Elwira Macierzyńska-Franaszczyk

"New" Limited Liability for Succession Debts under Polish Law[1]

I. Introduction

The Polish rules on liability for succession debts have been recently modified. The new legislation came into force on 18 October 2015[2], accompanied by mostly supporting voices of the Polish doctrine[3]. There were, of course, signs of critics disseminating fears of growth of credit costs, limited availability of credits to older people, or expressing disappointment that unaware heirs will be no more as easily trapped by unlimited liability for debts of inherited estate[4].

The amendment has also found a great response in the media. The highly enthusiastic media reported that under the new legislation „succession debts are no more inherited", or in slightly verified version "heirs do not inherit all succession debts", and "the era of accidental succession of debts has ended", as well as "liability for succession debts is lower", "heirs inherit debts only up to the value of inheritance", and finally "no more liability for debts unknown to heirs"[5]. Unfortunately, under Polish law of succession no one of the above statements is true. They are, however, illustrative examples of the widespread distortion, unawareness or ignorance regarding the legal effects of succession in the field of liability for succession debts.

The new legislation modifies two interconnected areas of the Polish succession system, namely: the acceptance/rejection of the succession and liability for succession debts. The leading idea of the Polish legislature included in the amendment was to establish a limited liability for succession debts as a rule governing heirs' liability. The primary step

---

[1] The paper updates my research on liability for succession debts conducted in years 2011–2014 in the frame of the individual project "Liability for debts of succession in Poland and selected European Countries on the background of the Europeanization of private law", No. 2011/01/N/HS5/04009 of the Polish National Science Centre.

[2] Ustawa z dnia 20 marca 2015 r. o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw, Dz. U. 2015 poz. 539.

[3] See *F. Zoll*, Das polnische Erbrecht im Wandel: die geplanten Reformen, in: R. Welser (ed.), Erbrechtsentwicklung in Zentral- und Osteuropa, Wien 2009, p. 37; J. Kremis, in: E. Gniewek/P. Machnikowski (ed.), Kodeks cywilny. Komentarz, Warszawa 2014, p. 1860; *W. Borysiak*, in: K. Osajda (ed.) Kodeks cywilny. Komentarz, t. III, Legalis el. 2015, art. 1015, lit. I; *E. Macierzyńska-Franaszczyk*, Wybrane problemy odpowiedzialności za długi spadkowe w prawie polskim – stan obecny i potrzeba zmian (Selected issues of liability for succession debts in Polish law – current state and the need for change), in: P. Stec/M. Załucki, 50 lat Kodeksu Cywilnego. Perspektywy rekodyfikacji, Warszawa 2015, p. 421; *M. Pazdan*, in: K. Pietrzykowski (ed.), Kodeks cywilny. Tom II. Komentarz. Art. 450–1088, Wyd. 8, Legalis el. 2015, art. 1015, III. 2.

[4] See commentaries of *M. Pazdan*, Zmiany w ukształtowaniu zasad odpowiedzialności za długi spadkowe w prawie polskim (Amendments in shaping the rules on liability for succession debts under Polish law), in: M. Boratyńska (ed), Ochrona strony słabszej stosunku prawnego. Księga jubileuszowa ofiarowana Profesorowi Adamowi Zielińskiemu, Warszawa 2016, p. 432.

[5] See http://www.bankier.pl/wiadomosc/Koniec-przypadkowego-dziedziczenia-dlugow-Wchodza-w-zycie-zmiany-w-prawie-spadkowym-7282115.html; http://pravo.gazetaprawna.pl/artykuly/851343,zmiany-w-prawie-spadkowym-2015-odpowiedzialnosc-za-dlugi.htm., http://www.dzienniklodzki.pl/artykul/3833263,zmiany-w-prawie-spadkowym-dziedziczenie-dlugow-tylko-do-wysokosci-spadku,id,t.html; http://dyskusja.biz/prawo/nowe-prawo-spadkowe-koniec-dziedziczenia-dlugow-52216; http://polskieradio.pl/42/273/Artykul/1532046,Koniec-z-dziedziczeniem-dlugow-Rewolucyjne-zmiany-w-prawie-spadkowym-weszly-w-zycie; http://www.rp.pl/Spadki-i-darowizny/310189993-Prawo-spadkowe-weszly-przepisy-chroniace-spadkobiercow-przed-dlugami-spadkowymi.html (accessed18.4.2017).

to introduce the new rule was a conversion of the existing legal fiction of a straightforward acceptance (simple acceptance) with the legal fiction of an acceptance with benefit of inventory in case of lack of any heir's statement regarding acceptance/rejection of succession. Since the effective limitation of liability requires drawing up the inventory of the estate elaborated by a court enforcement officer, the legislator introduced a new instrument, alternative to the formal inventory of the estate, which is a private listing of inventory.

