Abstract

The second part of the article concerns the interpretation and application in the central parts of Poland of the provisions of the Napoleonic Code on vacant inheritances. The Code does not provide a definition of the vacant inheritance. The key to the interpretation of the provisions on the acquisition of vacant inheritances by the state is the term “is presumed to be” (a vacant inheritance) used in the former Article 811 of the Napoleonic Code (French: est réputée vacante), see the current Article 809 of the French Civil Code which omits the term “is presumed to be”). This indicates that, in the absence of suitable heirs, the law introduced a specific rebuttable presumption of a vacant inheritance, belonging to the state. Only after an appropriate period of time did the presumption turn into certainty, i.e. it resulted in the inability to invoke the inheritance title. In practice, this meant that thirty years after the time necessary to draw up an inventory of the inheritance and to deliberate (ad deliberandum), the inheritance ultimately fell to the State. The mechanism adopted in the Napoleonic Code made it possible, on the one hand, for the heir to acquire the inheritance, which remained under the supervision of a curator for the period when it was presumed vacant, and on the other hand, it prevented the existence of inheritances without a claimant, i.e. inheritances devoid of the persons entitled to take them over. In the post-war period, when the communist authorities passed subsequent legal acts concerning the provisions of the inheritance law, the deadlines for heirs to apply for inheritance changed. Ultimately, the legislator did not adopt the model of vacant inheritances in the regulations harmonising the inheritance law on the Polish lands since 1947; instead, a solution analogous to the one provided for in the German Civil Code of 1986 (BGB) was adopted. The “shortening” of the statute of limitations also influenced the assessment of the admissibility of further application of the provisions of the Napoleonic Code in regard to vacant inheritances during the period of the People’s Republic of Poland regime (despite the existence of different inheritance law solutions).

Keywords: reprivatisation, inheritance law, succession, heirless inheritance, vacant inheritance.

IV. Inheritance (presumed to be) vacant

The Napoleonic Code did not provide a definition of the vacant inheritance. However, in a provision which is of key importance for the analysis of the institution in question, i.e. Article 811, the Code stated that that “When after the expiration of the delays for making the inventory and for deliberating, no person appears who claims a succession, there is no heir known, or the known heirs have renounced therein, such succession is taken to be vacant” (original spelling). The quoted Polish translation, although treated as quasi-official, does not reflect correctly the wording of the original text in which the legislator used the term “vacant inheritance” (French est repute vacante). This is important insofar as the legal theory distinguishes between heirless and vacant inheritances, treating them as two separate institutions of the inheritance law. Except for the Piarists edition of the Code, other translations correctly use the term “vacant inheritance”. The doctrine also points to the necessity of distinguishing between the vacant inheritance and the heirless inheritance. Heirlessness is an ultimate legal status in which, due to the lack of heirs or due to heirs waiving their rights, an inheritance falls to the State.

A solution similar to the French institution of the vacant inheritance was included in part II of the East Galicia Civil Code (and West Galicia Code, too) of 1797, where in § 626 we read that: “an announcement by the edict is also made when the court is not aware whether a decedent who left an estate, has also left a lawful heir. If no person claims the estate in the time prescribed by the law, the inheritance shall fall to the revenue; the right of succession shall, however, be still preserved. Each lawful heir may provide evidence and demand the return of hereditary property.”

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2 Translation after Kodex Cywilny Francuzski, w Warszawie, w Drukarni Rządowej naprzeciwko Dyrekcyi i Kantoru Głównego Loteryi z 1829 r., i.e. the Piarists version. According to an extract from the Protocol of the Secretariat of the State of 10 October 1809. The Napoleonic Code should be interpreted as per the Piarists’ version unless it is contrary to the original text (in accordance with Article 1(2): “will be honoured in the Courts, as long as it remains consistent with the original”).

