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<https://doi.org/10.26577/JAPJ.2023.v106.i2.015>**Kh.R. Gafarova** Baku State University, Azerbaijan, Baku
e-mail: xanim84.84@mail.ru**INHERITANCE STATUTE:
A COMPARATIVE ANALYSIS
OF THE LEGISLATION OF DIFFERENT STATES**

In the modern period, as a result of the comprehensive development taking place in the international arena, there has been an increase in the number of hereditary relations of an international nature. Regulation of basic international hereditary relations deemed to be one of the urgent problems of our time. The reason for this problem is that the substantive rights of States in this area differ from each other. Studying the legislation of the world countries in the field of inheritance and conducting a comparative analysis, we observe significant differences, the absence of an international regulatory mechanism in this area or the presence of certain legal gaps. It is obvious that legislative acts in the field of regulation of these relations are different both in content and in form.

There is no consensus on the statute of inheritance in international law. So, according to some approaches, the statute of inheritance refers to the constituent elements of this statute, or rather the circle of relations that it covers. These constituent elements have been defined in various forms in the substantive law of States.

According to another approach, the statute of inheritance refers to the law that will apply to inheritance relations in general. This right is determined by means of the rules on conflict of laws. This opinion can be found in variety of literatures.

Key words: mandatory share, statute of inheritance, heirs, inheritance by law, inheritance by will.

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e-mail: xanim84.84@mail.ru**Мұрагерлік статут: әртүрлі мемлекеттердің
заңнамасын салыстырмалы талдау**

Қазіргі кезеңде халықаралық аренада болып жатқан жан-жақты даму нәтижесінде халықаралық сипаттағы мұрагерлік қатынастар санының өсуі байқалды. Халықаралық қарапайым мұрагерлік қатынастарды реттеу қазіргі заманның өзекті мәселелерінің бірі деп айтуға болады. Бұл мәселенің себебі – бұл саладағы мемлекеттердің материалдық құқықтары бір-бірінен ерекшеленеді. Мұрагерлік саласындағы әлем мемлекеттерінің заңнамасын зерттей отырып және салыстырмалы талдау жасай отырып, біз айтарлықтай айырмашылықтарды, осы саладағы халықаралық реттеу механизмінің жоқтығын немесе реттеудегі белгілі бір олқылықтардың болуын байқаймыз. Біз бұл қатынастарды реттеу саласындағы заңнамалық актілердің мазмұны жағынан да, формасы жағынан да әртүрлі екенін көреміз.

Халықаралық құқықта мұрагерлік мәртебесі туралы консенсус жоқ. Сонымен, кейбір тәсілдерге сәйкес, мұрагерлік туралы заң осы Заңның құрамдас элементтерін, дәлірек айтқанда, ол қамтитын қатынастар шеңберін білдіреді. Бұл құрама элементтер мемлекеттердің материалдық құқығында әр түрлі формада анықталды.

Басқа тәсілге сәйкес, мұрагерлік туралы Заң жалпы мұрагерлік қатынастарға қолданылатын заңға қатысты. Бұл құқық соқтығысу құқығының нормалары арқылы анықталады. Бұл пікірді Әртүрлі дереккөздерден табуға болады.

Түйін сөздер: міндетті үлес, мұра туралы ереже, мұрагерлер, заң бойынша мұрагерлік, өсиет бойынша мұрагерлік.

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Наследственный статут: сравнительный анализ законодательств разных государств

В современный период в результате всестороннего развития, происходящего на международной арене, произошел рост числа наследственных отношений международного характера. Регулирование международных элементарных наследственных отношений, можно сказать, является одной из актуальных проблем современности. Причина этой проблемы заключается в том, что материальные права государств в этой сфере отличаются друг от друга. Изучая законодательство государств мира в сфере наследования и проводя сравнительный анализ, мы наблюдаем существенные различия, отсутствие механизма международного регулирования в этой сфере или наличие определенных пробелов в регулировании. Мы видим, что законодательные акты в области регулирования этих отношений различны как по содержанию, так и по форме.