There are many questions regarding the interplay of the new rules and instruments with the whole, in many respects imperfect, system of liability for succession debts. Issues, such as instruments serving to limit heir's liability, effectiveness of limitation and legal situation of an heir limiting his liability, will serve as a basis for further consideration. The main emphasis will be put on substantive provisions of heirs' liability before and after the 18 October 2015. The new legislation will be presented from a perspective of the whole system of liability for succession debts. Beyond the scope of the paper remain issues of liability of a legatee per vindicationem.

II. System of liability for succession debts in Poland

The structure of the Polish system of liability for succession debts reflects the adopted rules governing transition and acquisition of an inheritance. Pursuant to the principle of universal succession, expressed under art. 922 § 1 of the Civil Code[6], upon the moment of a deceased death, technically called "the opening of the succession" (art. 924 CC), his rights and obligations which constitute inheritance passes to heir(s). From this moment the heir acquires by operation of law the inheritance as a whole (uno actu) (art. 925 CC)[7]. In consequence also the liability for succession debts is attributed to heirs from the moment of the opening of the succession (art. 922 § 1 and 1030 CC).

Since nobody shall be forced by the law to inherit, the heir has a right to reject or accept the succession (art. 1012 and 1015 § 1 CC). The heir who rejects the succession is deemed not to be the heir at all, according to a legal fiction provided for by art. 1020 CC. The rejection requires a formal statement of the heir made within a statutory prescribed time period before a public notary or a court. The heir willing to inherit can end his temporary status by declaring the acceptance of the succession before the time period elapse. Otherwise, in lack of any heir's statement or in case of late statement, the succession is deemed to be accepted (legal fiction) by operation of law (art. 1015 § 2 CC)[8]. The reversed effect – the legal fiction of rejection of the succession in lack of heir's statement, which would oblige heirs to initiate the succession proceeding each time they would like to inherit, was considered by the Polish legislature unnecessary harsh and complicated[9]. The fiction of rejection would extend the temporariness of acquisition and, unwished for creditors, uncertainty as to subsequent heirs in case of rejection.

Due to the temporariness of the acquisition of the succession existing from the opening of the succession up to its rejection or acceptance the liability for succession debts within this period is limited cum viribus hereditatis. The heir is liable personally but only

---

6 The Act of 23 April 1964 – Civil Code, unified text Dz. U. 2017 pos. 459.

7 *J. S. Piątowski*/*H. Witczak*/*A. Kawałko*, in: B. Kordasiewicz (ed.), System prawa prywatnego. Prawo spadkowe. Tom 10, Warszawa 2013, p. 145.

8 *J. Kosik*, Przyjęcie i odrzucenie spadku, w: S. Piątowski (ed.), System prawa cywilnego. Tom IV. Prawo spadkowe, Warszawa 1986, p. 227. As to late statement see also verdict of the Polish Supreme Court (SN) of 13.12.2012, V CSK 18/12, Legalis el. No. 667430.

9 See *J. Gwiazdomorski*, Prawo spadkowe, Warszawa 1959, p. 95–96.

with the items of the inherited estate[10]. The Polish system applies two modes of heir's limited liability – limitation cum viribus or pro viribus. Whereas the heir has no impact on the limitation cum viribus, which arose before the acceptance of the succession by operation of law, the limitation pro viribus will appear if the heir accepts the succession with benefit of inventory. The scope and feature of the liability after the moment of acceptance depends on the way the heir accepted the succession. Despite the mode of acceptance the heir's liability stays personal in its nature. In case of the straightforward acceptance the heir will be liable personally and without limitations for all succession debts, except legacies and testamentary instructions (art. 1033 CC[11]). The acceptance with benefit of inventory allows to limit the heir's liability pro viribus hereditatis, up to the value of inherited assets (art. 1031 § 2 CC). This means that creditors have a right to satisfy their claims from the whole estate of the debtor, not only from items of inherited estate. Polish law does not provide any instrument allowing to restrict the liability cum viribus. The pro viribus limitation is a feature of limited liability of each heir accepting the succession with benefit of inventory, including municipalities and State Treasury, and even in such case there are no instruments to convert the mode of limitation into cum viribus.

It has to be noted, that under Polish law not only heirs (testamentary or intestate) but also legatees per vindicationem (zapisobiercy windykacyjni) are charged with the liability for succession debts. A legatee per vindicationem is personally liable for all succession debts from the moment of the opening of the succession. His liability, unlike heirs' liability, is always limited pro viribus up to value of the legacy (art. 10343 CC)[12].