3 Presently, Article 809 f.c.c. stipulates when an inheritance can be considered vacant (la succession est vacante).


In the French legal doctrine, the concept of the “vacant inheritance” in light of the French law, as well as the interpretation of the individual provisions of the Napoleonic Code, has been, from the very beginning, the theme of polemical exchanges and subject of heated disputes. As a consequence, it's not surprising that they raised – and still raise – many doubts in the Polish legal literature and case-law. There were also some additional complications associated with the provisions separately regulating a number of issues concerning heirless and vacant inheritance on the territory of former Kingdom of Poland, and subsequently the Republic of Poland. Except for exceptional situations and temporary absence of the parties concerned, the institution of vacant inheritance, for which a curator was appointed pending a claim by an heir, was in practice designed primarily for the cases of so-called adverse inheritance, which, upon its acceptance, would not provide the parties concerned with any particular benefits. Generally, this view prevails in the doctrine, as legal theorists point to the fact that the vacant inheritance should not be identified with the heirless inheritance (uncontested), but also that the former can’t be viewed as an “inheritance without an heir” but rather as an inheritance that has been “abandoned” (H. Capitant). According to M. Planiol, “[v]acancy is the actual status of an abandoned inheritance which remains unclaimed and which is left unmanaged even by the State. The vacant inheritance represents the so-called “unclaimed” inheritance (Latin vacare). The author treats the so-called vacancy (French: vacance de la succession) as an actual (rather than legal) status of temporary nature. Indeed, this institution was designed primarily to protect the creditors of the estate. For these reasons, as pointed out by K. Dunin, the decision of the former Administrative Council of the Kingdom of Poland of 30 January/11 February 1842 on heirless and vacant inheritance provided, in its Article 18, that heirless inheritance should be deemed vacant inheritance. According to this provision, “heirless inheritance which will not be taken into possession by the Kingdom Treasury, shall be notified by the Office of Prosecutor General to the King’s Prosecutor in order to have a Curator appointed to manage the same inheritance as it was vacant inheritance”. Without recognising the essence of the legislator’s intention, it would not be possible to understand this provision. A curator appointed on a vacant inheritance did not only act in the interest of potential heirs or the State, but was also obliged to act in the interest of creditors so that the latter could effectively assert their rights. This meant that in the permissible event that the revenue renounced an inheritance (failed to take it into possession), such inheritance was to be treated as vacant. The curator was, among other things, responsible for answering demands formed against the inheritance (Article 813 of the Napoleonic Code).

At the time of the partitions, heirless and vacant inheritance was governed by the provisions of the Russian act on civil court procedures of 20 November 1864, which in its Book 4 contained special provisions on court proceedings held in the district of the Warsaw Court Chamber, concerning primarily the announcement of the opening of the inheritance (Article 1682) and the administration of the estate under the custody of a curator of vacant inheritance (Articles 1743–1748). Later, pursuant to Article XV § 3 of the Regulation of the President of the Republic of Poland of 29 November 1930 Provisions implementing the Code of Civil Procedure, actions against the curator of vacant inheritance were also to be brought before the court competent under Article 29 of the Code of Civil Procedure of 1930.
Therefore, in light of Article 811 of f.c.c., this concerns inheritance the rights to which cannot be established due to the impossibility of determining the lawful heir. 

Therefore, in light of Article 811 of f.c.c., this concerns inheritance the rights to which cannot be established due to the impossibility of determining the lawful heir. *Lege non distinguente*, contrary to the long-held views and in line with the position adopted in the more recent French doctrine, the thesis that this provision and, as a consequence, the institution of vacant inheritance were applicable only to heirs other than the lawful heirs indicated in Article 724 f.c.c., should be rejected. The heir is therefore unknown, and even if they exist, they are not entitled to inheritance, having renounced it. This happens with inheritance after the expiration of the time for making the inventory and for deliberation. Pursuant to Article 795 of the Code, “the heir has three months to make the inventory as from the date on which the succession is opened”; moreover “for the purpose of his acceptance or renunciation”, a delay of fourteen days is allowed after the expiry of the above-mentioned term or after the closing of the inventory.

According to C. Demolombe, for inheritance to be considered vacant in light of Article 811 of f.c.c, three conditions must be met: 1) the period prescribed for making the inventory has expired, 2) no one has claimed the inheritance, 3) there are no known heirs or they have renounced the inheritance. A similar approach is presented by M. Planiol who treats the indicated conditions as the so-called vacancy conditions. According to this author, inheritance may be partially vacant, “where there exists a beneficiary of future goods or a legatee under the universal succession of title, who has the right only to a certain part of the inheritance.”

The second key provision is Art. 789 of f.c.c., under which the power to accept or renounce a succession is prescribed by the lapse of time required for the longest prescription respecting claims to real property. According to the case-law, a person who fails to accept inheritance expressly or tacitly within the prescribed term, loses the right to accept the succession.

Article 811 of Code Civil stipulated three conditions for recognising an inheritance as vacant following the expiry of the term prescribed for making the inventory and deliberation: 1) no person has claimed the inheritance, 2) there is no known heir 3) known heirs have renounced the inheritance. Thus, in the cases referred to in points 1 and 2 of Article 811 of f.c.c., the heir or, alternatively, the person claiming to be entitled are not known (as they don’t undertake the appropriate private or official acts required directly of them to accept the inheritance), or – in the case of point 3 – the heir was known, however, they have renounced the inheritance. If the nearest heir has renounced inheritance, more remote heirs were not seized in full right of the property and, as a consequence, the inheritance was also regarded a vacant in the case more remote heirs existed.