В международном праве нет единого мнения относительно статуса наследования. Итак, согласно некоторым подходам, закон о наследовании относится к составляющим элементам этого закона, или, скорее, к кругу отношений, которые он охватывает. Эти составные элементы были определены в различных формах в материальном праве государств.

Согласно другому подходу, закон о наследовании относится к закону, который будет применяться к наследственным отношениям в целом. Это право определяется с помощью норм коллизионного права. Это мнение можно найти в самых разных источниках.

Ключевые слова: обязательная доля, статут наследства, наследники, наследование по закону, наследование по завещанию.

Introduction

Inheritance is one of the ancient legal institutions, which was formed on the basis of religious, cultural, economic, social influences which are relevant to a particular society of conservative nature. The latter feature makes it rather difficult to carry out legal generalizations concerning inheritance. In this regard, the generalization (unification) of legal norms in the field of inheritance is one of the main problems of modern private international law. It is no coincidence that one of the issues to which the Hague Conference on the Unification of Private International Law has paid more attention since the very beginning of its existence is related to inheritance. One of the main methods of overcoming this problem, which is certainly relevant at the present time, is to ensure the harmonization of national legislation of States. To do this, it is necessary to study and determine the differences between national legal systems and State legislations. By identifying and eliminating these differences, it will be possible at least to create unified and uniform rules on conflict of laws. As it was noted, the legal regulation of inheritance relations is fundamentally different in national legal systems. The presence of existing differences leads to the problem of a certain conflict (contradiction). In order to resolve these conflicts that may arise, it is necessary to identify various circumstances that

may cause a conflict. To do this, it is necessary to conduct a comparative analysis of the national legislation on inheritance.

Materials and methods

While analyzing inheritance statute, the latest doctrinal developments made by scientists, like G.C. Kennet, J.S. Marius, G.R.V. Maria, M.S. Abramkov, A.M. Abdulkhalikov, E.P. Voitovich, and others, were used. When writing the study, a set of general and special methods of cognition were taken into account: systematic and theoretical analysis, comparative legal, historical analytical, structural logical, technical methods etc.

Results and discussion

As a result of a comparative analysis, we can make such a preliminary conclusion that the differences in legislations in the field of inheritance are mainly in the circle of heirs, the amount of the mandatory share, the form of the will, freedom of will while composing a will, the fate of the inherited property, etc. Sum of these issues on conflict of laws is the statute of inheritance.

The Statute of inheritance defines the solution as general issues – about the grounds for the transfer of property by inheritance (law, will, inheritance

contract, donation in case of death, etc.), about the composition of the inheritance (types of property that can be inherited), conditions (time and place) the discovery of inheritance, the circle of persons who may be heirs (including the resolution of the issue of “unworthy” heirs), and special issues related to inheritance on certain grounds – directly on the basis of the law (by law), by will, in the order of the inheritance contract, etc.

It should be noted that the norms of substantive law governing inheritance relations in the Republic of Azerbaijan (hereinafter – AR) are enshrined in the Civil Code of the AR (hereinafter – the Civil Code), and norms on the conflict of laws are in the Law of the AR “On Private International Law” of 2000 (hereinafter – the Law on PIL), including in bilateral and multilateral international treaties to which the AR is a party. However, as is known from the legislative practice of States, these norms are established in various regulatory legal acts. So, in post-Soviet countries such as Estonia, Georgia and Ukraine, these norms are enshrined in the Civil Code and in the laws on PIL as in the Republic of Armenia, while in such post-Soviet countries as Belarus, Uzbekistan, Kazakhstan, Russia, Tajikistan, etc., these norms are provided for in the Civil Code. And in some states, for example, in Bulgaria, inheritance relations are regulated by a special law “On Inheritance” (dated January 29, 1949).

Of course, the legislative position of States on this issue is primarily due to the law system to which the national law systems of these States belong. In other countries with such a law system, inheritance relations are regulated by the relevant articles of the French Civil Code (hereinafter FCC) contained in Annex I “On Inheritance” and Appendix II “On various ways of acquiring property”, in Germany – in book V “On inheritance”, in Switzerland – in book III “About inheritance” of the Civil Code and in the Swiss Federal Law on Private International Law of 1987.