An additional feature of the Polish system is a joint liability binding heirs and legatees per vindicationem, arising from the moment of opening of the succession and expiring with a complete partition of the inherited estate. After the partition each debtor is liable separately pro parte rata and proportionally up to the value of inherited assets (art. 1034^1 and 1034^2 CC).

The principle of unlimited liability for succession debts is not unjust in itself, until it becomes compulsory. Polish law created a trap of "a non-limitable liability" where due to a lack of instruments heir, after he once accepted the succession, may not effectively limit the liability up to strict value of the assets or up to items of the estate. The Polish system of liability for succession debts does not contain provisions on convocation of creditors, separation of estates (separatio bonorum), or liquidation[13]. There is also no comprehensive system of hierarchy of succession debts, which systematically complements rules on limited liability. The general order of payments can be implied from provisions on liability for legacies and testamentary instructions (art. 1033 CC) or rules

[10] As to the nature of personal liability see e. g. *K. Muscheler*, Erbrecht. Band II, Tūbingen 2010, p. 1761; *E. Macierzyńska-Franaszczyk*, Odpowiedzialność za długi spadkowe (Liability for succession debts), Warszawa 2014, p. 67–68.

[11] The provision of art. 1033 provides a specific limitation of heirs' liability up to the net value of the estate assets, applicable equally in each mode and type of acceptance of the succession.

[12] Due to the lack of limitation cum viribus even before acceptance of a legacy, which may cause some risk for legatees willing to reject the legacy, the provision of art 1034^3 shall de lege ferenda be revised.

[13] A separation of estates and liquidation was known under a predecessor of the Civil Code, which was the Decree of 8 October 1946 – Succession law (Dz. U. 46.60.328) and the Decree of 8 November 1946 on succession proceeding (Dz. U. 46.63.346), supplementing substantive provisions of the Succession law. As to the separation and liquidation and applicability of both instruments in post-war Poland – see e. g. *Gwiazdomorski*, fn. 9, p. 201–202; *K. Przybyłowski*, Ukształtowanie zasad dotyczących odpowiedzialności za długi spadkowe w polskim prawie cywilnym (Shaping of the rules of liability for inheritance debts in Polish civil law), in: Księga pamiątkowa ku czci J. Gwiazdomorskiego, SC 1969, t. XIII–XVI, p. 241–242; *Macierzyńska-Franaszczyk*, fn. 10, p. 27–28.

on calculating the value and limitations of a forced share (art. 993, 998, 1003, 1005 CC)[14]. Before the amendment of 2015 was introduced, the most direct remark referring to a manner of satisfying succession claims was expressed in art. 1032 § 2 CC, which advises the heir who accepted the succession in benefit of inventory, to satisfy the succession debts "duly".

III. Principle of unlimited liability and legal fiction of straightforward acceptance

Unlike the German system, Polish law provides a rather narrow set of instruments to limit the liability. The peculiarity of the Polish system lies in combining the only instrument used for the purpose to limit the liability, which is the benefit of inventory, with rules on acceptance and rejection. The heir's "freedom" to limit or not the liability exists only before acceptance and is restricted up to the statutory time period for acceptance or rejection of the succession. The acceptance, despite of its mode, is definitive and unconditional[15]. Further modification of the mode of acceptance is possible only based on defects of statement of will provided under art. 1019 CC[16].

The acceptance with benefit of inventory may be a result of an explicit heir's statement made before a court or a public notary or occurs by operation of law. Until 18 October 2015 a lack of heir's statement led to the legal fiction of straightforward acceptance. Articles 1015 § 2, 1016 CC (as well as 1023 § 2 CC) governing the ipso iure straightforward acceptance stayed unchanged from 1 January 1965, since the code came into force. The legal fiction of straightforward acceptance expressed and enhanced the adopted by the Polish legislature principle of unlimited liability for succession debts. The crown political argument for the principle, expressed in public, was the nature of succession debts which consisted mainly of unpaid credits from public sources and obligations from installment purchases[17]. Some irrationally expected that the risk of unlimited liability will incline heirs to put the attention on the succession matters and to reject or accept the succession with full awareness of its consequences[18].

Severe consequences of the adopted rule were mitigated by several exceptions from the straightforward acceptance, instead of which the fiction of the acceptance with benefit of inventory was applied. The second sentence of art. 1015 § 2 CC (previous wording) provided that failure of any statement of acceptance or rejection of succession results in the acceptance under benefit of inventory if the heir did not have full capacity for legal acts, or there were grounds for his full legal incapacitation, or he was a legal person[19]. The exceptions covered by art. 1015 § 2 and 1016 CC have had different grounds. Exceptions referring to natural persons provided under art. 1015 § 2 CC were explained with reference to subjective criteria, by the necessity to protect the natural person which,

---

[14] *Macierzyńska-Franaszczyk*, fn. 10, p. 283–285.

