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The legal status of the subjects of inheritance under the law in the Republic of Kazakhstan and the Republic of Turkey: a comparative legal analysis

In the context of actively developing relations between the Republic of Kazakhstan and the Republic of Turkey, the issues of regulating the legal status of subjects of inheritance by law are of particular relevance. Due to the peculiarities of national, historical, religious, cultural and family traditions, inheritance relations complicated by a foreign element are among the most difficult in legal regulation. According to the authors, the study and analysis of the legal status of subjects of inheritance under the law seems to be so significant, because due to active migration processes between the two countries, many citizens of Kazakhstan and Turkey have relatives in these countries, and, accordingly, inherit after them under the laws of another state. A comparative legal analysis of the current inheritance legislation in the field of regulation of the legal status of inheritance under the legislation of the Republic of Kazakhstan and the Republic of Turkey showed significant differences in the legislative regulation of subjects of in-heritance under the legislation of the two countries. Based on a comparative legal analysis of the current legislation of the Republic of Kazakhstan and the Republic of Turkey, a number of differences were identified in the order of precedence, the spouse's share in the inherited property and the policy of taxation of inherited property. At the same time, there are also general approaches to determining the hereditary status and to determining the status of the testator. In practical terms, this study is of interest to lawyers practicing in the field of inheritance law, as well as private international law.

Keywords: inheritance law, subjects of inheritance, legal status of subjects of inheritance under the law, inheritance legal relationship complicated by a foreign element, testator, heir, unworthy heirs, tax on inherited property, escheated property.

Introduction

Inheritance law is one of the conservative branches of civil law. The reason for this is the peculiarity of the institution of inheritance, where differences in national, historical, religious, cultural and family traditions and foundations are clearly manifested.

Inheritance is the transfer of property from the testator to his heirs. Consequently, inheritance affects the interests of each person and ensures the continuity of the existence and development of the private property.

In conditions of increased mobility of the population, when national borders no longer act as an obstacle to moving around the world and determining the place of residence abroad, there is a noticeable increase in the number of inheritance cases in practice [1; 239].

The number of inheritance cases with a foreign element increased, which was an indirect consequence of the migration of the population around the world. Settlers are often connected by family relations with citizens of their country of origin, which serves as the basis for the emergence of inheritance cases [2; 11].

The relevance of the comparative legal study of the subjects of inheritance legal relations of the Republic of Kazakhstan and the Republic of Turkey is because of several reasons.

Various private legal relations are actively developing among the citizens of our countries, such as labor relations, relations in the field of education, family and marriage relations, and relations in the field of tourism. Accordingly, the number of hereditary relations complicated by a foreign element is also growing.

The Republic of Turkey was the first country in the world to recognize the state independence of Kazakhstan on December 16, 1991, immediately after the signing of the Constitutional Law "On the State Independence of the Republic of Kazakhstan" by the First President of the country N. Nazarbayev. For the young Kazakh state, this became a symbol of brotherhood and friendship on the part of Turkey and was an important

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moral support [3]. Since then, these relations have only flourished; Kazakh-Turkish cooperation has been characterized by positive development dynamics from the first days of the establishment of diplomatic relations [4]. Thus, as part of the state visit of the President of Kazakhstan, Kassym-Jomart Tokayev, on May 10, 2022, 14 documents were signed to Turkey. Among them is a memorandum of cooperation in the field of mass media, agreements on international combined transport of goods and simplification of customs control procedures, a memorandum of cooperation in the field of information technology, an agreement on cooperation in the field of education, a protocol on cooperation in the field of military intelligence, as well as a protocol on cooperation in the field of military archives, military history, museology, and military publications [5].

The issues of inheritance law in our countries are becoming increasingly relevant in connection with ongoing socio-economic reforms, the development of information technology, and the digitalization of public life. With the establishment of freedom of entrepreneurial activity, the range of objects of private property of citizens in both countries expanded significantly, which led to an increase in interest in the fate of the inherited property. In the life of every person there comes a moment when the most important issue on the agenda is to whom and what to leave from their property acquired during life.

The modern legislation of both the Republic of Kazakhstan and the Republic of Turkey does not limit a citizen either in quantity, or in value, or the composition of the accumulation of property, which made it possible to form a new attitude of citizens of the two countries to their property in case of death.

Inheritance legislation, which establishes the universality of succession, is an important legal tool that ensures the stability of civil circulation in the event of the death of its participants [6; 4].

Inheritance relations within the state are regulated by domestic law, and in the sphere of private law relations, complicated by a foreign element, by the norms of international private law. Therefore, if the testator and heirs are citizens of the Republic of Kazakhstan, then in this case the norms of Section 6 “Inheritance Law” of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the CC RK) [7] are applied; if the testator and heirs are citizens of the Republic of Turkey, then the norms of Book 3 “Inheritance Law” of the Civil Code of the Republic of Turkey (hereinafter referred to as the CC TR) are applied [8].

