https://doi.org/10.31489/2024L1/128-137 Received: 03 October 2023 | Accepted: 24 November 2023

UDC 347.66

N.R. Maksatov[*1], L.M. Tokarchuk[2]

[1]*Caspian Public University, Almaty, Kazakhstan;*
[2]*Odessa I.I. Mechnikov National University, Odessa, Ukraine*
(E-mail: nureke259@mail.ru)

Recognition as an unworthy heir in court: a comparative analysis of the legislation of the Republic of Kazakhstan and Ukraine

The purpose of this article is to analyze the institution of unworthy heirs in the Republic of Kazakhstan and Ukraine. The authors explore the theoretical and practical problems associated with its enforcement in judicial practice, as well as conduct a comparative legal analysis between these countries. The issues related to inheritance are analyzed, and scientifically based ways of improving this legal institution are proposed. The paper analyzes the application and implementation of the grounds for recognizing heirs as unworthy in the studied countries. The institution of unworthy heirs exists in various legal systems, and has been subject to changes throughout history. An analysis of Kazakh and Ukrainian inheritance legislation shows that some provisions on this institution do not correspond to modern ideas of justice, while others are not legally accurate, which makes it difficult for judicial practice to protect citizens of their violated rights. Judicial practice is also being considered on the claims of persons interested in recognizing the subjects of inheritance as unworthy heirs, especially those who evade the duties of maintaining the testator. The main purpose of the study is an extensive study of problematic issues of the theory and practice of the institute of unworthy heirs in these countries, taking into account existing legislation and judicial practice, as well as the proposal of ways to solve them. This work is aimed at introducing novelty and value into the scientific study of this topic.

Keywords: inherited right, heirs, unworthy heirs, judicial proceedings, protection of civil rights.

Introduction

Inheritance law is one of the oldest institutions of civil law. Inheritance is the transfer of property, which is called the inheritance of a deceased person, which is called the testator, to another person who is called the heir, who is specified in the will or determined by law and in which the property passes in the order of universal succession, i.e. all rights and all obligations unchanged, unless otherwise established by law, this is the definition of inheritance we can deduce from Article 1038 of the Civil Code of the Republic of Kazakhstan [1]. Similar provisions of the law are provided for in Articles 1216-1217 of the Civil Code of Ukraine [2].

Inheritance is a derivative basis for the acquisition of property rights. The basis of inheritance according to the legislation of the Republic of Kazakhstan and according to the legislation of Ukraine is divided into two types by will and by law. For inheritance to occur, two points must be clearly established: 1. The death of the heir or the declaration of his death, this can be considered an analogue of the physical death of a person; 2. The fact of accepting the inheritance. Acceptance of the inheritance is not obligatory for the heir, i.e. this circumstance is purely voluntary.

If we talk about what is an object from the meaning of the civil legislation of the Republic of Kazakhstan and Ukraine, the following definition can be given: this is the property of the deceased, i.e. these are the rights and obligations of the testator. You need to understand that inheritance is not always a blessing. In practice, there are cases when the obligations may be greater than the property itself and it is not uncommon for the heir to have to pay the debts of the testator.

All potential participants in the inherited legal relationship can be considered subjects of inherited law. In turn, these are heirs, notaries, executors of wills, trust managers of hereditary property, municipal and state bodies, etc.

The topic “the institute of unworthy heirs” currently has no comprehensive monographic research. However, a number of scientists, such as M.K. Suleimenov, K.M. Ilyasova, B.A. Bulaevsky, and others, consider the general provisions of national legislation in the field of exclusion from inheritance (unworthy heirs).

[*] Corresponding author. E-mail: *nureke259@mail.ru*

The authors of this article rely on various sources and research to compile their analysis of the institute of inheritance in Kazakhstan and Ukraine, including:

– General works on civil inheritance and family law:

– Legislation of Kazakhstan and Ukraine;

– Judicial practice of Kazakhstan and Ukraine;

– The doctrine of law of Kazakhstan and Ukraine.

The authors of the article rely on various sources and research to compile their analysis of this institute, since there are currently no comprehensive monographs devoted to the comparative analysis of the institute of unworthy heirs in both Kazakhstan and Ukraine.

