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Comparative Legal Analysis of the Experience of Foreign Countries on Issues of Inheritance by Will

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Abstract: A distinctive feature of the modern world is integration processes affecting various spheres of international and domestic life. The migration of people from one country to another is the reason for the emergence of various legal relations, among which inheritance relations occupy an important place. The number of inheritance cases involving foreigners is increasing every year. In the modern world, the main factors contributing to the emergence of hereditary ties with foreign elements are: marriages with foreigners, acquisition of dual citizenship, international investment processes, economic and linguistic connections of regions, etc.

The pluralism of legal systems is associated with the national legal traditions of each individual country, which largely influenced the legal regulation of inheritance relations. These characteristics are determined by historical, economic, religious, moral, cultural, social and other factors.

Research related to the study of foreign experience in the legal regulation of inheritance relations is determined in advance by the needs of solving problematic issues arising in the inheritance legislation of Uzbekistan. A detailed analysis of international legal norms in this area of public relations allows us to propose specific changes to improve national legislation in the field of legal regulation of inheritance relations.

Each government, regardless of the type of legal system, determines its approach to regulating inheritance relations.

The main differences in the regulation of inheritance relations are that in continental law and in common law countries the institution of inheritance law has different aspects.

In the common law system, this institution is understood as a system of rules governing relations related to the performance by the executor (executor of the assignment) of the functions of the "personal representative" of the deceased. The executor, not the heirs, bears responsibility for the timely and correct repayment of the testator's debts. The heirs can achieve acceptance of their share of the inheritance from the executor after settlements with the creditors of the deceased, and in the continental legal system this institution is usually understood as a system of rules governing inheritance, where the rights and obligations of the deceased are transferred. directly to the heirs. The property of the deceased passes to the heirs "without intermediaries" by law or by will. Heirs are independently responsible for inheritance obligations.

In various legal systems there is no unanimity regarding inheritance, the form and content of a will, the testamentary capacity of a citizen, the revocation of a will, etc. Resolution of inheritance disputes usually leads to the emergence of property relations that relate to the property system of one country, but interact with the property system of another country. This gives grounds to demand the regulation of these hereditary relations for each legal order, if they are complicated

by a foreign element. Like national legislation, the legislation of foreign countries defines two methods of inheritance: by law and by will. Inheritance by will plays a leading role; if the testator did not leave a will, inheritance by law is used. One of the most important issues of inheritance under a will is the issue of determining the form of the will.

In the legislation of continental law countries, the following forms of wills are distinguished:

1) a handwritten will is a will signed by the testator independently. This form is the most common due to its ease of preparation and the ability to ensure the confidentiality of the will. The possibility of drawing up a holographic (handwritten) will is provided for by the legislation of Germany, Poland, France and other countries;

2) a will in the form of an official document is a will drawn up in the presence of an official in the manner prescribed by law, often such a person is a notary. In France, a will is drawn up in the presence of two notaries (or two witnesses), in Switzerland - in the presence of one official and two witnesses, in Germany the testator informs the notary of his last will or gives a written document expressing his last wish to the notary, in Italy a public will is accepted by a notary in the presence of two witnesses;

3) a secret (secret) will is considered to be drawn up by the testator and is usually presented to the notary in a sealed form in the presence of witnesses. This form of will allows for the confidentiality of the will and its security, but may also contain some entries that are ambiguous or illegal.

The rules of the Federal Law in many countries of the world have long allowed the testator to dispose of his property before his death by drawing up a secret (secret or closed) will. Thus, according to Article 1367 of the Federal Code of Georgia, at the will of the testator, witnesses confirm the will without becoming familiar with its contents (closed will). In this case, witnesses must be present when drawing up the will. When approving a closed will, witnesses must show that the will was drawn up by the testator in their presence, but its contents must remain unknown to them.

Thus, according to Article 727 of the Quebec Federal Code, the testator, in the presence of two adult witnesses, declares that the written document presented by him is a will and its contents are not disclosed; After that, he and the witnesses sign the will.

