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PROBLEMS OF LEGAL REGULATION OF INHERITANCE

Abduvaliyev Murodillo Marufjon ogli
Director of the "Legal Education Center" at the
Law Department of Fergana State University
asadulloabduvaliyev6@gmail.com

Abstract:

In this article, the right of succession, which is a civil legal relationship, is studied in detail, and the difference between the concepts of succession and testament in this institution is analyzed.

Keywords

Succession, legal succession, inheritance, testament, will, heir.

Introduction

Among legal relations, the civil law sphere is distinguished by the separate regulation of the rights and obligations of its participants. An example of this is the preservation of rights and obligations in relation to other persons or objects belonging to them upon the death of a person. In life, each person has various relationships with other persons. These relationships, of course, arise at the free will of the person. Over time, one relationship ceases, and another arises. All relationships are personal or property relationships and are regulated by certain rules. Each person in the relationship has certain rights and obligations. Such rights and obligations, as a rule, remain in force even after the death of the person. In other words, the death of a person does not lead to the termination of such rights and obligations. For example, funds deposited in credit institutions do not release the bank from the obligation to return the deposit even after the death of the person who deposited it. The obligation continues, but the right to claim is transferred to other persons.

In general, inheritance is understood as the transfer to the heirs of property that belongs to him on the basis of private property, as well as certain rights and obligations that are closely related to the identity of the testator after his death.

Inheritance is carried out by will (testament) and by law. The inheritance includes all rights and obligations that belonged to the testator at the time of opening the inheritance and that do not cease to exist after his death. However, rights and obligations that are closely related to the identity of the testator, in particular, membership in commercial organizations and other organizations that are legal entities, the right to participate in them, the right to receive pensions, benefits and other payments, personal non-property rights that are not related to property rights, are not included in the inheritance.

Each person can determine the fate of his property after his death in advance, during his lifetime. Therefore, by inheritance, one should understand the property of the deceased person, his rights to property, the right to claim from others, his obligations and debts to others.

Thus, inheritance is the sum of the rights and obligations of a citizen that can be transferred to other persons during his lifetime

Discussion and Conclusion:

The root of the word inheritance comes from the Arabic language and means “wirosatun”, that is, to have moral or financial rights and obligations. It is also worth noting that the words inheritance and inheritance come from the same root (wirosatun).

If we pay attention to the definition given by M. Abdusalomov to this concept, the law of inheritance is a set of legal norms necessary for the direct acquisition of property, personal non-property rights and obligations related to property in connection with the death of a citizen. The law of inheritance is associated with the protection of property rights and interests of citizens, ensuring the exercise of their right to dispose of their property without any obstacles, not only during their lifetime, but also after their death.

According to the Civil Code, inheritance is carried out by will and by law. Inheritance by law is carried out in the absence of a will or if it does not determine the fate of the entire inheritance, as well as in other cases established by law. All rights and obligations that belonged to the testator at the time of opening the inheritance and that do not cease to exist after his death are included in the inheritance.

When it comes to inheritance by law, the transfer of rights and obligations to property belonging to a deceased person on the basis of private property rights to persons specified by law is considered inheritance by law. The testator has the right to determine the fate of his private property after his death during his lifetime. However, the law establishes a number of conditions, based on which the testator does not have the right to change them. The law protects the rights of certain categories of heirs to inheritance, which are specifically specified by law. The testator does not have the right to reduce the shares of such heirs in the inheritance established by law or to deprive them of inheritance altogether.[1]

According to Article 58 of the current Constitution of the Republic of Uzbekistan, women and men enjoy equal rights in inheritance. Heirs by law are called to the inheritance in five stages in accordance with the procedure provided for in Articles 1135-1139 of the Civil Code. In addition, according to Article 1140 of the Civil Code, they may be called to the inheritance as dependents of the testator who are unable to work.

Each stage of heirs by law acquires the right to inheritance in the following cases: a) in the absence of the heirs of the previous stage; b) when all heirs are excluded from the inheritance; c) when all heirs do not accept the inheritance; or when they renounce it. The inheritance is distributed in equal shares among the heirs called to the inheritance by law within one stage.