[15] See e. g. *B. Kordasiewicz*, w: B. Kordasiewicz (ed.), SystemPr.Pryw, p. 488–489; also SN of 25.5.2012, I CSK 414/11, Legalis el., no. 532392; SN of 13.12.2012, V CSK 18/12, Legalis el. no. 667430;. SN of 20.12.2012, III CZP 89/12, Monitor Prawniczy 2013, No. 17, p. 931.

[16] See e. g. SN of 30.6.2005, IV CK 799/04, OSNC 2006, no. 5 pos. 94.

[17] See *Przybyłowski*, fn. 13, p. 246–247; *E. Drozd*, in: S. Piątowski (ed.), System prawa cywilnego. Tom IV. Prawo spadkowe, Warszawa 1986, p. 370–371.

[18] *Gwiazdomorski*, fn. 9, p. 96.

[19] Pursuant to art. 33^1 § 1 CC in conjunction with art. 1015 § 2 sent. 2 CC the exception covered also organizational units not being legal persons which have been granted the legal capacity by virtue of statutory law.

due to its inability to undertake legal actions or to recognize consequences of its passive behavior (lack of statement) requires protection against the risk of unlimited liability. The exception granted to a legal person was criticized as a relict of the former political system, where it was justified by interest to protect state-owned enterprises. In fact the historical arguments did not remain topical to justify the privileged position of legal persons against other heirs[20]. Separate preconditions allowing to avoid the straightforward acceptance ipso iure were provided under art. 1016 CC, which stated that if one of the heirs accepts the succession with benefit of inventory, it is presumed that heirs who did not make any statement within the said period also accept succession with benefit of inventory. Article 1016 CC protected heirs from cumulating the risk of unlimited liability resulting from the straightforward acceptance in hands of selected heirs, if other heirs benefited from limited liability[21]. The interpretation and scope of application of art. 1016 CC was problematic and its protective value appeared rather unexpectedly and only as a result of a joined succession[22].

The restrictiveness of the fiction of straightforward acceptance caused economic risks not only for heirs, but also their creditors. From the moment of acceptance the former creditors of the heir and succession creditors have had an equal right to seek satisfaction from the whole estate of the heir consisting of his previous estate and the inheritance. The general limitation cum viribus, attainable under other legal systems after the acceptance by e. g. separatio bonorum, is unavailable under the Polish law.

The fiction of straightforward acceptance was criticized even before enactment of the Civil Code and views opposite to it were already presented and discussed by the Codification Commission working on the succession provisions[23]. The previous criticism did not expire after enactment of the Code. Antagonists of the adopted fiction pointed out an unawareness of the ordinary/average heir as to consequences of his lack of interest on the succession, real difficulties by establishing level of succession debts, or risk of grossly unjust results of rigorist application of the adopted rule[24].

The succession debts arouse indeed without the involvement of the debtor and despite this are satisfied from his own estate. The lack of limitation of his liability can be a matter of his choice, but the unlimited liability which arouse as a consequence of a lack of debtor's statement, is in general difficult to explain without controversies, similarly as the principle of unlimited and "non-limitable" liability. The rule of straightforward acceptance ipso iure was questionable from an axiological point of view. The unlimited liability not only surprised heirs, but also strongly privileged creditors of succession debts. Creditors of succession debts are not a homogenous category, and to favor them as a group only because of unexpected usually transition of their debts to heirs is not sufficient to explain such far-reaching protection. Arguments related to the legal category of creditors do not convince, either, if we consider that the same entities could appear on both sites of this creditor-debtor relation[25]. Leaving aside particular areas of civil regulation where the weaker party is protected in a particular way (e. g. consumer law), the contemporary civil law favors rather equality of parties and awareness in creating legal obligation. The once formed by operation of law and after that non-limitable liability

[20] See: *B. Kordasiewicz*, w: B. Kordasiewicz (ed.), SystemPrPryw, p. 490–491; *W. Borysiak*, w: K. Osajda, Komentarz, 2015, Legalis, art. 1015, lit. F.

[21] As to ambiguity caused by application of art. 1016 CC see: *Macierzyńska-Franaszczyk*, fn. 10, p. 250–255.

[22] *B. Kordasiewicz,* w: B. Kordasiewicz (ed.), SystemPr.Pryw, p. 491.