The use of various sources and research allows the authors of the article to present a comprehensive and objective analysis of the institution of unworthy heirs in Kazakhstan and Ukraine, as well as to identify similarities and differences in the regulation of this institution in these two countries.

Materials and methods

General scientific methods of collecting primary information:

Analysis of official statistical data of the courts of the Republic of Kazakhstan.

Processing and analysis of the results of law enforcement practice (judicial practice) of substantive and procedural legislation on the issue of research of unworthy heirs.

Analysis of the experience of the Republic of Kazakhstan and Ukraine in the field of legal regulation of the problems of an unworthy heir in civil law.

A systematic research method:

The study of the institution of an unworthy heir in civil law.

Comprehensive research method:

Analysis of both internal and external factors, the institution of unworthy heirs in civil law, and its applicability in the judicial practice of Kazakhstan and Ukraine.

The integration method:

Combining the efforts of the authors to best achieve the goal of a scientific article.

Development of proposals to improve the applicability of civil legislation in judicial practice on the issue of the institution of unworthy heirs.

Discussion

According to paragraph 1 of Article 1045 of the Civil Code of the Republic of Kazakhstan, citizens who, by their deliberate illegal actions directed against the testator, any of his heirs or against the implementation of the last will of the testator expressed in the will, contributed or tried to contribute to the vocation of themselves or other persons to inheritance, or contributed or tried to increase shares of inheritance due to them or other persons, if these circumstances are confirmed in court. Such requirements are specified in Article 1224 of the Civil Code. Thus, two additional conditions are necessary to recognize the heir as unworthy for committing the listed grounds. Firstly, these circumstances must be confirmed in court, and secondly they must be committed intentionally. However, citizens to whom the testator has bequeathed property after the loss of their inheritance right have the right to inherit this property, unless otherwise proven in court.

By similar articles, 1045 of the Civil Code of the Republic of Kazakhstan (Elimination of unworthy heirs from inheritance) and 1224 of the Civil Code of the Republic of Kazakhstan (Elimination of the right to inherit) distinguishes between persons who absolutely have no right to inherit and relatively — that is, those who can be excluded from inheritance.

The first group can be stated as follows:

1. Characteristics of the act — illegal actions.

2. Purposeful — calling of the subject or other persons to inherit or increase the share of inheritance due to the subject or other persons

3. Orientation — thawing the testator of any of his heirs or against the implementation of the last will of the testator, expressed in the will.

4. The form of guilt is intent.

5. Degree of completeness — completed violations or an attempt (contributed or tried to contribute).

6. Mandatory condition — a court ruling on the fact (if these circumstances are confirmed in court) [3, 14].

These persons do not inherit either by will or by law. In paragraph 3 of Article 1045 of the Civil Code of the Republic of Kazakhstan, a similar norm specified in paragraph 2 of paragraph 3 of Article 1224 of the Civil Code identifies two more groups of heirs who are deprived of the right of inheritance by law.

Firstly, these are parents who do not have the right to inherit by law after children in whose relationship they were judicially deprived of parental rights and were not restored to these rights by the time the inheritance was opened. To establish the impossibility of calling such persons to inherit by law, it is sufficient to have the very fact of deprivation of parental rights and the absence of these rights, but the moment of opening the inheritance. No additional decisions, no organs are required. This norm is a logical continuation of paragraph 1 of Article 75 of the Code of the Republic of Kazakhstan on "Marriage (Matrimony) and Family" [4] and, accordingly, a similar norm is specified in Article 166 of the Family Code of Ukraine [5], "Deprivation of parental rights entails the loss of all rights based on the fact of kinship with a child ...". However, due to the principle of freedom of will, children themselves can bequeath their property to such parents.

Secondly, these are citizens who maliciously evaded the fulfillment of their legal obligations to maintain the testator. Such a person is deprived of the right of inheritance only by a court decision, which, at the request of the person concerned, considers the case of his removal from inheritance by law. Since such a person can only be removed from inheritance by law at the request of the person concerned, it is quite natural that we should talk about alimony obligations of family members. So for example:

– parents in relation to minor children and disabled adult children (Articles 138, 143 of the Code of the Republic of Kazakhstan "on m(m)f" of Article 1061 of the Civil Code of the Republic of Kazakhstan) (Articles 180 and 198 of the FCU and Article 1261 of the CCU);