If the testator is a citizen of the Republic of Kazakhstan, and part of the estate is real estate in Turkey, then in this case the norms of Section 7 International Private Law of the Civil Code of the Republic of Kazakhstan and the Turkish Code of 2007 “Code of Private International Law and International Civil process” (hereinafter referred to as the Code on PIL and IHL) are applied [9].

In 2007, Turkey adopted the Code of International Private Law and International Civil Procedure, which, as noted in the legal literature, is one of the latest codifications that reflect global trends in the field of legal regulation of PIL [10; 7].

The fundamental law of both countries recognizes for every person living on its territory, regardless of his citizenship, the right to private property and the inadmissibility of its deprivation except by a court decision. The right of inheritance is also guaranteed (Article 26 of the Constitution of the Republic of Kazakhstan [11], Article 35 of the Constitution of the Republic of Turkey [12]).

The purpose of this study is to conduct a comparative analysis of the features of the legislative regulation of inheritance and establish the legal nature of the subjects of inheritance relations under the legislation of the Republic of Kazakhstan and the Republic of Turkey.

The object of the study is social relations that develop in connection with, about, and in the process of exercising rights by heirs in accordance with the norms of the inheritance legislation of the Republic of Kazakhstan and the Republic of Turkey.

The subject of the study is the norms of Kazakhstani legislation and the legislation of the Republic of Turkey, regulating inheritance relations, law enforcement and judicial practice, as well as the content of scientific concepts and discussions in this area.

To achieve the above goals, the following tasks are defined in the work:

– to analyze the legislation of the Republic of Kazakhstan and the Republic of Turkey in the field of inheritance;

– to determine the circle of persons who have the right to be subjects of inheritance relations under the legislation of the Republic of Kazakhstan and the Republic of Turkey;

– to conduct a comparative analysis of the legal regulation of the legal nature of the subjects of inheritance legal relations in the civil law of the Republic of Kazakhstan and the Republic of Turkey.

Methods and materials

The methodology of this work incorporates the methods of dialectical and formal logic, methods of analysis, and synthesis, as well as special methods of legal research (historical, legal, comparative), and interpretation of legal norms.

Results and Discussion

Among the root causes of the problems of regulating the subject composition of hereditary succession in relation, one can single out the question of who are the subjects of these legal relations. Each state tries to organize its inheritance system in such a way as to ensure when transferring property to heirs, a balance between the will of the testator and the interests of the family, as well as the interests of third parties [13; 999].

In the regulation of hereditary relations complicated by foreign elements, two approaches are distinguished in determining the hereditary status: 1) on the basis of a single conflict criterion, the right is determined that is competent to regulate the entire set of hereditary relations both with respect to the movable and immovable property; 2) different conflict criteria are applied for movable property and immovable property: the inheritance of movable property is subject to the personal law of the testator (the law of the place of residence or the law of citizenship), and the law of the country where such property is located is applied to regulate the inheritance of real property [14; 458, 459].

In Kazakhstan, the second approach is applied, as the law of "the country where the testator had the last permanent place of residence" (Article 1121 of the CC RK) is applied to movable property, and "the inheritance of real estate is determined by the law of the country where this property is entered in the state register in the Republic of Kazakhstan - by the law of the Republic of Kazakhstan" (Article 1123 of the CC RK) [7].

The Republic of Turkey also applies different conflict criteria for movable and immovable property. According to Art. 20 of the PIL and IHL Code "inheritance is governed by the law of the citizenship of the deceased person. Turkish law is applicable to real estate located in Turkey" [9].

Under the norms of civil law, the subjects of inheritance legal relations are the testator and heirs. When determining who are the subjects of hereditary legal relations, there are no clear positions in the legal literature. Some researchers refer to the number of subjects of inheritance legal relations of the testator and heirs, while others believe that the testator is not the subject of these relations. There is also a position in the legal literature that a wider range of subjects of the inheritance legal relationship is involved in inheritance legal relations, these are heirs and all other persons who may come into contact with them [6; 22].

According to Article 1038 of the CC RK, "inheritance is the transfer of the property of a deceased citizen (testator) to another person (persons) - the heir (heirs)". Based on the interpretation of this norm, we can state the following: firstly, inheritance arises based on a legal fact - the death of a citizen, secondly, the deceased citizen is always the testator, thirdly, property belonging to the deceased citizen is transferred, and, lastly, the recipient of the inheritance is the heir(s).

The legislation of the Republic of Turkey does not operate with the definition of "inheritance".