To sum up, if the circumstances were contrary to any of the above negative conditions, then it should be assumed that there was no vacant inheritance or, to be more precise, that an inheritance could not be deemed as vacant. On the other hand, the objective “existence” of the heir without the possibility of their indication in order to take appropriate steps during the period of limitation does not mean that they are “known” within the meaning of the Napoleonic Code, and therefore that the hypothesis in Article 811 of CN is not met. Therefore, the view expressed in the case-law that: “The
existence of heirs itself is therefore an obstacle to the recognition of an inheritance as vacant cannot be considered accurate.

In the case-law, there is a view that “in the case of vacant inheritances a distinction was made between situations when an inheritance was vacant and when it was only presumed as such”. This view is generally accurate, although the distinction between these two categories can be found neither in the Napoleonic Code nor in other provisions regulating the issue of the vacant inheritance on the Polish lands. Indeed, whenever it refers to the “vacant inheritance”, the legislator considers it to be such an inheritance, which is presumed to be “vacant” and therefore one that exists in the state of uncertainty as to its ownership (i.e. until the expiry of the relevant prescription period concerning the rights to succession).

Contrary to the views voiced from time to time, Art. 811 of f.c.c., in its wording which was in force in the central parts of the Republic of Poland until 1947, neither defined the concept of the vacant inheritance nor determined beyond any doubt that, upon the expiry of the time-limits prescribed for making of the inventory and for deliberation, and in the absence of information about the heir, inheritance is “vacant”. It stipulated that in such circumstances the inheritance “is presumed to be vacant” (est réputée vacante). It is therefore a definition of sorts of the “vacant inheritance”. It provides for the presumption of the vacant inheritance, which makes it possible to define the starting point of the period set for determining the time after which the inheritance will become final and vacant and as such will fall to the State. It can be thus concluded that the French Civil Code distinguished between two institutions: 1) an inheritance which was “presumed to be vacant”, and 2) vacant inheritance without lawful heirs due to the expiry of the prescription period which, as a result, fell to the State pursuant to Article 539 f.c.c. On the other hand, in the case of an inheritance which was presumed to be vacant (and which in fact wasn’t “vacant” in the sense of being owned by the State), a curator had to be appointed “on the petition of the persons interested or on the requisition of the commissioner of government” (Article 812), who was bound in particular to certify the state of the inheritance by inventory, as well as to exercise the rights belonging to the estate and to administer it (Article 813 f.c.c.). The curator of a vacant inheritance (one “presumed" to be vacant) in fact represented the estate, acted as its legal representative. This solution gave rise to the thesis that the estate is a legal entity (there existed also a normative basis for this approach), and the concept was to some degree adopted into the Polish legislation of the inter-war period. The above interpretation is confirmed in the inter-war doctrine by E. Till, who noted that “[i]n terms of administration, the French scholarly work and practice distinguish between the so-called succession en déshérence, which, in the absence of heirs, has already been acquired by the State as heirless, and succession vacante, if the heirs are unknown, or failed to claim the inheritance within the prescribed time or have renounced it. This difference has also been recognised by the current decision (...) of the Administrative Council (...) which leaves the former type of inheritance under the administration of the revenue authorities, and transfers the other under the management of the curator, whose obligation it is, among other things, to search for the heirs”.

Failure to claim the inheritance by lawful heirs within the prescription period results in the preservation of the vacant status of the inheritance which, upon the expiry of that period, becomes heirless in a wider sense and as such falls to the State. At that time, the legal status of the inheritance becomes final rather than merely presumed. On the other hand, if the heirs (or persons claiming their right to inheritance) claim the estate or accept it, this terminates the prescription period. Acceptance of the inheritance is tacit “when the heir makes an act which necessarily supposes his intention of

27Ibidem.
29C. Demolombe, O spadkach, op.cit., p. 279.
30As for the French doctrine, see C. Demolombe, O spadkach, op.cit., p. 295.
31Pursuant to Article 47 of the Tax Ordinance Act of 15 March 1934 (Journal of Laws No. 39, item 346), the concept of payer within the meaning of the Ordinance included not only a natural or legal person, but also a vacant inheritance. The latter was to be represented by persons appointed to administer the estate (Article 49 § 3); see also the Regulation of the Minister of Treasury of 5 February 1935 on the postponement of the deadline for filing income tax returns for the year 1935 by natural persons and (unclaimed) vacant inheritance, maintaining commercial or economic accounts and on the date of the advance payment (Journal of Laws No. 9, item 52).
accepting, and which he would have no right to do but in his quality of heir” (Article 778 f.c.c). Such an act includes taking possession of property, filing a petition for putting in possession and the filing by a legal successor of a petition referred to in Article 7 of the Warsaw Decree. On the other hand, it should be noted that the act of filing a petition does not determine, by itself, the status of the heir. In accordance with Article 779 of the Napoleonic Code, “[a]cts purely conservatory, of supervision and provisional administration, are not acts of entry into the inheritance, if the title or quality of the heir have not been assumed”. In light of the above solutions, we should approach with some caution the thesis formulated in the case-law of the administrative courts that the submission of a petition by one of the heirs works in favour of the others heirs (as the so-called conservatory act).