– adult children in relation to their parents (Article 145 of the Code of the Republic of Kazakhstan "on m(m)f", Article 1061 of the Civil Code of the Republic of Kazakhstan) (Article 202 of the FCU and Article 1261 of the CCU);

– brothers and sisters in relation to their minors and disabled adult brothers and sisters (Article 151 of the Code of the Republic of Kazakhstan "on m(m)f", Article 1062 of the Civil Code of the Republic of Kazakhstan) (Article 267 of the FCU and Article 1262 of the CCU);

– grandfathers and grandmothers in relation to grandchildren (Article 152 of the Code of the Republic of Kazakhstan "on m(m)f", Article 1062 of the Civil Code of the Republic of Kazakhstan) (Article 265 of the FCU and Article 1262 of the CCU);

– grandchildren in relation to grandparents (Article 153 of the Code of the Republic of Kazakhstan "on m(m)f", Article 1062 of the Civil Code of the Republic of Kazakhstan — by right of representation of art. 1067 CC RK) (art. 266 FCU and art. 1262 CCU — by right of representation of art. 1266 CCU);

– stepsons and stepdaughters in relation to stepfather and stepmother (Article 155 of the Code of the Republic of Kazakhstan "on m(m)f", Article 1064 of the Civil Code of the Republic of Kazakhstan) (Article 270 of the FCU and paragraph 2 of Article 1265 of the CCU).

It is important to note that a person who does not have the right to inherit or is excluded from inheritance (an unworthy heir) is obliged to return all the property that he unreasonably received from the inheritance. The property constituting the unjustified enrichment of an unworthy heir must be reimbursed to the actual heir in kind. If this is not possible, the actual value of the property is reimbursed at the time of receipt by the debtor (Articles 955-956 of the Civil Code of the Republic of Kazakhstan) (Articles 1213-1214 of the Civil Code).

Unlike family legislation, which in some cases provides for alimony obligations in respect of former spouses (Article 147 of the Code of the Republic of Kazakhstan ("on m(m)f") (Article 76 of the FCU), the latter are not heirs by law, and therefore non-fulfillment or improper fulfillment of their duties has no legal force in the meaning of the section. In addition, the circle of heirs by law is wider than the circle of persons on whom the family legislation of the analyzed countries imposes alimony obligations.

Results

As a result of the study of this topic, it is possible to draw conclusions about the scarcity of legislators of the analyzed countries regarding the institution of unworthy heirs. In the judicial practice of both countries, when considering cases on the elimination of heirs, there are a number of unresolved issues that cause discussion, both among the judiciary and among academic theorists.

In connection with the above, it is essential and expedient to develop a uniform judicial practice on disputes related to the elimination of supranational heirs. We believe that when considering cases on the elimination of heirs, the court is based only on civil legislation. After significant reforms of the Institute of Inher-

ited Law in 2007, analysis and generalization of judicial practice of the Supreme Court of the Republic of Kazakhstan, in 2009, in regulatory resolution No. 5 “On certain issues of application of inheritance legislation by courts”, this research institute was given a symbolic place [6].

On the procedural procedure for the consideration of cases on the recognition of heirs as unworthy or on the arrangement of unworthy heirs, jurisdiction is determined by Article 31 of the CPC of the Republic of Kazakhstan [7] jurisdiction is exclusive, similarly indicated in Article 30 of the CPC of Ukraine [8].

Since this category of cases belongs to non-property, in this case, the payment of state duty is in accordance with tax legislation.

According to the statistics of the Supreme Court of the Republic of Kazakhstan, in 2022, 4,378 cases were considered on the recognition of the heir as unworthy. Of these, 198 cases were left without consideration, 87 cases were completed by a mediation agreement, and only 964 cases were satisfied, respectively, the remaining cases were refused satisfaction [9]. In this category of cases, the court makes decisions with great caution.

In judicial practice, there are often cases of recognition of heirs as unworthy on the grounds provided for in Article 1045 of the Civil Code of the Republic of Kazakhstan.

For example, in one of the cases, the court recognized the son of the testator, who intentionally took his father's life, as an unworthy heir. In the reasoning part of the decision, the court indicated that the son's guilt in committing a crime was confirmed by a court verdict that entered into force.

In another case, the court recognized as an unworthy heir the daughter of the testator, who intentionally committed a grave crime against the personality of her father. In the reasoning part of the decision, the court indicated that the daughter's guilt in committing a crime was confirmed by a court verdict that entered into force.

