

FEATURES OF INHERITANCE BY LAW: COMPARATIVE LEGAL ANALYSIS

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Abstract. *In the conditions of modern society, inheritance law is becoming the subject of increasingly active study and analysis. In the context of the transition of the Republic of Kazakhstan to a market economy, the implementation of socio-economic reforms and the development of information technology, the issues of inheritance law acquire new aspects and challenges. In this regard, this study is aimed at conducting a comparative analysis of the features of inheritance by law both in the Republic of Kazakhstan and in other countries, in order to identify similarities and differences in the legal regulation of this area. The purpose of the study is to study the key aspects of inheritance law using a comparative legal approach. Within the framework of this study, several main tasks have been identified: first, to analyze the legislation regulating inheritance by law in the Republic of Kazakhstan and in other countries of the world. This stage includes the study of the basic rules and principles governing the inheritance process in various legal systems. Secondly, to determine the circle of persons who have the right to inherit by law both in the Republic of Kazakhstan and in foreign countries. This important study will reveal differences in the established categories of heirs and the legal basis for their succession. Thirdly, to conduct a comparative analysis of the legal regulation of heirs by law in the civil law of the Republic of Kazakhstan and similar norms in foreign countries. This stage of the analysis will reveal similarities and differences in legal approaches to inheritance and its consequences for heirs. The results of the study are supposed to be used as a basis for developing recommendations for improving inheritance legislation, as well as for a deeper understanding and application of inheritance rules both in the Republic of Kazakhstan and in other countries. Thus, the study has practical significance and can contribute to improving the legal regulation of inheritance relations, ensuring a more equitable and effective succession procedure.*

Keywords: *inheritance law, subjects of inheritance, inheritance by law, testator, heir, universal succession.*

ЗАҢ БОЙЫНША МҰРАГЕРЛІКТІҢ ЕРЕКШЕЛІКТЕРІ: САЛЫСТЫРМАЛЫ - ҚҰҚЫҚТЫҚ ТАЛДАУ

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Аннотация. Қазіргі қоғам жағдайында мұрагерлік құқық барған сайын белсенді зерттеумен талдаудың тақырыбына айналуға. Қазақстан Республикасының нарықтық экономикаға көшуі, әлеуметтік-экономикалық реформалар жүргізу және ақпараттық технологияларды дамыту контекстінде мұрагерлік құқық мәселелері жаңа аспектілермен сын-қатерлерге ие болады. Осыған байланысты, бұл зерттеу осы саланы құқықтық реттеудегі ұқсастықтармен айырмашылықтарды анықтау мақсатында Қазақстан Республикасында да, басқа елдерде де заң бойынша мұрагерлік ерекшеліктеріне салыстырмалы талдау жүргізуге бағытталған. Зерттеудің мақсаты салыстырмалы құқықтық тәсіл арқылы мұрагерлік құқықтың негізгі аспектілерін зерттеу болып табылады. Осы зерттеу шеңберінде бірнеше негізгі міндеттер айқындалды: біріншіден, Қазақстан Республикасында және әлемнің басқа елдерінде заң бойынша мұрагерлікті реттейтін заңнамаға талдау жүргізу. Бұл кезең әртүрлі құқықтық жүйелердегі мұрагерлік процесін анықтайтын негізгі нормалармен принциптерді зерттеуді қамтиды. Екіншіден, Қазақстан Республикасында да, шетелдерде де заң бойынша мұрагерлікке құқығы бар адамдар тобын айқындау. Бұл маңызды зерттеу мұрагерлердің белгіленген санаттарындағы айырмашылықтарды және олардың мұрагерлігінің құқықтық негіздерін анықтайды. Үшіншіден, Қазақстан Республикасының азаматтық құқығындағы заң бойынша мұрагерлердің құқықтық реттелуіне және шетелдердегі осыған ұқсас нормаларға салыстырмалы талдау жүргізу. Талдаудың бұл кезеңі мұрагерлікке қатысты құқықтық көз қарастардың ұқсастықтары мен айырмашылықтарын және оның мұрагерлер үшін салдарын анықтауға мүмкіндік береді. Зерттеу нәтижелері мұрагерлік заңнаманы жетілдіру бойынша ұсынымдар әзірлеу үшін, сондай-ақ Қазақстан Республикасында да, басқа елдерде де мұрагерлік ережелерді тереңірек түсіну және қолдану үшін негіз болады деп болжанады. Осылайша, зерттеудің практикалық маңызы бар және мұрагерлік қатынастарды құқықтық реттеуді жақсартуға, мұрагерліктің неғұрлым әділ және тиімді тәртібін қамтамасыз етуге көмектесуі мүмкін.

Түйін сөздер: мұрагерлік құқық, мұрагерлік субъектілері, заң бойынша мұра, өсиет қалдырушы, мұрагер, әмбебап мирасқорлық.

