made by the witnesses before a court. If it is not possible to examine one of the witnesses in court, or if the examination faces obstacles difficult to surmount, a court may be satisfied with the unanimous testimonies of two witnesses (Art. 952 § 3 of the Civil Code).

Thus it might seem that if the content of an oral testament was established by a written document, such an informal testament could *de lege ferenda* be the basis of a deed certifying succession.¹² However, we should pay attention to the fact that even if there was a unanimous motion to certify succession on the basis of an oral testament, a notary would have to assess whether or not there was a fear of imminent death.

11 R. Kapkowski, *Sporządzenie aktu poświadczenia dziedziczenia*, Państwo i Prawo 2009, no. 11, p. 81.

12 M. Manowska, *Wybrane zagadnienia...*, p. 19.

According to present legislation in force, this is not admissible due to formalized rules of evidence. Therefore, what remains is a court proceeding.

Although a deed certifying succession plays merely a declarative role with regard to pre-existing legal events, it may only apply to some of them.

A deed certifying succession confers a “specific documentary form”¹³ to prior legal events whereas in commonly exercised notary transactions, the parties shape the content of legal relations themselves while a notary deed serves merely an intermediary function conferring the correct form to such statements.¹⁴

The subject literature pays attention to the fact that the role of a notary in drafting a deed certifying succession is special.¹⁵ A notary establishes the existing facts of a case on the basis of valid legislation and performs an act of subsumption determining who and in what proportion is entitled to the inheritance. In this system, a deed certifying succession may be treated as an act of applying law by a notary who himself or herself establishes the legal position of the parties according to the specified facts of a case, and issues an official deed equally valid to a court decision, i.e. a deed certifying succession. The declaratory nature of a given deed does not exclude recognition that we deal with an act of applying law since in such case an authorized body conferred with powers, declares the existence of specific legal relation bindingly.¹⁶

In drafting a deed certifying succession, a model of notary proceedings is similar to a court model of applying the law where it is necessary to first establish a legal status, then the facts of a case and finally perform subsumption. It should be emphasized, however, that notary's competence does not cover in principle such issues where an element of direct resolution of legal disputes would occur, since in the light of opinions expressed by doctrine and the Constitutional Tribunal (which was previously quoted), this aspect decides upon the essence of judicial administration of justice.

A certificate of succession is not a uniform act. The drafting of a minimum two documents of different legal nature: the minutes of succession and a deed certifying succession, are required to certify succession. In specific cases, it may be necessary to draft additional documents such as the minutes of testament opening and announcement, or the minutes of making statements regarding the acceptance or waiver of succession. The evaluation of the legal nature of a deed certifying succession, is a subject of discussion in legal environments.

13 R. Kapkowski, *Sporządzenie aktu...*, p. 85.

14 A. Oleszko, *Z cywilnoprawnej problematyki czynności notarialnych*, Rejent 1991, no. 1, p. 14 and next.

15 R. Kapkowski, *Sporządzenie aktu...*, p. 85.

16 S. Erlich, *Wstęp do nauki o państwie i prawie*, Warsaw 1979, p. 164, quoted after: R. Kapkowski, *Sporządzenie aktu...*, p. 85.

After drafting a deed certifying succession, it is registered in the electronic register kept by the National Notary Council. A registered deed certifying succession takes the effect of a legally binding decision establishing acquisition of inheritance.

Everyone has access to the data stored in the electronic register but, as with every system, this one too has its drawbacks. The register does not cover information about court decisions on succession and thus is of limited practical usefulness.

3. On the need of a new view on the issue of testamentary freedom

Despite several positive changes in the law of succession introduced recently (e.g. extending the group of statutory heirs to cover a testator's grandparents and the children of a testator's spouse where both parents did not survive to the moment of the succession's opening – Art. 934 and 934¹ of the Civil Code¹⁷), it seems that further changes of the law of succession are necessary, particularly those aimed at providing testators with true testamentary freedom. According to present legislation in force, the rule of testamentary freedom is to a great extent illusionary.