In its judgement of 19 February 1936 (case ref. I C 1498/35), the Supreme Court held that, pursuant to Article 779 of the Civil Code, tacit acceptance of the inheritance occurs when the heir undertakes such an act as they can undertake exclusively in the capacity of an heir, and based on which it must be concluded that they were indeed going to accept the inheritance; therefore, in light of this provision, purely conservative acts and acts of supervision and provisional administration, are not, by themselves, acts of entering into the inheritance.

V Prescription terms

As has already been indicated, the inheritance was “presumed” vacant in the period from its opening until the expiry of the period required for the longest prescription with respect to claims to real property” (Article 789 f.c.c.). As indicated by the Supreme Court in its judgement of 22 December 1932/10 February 1933, “in the case inheritance is recognised as vacant, each heir may at any time until the expiry of the prescription period prove their rights and demand that the vacancy of the relevant estate is lifted; they may do so by filing a petition with the court which issued the vacancy decision, without the need to challenge same decision in the court of a higher instance, even if the factual and legal grounds invoked by them existed before the recognition of the inheritance as vacant”.

It is, however, assumed that the prescription period did not run to the detriment of the heirs who were unaware of the fact that they were beneficiaries of the inheritance. In such a situation, they would have 30 years to accept the inheritance or to renounce it, from the moment they became aware of the opening of the inheritance.

As previously indicated, Article 811 f.c.c introduced the presumption of vacant inheritance, without determining its legal status beyond any doubt. C. Demolombe rightly notes that “in order for the presumption to be fair and just, a certain period of time had to be prescribed from the date of the opening of the inheritance, to see if no one claims the estate”. Eventually, inheritance devolved to the State (State Treasury) not upon the expiry of the time limits referred to in Article 795 of f.c.c., but rather after the expiry of the prescription period concerning inheritance rights. Until then, previously unknown heirs could come forward to assert their rights, demanding in particular the release of the inheritance.

When determining the prescription period, Article 2262 f.c.c should be applied which stipulates that “All actions, real and personal, are prescribed by thirty years, without compelling the party who invokes it to produce a document thereon, or without accusing him of acting in bad faith”. This provision certainly applied to inheritance claims, including the release of inheritance and, above all, to the right to renounce and accept the inheritance (in accordance with Article 789 f.c.c). This meant that the right to inheritance were subject to prescription after thirty years from its opening. Contrary to the views that after the lapse of the period in question, the status of the inheritance was determined, we should concur with an opposite argument, according to which after the expiry of the prescription period the right to inheritance was terminated and the estate ultimately fell to the State (Article 539 f.c.c). Indeed, the prescription was intended to terminate the legal title rather than to preserve it.

New prescription periods were introduced in the Code of Obligations. However, in accordance with Article XVIII of the Regulation of the President of the Republic of Poland of 27 October 1933, Provisions

33Quoted after: the decision of the Regional Court in Kielce of 24 October 2018, case ref. II Ca 716/18, unpublished.

34Judgement of the Supreme Court of 22 December 1932/10 February 1933, case ref. I C 1747/32, “Głos Sądownictwa” 1933, no. 6, p. 407.

35M. Planiol, O spadkach, op.cit., p. 95.

36See W. Dutkiewicz, Jak rozumieć art. 789 Kod.Cyw.?, “Gazeta Sądowa Warszawska” 1878, no. 33, p. 258.

37See ibidem, p. 259.
Implementing the Code of Obligations provisions in Title XX Book 3 of the Napoleonic Code concerning the prescription and in Article 1304 of same Code are hereby repealed with regard to obligations, thus Article 2262 of the Napoleonic Code continued to apply to succession rights, despite having been repealed in Article XVI § 2 of the Provisions Implementing the Code of Obligations.