The testator in both Kazakhstan and Turkey can be citizens of the country, foreign citizens living in the territory of one of the countries, or temporarily staying citizens, such as tourists, as well as stateless persons. "Death is inherent only to individuals, therefore, any types of legal entities are deprived of the ability to become testators" [15].

The basis for inheritance in both countries is inheritance by will and inheritance by law. In contrast to the inheritance law of the Republic of Kazakhstan, the Turkish legislator provided for such a form of will as an inheritance contract.

An heir is a person called to inherit in connection with the death of a citizen (testator). All subjects of civil rights - citizens, legal entities, and the state - can be heirs. If for the testator the state of his legal capacity is of great (essential) importance, then for the heir the legal capacity does not matter.

The legislator in Art. 1044 of the CC RK clearly outlined the circle of heirs, so citizens who are alive at the time of the opening of the inheritance, as well as those conceived during the life of the testator and born alive after the opening of the inheritance, can be heirs by will and law. Legal entities created before the opening of the inheritance and existing at the time of the opening of the inheritance, as well as the state, can be heirs by will [7].

In contrast to the "natural" inheritance by law, with inheritance by will, the testator himself decides the fate of his property and independently determines whom to appoint as his successor. Thus, the testator is

granted the right to independently determine the further subject composition of the inheritance legal relationship.

Both domestic and foreign legal entities can be heirs by will. In order for a legal entity to be called to inherit, it must exist on the day the inheritance is opened.

When inheriting by will, it is required to express the will of the testator regarding the property belonging to him. As notarial practice shows, the most common wills are those in which citizens are called the successor.

The Law of the Republic of Kazakhstan dated January 12, 2007 No. 225 introduced changes to the civil legislation in comparison with the previous provisions [16]. The current legislation has significantly increased the circle of possible legal heirs. Potential heirs by law may not be all individuals, but only those who are in certain family relationships with a potential testator, which are divided into eight stages:

1. First of all, the right to inherit under the law is received in equal shares by the children of the testator, including those born alive after his death, as well as the spouse and parents of the testator. The grandchildren of the testator and their descendants inherit by right of representation (Article 1061 of the CC RK);

2. The second place is received in equal shares by full-blooded and half-blooded brothers and sisters of the testator, as well as his grandfather and grandmother, both from the side of the father and from the side of the mother. Children of full and half brothers and sisters of the testator (nephews and nieces of the testator) inherit by right of representation (Article 1062 of the CC RK);

3. In the third place, uncles and aunts of the testator receive equal shares. Cousins and sisters of the testator inherit by right of representation (Article 1064 of the CC RK);

4. As heirs of the fourth stage, relatives of the third degree of kinship - great-grandfather and great-grandmother of the testator (Article 1064 of the CC RK);

5. As heirs of the fifth line, relatives of the fourth degree of kinship - children of the testator's nephews and nieces (cousins and granddaughters) and siblings of his grandparents (great grandparents) (Article 1064 of the CC RK);

6. As heirs of the sixth line, relatives of the fifth degree of kinship are the children of the cousin grandsons and granddaughters of the testator (cousin great-grandchildren and great-granddaughters), the children of his cousins (cousins and nieces) and the children of his great-uncles and grandmothers (cousins and aunts) (Article 1064 of the CC RK);

7. Step-brothers and sisters, stepsons, stepdaughters, stepfather and stepmother of the testator are called heirs of the seventh stage, if they lived together with the testator in one family for at least ten years (Article 1064 of the CC RK).

8. The heirs of the eighth stage are disabled dependents of the testator, who inherit independently in the absence of other heirs under the law of the previous stages.

As for the disabled dependents of the testator, they are divided into two groups:

1. Citizens who are heirs according to the law specified in Articles 1062, 1063, 1064 of the CC RK, disabled by the day of opening the inheritance, but not included in the circle of heirs of the queue that is called for an inheritance, inherit by law together and on an equal basis with heirs of this queue, if at least a year before the death of the testator were dependent on him, regardless of whether they lived together with the testator or not (Paragraph 1 of Article 1068 of the CC RK).

2. Heirs by law who are not included in the circle of heirs specified in Articles 1061, 1062, 1063, 1064 of the CC RK, but by the day the inheritance was opened, were disabled and for at least a year before the death of the testator were dependent on him and lived together with him, inherit together and on an equal footing with the heirs of the order that is called for inheritance (Paragraph 2 of Article 1068 of the CC RK).

When distributing heirs from the fourth to the sixth stage, the legislator established a single principle - this is the degree of kinship, which is determined by the number of births separating relatives of one from another, the birth of the testator himself is not included in this number.

As rightly noted by A.G. Didenko: “Neither the notarial or judicial practice of Kazakhstan has demonstrated the difficulties of applying or the injustice of the rules on the previous number of lines of heirs. Moreover, even six lines of heirs according to the law were, in our opinion, an excessive number, it was quite possible to limit ourselves to four lines, expanding the composition of the fourth line as much as possible in order to narrow the possibility of transferring the inheritance to the state to the limit” [17].