[23] *Przybyłowski*, fn. 13, p. 245–246; see also *Pazdan*, fn. 4, p. 424–425.

[24] *Gwiazdomorski*, fn. 9, p. 96; *Przybyłowski*, fn. 13, p. 247–248; *E. Drozd*, in: SystemPrCyw, p. 371.

[25] *Pazdan*, fn. 4, p. 422–423.

does not stay in line with these principles. It may be even considered as contrary to principles of community life[26].

The disputable fiction of straightforward acceptance by operation of law has changed from 18 October 2015. The former provisions are still applicable for successions opened before this date.

IV. Shift to the principle of limited liability and fiction of acceptance with benefit of inventory

The conversion of the legal fiction of straightforward acceptance was for many years rather univocally recommended by the Polish doctrine[27]. The last twenty years of economic transition have brought new economic reasons to abandon the criticized legal fiction. Better access to credits and increased level of indebtedness among individuals caused growth of financial risks. These, combined with constant legal unawareness among individuals[28], or maybe standing legal ignorance – as suggested some authors[29], made this demand very up-to-date. The expected amendment has been introduced by the act of 20 March 2015[30] and is in force from 18 October 2015.

With regard to the acceptance and rejection of the succession the amendment concerned provisions of art. 1015 § 2 and art. 1016 CC. The new wording of art. 1015 § 2 CC expresses a transition from the criticized legal fiction of straightforward acceptance to acceptance with benefit of inventory. But the essence of this amendment lies in a shift from the principle of unlimited liability to the principle of limited liability, which constitutes a systemic transformation of the liability rules. The fiction provided under former art. 1015 § 2 CC was in fact a tool for executing the principle of heir's unlimited liability.

The heir is still allowed to declare in the statutory time period a rejection of the succession, acceptance without limitation for succession debts or acceptance with limitation[31]. The new wording of art. 1015 § 2 CC provides that the lack of any statement of the heir in the statutory time period is unequivocal with the acceptance with benefit of inventory. The CC does not provide any exception from this rule. Article 1016 CC, which became meaningless as a result of a new wording of art. 1015 § 2 CC, has been repealed.

---

[26] *J. Ciszewski*, Ustawowe i umowne ograniczenia odpowiedzialności osobistej (Statutory and contractual limitations of personal liability), Gdańskie Studia Prawnicze 2003, t. 1, p. 23–24.

[27] E. g. *Przybyłowski*, fn. 13, p. 247–248; *E. Skowrońska*, Odpowiedzialność spadkobierców za długi spadkowe (Liability of heirs for succession debts), Warszawa 1984, p. 75–76; *Ciszewski*, fn. 26, p. 23; *G. Gorczyński*, Oświadczenie o przyjęciu i odrzuceniu spadku – uwagi de lege ferenda (statement of the acceptance of the succession – de lege ferenda remarks), in: *A. Dańko-Roesler*/*J. Jacyszyn*/*M. Pazdan*/*W. Popiołek*, Rozprawy z prawa prywatnego. Księga pamiątkowa dedykowana Profesorowi Aleksandrowi Oleszce, Warszawa 2012, p. 132–133; *Macierzyńska-Franaszczyk*, fn. 10, p. 329–330.

[28] The legal unawareness as to the results of passive behaviour after inheriting the estate pointed out *B. Kordasiewicz*, w: B. Kordasiewicz (ed.), SystemPr.Pryw, p. 490–491; see also Justification of the amendment, Sejm RP VII kadencji, Nr druku: 2707, item II.2.

[29] See *P. Księżak*, Dobrodziejstwo inwentarza po nowelizacji Kodeksu cywilnego z 2015 r. – aspekty materialnoprawne (Beneficium of inventarii after the amendment of the Civil Code of 2015 – substantive law aspects), Kwartalnik Prawa Prywatnego 2015, z. 4, p. 878.

[30] Ustawa z dnia 20 marca 2015 r. o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw, Dz. U. 2015 poz. 539.

[31] Motives of straightforward acceptance taken into account during work on the amendment presents *Pazdan*, fn. 4, p. 429.

The drafters of the act of 20 May 2015 justified the change with a lack of "due protection of heirs against an unexpected liability exceeding a value of inherited assets". The question, whether the new provisions assure proper protection, remains open. It should be pointed out, that despite the essential modification of the criticized legal fiction the system of liability does not remove risks of exceeding the limit of liability. This solitary systemic change did not create a comprehensive system with a guarantee of an effective protection of heirs. First of all, it shall be kept in mind that the pro viribus limitation means that liability covers the whole estate of the heir; and that taking advantage of the benefit of inventory requires constant activity of the heir, who in case of any claim shall invoke his liability limitation. This does not depreciate an importance of the amendment. An abandonment of fiction of straightforward acceptance was intuitively the best instrument to reduce the risk of inheriting an over-indebted (insolvent) estate.