However, the assessment of the application of the provisions concerning time limits, including the prescription period, may not disregard other regulations which supplemented or repealed former provisions of the Napoleonic Code. First, in accordance with Article 12 of the Decree of 12 November 1946 General Provisions of the Civil Law\(^39\), the provisions in the Code of Obligations concerning the prescription periods for claims were to be applied in the absence of special provisions, respectively, to the prescription of other rights and property claims. Second, in accordance with Article X of Provisions Implementing the inheritance law “provisions in Title XX Book 3 of the Napoleonic Code concerning the prescription, and in Article 1304 of the Code shall cease to apply to claims based on the provisions of the inheritance law”. As a result, a question arises as to whether the quoted provision did not apply to succession rights subject to prescription under the existing rules, provided they were not modified on the basis of the provisions of inheritance law (see Article XX and Article XXI of the Provisions Implementing the Inheritance Law). It is not clear whether the prescription provided for in Article 2262 of CN was not replaced with the solution envisaged in Article 12 of the Decree General Provisions of the Civil Law. In such a case, it should be concluded that the reference to the Code of Obligations applies also to inheritance cases provided for in the French Civil Code, with the prescription period shortened, however, to twenty years (Article 281 of the Code of Obligations). In such a case, inheritance rights would expire at the latest (without taking into account the possible suspension of the prescription period) on 1 January 1967. A comparison of Art. X Provisions Implementing the Inheritance Law and Article 12 of the Decree General Provisions of the Civil Law leads us to the conclusion that as from 1 January 1947 inheritance rights, as referred to in Article 789 of f.c.c, which arose prior to that date, should be subject not to Article 2262 of the said Code, but rather to Art. 281 of the Code of Obligations, as well as to other provisions of the 1933 Regulation governing the issue of prescription (and therefore, at least to some extent, to Articles 277 to 280 of the Code of Obligations).

However, the Act of 18 July 1950 Provisions Implementing the General Provisions of Civil Law, introduced new intertemporal rules concerning prescription\(^40\). This was related to the entry into force of new provisions on the prescription of claims set out in the Act of 18 July 1950. General Provisions of the Civil Law\(^41\) (Articles 105–113). Art. III of the Provisions Implementing the General Provisions of the Civil Law stipulated that “whenever the applicable provisions of law do not specify a specific prescription period, or provide for a prescription period of more than ten years, the period shall be ten years. Moreover, in accordance with Article XIX (2), if the prescription period under the general civil law of 1950 was shorter than that arising under the previously applicable law, the prescription period commenced as of the date of the entry into force of the new provisions; however, if the prescription, which commenced before the entry into force of the general civil law provisions would have occurred earlier under the previously applicable law, the prescription occurred in accordance with such earlier term specified in the previously applicable law. In such a case, if the new prescription periods were applied, this would mean a shortened time-limit for the prescription, since in light of the General Provisions of the Civil Law of 1950, the prescription would take place at the latest on 1 October 1960. However, contrary to what was established based on the 1946 provisions, such a petition should be rejected for two reasons. First, the new provisions expressly addressed the prescription period for property claims only and applied to them (without covering prescription periods for other subjective rights). Second, the adoption of direct applicability of the new act to the prescription of inheritance rights would in fact be in conflict with Article LIV of the Act of 23 April 1964 – Provisions Implementing the Civil Code (see below).

In the context of the Warsaw Decree, it should be noted that special provisions were included in the Law on the determination of ownership of immovable property, privileges and mortgages of 1818 (repealed expressly under Article III § 1(2) of the Decree of 11 October 1946. Provisions Implementing

\(^{38}\)Journal of Laws No. 82, item 599, as amended.

\(^{39}\)Journal of Laws No. 67, item 369, as amended.

\(^{40}\)Journal of Laws no. 34, item 312.

\(^{41}\)Journal of Laws No. 34, item 311, as amended.
the property law and the land and mortgage register law\(^{42}\)). In accordance with its Article 127, any heir who wished to have the title to the inheritance estate transferred to their name, was obliged to submit with the petition or to send to mortgage authorities the court’s decision asserting their rights to the inheritance or, alternatively, acknowledging the testament. The titles could be transferred not earlier than three months from the date the mortgage clerk sent a death notice regarding the relevant estate owner (Article 126). In the literature, these provisions – more specific as compared to the general regulations of the Napoleonic Code – were treated as providing for “\(sui\ren\) inheritance proceedings”\(^{43}\). It is worth mentioning that in accordance with Article LV § 2 of the provisions implementing the property law and the land and mortgage register law, with respect to inheritance proceedings which were initiated on the basis of the Law on the determination of ownership of immovable property, privileges and mortgages of 1818 before the entry into force of the Land and Mortgage Register Law, separate provisions were to be issued.

VI Harmonised inter-temporal law

The law harmonised as from 1947 adopted a different circle of heirs \(ab\ instestato\) than the Napoleonic Code. Pursuant to Article 755(1) f.c.c “relations beyond the twelfth degree do not succeed”. Currently, the Civil Code determines the circle of heirs according to the rules set out in the Act of 2 April 2009 amending the Civil Code\(^{44}\), which added stepchildren to this circle (see Art. 934 c.c.).

The harmonised law replaced the existing regulations on succession, including those governing the issues of vacant and heirless inheritances. Among other things, Provisions Implementing the Inheritance Law repealed provisions in Articles 718 to 930 of the Napoleonic Code and the decision of the former Administrative Council of the Kingdom of Poland of 30 January/11 February 1842 on heirless and vacant inheritance (Article IX(2) and (4)).