ОСОБЕННОСТИ НАСЛЕДОВАНИЯ ПО ЗАКОНУ: СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ

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Аннотация. В условиях современного общества наследственное право становится предметом все более активного изучения и анализа. В контексте перехода Республики Казахстан к рыночной экономике, проведения социально-экономических реформ и развития информационных технологий, вопросы наследственного права приобретают новые аспекты и вызовы. В связи с этим, данное исследование направлено на проведение сравнительного анализа особенностей наследования по закону как в Республике Казахстан, так и в других странах, с целью выявления сходств и различий в правовом регулировании данной области. Целью исследования является изучение ключевых аспектов наследственного права с помощью сравнительно-правового подхода. В рамках данного исследования определены несколько основных задач: во-первых, провести анализ законодательства, регулирующего наследование по закону в Республике Казахстан и в других странах мира. Этот этап включает в себя изучение основных норм и принципов, определяющих процесс наследования в различных правовых системах. Во-вторых, определить круг лиц, обладающих правом наследовать по закону как в Республике Казахстан, так и в зарубежных странах. Это важное исследование позволит выявить различия в установленных категориях наследников и правовых основаниях их преемства. В-третьих, провести сравнительный анализ правового регулирования наследников по закону в гражданском праве Республики Казахстан и аналогичных норм в зарубежных странах. Этот этап анализа позволит выявить сходства и различия в правовых подходах к наследованию и его последствиям для наследников. Результаты исследования предполагается использовать в качестве базы для разработки рекомендаций по совершенствованию наследственного законодательства, а также для более глубокого понимания и применения наследственных правил как в Республике Казахстан, так и в других странах. Таким образом, исследование имеет практическое значение и может способствовать улучшению правового регулирования наследственных отношений, обеспечивая более справедливый и эффективный порядок правопреемства.

Ключевые слова: наследственное право, субъекты наследования, наследование по закону, наследодатель, наследник, универсальное правопреемство.

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Introduction

In the modern conditions of the Republic of Kazakhstan, the issues of inheritance law are becoming increasingly relevant, especially in the context of the country's transition to a market economy, the implementation of cardinal socio-economic reforms, as well as the development of information technologies and digitalization of public life. The establishment of freedom of entrepreneurial activity has led to an expansion of the range of objects of private property of citizens, which has increased interest in hereditary issues in Kazakh society. The modern legislation of the Republic of Kazakhstan does not restrict citizens in the accumulation of property, which has formed a new attitude towards their property in the event of death.

An important legal instrument that ensures the stability of civil turnover in the event of the death of its participants and the protection of private property is hereditary legislation that enshrines the universality of succession. It is necessary to recognize the widespread inheritance by law, before inheritance by will.

Modern studies emphasize that inheritance law must evolve to reflect socio-economic changes and technological advancements to

address the complexities of contemporary society [1-2]. Khodyreva E.A. also notes that "inheritance law in modern Russia must adapt to new challenges, including the need to take into account digital assets and simplify inheritance procedures to ensure fairness and efficiency" [3, p.119].

There is a unified approach to inheritance by law in all countries of the world. The definition of the circle of such persons is based on the prevailing ideas about family relations in this society, as a result of which the list of persons called upon to inherit by law is far from the same in different legal systems. Inheritance by law is applied in the absence of a will, if the will is drawn up in relation to only a part of the property, the will is declared invalid in full or in part of the property, if the heir refused to accept the inheritance, and finally, if the heir according to the will died before the opening of the inheritance [4-2].

In inheritance legislation, the heirs established by law are usually distributed in order of priority, which is based on the principle of hierarchy, depending on the degree of proximity of kinship to the testator. Potential heirs by law may not be any natural persons, but only those who

are in certain family-related relationships with a potential testator. Recent studies highlight the importance of updating these principles to more accurately reflect modern family dynamics and social structures [4].

The purpose of this study is to conduct a comparative analysis of the features of inheritance by law in the Republic of Kazakhstan and foreign countries. To achieve this goal, the following tasks have been identified within the framework of the study:

1. To analyze the legislation regulating inheritance by law in the Republic of Kazakhstan and in other countries of the world in order to identify the key norms and principles governing the inheritance process.

2. To determine the circle of persons who have the right to inherit by law both in the Republic of Kazakhstan and in foreign countries, taking into account the specifics and restrictions established by law.

3. To conduct a comparative analysis of the legal regulation of heirs by law in the civil law of the Republic of Kazakhstan and similar norms in foreign countries, in order to identify similarities and differences in legal approaches to inheritance.

The research is aimed at systematization and analysis of the main aspects of inheritance by law in order to identify trends and features of its regulation both in the Republic of Kazakhstan and abroad.

Methods and materials

The methodology and research methods of this work present methods of dialectical and formal logic, methods of analysis, synthesis, as well as special methods of legal research: historical, legal, comparative, methods of analysis and interpretation of legal norms.

Discussion and results

When inheriting by law, inheritance follows a set order outlined by the current Civil Code of Kazakhstan which does not depend on a testator's will for its execution. This form of inheritance has often been called a "silent will"[2], inheritance without an explicit will document. Given that both forms of inheritance, by will and law, are subject to civil law, we believe it more suitable to refer to this form as inheritance without will than by law. As it stands, the difference between inheriting by will and inheriting through legislation lies in that when inheriting through will, the will of the testator is executed within its current framework, while in cases without an executed will by citizens, an orderly succession process set up by legislation

applies in order to call out potential heirs in an order of priority determined by legislation must be followed [5, p.102].