An increase in the number of queues and the circle of legal heirs, according to Y.K. Tolstoy, is dictated not so much by concern for the distant relatives of the testator, but by the desire to minimize the cases of transfer of hereditary property to the state as escheat [6; 59].

In our opinion, the following reasons preceded the increase in the number of succession queues under the law:

1. strengthening family and kinship ties;

2. strengthening the private property of citizens;

3. increasing the material well-being of citizens and, as a result, improving the socio-economic policy of the state;

4. unification of Kazakhstani legislation, recognition in the world community of a wide range of heirs.

For the inheritance procedure in the Republic of Turkey, the heirs must apply to the court at the location of the property and collect a package of documents (certificate of kinship, certified and translated into Turkish; registration in the tax register in Turkey and obtaining a TIN; valid passport; photographs). According to Turkish law, the heir is obliged to pay inheritance tax (Veraset Vergisi) within 3 years, the rates of which are calculated in the range from 1% to 30%, depending on the value and location of the inherited real estate. The Turkish inheritance tax rate in relation to the value of the property is as follows:

1. with the value of real estate up to 160,000 TRY (53,333 EUR) - 1%;

2. with the value of real estate up to 160,000 TRY (53,333 EUR) - 3%;

3. with the value of real estate from 510,000 - up to 1,280,000 TRY (426,667 EUR) - 5%;

4. with the value of real estate from 1,280,000 - to 2,780,000 TRY (926,667 EUR) - 7%;

5. if the value of real estate is more than 2,780,000 TRY (926,667 EUR) - 10% [18].

In accordance with Kazakh legislation, there is no separate inheritance tax in the Republic of Kazakhstan.

According to Subparagraph 33 of Paragraph 1 of Art. 341 of the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget" dated December 25, 2017, No. 120-VI, the value of property received by an individual in the form of a gift or inheritance from another individual is excluded from the income of an individual subject to taxation into the cost [19].

Heirs in Turkey are also heirs by law and heirs by will.

In the inheritance law system of Turkey, the gentile system forms the basis of the legitimate heirs of blood relatives. According to the Civil Code, there is a three-level system for the division of property during inheritance after the death of the testator [20].

Articles 495-501 of Chapter 1 "Legal Heirs" of the Civil Code of the Republic of Turkey are devoted to legal heirs [8].

Potential heirs under the law can only be citizens who are in certain family and kinship relationships with a potential testator, in particular children, parents, grandparents.

According to Art. 495 of the CC RT, heirs of the first degree are children who distribute the inheritance equally. If the children of the testator died before entering into the inheritance, then the heirs are the children of the deceased children of the heirs. "The children of the deceased are considered the head of the family" [8].

As an example, we can cite the court decision Yu. according to the will, Yashar S. died in 1979, leaving behind his wife Hatice and his children Yashar, Atisha, Hatdije, and Aisha as heirs, as well as Ismail, the child of his son Ibrahim, who predeceased him (in 1975). Children who died before heir, are replaced by their descendants by inheritance in all degrees. It is not true that Ismail Soykan, the son of Ibrahim, cannot be listed among the heirs and that he should not be given a share from the heir. The death of Ismail (in 1983) following the heir does not affect his heredity. Then the right of the deceased heir passes to his heirs... Ignoring this aspect is contrary to the law ... [21].

The heirs both by law and by will are the children of the testator conceived during his lifetime and born alive.

Article 496 of the CC TR is devoted to inheritance by the parents of the testator. In the absence of children of the deceased, the parents of the testator also inherit in equal shares. If the parents died before the testator, then their descendants will be their successors. For example, in a situation where there are no successors on the father's side, then the heirs on the mother's side receive the entire inheritance, which they also share equally.

Article 497 provides for the inheritance status of the grandparents of the testator in the absence of children and parents of the deceased. Similar to those discussed in Art. 496 in the absence of the grandfather and grandmother of the testator, their descendants will be the successors [8].

If the deceased leaves any fortune to a tax-exempt charitable organization or foundation, the reserved portion is two-thirds of the above amounts.

Children born out of wedlock provided that they are recognized by a parent or by a court decision, become heirs on a par with legitimate children (Article 498 of the CC TR) [8].

Of particular interest is the position of the spouse(s) as heir. The surviving spouse becomes heir in the following proportions, depending on the group to which he belongs:

1. If the spouse(s) becomes heir together with the child of the testator, a quarter of the inheritance,

2. If a spouse becomes an heir together with the parents of the decedent, half of the inheritance,

3. If the spouse (s) becomes the heir together with the grandfather, grandmother and their children, three-quarters of the inheritance belongs to the spouse (s) (Article 499 of the Civil Code of the Republic of Turkey) [8].