The implementation of a principle of limited liability for succession debts is far from creating preference to heirs with respect to succession creditors[32]. This shall be rather perceived as a limitation of an unjustified enhancement of creditors rooted in a historically earlier model of unlimited liability[33]. The limitation of liability up to inherited estate (even up to its value) is a milestone for a postulate to create a system of liability for succession debts where "the economic neutrality of risks of the succession" for creditors and debtors is equally protected[34].

V. Listing of inventory

An effective limitation of the heir's liability requires valuation of the inherited estate (assets and debts), which is performed traditionally by means of inventory of the estate (art. 1031 § 2 CC). In Polish law the inventory of the estate is a formal document arranged by the court enforcement officer[35], based on the decision issued of a probate court (art. 637 § 1 Code of Civil Procedure[36]). In order to simplify formalities and reduce costs of the inventory the Polish legislature decided to introduce a completely new instrument[37], alternative to inventory of the estate, called a "listing of inventory" (or "list of inventory"). The listing of inventory was also introduced by the act of 20 March 2015 and is regulated in art. 1031^1 – 1031^4 CC, which are supplemented by provisions of art. 636^1 – 638^1 CCP. The introduction of the listing entailed the modification (update) of art. 1031 § 2 and 1032 § 2, which provide sanctions applicable in case of making a deliberate faulty listing/inventory or omitting known to the heir debts by satisfying succession creditors.

---

32 Slightly opposite view expressed *Księżak*, fn. 29, p. 881.

33 *Macierzyńska-Franaszczyk*, fn. 10, p. 64–66.

34 Ibidem, p. 328.

35 Drawing up the inventory is charged according to art. 53 of the Act of 29.8.1997 on the Court enforcement officers and enforcement (Ustawa o komornikach sądowych i egzekucji), unified text Dz. U. z 2016 r. pos. 1138. The application to the probate court for decision on drawing up the inventory is subject of the fixed fee of 50 PLN, pursuant to art. 49 sec. 1 point 3 of the Act of 28.7.2005 on the court fees in the civil cases (Ustawa o kosztach sądowych w sprawach cywilnych), unified text Dz. U. 2016 r. pos. 623

36 The Act of 17.11.1964 – Code of Civil Procedure, unified text Dz. U. 2016 pos. 1822, henceforth CCP.

37 The amendment to the Civil Code was elaborated by the Group of the Law of Succession of Codification Commission ruled by prof. dr hab *M. Pazdan*. The work over the bill presents *Pazdan*, fn. 4, p. 426–432.

The listing is a private document. The heir, legatee per vindicationem or executor of a will are entitled to make a listing, acting individually or jointly or with other entitled person (art. 1031^1 § 1 and 2 CC). Drawing up the listing of inventory by any entitled person does not deprive others from drawing up the own listing. In consequence, several listings may appear and exist in the course of one succession proceedings, including listings which differ from each other regarding the estate assets or succession debts.

Article 1031^1 § 1 CC recognizes two modes of submitting the listing of inventory to a court: direct submission by an entitled person or with a contribution of a public notary. In the first case, the listing shall be drawn up according to a specified standard form determined in the regulation of the Ministry of Justice (art. 1031^2 § 1 and 2 CC). Pursuant to art. 636^3 § 1 CCP the entitled person submits listing prepared this way directly to the probate court (art. 628 CCP) or to the court in whose district a person submitting the listing resides, which immediately forwards the listing to the probate court. The second mode of submitting the listing requires involvement of the notary, to whom the entitled person submits a privately prepared listing. The notary includes it into a report, a copy of which he immediately forwards to the probate court (art. 636^3 § 2 CCP).

The probate court upon receiving the listing of inventory immediately publishes an announcement of the submission of the listing on the website and on the notice board of the court (art. 636^3 § 3 and art. 638^1 § 1 CCP). This informative function of the court announcement, which discloses to creditors of the estate the fact of limiting the liability by the heir and allows creditors to establish whether their claims have been properly included into the listing, was highlighted in the justification to the amendment[38].

The court proceedings regarding the listing of inventory together with the announcement are considered to be a surrogate of a convocation procedure, called also quasi-convocation[39]. The concept of Polish legislature should not, however, be identified with the convocation procedure known under the Austrian, Dutch or German law[40]. The announcement does not request creditors to submit their claims to the probate court, but merely informs about the fact of submission of the listing, the opportunity to get acquainted with its content by a person, which such need sufficiently justifies, as well as instructs as to the right to submit a request to take the inventory of the estate (art. 638^1 § 3 CCP). There is no formal way to submit creditor's claims to the listing. If the creditor establishes missing items or debts included incorrectly in the listing he may notify this fact to the author of the listing, who shall supplement the listing. The heir who was notified about incompleteness of his listing or who identified the missing content of the listing based on other submitted listings is obliged to complete/supplement the listing (art. 1031^1 § 4 CC).