In the third case, the court recognized the grandson of the testator, who deliberately prevented his grandfather from making a will, as an unworthy heir. In the reasoning part of the decision, the court indicated that the grandson's guilt in committing a crime was confirmed by the testimony of witnesses and other evidence presented during the trial.

Thus, the courts in their practice are guided by Article 1045 of the Civil Code of the Republic of Kazakhstan and recognize heirs as unworthy on the grounds provided for in this article.

At the same time, the courts, in the reasoning part of their decisions, describe in detail the circumstances confirming the guilt of the heir in committing a crime or other illegal action, which is the basis for recognizing him as unworthy.

Harsh treatment, harm to health, mutilation and a number of other offenses against the testator can also be confirmed by procedural or other competent documents.

These documents can be used to confirm the fact that the heir has committed illegal actions against the testator, which is the basis for recognizing him as unworthy.

For example, if the heir intentionally caused harm to the health of the testator, then this fact can be confirmed by a certificate from a medical organization, which indicates the nature and severity of the injuries caused.

If the heir has committed theft of the testator's property, then this fact can be confirmed by a resolution on the initiation of a criminal case, a protocol of inspection of the scene, a protocol of interrogation of witnesses and other documents collected during the investigation of the criminal case.

If the heir intentionally destroyed or damaged the property of the testator, then this fact can be confirmed by an act of inspection of housing and living conditions compiled by employees of the social protection authorities.

Thus, procedural and other competent documents can be used to confirm the fact that the heir committed illegal actions against the testator, which is the basis for recognizing him as unworthy.

In their practice, courts often use these documents to make a decision on recognizing a heir as unworthy.

The circumstances that serve as the basis for the elimination of unworthy heirs from inheritance are established by the court.

It follows from the commentary to the Civil Code that if the behavior of an unworthy heir does not fall under the signs of a crime, the circumstances that are the basis for recognizing the heir as an unworthy heir can be established in civil proceedings.

By virtue of paragraph 2 of Article 224 of the CPC, the court bases its decision only on the evidence that was examined at the court session.

For example, the judge of the Bostandyk district Court of Almaty satisfied the claims, basing his decision on the fact that the heir left the testator at the age of two, i.e. the son, and before his death for 26 years did not participate in his life, did not help financially, etc., meanwhile, a court order for the recovery of alimony or There was no decision on his deprivation or restriction of parental rights.

In the court's decision, the court indicated the following grounds: "the parent (father) did not fulfill his obligations to raise his son during his lifetime, which is also confirmed by the explanations of the third person A., who explained that the defendant left them when his son was three years old, did not participate in his upbringing and maintenance...", the court also witness statements have been taken into account [10].

A similar case was considered by the Al-Farabi District Court of Shymkent city. In this court, the court refused to satisfy the claim. From the court's decision," ... The plaintiff's arguments that he treated his parents very badly and cruelly, always behaved unlawfully, are unfounded and not proven.

The video viewed in court testifies to family and domestic conflicts. These circumstances do not confirm the facts of an attempt on the part of the defendant on the life of the testator.

... The plaintiff's arguments that the defendant did not fulfill the duties of the testator's maintenance were also not confirmed, since a judicial act on the recovery of alimony from the defendant in favor of M. was not submitted, "in this case, the court obviously refused to satisfy the claim for the lack of prejudice of judicial acts, protecting itself. In this matter, the judge can be understood, the lack of uniform practice, an imperfect law, became the reason for the judge's refusal. Thousands of such cases are considered per year, and yet the gaps of the legislator, when applicable, violate the rights of citizens.

The Desnyansky district court of Kiev considered the case on the claim of gr-ki S. The plaintiff asked to recognize Mr. A. to be recognized as an unworthy heir, arguing that their mother died due to the defendant's fault, this plaintiff's claim was damaged by a court verdict, where Article 121 of the Criminal Code of Ukraine "Intentional grievous bodily harm" was applied.

Meanwhile, the court dismissed the claim, citing the fact that "... the death of the testator was unintentional" [11].