On the basis of the presently valid theory and practice of succession law application, testamentary freedom is understood as the possibility granted to a testator to make legally effective dispositions in a testament with regard to his or her estate in case of death.¹⁸ Such dispositions may concern, most of all, the appointment of an heir, the establishment of legacy or arrangements, disinheritance, or making the so called negative testament. Testamentary freedom has been recognized as the rule of succession law.¹⁹

Defining this rule as a specified scope of the rights allowing a testator to dispose of his or her estate in case of death²⁰ has to be particularized. Apparently, the admissibility of disposing of the estate either in whole or in part and the appointment of any person as an heir²¹ is particularly exposed. Definitions of testamentary freedom, however, ignore the fact that within testamentary freedom a testator may in principle use a notion of inheritance shares, therefore, only its ideal parts.

The subject literature emphasizes that “the aim of testamentary freedom is simple if not obvious”.²² The object is to provide a testator with the possibility of disposing their estates in case of death, in a way that is most appropriate to their

17 The Act of 4.04.2009, Journal of Laws No. 79, *item* 662, which came into force on 28.06.2009.

18 S. Wójcik, in: S.J. Piąkowski (ed.), *System prawa cywilnego. Prawo spadkowe*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź, 1986, p. 173.

19 S.J. Piąkowski, *Prawo spadkowe. Zarys wykładu*, Warsaw 2002, p. 24.

20 E.g. E. Skowrońska–Bocian, *Prawo spadkowe*, Warsaw 2006, p. 102.

21 J.S. Piąkowski (ed.), *System prawa cywilnego...*, p. 173.

22 *Ibidem*

will and at the same time rational and suitable to the actual circumstances of each individual case. The statutory order of succession includes only typical situations and is based on a fixed and rigid scheme.

Similar to every rule, there are also exceptions to the rule of testamentary freedom. Limitations of testamentary freedom arise for from various reasons. They include in particular, a need to protect the financial interests of a testator's relatives as well as an intention to protect the whole or part of the property to the succession, and the protection of family estates. Moreover, it is difficult not to mention the issue of dependence of succession law provisions on a political system of a state and its attitude to the right of succession. As far as the last issue is concerned, it is worth adding that Art. 21 of the Constitution of the Republic of Poland, is today of fundamental importance. According to Art. 21, the Republic of Poland shall protect ownership and the right of succession.

The following succession law provisions are most frequently quoted as limitations of testamentary freedom (in the system of legitimate portion): Art. 923 § 1, Art. 962, 964, 968 § 1 and Art. 58 of the Civil Code²³. It seems that the problem of limitations of testamentary freedom exceeds the above-mentioned provisions to a great extent.

There are many arguments supporting a claim that the issue which requires attention and change in legislation, is the scope of freedom to dispose of the estates in case of death. This remark is most of all an effect of observing practice.

It may be observed that in practice, testamentary freedom is most seriously limited by the requirement to appoint heirs in fractional parts. This problem may occur when a testator requires to take into consideration several heirs. It does not arise where only a single heir is involved.

Each heir inherits a share to the whole succession in a specified proportion. At present there is no legally effective possibility to designate specified components of the inheritance to individual heirs. The effect of a testamentary disposition of individual assets covering almost an entire inheritance is such that the persons who are beneficiaries to such a disposition are considered to be appointed to the whole succession in fractional parts corresponding to the ratio of the value of the asset(s) they were allocated (Art. 961 of the Civil Code).

If a testator does not dispose of the inheritance in its entirety by designating specified assets in a will, such a situation is treated as a legacy. Persons drafting a will frequently consider the valid legal regulation as grossly violating the freedom to dispose of the estate in case of death. By disposing their assets in case of death in the

23 E. Skowrońska-Bocian, *Prawo spadkowe...*, p. 102.

form of a will, they would like to be certain that, e.g., a cooperative member's right of ownership of premises will be vested in their daughter, real estate in their son, or a car in their grandson.²⁴

Admitting a legally effective means of designating assets to individual heirs, would require a change in provisions which would lead to replacing a court confirmation of acquisition of inheritance, by a decision endorsing a will (or a notary's certificate of succession) under which specified heirs would acquire individual assets of the inheritance. Admitting the so called "shared" testament, would allow a testator's will to be respected more completely and at the same time it would not be necessary to share the inheritance. Finally, in case of a dispute between heirs (e.g. about liability for inherited debts), the problem would be solved in court proceedings for the share of inheritance.