In all legal systems, there is a common approach to inheritance by law, which includes the following aspects:

- 1) no will has been drawn up properly,
- 2) only part of the inheritance has been addressed in a will and
- 3) the will is declared invalid either fully or partially by court order.
- 4) the refusal by an heir under the will to accept their inheritance [5, p.103];
- 5) their demise prior to opening of their inheritance [4-2].

Inheritance by law relies on the assumption that the law establishing who will inherit, their order of inheritance and share sizes correspond to what would have been desired or desired had there been testamentary provisions [6, pp. 69-70]. Recent studies emphasize the significance of accounting for digital assets, such as cryptocurrencies and social media accounts, in inheritance proceedings. These assets can possess substantial financial value and necessitate specific legal mechanisms to ensure their proper transfer to heirs [1]. In Kazakhstan, as in other countries, legal norms must adapt to new technologies and economic realities. For instance, in the Russian Federation, there is an ongoing active discussion on the need to consider the interests of economically dependent family members in the distribution of inheritance, including digital assets, and to simplify inheritance procedures to address new realities and protect the rights of all concerned parties [3].

It is necessary to recognize the widespread inheritance by law, before inheritance by will. I think we should agree with M.Y. Barshchevsky, according to whom "... many citizens are satisfied with the order of distribution of hereditary property after death, which is established by the relevant legislative norms of inheritance law" [7, p.44].

Exploring the issues of inheritance, I.A. Pokrovsky emphasized that the regulation of relations related to inheritance is traditionally based on a combination of two fundamental principles - individual, reflecting the interests of an individual, and social, reflecting the interests of society and the state [8, p.294]. O.Y. Shilokhvost further developing the idea notes that "in inheritance by law, the traditional manifestation of individual from the beginning, it was considered that the closest relatives and family members of the testator were among the heirs. The social principle, in turn, manifested

itself in the desire of the state, by providing legitimate heirs with means of subsistence at the expense of the property of the deceased owner, to free society from the burden of maintaining these persons" [9, p.5].

Gender equality issues in inheritance law are particularly crucial for improving the socio-economic status of women and children. The experience of Kenya demonstrates that changes in inheritance legislation can significantly enhance the socio-economic conditions of women and their children, ensuring gender equality in inheritance rights. In Kenya, modifications to inheritance laws have led to substantial improvements in the socio-economic status of women and their children, highlighting the importance of gender equality in inheritance law. These changes include expanding women's rights to inheritance, thereby promoting social justice and equality [4].

The main issues that arise when inheriting by law are:

1) who, according to the current legislation, can be the heir by law?

2) in what order can heirs by law be called to inherit?

Legislators of most countries of the world, answering the question of who can be the heir by law, proceed solely from the fact of consanguinity (individual origin) between the testator and the heirs. The origins of consanguinity under ancient law, as noted by I.A. Pokrovsky, are predetermined by the family system, where the identity of the heir and the order of inheritance could not be changed by the private will of the individual. Ancient German law was characterized by the famous saying " Solus Deus heredemfacerepotest non homo ("only God can make heirs, but not man" - Latin)", which perfectly conveys the idea of inheritance of ancient law as a whole [8, p.296].

Modern researchers also focus on the family nature of inheritance by law, which, in their opinion, determines its prevalence [10, p.338], and also note the important role of the institute of inheritance in strengthening the family, since most often the heirs are family members or close relatives [11, p.117]. Recent reforms in Cyprus, such as the abolition of section 42 of the Wills and Succession Law, also highlight the need to

adapt legislation to contemporary conditions. These changes address mandatory shares and expand the rights of heirs, which is important for ensuring justice and equality in inheritance law².

The general signs of inheritance by law for all legal systems are:

I. the procedure for calling to inheritance is strictly regulated by the norms of civil legislation and cannot be changed either by agreement of the heirs or on any other basis, for example, by a court decision.

Law provides for an alternate inheritance order to be implemented; examples include Kazakhstan and Ukraine's respective Civil Codes. According to paragraph 4 of Article 1060 of the Civil Code of Kazakhstan, inheritance can be altered through notarized agreements between interested heirs reached after opening an inheritance if such action does not violate either nonparticipants' rights or mandatory shares³.

Article 1259 of Ukraine's Civil Code considers this possibility in two cases. After the opening of an inheritance is disclosed, all interested heirs should sign a notarized contract that does not violate either party's rights (ie, those not participating as well as those entitled to mandatory shares in it). 1) Citizens may inherit according to the law of succession; and 2) any citizen who, during the life of the testator, provided long-term care, financial assistance, or other forms of assistance due to old age, serious illness or injury and was thus deemed helpless. In the second scenario, this heir is invited to inherit with other heirs of a queue called for inheritance (paragraph 2 of Article 1259 of Ukraine's Civil Code)⁴. For this rule to operate effectively, Ukrainian lawmakers clearly used paragraph 4 of Art 1172 Model Civil Code which allows this freedom of contract [12, pp.49-50].