The sanction for failure to complete the listing (or inventory) with debts which were known, or should be known to the heir, is provided under art. 1032 § 2 CC. The result of the omission will be extension of the liability for the notified claim (considered as known to the debtor) to the amount in which the heir would be obliged to satisfy the claim, had he properly satisfied all the succession debts, even above the value of the assets of the

---

[38] Justification of the amendment, item 3. Both the listings of inventory, as well as the inventory of the estate include items of the estate and objects of legatees per vindicationem (pursuant to art. 981^1 § 1 w zw. z art. 922 § 2 CC they do not belong to the inherited estate), with their value appropriate to the condition and prices existing on the opening of succession, and succession debts as appropriate to the condition existing on the opening of succession (as to the listing – art. 1031^1 § 3 CC, as to the inventory – art. 638^8 CCP).

[39] *K. Osajda*, Wykaz inwentarza – nowa instytucja prawa spadkowego (Listing of inventory – the new institution of the civil law), Monitor Prawniczy 2015, No. 23, p. 1245; the term "quasi-convocation" is used by *Księżak*, fn. 29, p. 888.

[40] Respectively § 813–815 ABGB; art. 4:214 Dutch Civil Code; § 1970–1974 BGB.

inherited estate (above liability limitation). The failure to supplement the listing/inventory with respect to existing debts does not release the heir from satisfying them as if they were included in the listing/inventory.

Leaving the listing incomplete as to assets or reporting non-existing debts exposes the heir to more severe sanction. The heir who accepts the succession with benefit of inventory, but who by drawing up the listing or inventory fraudulently avoids to include in the listing/inventory assets belonging to the estate or includes non-existing debts risks the loose of the limitation of liability (art. 1031 § 2 CC).

The listing of inventory, as well as the inventory of the estate, have a broader informative value. They disclose information on the composition of the inherited estate, allow assessing creditor's perspectives for satisfying claims or pointing out assets suitable for enforcement of claims. The listing of inventory is more easily accessible for an interested person than the inventory of estate. Pursuant to art. 638^1 § 3 CCP the listing of inventory might be read by anyone who will sufficiently justify such need[41]. The prerequisite of mere "justification of the need" will open an access to information included in a listing to a broad range of entities, including those demonstrating their prospective rights as creditors of the succession[42]. Taking into account that the listing gives a detailed picture of the inherited assets and debts with information as to competitive creditors, it would seem more appropriate to put on the interested person, instead of mere justification, a requirement to demonstrate their legal interests or substantiate probability of their claims.

The listing of inventory and the inventory of the estate are necessary to complete (enforce) the liability limitation. Drawing up the listing or the inventory is facultative even if the heir accepted the succession with benefit of inventory. It may be pointless from the heir's perspective, if the value of estate assets exceeds debts, no forced share (legitime) claims are filled and the inventory is not necessary for determining a value of claim, or a partitioning of estate does not generate disputes among heirs. The heir willing to prepare the listing/inventory is also not limited in time and he may start to proceed at any time, even after the creditor's action against him have been brought[43]. Despite this, a failure or delay in the drawing up the listing/inventory can cause some risks to the heir. A lack of listing/inventory means that the limitation of his liability has not been determined, what in praxis exempts the heir from invoking the limitation. An excessive time period between the opening of the succession and drawing up the listing/inventory increases the risk of misrepresentation of the content, and exposes the heir to the loss of liability limitation, which is a sanction provided under art. 1031 § 2 CC in the case the heir fraudulently omits in the listing/inventory assets belonging to the estate or includes non-existing debts.

If the heir does not draw up the listing or inventory each of the succession creditors, who demonstrate existence of their claims, can request the probate court to fill a decision to take an inventory (art. 637 § 1 CCP). The probate court can issue the decision after hearing the heir (unless this is impossible). The heir will avoid making the inventory if he offers to the creditors satisfaction of their claims. The creditor cannot refuse to accept an offered payment even if it is undue at this time (art. 1031^4 CC – former art. 638 CCP).

---

41 The court also publishes a notice of the issuing of a decision to take an inventory of the estate (art. 637 § 3 i 638^1 § 1 CCP). After the enforcement of the court decision the court enforcement officer includes the inventory of the estate into the probate files which he sends to the probate court. Since the inventory makes a part of formal court files, the group of entities entitled to read the inventory is limited to those which demonstrate their legal interest.