In the countries of the common law system, these relations are regulated through special laws and judicial precedents. The regulation of inheritance relations in the UK was carried out in accordance with the Wills Act of 1837 (the Wills Act), the 1963 Law of the same name implementing the provisions of the 1961 Vienna Convention on the Form of a Will, the 1918 Law on the Wills of Soldiers and Sailors, the 1925 Law on the Management of Inheritance, the 1938 Law on Inheritance, the Inheritance Law of 1975, the Law on the Reform of Inheritance Law of 1995.

In the United States (hereinafter – the US), inheritance relations are regulated by special laws adopted by the States themselves, along with the laws adopted at the federal level. As we know, the US law system has its own peculiarities. That is, all states have a single federal structure, while each state has its own unique law system. Although the US belongs to the Anglo-Saxon law system, the state of Louisiana has a Romano-Germanic law system. Hence, hereditary relations here are regulated by the main provisions of the Civil Code of 1825, compiled on the basis of the Federal Civil Code. In addition, in 1969, a Unified Inheritance Code was adopted in the US. This code has been adopted in whole or in part in many states.

Inheritance by law

The emergence of hereditary relations, as we know, occurs on two grounds: by law and by will.

Inheritance by law is unambiguously understood as the absence of a deceased testator’s will determining the fate of his left property.

As we can see from the concept given in Article 1132.2 of the Civil Code of the AR (CC of AR), hereditary relations by law arise on two grounds. The first is the absence of a will. That is, the deceased does not define a will as the basis of his last will, hereditary relations also arise according to the law as well. But if the deceased person had a will, then this would be the basis for the emergence of hereditary relations under the will. Another case is that a will is considered invalid in whole or in part. As it is clear, a person has a will, but since it does not meet the form or other requirements, the will is considered invalid by the court in whole or in part. As a result, there is inheritance by law.

In our civil legislation, it can be found other grounds for the emergence of inheritance by law. One of such cases is to bequeath some parts of the inherited property. In other words, a person bequeaths only a part of his property in his will. Thus, the bequeathed part of the property is subject to the norms of legislation providing for its application to inheritance relations under the will. On the other hand, inheritance by law applies to inherited property that has not been bequeathed. In the civil law literature, this is called mixed inheritance (Geyushov 2012: 529).

Inheritance is usually understood as the fact of death and the consequences that occurred after it. But the circle of heirs by law is not the same for all States. Both the scope of responsibilities and the amount of inherited property that they will

receive are fundamentally different in all countries, including Islamic States.

In accordance with Article 731 of the FCC, if the deceased has no will, his/her relatives and spouse act as heirs of the deceased.

According to this Article, heirs in France are divided into 4 categories. However, in accordance with Article 725 of the relevant Code, in order to inherit, it is necessary to exist at the time of the initiation of the inheritance. Here, the concept of existing at the time of the initiation of the inheritance includes a broad content. By the time of the initiation of the inheritance, the persons who were not conceived during the testator's lifetime and were born dead after his death cannot act as an heir.

The fact that one of the relatives of the previous queue is alive automatically invalidates the heirs of the next queue (CC F art.734). Before the amendments to the Civil Code of 2001, children born out of wedlock could not act as heirs.

However, this discrimination was completely eliminated after the 2005 reforms, and these children were entitled to a share in the inheritance, as well as children born from official marriages. The impetus for this reform in French legislation can be considered the 2001 court case of the European Court of Human Rights entitled "Mazurek v. France". The plaintiff here is a child born from an informal marriage. The claim is based on the distinction in hereditary relations of children born from "official" and "informal" marriages. Thus, until 2001, under the French law, children born in an official marriage were entitled to a larger share of inheritance than children born in an informal marriage. In relation to them, others had the right to receive half of their share of the inherited property of their parents.