As for common law countries, unlike civil law countries, the laws of these countries usually specify the written form of a will and the requirement for its signature by the testator. Yes, section 9 of the Wills Act 1837 in England states that a will must be in writing, signed by the testator or another person at the direction of the testator, and witnessed by at least two witnesses in the presence of the testator. A combination of handwritten and typewritten text is allowed.

Therefore, a will in the form of a public document is not widespread in common law countries, unlike European countries; in these countries, the fact of a testator's will is considered to be its state registration or certification by officials.

In the case of an emergency will (will in emergency situations), for example, according to Polish law, such a will can be made orally in the presence of three or more witnesses. However, according to Article 955 of the Polish Civil Code, a simplified will becomes invalid six months after the disappearance of the circumstances that made it impossible to draw up a will in the usual form[1].

The same possibility is provided for in Spanish law, but with the condition that drawing up an oral will is possible only during hostilities (in situations of immediate danger).

French inheritance law includes the concept of privileged wills, which include: a military will; will during an epidemic; A will drawn up during a stay on an island located in the European part

[1] Кернична С. Форма заповіту як обов'язкова умова його дійсності в українському законодавстві та законодавстві окремих європейських країн (Франції, Німеччини, Польщі). URL: // http://dspace.nbuv.gov.ua.

of France or in foreign departments where there are no notaries; a will made on the high seas; a will drawn up by French citizens abroad[2].

According to § 2250 of the German Federal Civil Code, a person located in an area cut off from the outside world due to certain circumstances, as well as a person under threat of death, can draw up a will with an oral declaration in the presence of three witnesses[3].

The Hungarian Federal Law defines the conditions under which an oral will comes into force: 1) the last will must be expressed in full; 2) the presence of two witnesses at the expression of will; 3) witnesses must know the language in which the will is written; 4) the testator must declare that the expressed will is his expression of will[4].

Consequently, we can conclude that in countries of continental law, a will is more public in nature - it, as it were, declares the last will of a person to society. At the same time, in the countries of the Anglo-Saxon system it is more personal in nature. Therefore, in these countries, confirmation of the will by witnesses is considered sufficient.

The age limit for the right to execute a will varies in the laws of foreign countries.

In most European countries, legal capacity begins at age 18. However, there are some exceptions to this. § 2229 of the German Federal Code allows wills for minors who have reached 16 years of age[5].

According to Article 904 of the French Federal Code, a person who has reached the age of sixteen and is not exempt from parental authority has the right to dispose of only half of the property that he could dispose of if the majority had reached the age[6].

In Slovenia, individuals have the right to write a will from the age of 15, in Spain - from the age of 14. Swiss law establishes partial testamentary capacity at age 18 and full testamentary capacity at age 20[7].

According to the Hungarian FC, a will can be made by minors under 14 years of age, as well as adults with limited legal capacity for whom the court has appointed guardians[8].

In England, testamentary capacity is established from the age of 21 (with the exception of military personnel and sailors, who acquire such right from the age of 14)[9].

In most US states, the ability to make a will begins at age 18, but in some states (Georgia) it is established that this ability begins at age 14 [10].

In Uzbekistan, the right to draw up a will has a person with full civil capacity, that is, an individual who has reached 18 years of age.

A different approach exists to the possibility of drawing up a single will by several persons (common will). The legislation of some countries allows the execution of such a will by two or

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[2] Бунятова Ф.Д. Привилегированное завещание во французском гражданском праве // Нотариальный вестникъ. 2013. – № 2. – С. 45–47.

[3] Гражданское уложение Германии. Вводный закон к Гражданскому уложению. Перевод с нем. / научн. ред.: Н.Г.Елисеев, А.Л.Маковский, Т.Ф.Яковлева; введ.: В.М.Бергман. – М.: Волтерс Клувер, 2004. – 816 с.

[4] Основные институты гражданского права зарубежных стран / отв. ред. В.В. Залесский. – М.: Норма, 2009. – 1100 с.

[5] Фединяк Г.С. Міжнародне приватне право: підручник. – Київ: Атіка, 2003. – 264 с.

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[8] Основные институты гражданского права зарубежных стран / отв. ред. В.В. Залесский. – М.: Норма, 2009. – 1098 с.