The \(prima\ facie\) enigmatic Article XX of the Provisions Implementing the Inheritance Law should be interpreted in light of the above findings. In § 1 of this Article we read that “provisions of the inheritance law regarding the statutory succession by the State Treasury shall apply, regardless of the type of property, to any and all inheritances opened prior to the entry into force of this law, if, according to the provisions of the existing law, such inheritances are vacant or heirless, unless proceedings concerning such inheritance have already been duly completed”. The doctrine does not clearly indicate how this provision should be interpreted. In particular, the scope and effects of the application of the intertemporal regulation are not assessed by J. Gwiazdomorski, which could give rise to some doubts\(^{45}\). An interpretation whereby the provisions on succession by the State Treasury or municipality, included in the new regulations (since 1947) are applicable after the effective date of, first, the provisions of the harmonised Inheritance Law of 1946 and, subsequently, of the Civil Code of 1964, replacing the previous regulations of the Napoleonic Code, and thus modifying the principles of acquiring rights to inheritance, should be regarded as incorrect. Therefore, it cannot be concluded that the Inheritance Law of 1946 required in this respect the use of the principle of direct application of the new law, which is also confirmed by a cursory reading of Articles XX and XXI of the Provisions Implementing the Inheritance Law. The position according to which the subsequent provisions resulted in a removal of the rules relating to the status of vacant inheritance (and thus existing in the prescription period) should not be endorsed, either.

The above solution was supplemented by the provisions in Article XX (2) and Article XXI of the Provisions Implementing the Inheritance Law. The content of these provisions clearly indicates that the above interpretations should not be deemed as correct. According to the first of them, the above provision, i.e. Article XX of the Provisions Implementing the Inheritance Law, “does not affect negatively the rights of persons called to statutory succession under the previously existing regulations, unless they lose such rights pursuant to the provisions of the following article”. In turn, Article XXI of the Provisions Implementing the Inheritance Law stipulated that if an inheritance which was opened before the effective date of the Inheritance Law of 1946, had a statutory heir appointed on it, and such an heir wouldn’t be considered a statutory heir under that law, such heir would lose their rights under the statutory

\(^{42}\)Journal of Laws No. 57, item 321, as amended.

\(^{43}\)F. Jaglarz, Jak usuwać kolizje, zachodzące przy stosowaniu dzielnicowych ustaw spadkowych i hipotecznych, “Palestra” 1927, no. 4, p. 427.

\(^{44}\)Journal of Laws no. 79, item 662.

\(^{45}\)J. Gwiazdomorski, Prawo spadkowe, Warszawa 1959, p. 246.
succession with respect to the whole or a part of the inheritance, which they had not acquired or for which no succession proceedings had been initiated with their participation, unless they obtained a decree asserting their rights to the inheritance in proceedings initiated at the latest two years before the date of entry into force of the inheritance law. This provision confirmed continued application of the previously existing regulations, in particular those relating to vacant inheritance, to successions opened before 1 January 1947. As a consequence, statutory heirs – other than those excluded under the new regulations – were able to continue to assert their inheritance rights pursuant to the previously applicable regulations. Thus, the new provisions only limited the group of heirs ab intestato as compared to the old regulations, however, they also provided the entities concerned with the opportunity to assert their claims in the transition period.

Article XX of the Decree of 8 October 1946 – Provisions Implementing the Inheritance Law should be interpreted in such a way that it does not shape the substantive rules for the acquisition of inheritance under the previously existing regulations (and therefore, in accordance with the general principle of the inheritance law), but rather that it modifies the subjective scope of inheritance, on the one hand adjusting the existing regulations with respect to the determination of the circle of lawful heirs and, on the other hand, to determination whether and to what extent the vacancy of inheritance leads to its acquisition by the State Treasury or – until 1950 – in respect of property other than land – by the municipality (in place of the State in accordance with the rule established earlier under Article 539 of CN).

The above findings concern inheritance which was presumed vacant under the earlier regulations. However, they do not change the fact that vacant inheritance, including inheritance presumed vacant due to having been opened prior to the entry into force of the 1946 Inheritance Law, should continue, in principle, to be subject to the relevant provisions of the substantive law in accordance with the general intertemporal rule, and therefore to the law applicable at the time of the death of the decedent (Article XVIII of the Decree of 8 October 1946 – Provisions Implementing the Inheritance Law). Pursuant to Article 27 § 1 of the Inheritance Law, “in the absence of relatives and a spouse called to inheritance by operation of law, the estate shall be transmitted to the municipality of the last domicile of the decedent, and if such a domicile was located abroad – to the State Treasury. However, immovable land property and immovable property situated outside the territory of Poland shall be inherited by the State Treasury, while other immovable property (thus also immovable property situated within the limits of the capital city of Warsaw) – by the municipality in which they are located.