The Court found that, along with Article 1 of Protocol I, Article 14 of the Convention (allowing discrimination) had been violated. As a result, in 2001, amendments were made to French legislation, which formalized that children born from official and informal marriages have equal inheritance rights. Another interesting example of the inability of children born out of wedlock to act as heirs is the case of *Marx v. Belgium* before the European Court of Human Rights. Thus, according to Belgian law, the procedure for recognizing motherhood in children born out of wedlock is significantly complicated, so the child is legally without a mother for some time. The plaintiff filed a lawsuit with the European Court of Human Rights, claiming disrespect for her family life and discrimination against her because she was an illegitimate child. The lack of legal recognition of the fact of motherhood deprived her of the right

to officially act as her mother's heir. However, on March 31, 1987, the Court, on the basis of Article 8 of the Convention, made a final decision (Council of Europe 1998: 146). In accordance with this decision, changes were made to Belgian legislation aimed at eliminating discrimination between illegitimate and children born during marriage. Parties in a civil marriage can act as heirs to each other only when their names are mentioned in the will (Article 763 of the FCC).

It should also be mentioned that in 2009-2010, German inheritance law underwent a radical reform. According to German law, the heir does not need to apply to any notary in connection with the acceptance of the inheritance. That is, the end of the term of acceptance of the inheritance is considered automatic acceptance of the inheritance (Civil Code of Germany, para. 1943).

But the right of heirs to refuse inheritance exists in each case. However, from the same law system, one can even say that, despite the similarity of the provisions of their legislation, both in Azerbaijan, Russia, and in other CIS countries, these circumstances are completely different. In accordance with Article 1243 of CC of the AR, the heir is considered to have accepted the inheritance when he has applied to the relevant notary authority with an application for acceptance of the hereditary property, has begun to own or actually manage the inheritance. That is, unlike Germany, without taking any action, it is not automatically considered to have accepted the inheritance. Hence, it can be concluded that failure to perform any of the listed steps should be considered a waiver of inheritance after the expiration of the term. But in Article 1256 of our Civil Code, it is noted that a person, that is, an heir, must file a statement of refusal of inheritance with a notary. We believe that these two articles contradict each other, and, in our opinion, Article 1256 should be excluded from the Civil Code. In practice, there are enough problems with this issue. Thus, the deceased has 2 or 3 heirs and one immovable property, which should be divided between them in a joint manner. Only two of them applied to the notary regarding the acceptance of hereditary property. The other heir did not take any action in this regard. Despite the fact that the term has expired, the division of this hereditary property cannot be carried out because of one heir. That is why Article 1256 should be removed from the CC of the AR and the failure to perform any actions should be equated with the rejection of inheritance.

The legislation of the states forming on the basis of the Model Civil Code in the CIS also differs

from each other. This differs both in the circle of legitimate heirs and in their sequence, as well as in the circle of legitimate heirs entitled to a mandatory share. First of all, it should be noted that the term universal succession is not used in the civil codes of all these States.

This term is used in the civil codes of Russia (Article 1110), Kazakhstan (Article 1038) and Belarus (Article 1031). As a difference in the circle of legal successors, we can cite the term that only children born alive after the death of a person mentioned in the civil legislation of Turkmenistan (Article 1096 of CC), Moldova (Article 2178 of CC), Georgia (Article 1307 of CC) can be heirs. All these terms are based on Moldovan civil legislation. There are significant differences in the order and circle of heirs. Thus, if there are two of them in the legislation of Turkmenistan (Article 1129 of CC), then there are eight in Russian legislation (Articles 1142-1148 of CC), in Azerbaijan (Article 1159 of CC), in Georgia (Article 1336 of CC) this circle is five in accordance with the legislation (Ruggeri 2019: 249).

The circle of heirs, as we know in our national legislation, is five. The circle of heirs in the legislation of states is almost radically different from each other. But especially noticeable differences between them exist in the circle of heirs of the fourth and fifth line. When analyzing the national legislations of the States, the fourth and fifth circles of heirs include persons who have received the right of inheritance by submission. For instance, from the civil legislation of Germany it seems that the heirs of the fourth stage of our civil legislation acquire the status of heirs as a result of a single presentation of the heirs of the third stage according to the civil legislation of Germany. According to our legislation, heirs of the fifth stage receive the right of inheritance as a result of the double representation of heirs of the fourth stage, specified in the national legislation of Germany. In our opinion, the position of the German civil legislation is more appropriate. Thus, German legislation preserves hereditary property within the family and expands the circle of heirs. In addition, sequence existing in German law is more appropriate.