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more persons, regardless of whether they are related to the family or not. For example, according to the laws of Sweden and Denmark, closely related persons can make a joint will. German civil law allows for the drawing up of joint wills by persons registered for joint residence. The Berlin will is very common, in which the spouses name each other's heirs and at the same time determine who will inherit their property after the death of both[11].

According to Article 1347 of the Civil Code of Georgia, a spouse may draw up a joint will related to mutual inheritance, and it is also possible to revoke this will at the request of the husband or wife during the lifetime of the spouse[12].

According to Article 604 of the Federal Code of the Republic of Latvia, a will is permitted when two or more persons appoint heirs to each other by one common act (the so-called mutual will). Moreover, if one of the testators revokes a mutual will or his will is revoked for any reason, this does not affect the validity of the order of the other testators[13].

Mutual wills are also known in the laws of England and the USA[14].

According to the laws of Bulgaria, the Netherlands, Italy, France and Poland, a will is a unilateral act, therefore two or more persons cannot express their will in one document, regardless of whose benefit the will is drawn up[15].

According to Ukrainian legislation, only a married couple can make a joint will.

The principle of freedom of expression is expressed differently in the laws of different countries. This principle is usually limited to the interests of the testator's family members[16].

Polish inheritance law (Article 991 of the Civil Code) includes disabled descendants (including young children), disabled spouses and disabled parents as heirs entitled to an obligatory share of the inheritance, and they are legal heirs regardless of the contents of the will . have the right to receive 2/3 shares.

Austrian law provides that the testator's children are compulsory heirs, and if the testator has no children, his parents as well as his spouse are entitled to a compulsory share of the inheritance. Children also include grandchildren and great-grandchildren, and parents include all grandparents. The obligatory share of each child and spouse is half of what each is entitled to inherit by law. It is allowed to reduce the obligatory share of the inheritance if the person entitled to receive it and the testator have never had a close relationship, which usually exists between close relatives in the family. However, this right cannot be exercised if the testator unreasonably refused to exercise the right to personal communication with a person entitled to receive an obligatory share in the inheritance (773a FC Austria).

In Switzerland, the descendants of the testator, his parents and his widow are entitled to a compulsory share of the inheritance. An heir may be deprived of the right to an obligatory share of the inheritance if he has committed a crime against the testator or his close relatives or grossly violated the duties imposed on him by law in relation to the testator and his family[17].

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[11] Гражданское уложение Германии. Вводный закон к Гражданскому уложению. Перевод с нем. / научн. ред.: Н.Г. Елисеев,А.Л. Маковский, Т.Ф. Яковлева ; введ.: В.М. Бергман. Москва : Волтерс Клувер, 2004. 816 с.

[12] Кухарєв О.Є. Спадкове право України : навчальний посібник. – Київ: Алерта, 2013. – 74 с. URL: http: // kafedr.at.ua /_bd/2/217.pdf.

[13] Блинков О.Е. Многосторонние завещания в наследственном праве зарубежных стран // *Современное право.* 2008. – № 11. – С. 117–120.

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[16] Павлова І.У. Міжнародне приватне право : підручник. – М.: Эксмо, 2005. – С. 345-346.

[17] Кухарєв О.Є. Спадкове право України : навчальний посібник. – Київ: Алерта, 2013. – 67-68 с. URL: http: // kafedr.at.ua /_bd/2/217.pdf.

According to the Hungarian Civil Code, regardless of the contents of the will, the testator's children (especially adopted children), grandchildren, great-grandchildren and his surviving spouse, as well as parents, have the right to a mandatory share. Deprivation of an obligatory part of the inheritance is permitted if there is a valid will of the testator, which clearly states the basis for deprivation of the share of the inheritance[18].

Muslim law significantly limits the freedom to draw up a will. The main method here is inheritance by law. The testator cannot change the order of inheritance established by law and can dispose of only one third of the inherited property in favor of persons not included in the list of heirs according to the law. There is no equality between men and women: a woman can only receive half a man's share; Persons belonging to other religions or having other beliefs cannot become heirs[19].