However, the above-mentioned modifications do not apply if the proceedings concerning a given inheritance were concluded by a final and binding decision before 1 January 1947 and, therefore, if the vacant inheritance has fallen – as heirless – to the State Treasury. In such a situation there are no grounds for modification not interfering with the inheritance rules, since in such a case it would be possible to talk about communalisation (inheritances which, pursuant to Article 539 CN, fell to the State would devolve to the municipality under the new provisions of the Inheritance Law).

In any other case, i.e. if proceedings were not duly completed before that date and if they were not initiated within that time, the provisions of the Napoleonic Code on vacant inheritance (Article 811 f.c.c) should continue to apply, with the modifications indicated above, rather than – as suggested by J. Gwiazdomorski – the provisions of the new law, including in particular Art. 935 c.c.46 In the event an inheritance is renounced, it becomes public property (rather than that of a nation) definitively and unconditionally, while in other cases this is conditional upon the expiry of the prescription period. Theoretically, another interpretation variant allows for a restriction which entails that all vacant inheritances are acquired by the State Treasury at the time of entry into force of the Decree. This interpretation would, however, be inconsistent. In such a case, the introduction of the inter-temporal rule in the event the institution of continued succession of vacant inheritances was abolished, would be unacceptable because this regulation would simply be unnecessary (pointless). However, due to the entry into force of the new provisions of the inheritance law, before the expiry of the prescription period in relation to vacant inheritances opened before 1 January 1947, it became necessary to apply the succession rules included in the Civil Code to such inheritances regardless of the rules previously introduced under the harmonised law and to adjust the effects of “vacancy” and the expiry of the prescription period to the new rules of statutory succession. For this reason, in accordance with Article LIV of the Act of 23 April 1964, Provisions Implementing the Civil Code, “provisions of the Civil Code regarding the statutory succession by the State Treasury shall apply, regardless of the type of property, to any and all inheritances opened prior to 1 January 1947, if according to the provisions in force before

46. J. Gwiazdomorski, Prawo spadkowe, op.cit. p. 246.
that date, such inheritances were vacant or heirless, unless proceedings concerning inheritance have already been duly completed”. This provision should be construed in line with the above-mentioned interpretation, which had to be applied on the ground of the Provisions Implementing the Inheritance Law, the possibility of acquiring vacant inheritance by the municipality. In this context it has to be noted that after 1950 the acquisition of vacant inheritances by municipalities became unacceptable since the local government units had been abolished (see Article 32 of the Act of 20 March 1950 on the local units of the consolidated state authority).

It should be assumed that Article XX has this effect that an inheritance or a part thereof, is acquired by the State Treasury, upon the expiry of the prescription period which determines the final status of the inheritance as “vacant”.

VII Conclusion

More than a hundred and forty years ago, K. Dunin wrote about the problem of vacant inheritance, noting that “in numerous cases in practice it was necessary to create – not always in line with the law – consistent jurisprudence which today, due to the new judicial system and radical changes in hierarchical relations of the judicial authorities, cannot be applied”. In this regard, the author indicated complications related to the factual circumstances which hadn’t been taken into account by the legislator.

Adopting the uniform model for the acquisition of inheritance in the post-war period, the Polish legal system rejected the solution established in the French codification. This was due to the fact that ipso iure acquisition of inheritance by heirs on the opening of such inheritance was recognised as a better and more transparent approach. This does not mean, however, that the provisions previously in force on the central parts of the Republic of Poland became completely irrelevant, considering the rules of inter-temporal law.

It seems that the French solution was neither clear nor useful. It gave rise to many doubts and discrepant interpretations both in the French and Polish doctrines. Today, these solutions are relied on with decreasing frequency although we must not forget that there are demands regarding the modification of rules concerning the fate of estates comprising of goods taken over after the Second World War by the Communist authorities in the process of nationalisation. This issue can only be indicated. In this context, the constitutional standards allow for the introduction of certain solutions that deviate from the established schemes, as well as for the limitation of the principle of protection of acquired rights. Moreover, it is possible to establish, as part of a potential reprivatisation process, the circle of persons entitled to compensation, in a way that deviates from the generally accepted rules of the inheritance law. Such restrictions should always respect the values and constitutional principles, in particular the principle of proportionality (Article 31(3) of the Constitution of the Republic of Poland). Furthermore, it should be noted that the legislator has significant regulatory freedom when it comes to establishing the rules of succession. As noted by the Constitutional Tribunal in the already-mentioned judgement of 4 September 2007, ref. no. P 19/07: “Constitutional provisions do not provide for exact and unambiguous standards for the determination of the circle of heirs, the order of succession and the share due to statutory heirs. Of course, it can be assumed that the circle of statutory heirs must necessarily include the closest relatives and spouse of the decedent, but at the constitutional level it is not possible to indicate the degree of kinship or affinity justifying the obligatory inclusion of a person into this circle. The Constitution protects the rights acquired by inheritance, but does not determine definitively who acquires these rights in a specific situation”.