42 Cf. *Osajda*, fn. 39, p. 1245. It has been argued in the doctrine that not enough limited access to listings can discourage successors willing to secure information as to their assets – see. *Księżak*, fn. 29, p. 886.

43 *Osajda*, fn. 39, p. 1240.

An additional function of the listing/inventory appears if the debts of the inherited estate exceed the assets and heirs have limited their liability up to the value of estate. The listing/inventory of estate determines the order of payment of inheritance. The mutual relation of multiple listing and the inventory in determining the "hierarchy" of debts solves the provision of art. 1031^3 CC. According to its § 1 sent. 1 the heir upon filling the listing shall satisfy creditors in accordance with the submitted listing. If there are several listings the heir shall take into account the content of each listing submitted to the court and cannot defend himself claiming the lack of information as to other listings. Multiple listings, in particular unequal as to the content, may cause uncertainty with regards to the actual scope and limit of liability. The provision of § 2 determines the relation between listings and inventory by stating a priority of the official inventory of the estate over the private listing. According to art. 1031^3 § 2 from the moment of making up the inventory of the estate the heir shall pay debts in accordance with the inventory, instead of the listings.

If the heir who satisfied creditors according to the listing or inventory exhausted the limit of his liability (equal to the value of assets included in the listing/inventory) he can refuse to pay debts not included in the listing, even if they took precedence in relation to satisfied claims.

The heir who ignores the content of other listings or the inventory, in particular debts included there, bears the risk of exceeding his liability according to art. 1032 § 2 CC. Each listing submitted to the court, the inventory, as well as their supplements, shall be considered as a source of information on succession debts. The heir who omits debts included there and pays debts according to his own listing, will be liable for those other debts, even above the value of inherited assets, up to the amount in which he would be obliged to satisfy them had he properly paid all debts. The sanction is not applicable only to an heir not having full capacity to perform legal acts and to an heir with regard to existing legal grounds for his incapacitation.

Introducing the listing of inventory, on the one hand, deformalized activities of the heir limiting his liability, but on the other hand, it redefined the level of heir's due diligence. The heir is obliged to fulfil succession debts in accordance with the listing, and if the inventory of estate has been performed – with the inventory. The heir who accepted the succession with benefit of inventory in order to comply with the due diligence requirements shall in fact, before satisfying succession claims, gain the information from the court to determine whether new listings of inventory have been submitted. Beside the public announcements on submitted listings or on court decision of taking the inventory the Polish law does not provide additional information duty against the heir as to submitting listing or inventory.

The heir who delayed the drawing up of the listing/inventory is not deprived of the right to limit his liability, and he can at any time submit the listing. It would be highly recommended for the heir to satisfy claims taking into account listings submitted to the court.

VI. Limits of liability limitation – conclusions

The economic importance of the last amendments of Polish law of succession is unquestionable. Although, the amendment covers only the minimum of postulates de lege ferenda regarding the system of liability for succession debts, it allowed to achieve a better balance of the gravity of liability for succession debts between debtors and creditors. But what exactly does "the proper balance" in regards to liability for succession debts mean?

The most obvious assumption regarding the perfect system of liability for succession debts is that it shall balance the interests of debtors of succession debts and their creditors, among which are creditors of succession debts as well as other "personal" creditors of heirs or legatees per vindicationem. Balancing interests is necessary when we try to protect to some extent contrary interests of separate groups of entities. It is necessary also in case of liability for succession debts, hence the economic risks related to the fact of death of the deceased can be severe and risky to each of the above mentioned groups. The creditors of the deceased might be faced with creditors of the heir looking for satisfaction from the same assets, and vice versa. The estate of the deceased might be inherited by an insolvent heir, or the inherited estate can be insolvent in itself. The proper balance at such high variability of scenarios can be generalized as a postulate of "economic neutrality of risks of the succession". The balanced system of liability for succession debts shall first of all limit the liability for succession debts up to the value of estate. Within this frame limit the interests of creditors shall take priority over interests of debtors. The competitive creditors (of succession and of heirs) shall dispose of instruments securing their privileged position on assets which secure their claims before opening of the succession. If we impose these assumptions onto the Polish system of liability for succession debts we shall observe that the only amendment, however crucial, does not remove all shortcoming of the system of liability for succession debts. The acceptance with benefit of inventory never serves as a single instrument to secure economic neutrality of the succession. The amendment of 2015 and conversion of the rule on unlimited liability into limited one is, however, a milestone of the predictable system of liability for succession debts.