In Ukraine, this circle is completely different. If in the legislation of the other States the circle of heirs is prescribed as a specific norm, then according to the legislation of Ukraine this circle can be changed after the death of a person under an agreement concluded between the heirs and notarized (Article 1259 of CC). In the legislation of almost all countries, as well as the CIS Member

States, alive husband or wife is indicated in the list of heirs of the first degree. The main reason for his/her exclusion from the list as an heir is the actual and legal termination of marital relations. All these differences lead to quite complex problems in the regulation of hereditary relations. For example, in Azerbaijan, Russia, etc. in general, monogamy exists in the CIS States. That is, according to Azerbaijani legislation, a person can legally be in only one marriage union at the same time. And what happens if a citizen of the AR enters into a marriage relationship in accordance with his legislation in another state where polygamy is allowed? So, does this marriage contradict our public rule? Can the parties in such a marriage be each other's heirs? At this time, the question arises about the recognition of marriage in Azerbaijan as a primary conflict of laws issue before the settlement of hereditary relations. According to the legislation of the AR, its legislation recognizes only monogamy. Consequently, the parties in such a marriage cannot be heirs of each other. However, it is obvious that although the legislation of the AR does not recognize legal acts that contradict the general rule, but, in some cases, it recognizes the legal consequences arising from it. As these circumstances, we can specify the alimony obligation. We also believe that inheritance relations are a right that is related to the right of ownership. From this point of view, we believe that even if we do not recognize marital relations, in the sense of human rights protection, recognition of hereditary relations resulting from this marriage would be appropriate.

Inheritance by will

Inheritance, the conditions and rules of which are determined by the will of the testator in accordance with the law, is called inheritance by will. When we talk about a will in the legislation of all States, then a will is understood as the last will of a person, providing for the disposal of his property in the case of his death.

Article 1166 of the CC of the AR defines a will as follows: a person may bequeath his property or part of it to one or more persons, both heirs and outsiders, in the event of his death.

A will may be accepted as an act of disposal by a person of property and non-property rights belonging to him [2, 156]

The conditions and procedure for the emergence of inheritance by will, unlike inheritance by law, are determined not by law, but by the will of the testator. However, this does not indicate that inheritance

by will is contrary to the law. If the testator's will contradicts the law, this circumstance leads to its invalidity. By inheritance by will, we mean the emergence, development and termination of legal relations related to inheritance. These relationships are reflected in certain legal facts. These are the main facts underlying inheritance by will in legal facts. Consequently, one of the legal bases of inheritance by will is a will.

A will, as we know, is a one-sided transaction, which in itself reflects the last will of a person. Article 326 of the CC of the AR notes that a unilateral transaction creates obligations for those who concluded it, the concept in this form is enshrined in the Civil Code of many other States, including the Russian Federation. However, according to many doctrines, including A.G. Sarayev's approach, making a will does not create any obligations for a person. In his opinion, even cases are not excluded when the legal consequences do not occur as the person who made the will believes. Such circumstances include the refusal of heirs from inheritance by will, the death of heirs, recognition of their incapacitated heirs. We don't completely agree with the author's opinion. Because a will is a transaction aimed at appointing heirs and creating property rights for them by this means. That is, it is a transaction aimed at creating property rights for heirs.

The concept of a will enshrined in our legislation can also be found in the legislation of other States. In Spanish law, it is implied that a person disposes of all or a certain part of his property after his death. In our opinion, the concept of a will is quite exhaustive and satisfactory.

Inheritance law is based on two principles in the legislation of all States: freedom of will (testament) and protection of the interests of families.

The principle of freedom of will is directly reflected in our legislation (Article 1166). This principle is based on the fact that the person making the will must express his will, change or cancel it completely independently. No one should directly or indirectly put pressure on the testator. But it should be noted that the principle of freedom of will is not absolute. That is, this freedom is restricted in cases provided for by law, in order to protect the interests, interests of others. The principle of freedom of will, as in Azerbaijan, is provided for in the legislation of other States.