The position according to which a person convicted of intentionally causing serious harm to health, life-threatening to a person who inadvertently caused the death of the victim (Part 2 of Article 121 of the Criminal Code of Ukraine) cannot be recognized as an unworthy heir does not seem indisputable for the following reasons [12]:

Intentional infliction of serious harm to health, life-threatening to a person, resulting in the death of the victim by negligence, is a serious crime. It encroaches on human life and health, which are the highest values protected by law. A person who has committed such a crime shows an extreme degree of public danger and cannot be considered a worthy heir.

Recognition of a person as an unworthy heir is a measure of civil liability. It is applied to a person who has committed acts directed against the testator, his will or against other heirs. Intentional infliction of serious harm to health, dangerous to human life, which caused the death of the victim by negligence, is certainly an action directed against the testator and his will.

Failure to recognize a person as an unworthy heir in this case may lead to unfair enrichment of the criminal. He will receive an inheritance, despite the fact that he committed a serious crime against the testator. This is contrary to the principles of justice and equality of heirs.

Thus, according to the authors, it seems reasonable to recognize a person convicted of intentionally causing serious harm to health, life-threatening person, who inadvertently caused the death of the victim (part 2 of Article 121 of the Criminal Code) as an unworthy heir. This will help to protect the rights and interests of the testator, other heirs and society as a whole.

From the judicial practice of the analyzed countries, the issue of the actions of the heir in committing criminal violations against the property of the testator remains open and controversial.

So, during the consideration of the case in the Turksib district Court, the court satisfied the claims of Mr. D., to recognize as unworthy the heir, his stepson, who during the lifetime of the testator, i.e. the defendant's mother, repeatedly stole her money and jewelry with his common-law wife, in order to buy drugs.

The appellate instance of Almaty overturned the decision of the court of first instance, arguing that the fact of a criminal offense should be interrelated, the fact that the defendant's act is not aimed at calling inheritance or increasing due share of the heir, thus, the board came to the argument that the theft of the heir from the testator cannot, is the basis to recognize it an unworthy heir.

When assessing the actions of a person who committed theft of property belonging to the testator, the courts must take into account the following circumstances:

The presence of intent to steal the testator's property. Intent can be expressed both directly and indirectly. For example, a person may steal the testator's property in order to turn it to his advantage or dispose of it at his discretion.

The method of committing theft of the testator's property. Theft can be committed in various ways, for example, by theft, robbery, robbery or fraud. The method of committing theft may indicate the degree of public danger of the act and the nature of the person's intent.

The amount of the testator's stolen property. The amount of stolen property may affect the qualification of the act and the measure of responsibility of the person.

The presence or absence of damage to the testator's heirs. Theft of the testator's property may cause damage to the heirs, depriving them of the opportunity to receive the inheritance due to them.

The presence or absence of remorse of the person who committed the theft of the testator's property. A person's remorse may indicate his awareness of the wrongfulness of the committed act and a desire to make amends for the harm caused.

The courts should also take into account the provisions of civil legislation governing inheritance issues. In particular, according to Article 1045 of the Civil Code of the Republic of Kazakhstan, the heir who committed the premeditated murder of the testator, an attempt on his life, intentionally caused bodily injuries that caused the death of the testator, or intentionally committed other illegal actions directed against the testator, is deprived of the right of inheritance.

Thus, when assessing the actions of a person who committed theft of property belonging to the testator, the courts must take into account all the circumstances of the case and apply the norms of civil and criminal law.

The Zhetysu District Court ruled to satisfy the claim of Mr. S. against Mr. P., to eliminate the unworthy heir who killed his wife, i.e. the plaintiff's mother. The defendant, in turn, did not admit the claim, arguing that he committed crimes in a state of passion because of the marital infidelity of the heir and his actions did not have the intention to increase the inherited property or contributed to the vocation to inheritance.

The court of Appeal upheld the decision of the court of first instance.

Based on this judicial practice, we believe that a person can be excluded from inheritance even if he did not intend to receive an inheritance. For example, if a person committed actions that led to the death of the testator, as in the above case, he may be excluded from inheritance, even if he did not plan to receive the inheritance after the death of the testator.

Thus, the law protects the rights of heirs who have not committed illegal actions aimed at obtaining an inheritance or increasing their share in the inheritance.

Grounds for exclusion from inheritance:

Intentional murder of the testator, an attempt on his life, intentional infliction of bodily harm that caused the death of the testator, or intentional commission of other illegal actions directed against the testator.