In this context, it is also worth mentioning that the property rights of the State, as well as its status as the heir, are not subject to constitutional protection reserved for fundamental rights. This is due to the nature of the latter as citizen rights protected by the State. They are addressed at the State which, as a result, has certain obligations towards the right holders. Moreover, as the Constitutional Tribunal stated in its judgement of 31 January 2001, ref. no. P 4/99: “Inheritance by State Treasury is not covered by the constitutional guarantee of the right to succession. This right applies, in the first place, to natural persons and other private law entities. In this case, the State is the entity obliged to provide protection rather than entitled to take advantage of it. It is not possible for the State Treasury to make claims

47 Journal of Laws No. 14, item 130, as amended.
49 OTK ZU no. 1/2001 item 5.
against the State itself with respect to the protection of acquired rights or other constitutional rights”. Referring to the well-known formula used in the case-law of the German Federal Constitutional Court and in the German doctrine in general, the Tribunal noted in the justification to the judgement that “the inheritance law serves primarily as a guarantee that the property remains in private hands”.

The above findings are of fundamental importance for the assessment of the effects of recognising inheritance as vacant in cases when such inheritance comprised of immovable property subject to the provisions of the Warsaw Decree of 1945. They allow us to assess under what circumstances and when a building property should be considered as the property of the State (or a municipality). This applies to real estate or parts thereof (see Art. 27 § 2 of the Inheritance Law) forming part of inheritance presumed vacant in the years 1945–1947, with respect to which the inheritance was opened before or during that period and where the prescription period resulting in the final acquisition by the State didn’t expire and which, on the date of the entry into force of the Inheritance Law of 1946, were presumed vacant. It should be noted that although in light of Article 1 of the Decree of 26 October 1945 on the Ownership and Use of Land in the Capital City of Warsaw, as of the date of its entry into force Warsaw lands became the property of the commune (city), pursuant to Article 5 of the decree, the buildings located on these lands remained the property of the former owners, unless special provisions stipulated otherwise. As entities separate from the land, they were subject to the general principles of succession, provided that they hadn’t passed into public ownership on the terms set out in the Decree, which in some cases was unlikely to happen (as a result of not considering a petition and, consequently, a municipality’s – or after 1950 – the State Treasury’s failure to acquire a building as a part of the immovable property in light of Article 8 of the Decree).

50 For more details, see: K. Zaradkiewicz, Instytucjonalizacja wolności majątkowej. Koncepcja prawa podstawowego własności i jej urzeczywistnienie w prawie prywatnym, Warszawa 2013, p. 82.

51 See also the following CT judgements: of 21 May 2001, SK 15/00, OTK ZU no. 4/2001 item 85; of 4 September 2007, P 19/07, OTK ZU no. 8/A/2007 item 94 and of 5 September 2007, P 21/06, OTK ZU no. 8/A/2007 item 96.
Vacant inheritance, heirless inheritance and claims from the Warsaw decree (part II)

Abstract

The second part of the article concerns the interpretation and application in the central parts of Poland of the provisions of the Napoleonic Code on vacant inheritances. The Code does not provide a definition of a vacant inheritance. The key to the interpretation of the provisions on the acquisition of vacant inheritances by the state is the term “is presumed to be” (a vacant inheritance) used in the former Article 811 of the Napoleonic Code (French: *est réputée vacante*, see the current Article 809 of the French Civil Code which omits the term “is presumed to be”). This indicates that, in the absence of suitable heirs, the law introduced a specific rebuttable presumption of a vacant inheritance, thus belonging to the state. Only after an appropriate period of time did the presumption turn into certainty, i.e. it resulted in the inability to invoke the inheritance title. In practice, this meant that thirty years after the time necessary to draw up an inventory of the inheritance and to consider (*ad deliberandum*), the inheritance ultimately fell to the State. The mechanism adopted in the Napoleonic Code made it possible, on the one hand, for the heirs to acquire the inheritance, which remained under the supervision of a curator for the period when it was presumed vacant, and on the other hand, it prevented the existence of inheritances without a claimant, i.e. inheritances devoid of the persons entitled to take them over. In the post-war period, when the communist authorities passed subsequent legal acts concerning the provisions of the inheritance law, the deadlines for heirs to apply for inheritance changed. Ultimately, the legislator did not adopt the model of vacant inheritances in the regulations unifying the inheritance law on Polish lands since 1947; instead, a solution analogous to the one provided for in the German Civil Code of 1896 (BGB) was adopted. The “shortening” of the statute of limitations also influenced the assessment of the admissibility of further application of the provisions of the Napoleonic Code in regard to vacant inheritances during the period of the People's Republic of Poland regime (despite the existence of different inheritance law solutions).

Keywords: reprivatisation, inheritance law, heirless inheritance, vacant inheritance