The norm ensuring the freedom of the will is reflected in Article 1937 of the civil legislation of Germany, Article 895 of the FCC. Another interesting norm in German civil law is reflected in Article

1939. This Article notes that the testator may bequeath a certain part of the inherited property to any person without defining him as a personal heir. The difference between the norm reflected in this Article and Article 1937 is that in this form, persons acquire ownership only of a certain part of the deceased's property, without assuming any obligations (Kenneth 2011: 55).

Another case limiting the principle of freedom of the will is the institution of a mandatory share (Article 1193 of CC of the AR). The institution of a mandatory share in one form or another is reflected in the legislation of almost all countries, especially in the Romano-German law system. A mandatory share means restricting a person's freedom to make a will, that is, to limit his last will in the interests of family members. The main purpose of the institution of compulsory insurance is to preserve family ties, protect the rights of persons in need of hereditary property, which will be inherited from the testator. According to some approaches, a mandatory share means limiting a person's right to a will in a certain form. In accordance with Article 1193 regardless of the will of the deceased person, the children, parents and husband (wife) of this person have the right to a mandatory share in the inheritance. This Article is reflected in Article 1149 of the CC of the Russian Federation in a slightly different form. Thus, in this Article it is noted that incapacitated children of the deceased, incapacitated parents or spouse and disabled persons who are dependent on him act as heirs entitled to a mandatory share. That is, as we mentioned above, those who depend on the deceased person have the right to a mandatory share. If the will is the last will, and the execution of the last will is the right of every person. Therefore, in our opinion, it would be more expedient to make some changes to this Article of our legislation, changing it as granting the right to a mandatory share to the disabled children of the deceased, disabled parents or spouses and disabled persons who are dependent on them. At the same time, everyone has the right to use their property in any form, to any extent. This is reflected in Article 1 of Protocol I of the Convention for the Protection of Human Rights and Fundamental Freedoms. The relevant Article notes that every individual and legal entity has the right to peaceful use of their property rights. It is from the point of view of ensuring that this Article of the Protocol is not violated, as well as from the point of view of the execution of the last will of the person, it would be advisable to make this amendment to our legislation.

French and German legislations also contain provisions on the right to a mandatory share in the

inheritance. Articles 2303 and 2338 of the German Civil Code provide for an indication of a “mandatory share”. But according to this provision, a mandatory heir is considered a creditor, and not an heir by law. That is, these are persons who have the right to demand from the heirs according to the will the share that they will get.

The study shows that the institution of mandatory share is known in a certain form along with the legislation of the AR and the legislation of other countries. If we have the right to a mandatory share for all heirs of the first stage without the need for any activity and disability, then in other states certain conditions are provided for this. The presence of such differences in practice creates significant difficulties in regulating basic foreign hereditary relations. For example, can a citizen, for whom the right to a mandatory share is provided, exercise his right to a mandatory share if there is hereditary property on the territory of a State where such a share is not provided for by law? According to Article 29 of the Law on Private International Law, inheritance relations are generally regulated by the legislation of the last permanent place of residence, except in cases when the deceased testator chooses the legislation of the country of which he is a citizen. Consequently, these relations can be regulated by both laws. We believe that the development of uniform rules on the conflict of laws to eliminate such cases would be an appropriate step.

Another important point of hereditary legal relations under the will, is to define the requirements established for the person who made the will. These requirements are reflected in Article 1167 of the CC of the AR. In accordance with this Article, the person who made the will must be of legal age; have legal capacity; be able to consciously judge his actions at the time of the will.

If only individuals can act as testators, individuals and legal entities, including the State and municipalities, can act as heirs in case of inheritance by will. Therefore, for the emergence of these legal relations, an important condition is that a person has legal capacity. Our civil legislation provides as a prerequisite for the emergence of the ability to make a will, the legal capability. In our civil legislation, a person’s full legal capability arises when a person reaches the age of majority.