The legal status of adoptive parents and adopted children are also of interest. Adopted children have the same rights as natural children. However, adoptive parents cannot be heirs of an adopted child. At the same time, the former family of the adopted child will inherit in the event of the death of the natural child (Article 500 of the Civil Code of the Republic of Turkey). That is if the testator has a natural father who previously divorced his mother, in the event of the death of the testator, even if he is adopted by a stepfather with whom the testator's mother entered into a second marriage, the inheritance will be due to his mother and father.

If there is a will, the testator may prohibit the legal heirs from receiving an inheritance. This situation applies only in exceptional circumstances. However, the testator must first prove the reasons for such a ban in court [8].

We see that the Turkish inheritance legislation differs from the Kazakh one not only in the order and size of the inheritance shares but also in the fact that the testator is obliged to prove his right to deprive the heirs of the right to inherit by will. In addition, a distinctive feature is the absence of an inheritance tax for persons inheriting property in the Republic of Kazakhstan.

The inheritance legislation of the two countries provides an exhaustive list of categories of persons who do not have the right to inherit either by will or by law.

According to the provisions of Art. 1045 of the CC RK, the first category includes unworthy heirs who intentionally took the life of the testator or any of the possible heirs or made an attempt on their life. This provision indicates the intent of the acts committed. In relation to persons who have committed unlawful acts of this nature through negligence, this rule should not apply. The heir, whose actions can be regarded as grounds for removal from the inheritance, does not lose the right to inherit only if at the time of the commission of the crime (murder, attempt) he was insane, and if the making of a will in favor of such an "unworthy" heir took place after criminal acts. It is the latter circumstance that is an innovation in the Civil Code. The fact is that the testamentary disposition is based on the will of the testator, and if the testator left a will in favor of such an heir, then he forgave him. Now the legislator, with a direct indication in the law, makes an exception for persons in respect of whom the testator made a will after the attempt was made on his life (Paragraph 1 of Article 1045 of the CC RK) [7].

The second group includes persons who deliberately prevented the testator from carrying out the last waves and thereby contributed to the calling of themselves or persons close to them to inherit or increase their share of the inheritance (Paragraph 2 of Article 1045 of the CC RK). For the application of this rule, it the unlawful actions of a person must be intentional. At the same time, the direction of intent does not matter: a person may be excluded from inheritance, regardless of whether he acted to receive an inheritance or his illegal actions were caused by other motives. The result of illegal actions should be a call to inherit or an increase in the share of the inheritance. These illegal actions can be expressed in threats, deceit, and violence to force the testator to make a will, to prevent the drawing up of a will, to hide a will, to force one of the heirs to renounce the inheritance, etc.

In judicial practice, certain traditions have developed in resolving the issue of unworthy heirs. Persons who committed criminal acts were removed from an inheritance, and these acts had to be proven in court under the criminal legislation of Kazakhstan. In our opinion, this rule should remain in force for unworthy heirs of the first category, for those who took the life or attempted the life of the testator and heirs, because the actions of the heir fall under the signs of one of the offenses provided for by the Criminal Code of the Republic of Kazakhstan. If the behavior of an unworthy heir does not fall under the signs of a crime, the circumstances that are the basis for recognizing the heir as an unworthy heir can be established in civil proceedings [22]. Thus, to resolve issues relating to the removal of inheritance in accordance with Paragraph 2 of Art. 1045 of the CC RK, it is possible to apply the procedure for both criminal and civil proceedings.

Thus, by the decision of the Kostanay City Court of the Kostanay Region dated February 03, 2020, Case No. 3910-19-00-2/9975, the defendant citizen V.P. [23].

The court, after hearing the parties, having studied the materials of the civil case and the registration case, made a decision based on the plaintiff provided by citizen T.P. the verdict of the court No. 2 of the city of Kostanay dated November 10, 2017, that the defendant citizen V.P. found guilty of deliberately unlawful causing death to their common son Dmitry, applying Paragraph 1 of Art. 1045 of the Civil Code of the Republic of Kazakhstan "persons who deliberately deprived the testator or potential heir of life, or made an attempt to take the testator's life shall have no right to inherit neither by law nor by will" satisfied the claim of the plaintiff, citizen T.P. on the recognition of the defendant citizen V.P. unworthy heir [23].

The third group of "unworthy heirs" consists of parents after children in respect who they were deprived of parental rights and were not restored to these rights by the time the inheritance was opened, as well as parents (adoptive parents) and adult children (adopted children) who evaded the fulfillment of the obligations assigned to them in the force of the law of obligations for the maintenance of the testator.