II. the circle of heirs in Kazakhstan is determined solely by consanguinity, marriage, adoption and maintenance provided by the testator to persons dependent upon him or her. Kinship in this context is measured by counting births between relatives - without accounting for testator himself (paragraph 2, paragraph 1 of Article 1064 of the Civil Code of Kazakhstan)⁵.

Inheritance may occur through several ways. One option is for descendants to pass down their inheritance directly from ancestors to

² *Recent changes to inheritance and succession law* // <https://www.agplaw.com/recent-changes-to-inheritance-and-succession-law> (Date of application: 16.12.2023).

³ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999.* URL: // <https://adilet.zan.kz/rus/docs/K990000409> (Date of application: 16.12.2023).

⁴ *Civil Code of Ukraine №435-IV dated January 16, 2003* URL: // <http://kievgrad.info/page/1/628> (Date of application: 16.12.2023).

⁵ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999.* URL: // <https://adilet.zan.kz/rus/docs/K990000409> (Date of application: 16.12.2023).

descendants (parent - children, grandchildren), another can involve descendants passing down a line from children back up the tree (children to parent etc)⁶, and finally through a lateral line that connects people sharing common ancestors (for instance siblings with shared or common parents or mothers and fathers).

History has provided two primary methods for determining blood relations: Roman and Germanic. Roman kinship laws use birth dates as the measure of relationship; Georgia, Republic of Kyrgyzstan, Republic of Tajikistan, Turkmenistan, France, Estonia have adopted this system.

The Germanic system of consanguinity, also known as *parantellae* (from Latin *parens* - parent), divides blood relations into groups called *parantellae* based on common ancestor with multiple descendant lines from him, similar to Roman system, so inheritance takes place when someone dies within it. One distinctive aspect is that within each *parantella*, degree of proximity does not matter and descendants in descending line are given priority over younger generation. This system has found applications across Germany, Austria and Switzerland. This system has found applications throughout Germany Austria Switzerland with applications also found within families. This system has found applications across Germany Austria Switzerland [13, p.116].

III. 1) the relatives closest to the testator would exclude more distant relatives from inheriting, while each subsequent group of heirs only acquired rights to inherit in case there were no heirs of previous queue who accepted inheritance; 2) when one or more from previous queue were disinherited from inheritance; 3) non-acceptance or refusal by previous queue members to accept inheritance; 4) equal share inheritance among same queue heirs, and finally fifthly this being strictly in order of priority. Kazakh law has long recognized that when there are heirs of close degrees of kinship present, the opportunity to inherit other relatives becomes inapplicable. "Heirs of successive queues may

only inherit by law if no heirs of previous queues exist or they reject inheritance; or all the previous queue heirs have been denied their right of inheritance" (Article 527 of the Civil Code of Kazakh SSR)⁷.

As for the order of priority of calling heirs by law to inheritance, there is no uniformity in this matter. The definition of the circle of such persons is based on the prevailing ideas about family relations in this society, as a result of which the list of persons called upon to inherit by law is far from the same in different legal systems [14, p.366].

The Law of the Republic of Kazakhstan dated January 12, 2007 No. 225 amended the civil legislation, significantly expanded the range of possible heirs by law⁸. The heirs are legally distributed in the following order of priority:

First of all, the relatives closest to the testator are called upon to inherit – the testator's children, including those born alive after his death, the testator's spouse and parents (Article 1061 of the Civil Code of the Republic of Kazakhstan)⁹.

By the term "children of the testator", the legislator understands, first of all, daughters and sons born in a registered marriage, both during the life of the father, and conceived during the life of the testator and born alive after the opening of the inheritance. The origin of the child from persons who are married (*matrimony*) to each other is confirmed by the certificate of marriage (*matrimony*) of the parents (paragraph 2 of Article 47 of the Marriage and Family Code of the Republic of Kazakhstan – hereinafter referred to as the MFC RK)¹⁰.

The presumption of paternity is valid both in the case of the birth of a child in a registered marriage, and "in the case of the birth of a child within 280 days from the date of dissolution of marriage, invalidation of marriage or death of the spouse of the child's mother, the former spouse of the mother may be recognized as the father of the child, unless otherwise proven" (paragraph 3 of Article 47 of the MFC RK)¹¹.

Children born out of wedlock may inherit after both parents, provided paternity can be

⁶ *The Civil Code of the Republic of Azerbaijan (approved by the Law of the Republic of Azerbaijan dated December 28, 1999 No. 779-IQ) URL://http://azerights.info (Date of application: 16.12.2023).*

⁷ *The Civil Code of the Kazakh SSR. Approved by the Law of the Kazakh SSR of December 28, 1963, Became invalid by the Law of the Republic of Kazakhstan of July 1, 1999 N 410 ~Z990410 URL: // https://adilet.zan.kz/rus/docs/K630001000 (Date of application: 16.12.2023).*

⁸ *On amendments and additions to the Civil Code of the Republic of Kazakhstan (General and Special parts). Law of the Republic of Kazakhstan dated January 12, 2007 No. 225-III. // URL: // https://adilet.zan.kz/rus/docs/Z070000225_/links (Date of request: 12/16/2023)*