In the practice of the analyzed countries, the main problem of exclusion from inheritance of those who maliciously evade the obligation to maintain the testator is to provide evidence of malicious evasion from fulfilling the duties of the testator.

Evidence of malicious evasion of the duties of the testator's maintenance may be:

The court's verdict on bringing a person to criminal responsibility for malicious evasion of payment of funds for the maintenance of children or disabled parents (Article 137 of the Criminal Code of the Republic of Kazakhstan [13] and Articles 164-1654).

A court decision on the recovery of alimony from a person in favor of the testator.

Other documents confirming the fact of malicious evasion of the duties of the testator's maintenance (for example, certificates from the social protection authorities, witness statements, etc.).

At the same time, it should be borne in mind that:

Malicious evasion of the duties of the testator's maintenance must be established in court.

Not every evasion of the duties of the testator's maintenance is malicious. Malicious evasion is considered to be committed intentionally and systematically. Malicious evasion of the duties of the testator's maintenance can be established both during the testator's lifetime and after his death.

If a person has been removed from inheritance due to malicious evasion of duties related to the maintenance of the testator, he does not have the right to a mandatory share in the inheritance.

Thus, in order to remove from inheritance a person who maliciously evades the obligation to maintain the testator, it is necessary to provide evidence of such evasion to the court. This may be a court verdict, a

court decision on the recovery of alimony or other documents confirming the fact of malicious evasion from fulfilling the duties of the testator's maintenance.

Also, courts need to pay maximum attention to all the circumstances of cases that can significantly affect the judicial act.

For example, the Solomenskiy district court in Kiev issued a court decision to dismiss the claim of gr-ki A. so in gr-ka, the lawsuit indicated that the defendant had killed the plaintiff's sister. The court motivated its decision by the fact that, according to the verdict of the criminal court, the defendant was in an insane state, i.e. he did not give an account of his actions, which was damaged by forensic medical examination and by the fact that the court sent the accused to a psychiatric institution for compulsory treatment. From the meaning of this case, the court concluded that the defendant was not formally guilty of what he had done, and that he was the heir of the first stage.

Conclusions

Based on the studied norms of the substantive and procedural legislation of the Republic of Kazakhstan and Ukraine, the following conclusions should be drawn.

According to the requirements of the norms of civil legislation, citizens and legal entities, at their discretion, dispose of their civil rights, including the right to their protection.

Unworthy heirs are citizens who have committed illegal actions against the testator or his close relatives, as well as persons who maliciously evaded the fulfillment of duties for the maintenance of the testator. Such persons do not have the right to inherit the property of the deceased and are obliged to return the inheritance received.

To classify the heir as unworthy, the motive of his actions does not matter. Illegal actions should contribute to, i.e. be the reason for calling an unworthy heir or other persons to inherit or increase the share of inheritance due to him or other persons.

The authors believe that legitimate courts should base their decision on the fact that the motive and purpose of committing an illegal act entailing deprivation of the right to inherit should not be taken into account when classifying a heir as unworthy. The motive (for example, revenge, jealousy, greed, etc.) cannot serve as a justification for committing an illegal act, but the purpose (for example, promoting the calling of the guilty or other persons to succession, increasing the share of the guilty or other persons in the hereditary mass) It is immoral and should not be encouraged by the law.

Indeed, paragraph 1045 of the Civil Code of the Republic of Kazakhstan and 1224 of the Civil Code of the Republic of Kazakhstan establishes an exhaustive list of the purposes of committing illegal actions by the guilty against the testator, which entail deprivation of the right to inherit. These goals include:

– assistance in calling the culprit or other persons to succession;

– an increase in the proportion of the culprit or other persons in the hereditary mass.

Taking into account the above, it seems advisable to change the existing norm of paragraph 1 of Article 1045 of the Civil Code of the Republic of Kazakhstan, respectively, paragraph 1 of Article 1224 of the Civil Code, excluding from it the category of the goal pursued by the offender. Otherwise, the goal will have to be established along with intent as a mandatory sign of the subjective side of the offense in order to recognize a citizen as an unworthy heir. This will complicate the proof process and may lead to unfair decisions.

Thus, the exclusion of the category of the offender's goal from these points will simplify the proof process and prevent unfair decisions.