This rule only applies to statutory inheritance. Due to the fact that the testamentary disposition reflects the will of the testator, it is impossible not to recognize the right of inheritance for unworthy parents and unworthy children if the testator, having forgiven them for their guilt, left all or part of his property to the "unworthy heirs".

All circumstances under which the heirs are removed from the inheritance as unworthy are established by the court. At the same time, it does not matter in which legal proceedings a citizen is recognized as an unworthy heir. Circumstances of unworthiness may be established in criminal proceedings, as well as in civil proceedings.

An important fact is that the unworthy heir is obliged to return all the property unreasonably received by him from the composition of the inheritance, and if it is impossible to return the inherited property, the unworthy heir is obliged to reimburse its market value.

The rules on unworthy heirs apply to testamentary trust and to heirs entitled to a compulsory share.

At the same time, as observed from judicial practice, when considering disputes arising from hereditary legal relations, persons who do not have the authority and rights to do so often file a lawsuit with a court to eliminate unworthy heirs.

So, citizen Z. filed a lawsuit to invalidate the marriage between her brother and daughter-in-law (defendant B.), to eliminate the wife of her dead brother (defendant B.) from inheritance under the law, arguing that after the death of the deceased the plaintiff's brother, an inheritance in the form of an apartment was opened. The heirs of the first stage after the death of the plaintiff's brother were his own father and his wife, defendant B.; there were no other heirs of the first order. The testator did not leave any will to dispose of his property [24].

Substantiating her claim, the plaintiff pointed out that defendant B. is an unworthy heir and is subject to elimination from an inheritance, since the marriage between her and the plaintiff's brother should, according to the plaintiff, be declared invalid on the grounds that at the time of the conclusion and registration of the marriage, the plaintiff's brother was on registered in a psycho-neurological dispensary with a mental illness, which was known to the defendant B. Despite this fact, the defendant, according to the plaintiff, fraudulently registered a marriage with a mentally ill person, pursuing selfish goals.

Plaintiff Z. was denied satisfaction of this claim by a court decision, since in the case under consideration the grounds for eliminating the defendant from inheritance as an unworthy heir, given in support of Z.'s claim, under an exhaustive list of categories of persons who do not have the right to inherit either by will or by law according to Art. 1045 of the Civil Code did not fall under.

In the decision of the court, it was also explained that, according to the provisions of Art. 1038 of the Civil Code, the inheritance of a deceased citizen passes to other persons on the terms of universal succession as a whole and at the same moment unless otherwise follows from the rules of this section. Due to the requirements of p.p. 1, 3 Art. 1060 of the Civil Code, legal heirs are called to inherit in the order of priority provided for by Art. 1061-1064 of the CC RK [24].

Thus, in the above case, after the death of the testator, the plaintiff Z.'s brother, there were heirs of the first stage: his father and wife – defendant B; plaintiff Z., according to the requirements of these norms, was the heir of the second stage, accordingly, she was not entitled to raise the issue of eliminating another heir of the first stage from inheritance.

Another category of heirs in the inheritance legislation of the Republic of Kazakhstan is absent heirs. This norm is new for Kazakhstan because the legislation of the Kazakh SSR did not contain norms regulating such relations. Absent heirs, if they missed the six-month deadline, were denied the right to inherit. The introduction of this category of heirs is associated with a change in the procedure for accepting an inheritance.

Missing heirs are those persons whose whereabouts are unknown. Establishing their location and calling to inherit is the responsibility of the other heirs, the executor of the will (inheritance manager) and the notary (Paragraph 1 of Article 1077 of the CC RK) [7].

If the absent heir called to inherit, whose location has been established, has not renounced the inheritance within six months, then the other heirs are obliged to notify him of the division of the inheritance property. In the event that three months after such notification, the absent heir does not express his desire to participate in the division of the inheritance, then the remaining heirs can make the division independently, taking into account his share.

If a year after the opening of the inheritance, the absent heir does not appear and his location is unknown, then the heirs can divide the inheritance property by allocating the share of the absent heir.

The Kazakh legislator includes conceived but not yet born heirs among the absent heirs. The only difference is that absent heirs are subjects of law, and those conceived but not born are only prospective heirs, with the condition that they are born alive.

As an example, consider the published court practice that took place in the city of Uralsk.

Thus, by decision No. 2-6565/18 of Court No. 2 of Uralsk, West Kazakhstan Region dated June 25, 2018, the claim of the plaintiff E.A. on the recognition of the defendant L.V., born on December 29, 1960, as having ceased (renounced) the right to inherit by will, after the death of E.I., born on March 15, 1930, who died on July 24, 2016, was satisfied [23].

It follows from the materials of the case that after the death of the testator E.I. born on March 15, 1930, the property remains - an apartment located in Uralsk, st. Korolenka, 32, apt. 21, owned by her. The heir by will after the deceased is the daughter of the defendant L.V., born on December 29, 1960, who in 1995–1998 left the Republic of Kazakhstan for Germany for permanent residence.