All the listed requirements for making a will are reflected in the legislation of States in a certain form. Article 663 of the Spanish CC indicates that any sane person can make a will. According to Bulgarian law, a person should be able to consciously judge when making a will. This circum-

stance is reflected in Article 177 of the CC of the Russian Federation. It is noted here that a person must understand the meaning of his actions. Article 2229 of German law emphasizes that persons with a mental disorder, mental problems, and generally unable to consciously realize their actions are not allowed to make a will. Article 901 of the FCC provides for that when making a will, a person must be of sound mind and reach the age of adulthood. That is, a person should be in full sanity. To be able to make a will in the US, the rules are somewhat different from being considered legally capable. Thus, there is no need for the complete mental health or mental state of the person who made the will. So, according to the US law, mentally ill people can also make a will. Even the recognition of a person as incapacitated by a court decision is not a reason for depriving him of the right to make a will. For example, in one of the decisions of the Utah State Court (1994), it was found that the recognition of the testator’s incapacity in court and the appointment of a guardian to him does not prevent the drafting of a will, since this procedure requires less legal capability than for other transactions. The psychological state of the testator must meet 3 basic conditions: 1. He must understand the essence of the action he is performing; 2. The person to whom he has bequeathed must be someone he knows; 3. When making a will, he must be fully aware of his property.

We believe that when making a will, a person should be fully capable, be aware of the nature of the actions he performs, and be considered completely healthy in a psychological sense. The possibility of a will by persons who do not meet all these requirements is not considered appropriate.

In practice, it is often possible to find cases of recognition of a will as invalid. Thus, the plaintiff proved that the person when making the will was not in a state of full sanity, full understanding of his actions due to illness or other circumstances. It is for this reason that a will can be declared invalid.

When making a will, an individual must be legally capable. Analyzing the legislation, we can see that the fact that a person is considered in a full capability is determined by his full physical health, as well as the achievement of a certain age limit.

The age limit established by the legislation of the AR in order to be considered fully capable is 18 years (Article 1167). The age limit for being considered legally capable without making a will is set in the legislations of the States in different ways. For instance, in Spain this age limit is 14 (Article 663), in Bulgaria – 16, in some countries 18 (the AR, Rus-

sia, Germany). In England, this age was determined as 21 years.

The legislation of some States recognizes the rights of minors to the possibility of making a will. Among these states are Austria (14), Turkey (15), Germany (16), Latvia (16), England (18).

The recognition of the rights of minors to the possibility of a will sometimes occurs within certain restrictions. For example, in France, minors under guardianship can do this after they are authorized by the court or the family council (Article 476 of FCC). Dependent persons must make a will taking into account the provisions of Article 901 of CC. In Germany, persons who have reached the age of 16, in accordance with articles 2232-2233, have the right to make a will only in the form of a public act. As for the scope of the orders contained in the will, for example, Article 904 of FCC defines that persons who have reached the age of sixteen and are not released from custody have the right to dispose of property only in the amount of two-thirds of the property they have the right to dispose of. Another interesting example is the legislation of Finland. The legislation notes that the right to a will is acquired by persons who are officially married and have reached the age of 15. But at the same time, they have the right to dispose only of the profit that they received themselves (Chapter I, section 9 of the Inheritance Code).

In our opinion, persons who have reached the age of 16 can already make a will. As we know, wills are a one-sided transaction in which a person has the last will. We believe that if a person has certain property belonging to him, he may already have the right to dispose of his property at the age of 16.

Another important point for a will is that the will reflects the will of only one person. In our legislation, it is noted that the will must contain the will of only one person. A joint will exists only if the husband and wife make a mutual will (Article 1169 of CC of the AR). The will drawn up by them among themselves is combined and makes a joint will. This norm has found its justification in the legislation of other States. For instance, Germany, Russia, Georgia, Turkmenistan, Ukraine, Austria, England, etc. However, the legislation of some countries allows the joint will of partners in the marriage of a husband and wife or in a same-sex marriage. For example, Article 602 of the General Civil Code of Austria defines that spouses or partners in same-sex marriages can make a joint will. Another similar norm is reflected in German legislation. German civil law states that both joint and mutual wills are permissible (Article 2265). Another interesting case is noted in the legislation of Sweden and Denmark.

On the basis of these laws, a mutual will of close relatives is adopted by law. The opposite of these states is France, Spain, Italy, Bulgaria, Kyrgyzstan, Moldova, Tajikistan, Uzbekistan, Belarus, the legislation of these states does not accept joint wills in any case.