⁹ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999. URL: // https://adilet.zan.kz/rus/docs/K990000409_ (Date of application: 16.12.2023).*

¹⁰ *The Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family» dated 26 December, 2011 No. 518-IV. URL: // https://adilet.zan.kz/eng/docs/K1100000518 (Date of application: 16.12.2023).*

¹¹ *The Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family» dated 26 December, 2011 No. 518-IV.*

verified according to legal procedures. Under Art 47 MFC RK paragraph 5, civil registry offices establish the origin of children by way of joint statement between both parents and upon request from either of them if either have died, become incapacitated, deprived of parental rights or cannot establish her location; failing that consent could also be determined through court decision¹².

Courts also determine the origins of children born of unmarried parents if there is no joint statement from both or an acknowledgement by either father (Article 48 of MFC RK)¹³.

To ensure the consistent application of legislation by courts when considering cases related to the birth or origin of children, on November 29, 2018 the Supreme Court of Kazakhstan adopted Regulatory Resolution No. 16 entitled: "On the application of legislation by courts when considering cases related to the establishment of origin"¹⁴.

Interesting is the legal practice wherein a child abandoned by his/her biological mother seeks to adopt the spouse of an unmarried man legally recognized as being the biological father [15]. According to the judge of the Supreme Court of the Republic of Kazakhstan S.A. Zharmukhambetova, changes should be made to the current Code of the Republic of Kazakhstan "On Marriage (Matrimony) and family" during adoption "for the provision of a conclusion of molecular genetic examination when establishing the paternity of a person who is not married to the child's mother" [15].

The origin of children from their parents (consanguinity) is confirmed to a notary or a court in accordance with the procedure established in the Republic of Kazakhstan by law¹⁵.

However, Kazakhstan law equates blood and adoptive relatives of son-in-law and offspring as well as that of adoptive parent (paragraph 2 of Article 1060 of the Civil Code) so that adopted children inherit from both sets of their adoptive parents just like blood children [12, p.30]. Adoption is seen as a legal act through which exactly similar legal relationships are

formed between adoptive parents or adoptive parent and their adopted child as are present between blood parents and children [16, p.29].

Note, however, that an adopted child does not inherit by law after their biological parents, grandparents and siblings, since adoption creates a new legal relationship that terminates that of his blood relatives. However, in cases such as orphanages where children have been adopted posthumously after both of their blood parents have passed on they can inherit after them.

One of the intriguing issues surrounding inheritance involves considering spouses as potential heirs who are not blood relatives of the testator.

There are various approaches to this issue globally. For instance, in post-Soviet countries (Kazakhstan, Azerbaijan, Armenia, Belarus Georgia Kyrgyzstan Russia Tajikistan Turkmenistan Uzbekistan and Ukraine) spouses inherit as an equal share alongside children and parents of the testator.

In countries like Latvia, Lithuania, Estonia, Moldova and Turkey, each spouse inherits from each of their queues called for inheritance based on local laws to an varying extent depending on which queue was called upon for inheritance.

Civil Code of Moldova, the surviving spouse is not included in any of the groups of heirs and becomes an heir in the following proportions, depending on the queue with which he inherits:

1) All first stage heirs (regardless of number) have the right to one fourth part of the hereditary mass; 2) Remaining spouse and all second and third stage heirs have equal access to half of it (regardless of number of heirs).

3) A higher share is allotted for the surviving spouse than is allowed under hereditary shares, in order to reduce competition between his share and those allocated for competing heirs.

4) If there are no direct heirs from either lineage, such as grandpa or grandmother, or they have no right of inheritance, the entire inheritance passes to the surviving spouse¹⁶.

There are certain peculiarities surrounding inheritance for the surviving spouse when there

URL: // <https://adilet.zan.kz/eng/docs/K1100000518> (Date of application: 16.12.2023).

¹² The Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family» dated 26 December, 2011 No. 518-IV. URL: // <https://adilet.zan.kz/eng/docs/K1100000518> (Date of application: 16.12.2023).

¹³ The Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family» dated 26 December, 2011 No. 518-IV. URL: // <https://adilet.zan.kz/eng/docs/K1100000518> (Date of application: 16.12.2023).

¹⁴ Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated November 29, 2018 No. 16 "On the application of legislation by courts when considering cases related to the establishment of the origin of a child" // URL: // <https://adilet.zan.kz/rus/docs/P180000016S> (Date of application: 16.12.2023).

¹⁵ Law of the Republic of Kazakhstan dated July 14, 1997 No. 155-I "On notary" // URL: // https://adilet.zan.kz/rus/docs/Z970000155_z970155.htm. Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015 No. 377-V ZRK // URL: // <https://adilet.zan.kz/rus/docs/K1500000377> (Date of application: 16.12.2023).