According to the legislation of Uzbekistan, the testator has the right to bequeath his property to any person: persons included in the circle of heirs by law, and an outsider who is not related to the testator. It should be noted that the fact of a will in favor of a certain person is not considered sufficient to obtain the status of heir. There should also be no evidence of dishonest behavior of the heirs towards the testator. Article 1119 of the Federal Code contains a list of cases in which a person may be recognized as an unworthy heir.

In the legislation of some foreign countries, inherited property is divided into two parts: free and reserve property. For example, according to French law, the testator's property is divided into freely disposable (quotite disponible) and the so-called reserve share (reserve). In France, the children of the testator have the status of protected heirs and a portion of the property must be assigned to them (Reserve Leegale). Under no circumstances may relatives or adopted children be disinherited. If the testator lived in a new marriage, his children from this marriage, together with the children from the previous marriage, have the right to inherit the property of their parents, but this does not apply to the stepfather and stepmother. The age of children does not matter for access to inheritance rights. If the testator has one child, his share is equal to half of the property; if there are two children, two-thirds will be given to them; if there are three children, three quarters, etc. If the testator has no children, the inheritance goes to other family members if they are blood relatives of the testator (brothers, sisters, nephews and nieces). In this case, the protected share passes only within the circle of kinship in a direct line[20].

The reserve part, limiting the right of the testator to freely dispose of his property under the will, should not exceed 3/4 of the property. Heirs cannot refuse the reserve (unless they are disinherited[21]).

Belgian law recognizes the principle of the reserve part, according to which a minimum part of the inheritance (the reserve part) must be transferred to the wife (husband), children and parents of the deceased. If there is one child (or his descendants), this reserve is half of the inheritance, if there are two children - 2/3, if there are three or more children - 3/4. In the absence of descendants or husband (wife), the father and mother have the right to receive a quarter of the inheritance. The other party always receives the right to use at least half of the inherited property. In this half, the house and household contents will be owned. If the testator decides to ignore the proviso part of his will, and the heirs agree, respecting his wishes, then the will can be

[18] Основные институты гражданского права зарубежных стран / отв. ред. В.В. Залесский. – Москва: Норма, 2009. – 1103 с.

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[21] Французький гражданский кодекс 1804 р. URL: www.ipsub.udsu. ru/download/kafedra.../fgk.doc. 1.

valid. However, heirs who have not complied with the reserve share and wish to claim it have the right to initiate proceedings to reduce the inheritance to the amount of the reserve share[22].

According to Czech law, a spare part can cover the entire property. The size of the reserve depends on the age of the heir (minor/adult) and the number of heirs. Beneficiaries of the reserve share may relinquish their share of the reserve share. They only have the option of accepting or rejecting the entire inheritance, but as part of an inheritance agreement between heirs, the spare recipient may agree to receive less of the property than they are entitled to. One of the spouses will not have a spare part. The heir receives this status by decision of a notary performing the functions of a bailiff. This decision takes effect on the day of death, even if the decision is made later. The heir is personally liable for the debts of the deceased according to the value of the property he received[23].

Therefore, in the legislation of all foreign countries, the obligatory share performs the function of security. In some countries, the circle of compulsory heirs includes individuals, regardless of their ability to work.

Indeed, in foreign countries, various legal institutions are used to protect the rights of heirs: the right to an obligatory share and the right to a reserve. The right to an obligatory share is exercised by sending a demand to the heirs to pay the monetary equivalent of a share from the inherited property. If other heirs object to the issuance of a certificate of inheritance for the obligatory share, they have the right to file a corresponding claim in court. Consequently, many problems arise when exercising the right to an obligatory share, for example: other heirs may object to the allocation of such a share; in cases established by law, the court may reduce the size of the obligatory share taking into account certain circumstances, etc. Such problems do not arise when using the reservation right. After all, during the life of the testator, his property is divided into reserves and shares. The testator has the right to dispose only of the property constituting a free share. Part of the reserve is intended for the relatives of the testator and will pass to them after the death of the testator. Consequently, the rights of the testator's family are better protected in countries where reserve law is used as a way to protect the rights of the testator's family. Therefore, we propose to use this method to ensure the interests of the testator’s family members in Uzbekistan.

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