[1] 1 Узбекистон фукаролик кодекс II-кисмга шархлар Т. 1998 й Ш-жилд 265-бет.

In the event of the death of minor children living with their parents, the property inherited from them, if bequeathed in accordance with the procedure established by law, shall pass to the parents.

According to the law, only those persons who were alive at the time of the death of the testator shall be called to the inheritance. If the heir according to the law dies after the opening of the inheritance without accepting it, his share shall pass to his heirs by right of presentation. The circle of heirs according to the law shall be determined by determining the degree of kinship to the testator in accordance with the Family Code of the Republic of Uzbekistan.

Article 1120 of the Civil Code states that “a citizen’s will regarding the disposition of his property or his rights to this property upon his death shall be recognized as a will.” In legal literature, the concept of a will is defined differently by legal scholars. According to the definition given by F. Sayfullaev, “a will is a written order of the testator to leave all or part of his property after his death to one or more heirs or persons not considered heirs, to the state or to state, public organizations, enterprises or institutions in the manner prescribed by law.[2]

In addition, M.U. Barshevsky puts forward the following idea - this is a unilateral agreement of a personal-official nature, determining the procedure for obtaining rights after the death of the testator.[3]

According to Article 1120 of the Civil Code, a citizen's will regarding the disposition of his property or his rights to it upon his death is recognized as a will.

A will must be drawn up personally. It is not allowed to draw up a will through a representative. A citizen may bequeath all or a certain part of his property to one or more persons, including legal entities, the state or citizens' self-government bodies, who are included in the circle of heirs by law.[4]

The testator has the right to disinherit one, several or all of the heirs at law without giving reasons. Disinheritance of an heir at law does not apply to the descendants of the testator who inherit by right of presentation, unless otherwise provided by the will.[5]

The testator has the right to make a will that includes a disposition of any property.

The testator has the right to make a will that includes a disposition of property that does not belong to him at the time of making the will. If by the time the inheritance is opened, such property belongs to him, the corresponding disposition is considered valid.

In addition, the Civil Code sets out in detail the general rules for the form of a will, which are as follows:

The will must be made in writing, indicating the place and time of its writing.

The following wills are considered to be made in writing:

[2] Ф. Сайфуллаев. Узбекистон ССР Гражданлик хукуки. И том.Тошкент, «Укитувчи»1988 - 264- б.
[3] М.Ю. Баршевский. Правовое регулирование наследования по завешанию. Москва. 1989.
[4] Узбекистан Республикаси фукаролик кодексининг иккинчи кисмига шархлар. Тошкент, 1998 й. «Иктисодиёт ва х,укук дунёси» 111 жилд. 238-бет.
[5] Fuqarolik Kodeksi: 1120-modda. 29.08.1996

notarized wills;
wills equivalent to notarized wills.
A written will must be signed by the testator himself.
If the testator is unable to sign the will in person due to physical disabilities, illness or illiteracy, another person may sign the will in his/her presence, in the presence of a notary or other person certifying the will in accordance with the law, indicating the reasons for the testator's inability to sign in person.
The following may not sign a will instead of the testator:
a notary or other person certifying the will;
the person in whose favor the will is drawn up or to whom the testamentary obligation is imposed, his/her spouse, children, parents, grandchildren and great-grandchildren, as well as the testator's heirs at law;
citizens who do not have full legal capacity;
illiterate persons and other persons who cannot read the will;
persons previously convicted of perjury.

Conclusions and Suggestions

In conclusion, it can be said that the inheritance property passes to the heirs only on the basis of inheritance by law and by will. In inheritance by law, it is necessary to study in detail the following aspects: the order of succession, dependents of the testator who is unable to work, inheritance by the right of presentation, as well as the will and the grounds for its preparation, amendment, cancellation and its recognition as invalid.

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6. Fuqarolik Kodeksi: 1120-modda. 29.08.1996