Paying attention to "shared" testaments, G. Bieniek²⁵ observes that a legislator does not use the notion of a "shared" testament. The author rightly indicates that a basic aim of introducing the institution of a "shared" testament, is to provide correct realization of the rule of testamentary freedom and dispositions in case of death. Within a "shared" testament, a testator would obtain the possibility of determining who would receive what assets contained in the inheritance following his/her death. In today's legislation there is a very limited possibility to dispose of specific objects in case of death, e.g. a legacy, which only takes the effect of an obligation.

Including in a will a disposition determining which objects are to be vested in which heirs is treated today only as a recommendation to be taken into consideration during court proceedings to share the inheritance as far as legal and factual possibilities would allow it. However, there is no legal obligation to take into consideration a testator's recommendations. The law of succession does not provide for the possibility of determining a way of sharing the inheritance by a testator. If a testator included decisions about this matter in his or her will, they would not bind the heirs from a legal point of view. In the contractual share of inheritance it is the heirs' wishes not the testator's recommendations that will finally decide.²⁶

Practice shows that testators frequently find it difficult to understand why they cannot make a disposition of individual objects in case of death. They believe it is a major and unjustified limitation of a testator's will. It is difficult not to find these arguments justified. In this context, the question arises of whether on the basis of presently valid succession provisions, the rule of testamentary freedom is in fact a rule.

24 See more in: T. Mróz, O potrzebie i kierunkach zmian przepisów prawa spadkowego, *Przegląd Sądowy* 2008, no. 1, p. 81 and next as well as literature quoted therein.

25 G. Bieniek, *Notarialne poświadczenie...*, p. 25.

26 *Ibidem*, p. 27.

A new look at the problem of the rule of testamentary freedom and its practical realization seems necessary. In its present theoretical and practical shape it does not meet social expectations. Only the introduction of a legal means of disposing of individual objects in case of death and in this way appointing specific heirs to succession, will confer real importance to the rule of testamentary freedom.

Final remarks

Transactions performed by a notary in connection with a certificate of succession may be divided into three basic stages: 1) drafting the minutes of succession by a notary, 2) drafting a deed certifying succession by a notary, 3) entering a deed of succession to the register kept by the National Notary Council²⁷.

It is worth noticing that subject literature criticizes the lack of a coherent concept of a deed certifying succession. A legislator did not provide the parties taking part in this transaction with too much freedom fearing the rules of succession may be violated. The role of a notary in establishing acquisition of inheritance is greatly diminished compared to that of a court. A notary may not certify succession without the parties' consent even if it directly resulted from the minutes of succession accepted by the parties who an heir would be. Each time when the order of succession determined by a notary is not in accordance with the expectations of the interested parties', a deed certifying succession will not be made. Court proceedings will be necessary, even though it would be pointless from an economic point of view since the settlement is likely to be identical²⁸.

The fact that a deed certifying succession may be drafted by any selected notary should be assessed positively. In case of court proceedings the court of succession is the only competent court, i.e. the court of the last residence of a testator (Art. 928 of the Code of Civil Procedure).

Considering whether the institution of certifying succession will be approved by the interested persons, it is most of all essential to take into account the fact that relatively little time has elapsed from the time this institution was introduced to draw any general or reliable conclusions with regard to the scope of using a possibility of certifying succession by a notary in the future.

De lege ferenda, it is necessary to postulate further changes in the law of succession, particularly those aimed at making the rule of testamentary freedom real in practice, e.g. by creating a legal possibility of disposing of not only shares to the inheritance in case of death but also individual objects contained in the inheritance

27 L. Kwaśnicka, B. Porębska, *Notarialne poświadczenie...*, p. 1343.

28 R. Kapkowski, *Sporządzenie aktu...*, p. 89.

(the rights inhered in these objects). Moreover, the issue of further extension of a group of statutory heirs requires consideration too.²⁹

Despite recent changes in this area, it may still be rightly claimed that a municipality or the State Treasury come into succession too quickly. According to Art. 935 of the Civil Code, if there is no testator's spouse, nor relatives or children appointed to succession under the law, the succession comes into the municipality of the last place of residence of a testator as a statutory heir. If it is not possible to determine the last place of residence of a testator in the Republic of Poland, or if the last residence of a testator was abroad, the succession comes into the State Treasury as a statutory heir.