The testator E.I. suffered from a complex form of diabetes, which subsequently led to diabetic antipathy of the vessels of the lower extremities, initially gangrene of the left foot, and subsequently in 2016, amputation of the left limb at the level of the middle third of the thigh. After the death of the testator E.I., daughter of the deceased defendant L.V. did not accept the inheritance within the established 6-month period, she did not come to her mother's funeral; the last time she came to Uralsk was in 2014. Sometimes contact was maintained by phone, but in 2016 this connection was also interrupted.

Until her death, the deceased was looked after by the plaintiff E.A. and her daughter with her husband. They purchased medicines, took them to medical institutions, hired a nurse to care for the testator E.I., about which the defendant L.V. was known, and in gratitude, through acquaintances from Nuremberg (Germany), she handed over a letter of renunciation of the inheritance. However, the refusal was not formalized properly and was not accepted by the notary. By a resolution dated April 10, 2018, the plaintiff E.A. refused to accept the inheritance.

In accordance with Art. 1072, 1072-1 of the CC RK, to acquire an inheritance, the heir must accept it by submitting an application from the heir to accept the inheritance, as well as performing the actions specified in 1072-1 of the CC RK. The term of acceptance of the inheritance according to Art. 1072-2 of the Civil Code of the Republic of Kazakhstan - six months from the date of opening the inheritance. However, after the death of the mother of the defendant L.V., the inheritance was not accepted, the corresponding application was not submitted to the notary.

The court also concluded that the actions of the defendant E.A. testifies to her refusal to accept the inheritance, which follows from the text of the letter sent from Nuremberg (Germany) in 2016 after the death of her mother, the letter with the official translation is attached to the file [21].

Since the inheritance legal relationship is a rather complex type of civil legal relationship, its subject composition may undergo other changes. First of all, these changes are associated with events and actions, i.e. with legal facts. This is the refusal of the heir from his share in the inheritance and the call to inherit subsequent lines, or a sub-appointed heir, and much more.

In Turkish legislation, the provisions for persons deprived of the right to inherit are regulated in Article 510 of the Civil Code of the Republic of Turkey.

Unworthy heirs are:

1. A person who intentionally committed a serious crime against the testator or one of the relatives of the testator [8].

Similar to the legislation of Kazakhstan, there is an exception for persons in respect of whom the testator made a will after an attempt was made on his life, i.e., forgave them.

2. A person who has not fulfilled his obligations to the testator or family members of the testator. We are talking about parents (adoptive parents) and adult children (adopted), who evaded the fulfillment of their obligations to support the testator [8].

3. Persons who deliberately prevented the testator from making a will, amending it, canceling the will and thereby contributed to the emergence of the right to inherit themselves or persons close to them or increase the share of the inheritance due to them, have no right to inherit either by will or by law also [25].

4. Persons deprived of parental rights and not restored in these rights by the time the inheritance is opened [25].

5. A person whose marriage has been declared invalid by a court. However, the exception is if the heir whose marriage was annulled proves his case regarding the invalidity of the marriage, in which case he has the right to receive a share in the inheritance from the property acquired by the testator during the actual marriage [23].

The institution of unworthy heirs is designed to ensure that the limits of inheritance correspond not only to the actual one (in case of concealing a will and preventing the expression of the last will), but also to the alleged one (in case of an intentional unlawful act directed against the testator or any of his heirs, as well as in case of evading maintenance) the will of the testator, adjusting the composition of the heirs according to the law, determined solely based on family kinship [2; 13].

The state is a special subject of the hereditary relationship. The state can be an heir both by will and by law. There is a definite difference in what underlies hereditary succession - a law or a will.

If by virtue of Paragraph 1 of Art. 1083 of the Civil Code of the Republic of Kazakhstan, the inheritance is recognized as escheat, then it passes to the state according to the law, and if the property was bequeathed to the state, then it is not recognized as escheated, then the state is the heir by will.

According to Turkish legislation, in the absence of blood heirs, the inheritance passes to the Turkish state (Article 501 of the CC TR) [8]. As for the property located in Turkey, and in respect of which there are no heirs, belongs to the state (Paragraph 20 of the Code of Private International Law and International Civil Procedure) [9].

Conclusions

Summing up the study, it can be noted that the testator in both Kazakhstan and Turkey can be citizens of the country, foreign citizens living in the territory of one of the countries, or temporarily staying citizens, such as tourists, as well as stateless persons. However, a number of differences have also been identified:

1. In the Republic of Turkey, unlike the Republic of Kazakhstan, the codification of private international law has been carried out. In 2007, the Code on Private International Law and International Civil Procedure was adopted.