¹⁶ Civil Code of the Republic of Moldova No. 1107-XV dated June 6, 2002. (Book Four. Inheritance law) // URL: // https://continent-online.com/Document/?doc_id=30397914 (Date of application: 16.12.2023).

are multiple heirs of second and third line; such as when inheriting together with heirs of second and third lines. Under such conditions, in addition to receiving his share, he receives any furniture and household items belonging to both spouses that had joint use unless these items form part of real estate and cannot be parted without damage to it. If a surviving spouse inherits by law alongside the first-stage heirs, these items can also be provided to him to run his household effectively. When allocated shares are divided up among various beneficiaries (Article 2186 of Moldova's Civil Code)¹⁷. If a spouse belongs to one or more relatives who are called upon to inherit, he simultaneously inherits as part of this group. An inheritance acquired via blood relationship is treated as its own hereditary share (Article 2188 of Moldova's Civil Code)¹⁸.

Under subsection two of the Civil Law of the Republic of Latvia, each spouse receives a share in each child if there are less than four; otherwise it receives one-fourth. (Article 393 of the Civil Law of the Republic of Latvia)¹⁹. If, due to inheritance size constraints, division would make maintaining minor children impossible, then instead the surviving spouse has the right and responsibility of managing and using all undivided inheritance in its entirety; they are required firstly, however, to provide funds from this income towards covering maintenance (Article 394 of Civil Law of Republic of Latvia)²⁰.

In the absence of the deceased spouse of both descending relatives and adopted ones, or if the mentioned persons disappear, the surviving spouse receives half of the inheritance and, in addition, the furniture of the apartment. If the deceased spouse has no descending relatives, no adopted or ascending relatives, no full-siblings or their children, no half-siblings or their children, or if these persons disappear, the surviving

spouse receives the entire inheritance (Article 396 of the Civil Law of the Republic of Latvia)²¹.

According to Article 5.13 of Chapter III "Legal Succession" of Book 5 of the Civil Code of Lithuania, when there are three or fewer first degree heirs and no second-degree heirs present, their surviving spouse inherits one-fourth of any inheritance; otherwise they share equally among themselves and any additional heirs present. If there are more than three first and second degree heirs involved, each inherits an equal share. If inheriting alongside second-degree heirs they receive half of any inheritance; otherwise when alone all inherited properties will go directly to them²².

According to Estonia's Inheritance Law, if there are no immediate relatives on either line then their surviving spouse inherits together with all heirs of both stages in equal shares; otherwise they each inherit half²³. If neither line are present then their inheritance goes solely to the surviving spouse²⁴.

In accordance with Article 499 of the Civil Code of the Republic of Turkey, the surviving spouse becomes the heir in the following proportions, depending on the group to which he belongs:

1. If the spouse becomes the heir together with the testator's child, a quarter of the inheritance,
2. If the spouse becomes the heir together with the testator's parents, half of the inheritance,
3. If the spouse becomes the heir together with the grandfather, grandmother and their children, three quarters of the inheritance of the spouse²⁵.

In our opinion, the position of the surviving spouse, who "competes" with the testator's blood relatives, is not entirely logical and fair, since it is the spouses who form a common joint property throughout their life together.

Under these legal systems, surviving spouses have a rigidly fixed share in inheritance

¹⁷ Civil Code of the Republic of Moldova No. 1107-XV dated June 6, 2002. (Book Four. Inheritance law) // URL: // https://continent-online.com/Document/?doc_id=30397914 (Date of application: 16.12.2023).

¹⁸ Civil Code of the Republic of Moldova No. 1107-XV dated June 6, 2002. (Book Four. Inheritance law) // URL: // https://continent-online.com/Document/?doc_id=30397914 (Date of application: 16.12.2023).

¹⁹ Civil Law of the Republic of Latvia dated 01/28/1937 URL: // <https://www.inlatplus.lv/wp-content/uploads/2019.pdf> (Date of application: 16.12.2023).

²⁰ Civil Law of the Republic of Latvia dated 01/28/1937 URL: // <https://www.inlatplus.lv/wp-content/uploads/2019.pdf> (Date of application: 16.12.2023).

²¹ Civil Law of the Republic of Latvia dated 01/28/1937 URL: // <https://www.inlatplus.lv/wp-content/uploads/2019.pdf> (Date of application: 16.12.2023).

²² Civil code of the Republic of Lithuania. 18 July 2000 No VIII-1864 URL: // <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495> (Date of application: 16.12.2023).

²³ The Law «On Inheritance» in Estonia dated January 17, 2008. URL // <https://www.juristaitab.ee/ru/zakonodatelstvo/zakon-on-nasledovaniy> (Date of application: 16.12.2023).

²⁴ The Law «On Inheritance» in Estonia dated January 17, 2008. URL // <https://www.juristaitab.ee/ru/zakonodatelstvo/zakon-on-nasledovaniy> (Date of application: 16.12.2023).

²⁵ The Civil Code of the Republic of Turkey. Official Bulletin Date: 08.12.2001. Official Bulletin number: 24607. URL // <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.4721.pdf> (Date of application: 16.12.2023).

that varies depending on who inherits as first or second-turn heirs - generally 1/4 when inheriting as an heir of first turn, 1/2 for second-turn inheritance; or three-quarters inheritance according to Turkish civil law in cases involving grandparents and their offspring.