The Washington Convention on the Uniform Law on the Form of a Will of October 26, 1973 also prohibits the adoption of joint wills in any case.

As other circumstances limiting the last will of a person, setting it within a certain framework, it is possible to note the requirements for the form of a will. In the legislation of States, this issue has been reflected in certain forms. That is, wills must be drawn up in accordance with the form required by law. Failure to comply with this form leads to the invalidity of this transaction, as well as to the violation of the last will of the person. According to the legislation, the forms of making a will differ significantly from each other. So, wills can be in a simple written, notarial, oral, closed form.

According to the Civil Code and inheritance legislation, a will in all cases must be drawn up only in writing form. Making a will orally is not allowed by the legislation of the AR. But in some European countries, an oral will is allowed in exceptional cases. For example, according to the Swedish Inheritance Law, a will can be drawn up orally in the presence of 3 witnesses in emergency situations, that is, in the case of an infectious disease, as well as in the case of war. According to articles 2249 and 2250 of German CC, a will can only be drawn up orally in the presence of 3 witnesses during wartime, when communication with the outside world is interrupted. In England, Turkey, Switzerland, a similar case is provided for in the legislation.

The main and only form of will in countries with a common law system is a will certified by witnesses. Other than that, there was no form of will. It is drawn up by the testator himself or another person on his behalf. As stated in Article 9 of the English Wills Act, a will can only be written by the person himself or by another person on his behalf. But the same Article also defines that the will must be signed by the testator in the presence of two witnesses. In accordance with the Law of 1837, witnesses signing a will can in no case be persons who will profit from the will in any form.

The application of norms that differ from those specified in the legislation occurs in the event of any extraordinary circumstances, a sea voyage or any event that forces a person to make a will for his property. Similar cases are provided for in the civil legislation of Russia (Article 1129), Germany (Ar-

ticle 2249-2252), France (981-996), Sweden (506-508). Such wills are drawn up in a simplified form, in the presence of witnesses. But such wills are valid for a certain period of time. The beginning of the validity period of wills begins from the moment of elimination of special circumstances.

The legislation of the AR reflects the provisions related to these issues. Thus, according to Russian legislation, the drafting of a simple handwritten will in the event of any extraordinary circumstances is considered permissible. That is, the writing of wills written by hand by the person himself and not requiring notarization is allowed only in this case. On the contrary, our legislation allows for the writing of both notarial and simple household wills (Article 1186).

In general, household wills give a number of advantages. Thus, forgery is prevented, since the will is drawn up by the testator himself. At the same time, sometimes it may happen that a person's health condition will deteriorate dramatically, and a person will be left alone at home. At this time, a person can dispose of his property by making household will. That is, the simplest way to express a person's will during extraordinary or unavoidable events is to make a home will.

In our opinion, adding an article on the resolution of oral wills to our civil code would be a step on the spot. We believe that if a will is the final will of a person to be able to use this right, it must be carried out regardless of the circumstances. A will is also the right to dispose of a person's property. That is, it is directly related to important human rights. Given

all this, we believe that allowing persons at war to make oral wills in the presence of three witnesses when an extraordinary event occurs or when they face death makes sense for this purpose.

Conclusion

In order to eliminate conflict of laws, it is necessary to ensure the harmonization of the hereditary legislation of States belonging to different law families, regardless of their form. To this end, it is advisable to take measures at the regional level to unify the norms of substantive law. The measures taken in this direction within the framework of the European Union and the CIS can be considered appropriate for the current period. We believe that in order to eliminate future conflicts, Article 1256 should be removed from CC of the AR. One of the issues creating a conflict in the field of foreign inheritance relations is the institution of mandatory shares. While the right of compulsory share in the AR applies to each of the heirs under the law of the first stage, in many countries this issue is defined differently. A mandatory share is an institution that restricts a person's right to make a will, in other words, his final will. Taking into account the inviolability of property rights and the right of everyone to use their property in any volume and form, as well as future conflicts of laws, we believe that some changes should have been made to the civil legislation of the AR, or it would be more appropriate to change it in order to transfer it to their spouse and dependents.

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