2. In Kazakhstan, in the absence of heirs of the previous stages and the presence of disabled dependents of the testator, the number of lines under the law is eight. In Turkey, there are only three lines of heirs by blood.

3. In the Republic of Turkey, the legislator primarily protects the interests of the children of heirs. In the Republic of Kazakhstan, children, spouse and living parents are protected equally.

4. In Kazakhstan, there is no inheritance tax, unlike Turkish law.

5. In Turkey, the surviving spouse inherits by percentage, depending on which of the three groups of heirs he belongs to.

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Қазақстан Республикасындағы және Түрік Республикасындағы заң бойынша мұрагерлік субъектілерінің құқықтық мәртебесі: салыстырмалы-құқықтық талдау

Қазақстан Республикасы мен Түркия Республикасы арасындағы белсенді дамып келе жатқан қатынастар жағдайында мұрагерлік субъектілерінің құқықтық мәртебесін заңмен реттеу мәселелері ерекше өзектілікке ие деп есептейміз. Ұлттық, тарихи, діни, мәдени және отбасылық дәстүрлердің ерекшеліктеріне байланысты шетелдік мұрагерлік қатынастарды құқықтық реттеудегі ең күрделі қатынастардың бірі болып табылады. Авторлардың пікірінше, мұрагерлік субъектілерінің құқықтық мәртебесін зерттеу және талдау заң бойынша маңызды болып есептеледі, өйткені екі ел арасындағы белсенді көші-қон процестерінің арқасында Қазақстан мен Түркияның көптеген азаматтарының осы елдерде туыстары бар және тиісінше олардан кейін басқа мемлекеттің заңнамасы бойынша мұра мәселесі қарастырылады. Қазақстан Республикасының және Түркия Республикасының заңнамасы бойынша мұрагерліктің құқықтық мәртебесін реттеу саласындағы қолданыстағы мұрагерлік

заңнаманы салыстырмалы-құқықтық талдау екі елдің заңнамасы бойынша мұрагерлік субъектілерін заңнамалық реттеудегі елеулі айырмашылықтарды көрсетті. Қазақстан Республикасы мен Түркия Республикасының қолданыстағы заңнамасын салыстырмалы-құқықтық талдау негізінде кезектілік тәртібінде, жұбайының мұраға қалдырылған мүліктегі үлесінде және мұраға қалдырылған мүлікке салық салу саясатында бірқатар айырмашылықтар анықталды. Сонымен бірге мұрагерлік мәртебені анықтауға және мұра қалдырушының мәртебесін анықтауға қатысты көптеген көзқарастар бар. Іс жүзінде бұл зерттеу жұмысы мұрагерлік құқық, сондай-ақ халықаралық жеке құқық саласында жұмыс істейтін заңгерлер үшін қажет деп есептейміз.

Кілт сөздер: мұрагерлік құқық, мұрагерлік субъектілері, заң бойынша мұрагерлік субъектілерінің құқықтық мәртебесі, шетелдік мұрагерлік құқықтық қатынастар, мұрагер, лайықсыз мұрагерлер, мұрагерлік мүлікке салынатын салық, иесіз қалған мүлік.

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Правовой статус субъектов наследования по закону в Республике Казахстан и Турецкой Республике: сравнительно-правовой анализ

В условиях активно развивающихся отношений между Республикой Казахстан и Турецкой Республикой вопросы регулирования правового статуса субъектов наследования законом приобретают особую актуальность. В силу особенностей национальных, исторических, религиозных, культурных и семейных традиций наследственные отношения, осложненные иностранным элементом, являются одними из наиболее сложных в правовом регулировании. По мнению авторов, изучение и анализ правового статуса субъектов наследования по закону представляется столь значимым, поскольку благодаря активным миграционным процессам между двумя странами многие граждане Казахстана и Турции имеют родственников в этих странах и, соответственно, наследуют после них по законодательству другого государства. Сравнительно-правовой анализ действующего наследственного законодательства в области регулирования правового статуса наследования по законодательству Республики Казахстан и Турецкой Республики показал существенные различия в законодательном регулировании субъектов наследования по законодательству двух стран. На основе сравнительно-правового анализа действующего законодательства Республики Казахстан и Турецкой Республики был выявлен ряд различий в порядке очередности, доле супруга в наследуемом имуществе и политике налогообложения наследуемого имущества. В то же время существуют также общие подходы к определению наследственного статуса и к определению статуса наследодателя. В практическом плане данное исследование представляет интерес для юристов, практикующих в области наследственного права, а также международного частного права.

Ключевые слова: наследственное право, субъекты наследования, правовой статус субъектов наследования по закону, наследственное правоотношение, осложненное иностранным элементом, наследодатель, наследник, недостойные наследники, налог на наследуемое имущество, выморочное имущество.

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