A completely different approach is observed in the countries of the Anglo-Saxon legal system, where the surviving spouse occupies a more advantageous position compared to other members of the testator's family.

The rights of the surviving spouse to the inherited property are established in absolute figures (the so-called "first pounds", "first dollars"), which are periodically reviewed. In particular, according to Section 102 of the Uniform Inheritance Code, the surviving spouse receives the first 50 thousand dollars and half of the entire inheritance. In Florida, the amount of the "first dollars" is 20 thousand dollars [14, p.372].

Legal systems of all sorts generally hold that only those married at the time of a testator's death and registered as their spouse inherit as beneficiaries from his will. Unregistered, civil marital relations do not carry legal weight and if an unmarried civil partner wants to inherit legally through will then they cannot. Please be aware that in Kazakhstan "religious marriage" does not count as legal matrimony so doesn't carry legal consequences either. Accordingly, the surviving spouse of the testator becomes the heir if, on the day of the opening of the inheritance, their marriage was registered with the civil registration authorities. However, by a court decision, the spouse may be removed from inheritance by law if it is proved that the marriage with the testator actually ended before the opening of the inheritance and the spouses lived separately for at least five years before the opening of the inheritance (paragraph 2 of Article 1070 of the Civil Code of the Republic of Kazakhstan)²⁶.

Second, blood relatives of the second degree descended from a common ancestor - full and half-siblings of the testator as well as those in his ascending line, such as his grandfather and grandmother on both sides are entitled to

equal shares from inheritance in equal shares; their children (nephews and nieces of testator), being third degree affinity relatives in lateral line inheritance have rights of representation (Article 1062 of Civil Code of Republic of Kazakhstan)²⁷.

Full-siblings are citizens who share both their father and mother; if only one of the parents (e.g. father) are native, we refer to these people as half-brothers or sisters; similarly if one parent (such as mother) shares citizenship we speak of half-brothers or sisters; however current Kazakh civil law does not distinguish between full and half siblings in regards to inheritance rights.

At this stage, the testator's own uncles and aunts (blood relations of the third degree of kinship in lateral lines), are inheritors in equal shares through rights of representation (Article 1064 of the Civil Code of Kazakhstan)²⁸. Cousins inherit equally through right of representation (Article 1064 of Civil Code of Republic of Kazakhstan)²⁹. At our level, the legislator wisely included third-stage heirs among the closest relatives of a testator; indeed, such inclusion is supported by public sentiment: for instance, that public awareness has long supported an idea that siblings share joint familial responsibility for any offspring born from one of their relationships [14, p.258-259].

Great-grandparents and great-grandmothers inherit as heirs from the fourth stage, blood relatives of third degree of kinship in an ascending line (paragraph 1, paragraph 2, of Article 1064 of the Civil Code of Kazakhstan)³⁰.

At this stage, those entitled to inheritance include relatives in the fourth degree of kinship along the lateral line - particularly children of nephews and nieces (great-grandsons and granddaughters) of the testator, or siblings of his grandfathers and grandmothers (great-grandfathers and grandmothers) (paragraph 2, paragraph 2, Article 1064 of the Republic of Kazakhstan Civil Code)³¹. Relatives in the fifth degree of kinship who may qualify as heirs of the sixth turn include children of the testator's great-great-grandchildren and

²⁶ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999. URL: // <https://adilet.zan.kz/rus/docs/K990000409> (Date of application: 16.12.2023).*

²⁷ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999. URL: // <https://adilet.zan.kz/rus/docs/K990000409> (Date of application: 16.12.2023).*

²⁸ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999. URL: // <https://adilet.zan.kz/rus/docs/K990000409> (Date of application: 16.12.2023).*

²⁹ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999. URL: // <https://adilet.zan.kz/rus/docs/K990000409> (Date of application: 16.12.2023).*

³⁰ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999. URL: // <https://adilet.zan.kz/rus/docs/K990000409> (Date of application: 16.12.2023).*

³¹ *The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999.*

granddaughters, grandchildren and great-great-granddaughters; his cousins and sisters (great-nephews and nieces); as well as great-uncles and grandmothers (great-uncles and aunts) (paragraph 3, paragraph 2, of Article 1064 Civil Code of Republic of Kazakhstan)³².

As opposed to previous heirs of a testator who were blood relatives, stepbrothers, stepsons, stepdaughters, stepfather and stepmother may inherit provided that they have lived with the testator in his or her household for at least 10 years (paragraph 3 of Article 1064 of Kazakhstan Civil Code)³³.

The laws of Kazakhstan do not provide for a consistent definition of terms such as "stepbrothers", "stepsisters", "stepdaughters", "stepfather" and "stepmother", so further codifying these definitions at legislative level will enable easier establishment of familial ties when seeking inheritance rights for these individuals.