For example, if the deceased did not leave statutory heirs listed in this provision, but was survived by a sisters-in-law, the sister-in-law would not inherit under the Act. The municipality or the State Treasury would become the beneficiary.

Generally, a direction of changes in the law of succession should be considered right. However, several circumstances show that there is a need for subsequent changes in the provisions thereon. It is characteristic that major changes which extended a group of statutory heirs were realized only after so many years passed after the system transformation in Poland. The provisions of succession law of the "people's democratic" state were filled with an ideological assumption according to which accumulating family estates was extraneous to the system, whereas hired labour was the basis of a citizens' existence.

It is worth mentioning here the problem of sharing the inheritance, or rather its costs. It seems that we would deal with sharing of inheritance in court and court dissolution of joint property much less frequently if the costs of arranging these matters by acts performed by a notary³⁰ would be different what they are now. They are significantly higher than court costs.³¹ For this reason many cases which do not have to be settled by a court are nevertheless submitted to one. Contractual sharing of inheritance made by a notary would relieve courts and realize the important rule of prompt proceedings. It is a significant practical problem since successions mostly

29 See more in: T. Mróz, *O potrzebie i kierunkach zmian...*, p. 81 and next.

30 See: Decision of Minister of Justice of 28.06.2004 in the matter of maximum notary fees, *Journal of Laws of 2002*, no. 42, item 369 as amended. According to the content of § 2. 1, § 8–16 restricted, a maximum notary fee for notary transactions, hereinafter referred to as a "maxim fee", depends on the value of the subject of a notary transaction. In case of sharing inheritance, a maximum fee is determined on the basis of a general value of the estate which is subject to share.

31 See: Act of 28.07.2005 on Court Costs in Civil Lawsuits, *Journal of Laws of 2005*, no. 167, item 1398 as amended., Art. 41. 1. A fixed fee of PLN 1.000 is charged for a motion to dissolve joint property. 2. If a motion includes a unanimous draft of dissolution of joint property, a fixed fee of PLN 300 is charged. Art. 51. 1. A fixed fee of PLN 500 is charged for a motion to share inheritance and if it includes a unanimous draft of sharing the inheritance, a fixed fee of PLN 300 is charged. 2. A fixed fee of PLN 1.000 is charged for a motion to share inheritance connected with dissolution of joint property and if it includes a unanimous draft of sharing the inheritance and dissolution of joint property, a fixed fee of PLN 600 is charged.

contain lands, buildings or premises. If the inheritance does not contain real estate or if sharing is limited to other objects excluding real estate (Art. 1038 § 2 of the Civil Code), an agreement of sharing may be concluded in any form (Art. 75 § 1 of the Civil Code restricted). It should be emphasized that the issue of relieving courts in the way mentioned above, requires neither changes in the law of succession nor changes to the Public Notaries Act.

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In the years that have elapsed since 1989, when the process of system transformation began in Poland, amendments have been made to the Civil Code relating to inheritance law. The need for change was clearly felt, and shown, not only in legal circles but also by the public. The pre-1989 inheritance law provisions, contained a very narrow circle of heirs which reflected the ideology of the former system and which followed through after its transformation. The Circle of Heirs law has now been emended, but it seems that further revision is needed as the Treasury still reacts to quickly in claiming succession under the inheritance law (art. 93 BC).

Changes in the inheritance law now make it possible for a certificate of succession to be drawn up by a notary, but not in every case. All heirs must first give their consent. Hitherto, only a court could determine the full provisions of inheritance law but now some issues can be undertaken by a notary. Poland has moved forward and so too has the role of the notary within the scope of obligations imposed by law.

Key words: succession, circle of heirs, inheritance law, notary, certificate of succession