As for a testator's disabled dependents, these individuals can be divided into two groups. 1) Citizens unable to work by the opening of the inheritance but not included within its circle of heirs are granted equal shares if they were dependent upon him for at least a year prior to his death (Clause 1 of Article 1068 of the Civil Code of Kazakhstan); The second group consists of legal heirs who do not fall into one of the seven queues but on the day of inheritance were incapacitated or dependent upon him for at least one year prior to his death and lived together; these individuals inherit together and on an equal footing with those named for inheritance (Paragraph 2 of Article 1068 of Civil Code of RK)³⁴. Furthermore, disabled dependents of testator can inherit as independent eighth stage heirs in absence of citizens belonging to either the second or eighth stage groups³⁵.

As A.G. Didenko correctly notes: "Neither notarial nor judicial practice in Kazakhstan has demonstrated difficulties or unfairness in applying or fairness of norms on queues of heirs. Six queues by law was in our view an excessive number; it would be more suitable to limit ourselves to four queues while expanding

composition in fourth queue as much as possible in order to limit state transferability of inheritance" [17].

On the subject of legal expansion of inheritance, M.S. Abramenkov notes: "an unrestrained expansion of heirs could cause his hereditary mass to pass onto distant relatives with whom the testator did not maintain relationships during life or were unaware they existed (so-called laughing or having fun heirs). Naturally, his will should not include posthumous favoritism for such "heirs", rather the will would need to express such desires directly" [18].

However, we agree with Y.K. Tolstoy that the increase in queues and circle of heirs defined by law should be driven not so much by concern for distant relatives but by reducing cases where hereditary property transfers were seen as excessive by state authorities [19, p.85].

State legal relations present a unique form of hereditary legal relationship, where the state can inherit both by will and law - with each providing distinct basis for succession to power.

Therefore, in accordance with paragraph 1 of Article 1083 of the Civil Code of Kazakhstan, an inheritance that is recognized as exorbitant passes directly to the state under law; but if property was bequeathed to the state without being considered exorbitantly bequeathable then they are recognized by will and become heirs of state by will³⁶.

However, as was noted previously, Kazakh legislators attempted to limit any possibility that hereditary property be recognized as exorbitantly expensive.

Therefore, in the context of inheritance by law in Kazakhstan, it is crucial to consider both traditional and contemporary aspects of inheritance law. Current legislation clearly regulates the order of succession, including the prioritization of heirs and the conditions for the inheritance of children born out of wedlock. However, further legislative improvements are necessary to account for digital assets and to ensure the fairness of inheritance procedures.

In summary, it is essential for inheritance

URL: // https://adilet.zan.kz/rus/docs/K990000409_ (Date of application: 16.12.2023).

³² The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999.

URL: // https://adilet.zan.kz/rus/docs/K990000409_ (Date of application: 16.12.2023).

³³ The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999.

URL: // https://adilet.zan.kz/rus/docs/K990000409_ (Date of application: 16.12.2023).

³⁴ The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999.

URL: // https://adilet.zan.kz/rus/docs/K990000409_ (Date of application: 16.12.2023).

³⁵ The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999.

URL: // https://adilet.zan.kz/rus/docs/K990000409_ (Date of application: 16.12.2023).

³⁶ The Civil Code of the Republic of Kazakhstan (Special part). Code of the Republic of Kazakhstan No. 409 dated July 1, 1999.

URL: // https://adilet.zan.kz/rus/docs/K990000409_ (Date of application: 16.12.2023).

law to continually adapt to societal and technological changes to effectively protect the rights of heirs and to ensure the equitable distribution of the estate.

Conclusion

The conducted comparative legal study of the features of inheritance by law revealed several significant aspects relevant both for the Republic of Kazakhstan and other countries, particularly those in the post-Soviet space.

Firstly, legislators in different countries take varied approaches to forming the content of the order of succession by law. All states primarily protect the rights of the testator's children and parents. The increase in the number of succession orders is driven by the strengthening of family and kinship ties, the enhancement of citizens' private property, and the aim to minimize the possibility of the citizens' estate passing to the state as escheat.

Secondly, it is important to note that the legislation of the Republic of Kazakhstan does not contain definitions for terms such as "stepbrothers," "stepsisters," "stepsons," "stepdaughters," "stepfather," and "stepmother." Introducing such definitions at the legislative level could facilitate the establishment of family ties when these individuals are called to inherit.

Thirdly, modern research highlights the importance of accounting for digital assets, such

as cryptocurrencies and social media accounts, in inheritance. These assets can possess substantial financial value and require specific legal mechanisms to ensure their transfer to heirs. Further legislative improvements are necessary to account for digital assets and to ensure the fairness of inheritance procedures.

Fourthly, issues of gender equality in inheritance law are particularly crucial for improving the socio-economic status of women and children. The experience of Kenya demonstrates that changes in inheritance legislation can significantly enhance the socio-economic conditions of women and their children, ensuring gender equality in inheritance rights. Expanding women's rights to inheritance promotes social justice and equality.

Thus, taking the above into account, it can be concluded that inheritance by law is an important institution of civil law, closely connected with various aspects of social and economic life. Understanding and considering the features of inheritance by law not only contributes to the effective protection of citizens' inheritance rights but also promotes the development of fair and balanced legal norms in this area. Inheritance law must continually adapt to societal and technological changes to effectively protect the rights of heirs and to ensure the equitable distribution of the estate.

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