In fact, a claim for recognition of a person as an unworthy heir or for removal from inheritance can only be filed by an interested person who may be infringed on property rights by recognizing such a person as a heir by law. If inheritance is carried out according to a will, then the decision to recognize the heir as unworthy does not apply, since the testator has the right to forgive unworthy heirs by making a will in their favor after they commit the specified illegal action. However, there is some exception. If the heir abuses his position, for example, by maliciously evading the obligation to maintain the testator, then such behavior may become the basis for filing a claim for recognition as an unworthy heir on the specified basis. In any case, the decision to recognize a person as an unworthy heir is made by the court, which considers the relevant claim and takes into account all the circumstances of the case.

This research has been/was/is funded by the Science Committee of the Ministry of Higher Education and Science of the Republic of Kazakhstan (Grant No. AP 19174965)».

References

1 Гражданский кодекс Республики Казахстан (Особенная часть) от 1 июля 1999 года № 409–I (с изм. и доп. по состоянию на 01.01.2024 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=1013880

2 Гражданский кодекс Украины от 16 января 2003 года № 435–IV (с изм. и доп. по состоянию на 30.01.2024 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=30418568&doc_id2=30418568#activate_doc=2&pos=199;-103.19999694824219&pos2=7455;-69.19999694824219

3 Долинская В.В. Наследованное право Российской Федерации / В.В. Долинская. — 2-е изд. — М.: Приор, 2004. — С. 14.

4 Кодекс Республики Казахстан от 26 декабря 2011 года № 518–IV «О браке (супружестве) и семье» (с изм. и доп. по состоянию на 01.01.2024 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=31102748

5 Семейный кодекс Украины от 10 января 2002 года № 2947–III (с изм. и доп. по состоянию на 01.01.2024 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=30418309

6 Нормативное постановление Верховного Суда Республики Казахстан от 29 июня 2009 г. № 5 «О некоторых вопросах применения судами законодательства о наследовании» (с изм. от 31.03.2017 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=30425715

7 Кодекс Республики Казахстан от 31 октября 2015 г. № 377–V «Гражданский процессуальный кодекс Республики Казахстан» (с изм. и доп. по состоянию на 01.01.2024 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=34329053

8 Гражданский процессуальный кодекс Украины от 18 марта 2004 г. № 1618-IV (с изм. и доп. по состоянию на 31.12.2023 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=30418564.

9 Статистика Верховного Суда Республики Казахстан. — [Электронный ресурс]. — Режим доступа: https://www.sud.gov.kz/rus/analitika/statistika

10 Судебный кабинет. Единое окно для доступа к электронным сервисам судебных органов Республики Казахстан. — [Электронный ресурс]. — Режим доступа: https://office.sud.kz/form/proceedings/services.xhtml.

11 Государственный реестр судебных решений Украины. — [Электронный ресурс]. — Режим доступа: https://5140.org/courts/page-10?cort_id=118&region_id=1.

12 Уголовный кодекс Украины от 5 апреля 2001 г. № 2341–III (с изм. и доп. по состоянию на 09.12.2023 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=30418109.

13 Уголовный кодекс Республики Казахстан от 3 июля 2014 г. № 226–V (с изм. и доп. по состоянию на 12.09.2023 г.). — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=31575252.

Н.Р. Максатов, Л.М. Токарчук

Лайықсыз мұрагер деп сот тәртібімен тану: Қазақстан Республикасы мен Украина заңнамасына салыстырмалы талдау

Мақаланың мақсаты — Қазақстан Республикасы мен Украинадағы лайықсыз мұрагерлер институтын талдау. Авторлар сот практикасында оның орындалуына байланысты теориялық және практикалық мәселелерді зерттеп, сондай-ақ аталған елдер арасында салыстырмалы-құқықтық талдау жүргізген. Мұрагерлікке байланысты мәселелер талданған, сондай-ақ осы құқықтық институтты жетілдірудің ғылыми негізделген әдістері ұсынылған. Жұмыста зерттелетін елдерде мұрагерлерді лайықсыз деп тану негіздерін қолдану және енгізу талданып, зерделенген. Лайықсыз мұрагерлер институты әртүрлі құқықтық тәртіпте бар және тарих бойынша өзгерістерге ұшырады. Қазақстандық және украиналық мұрагерлік заңнаманы талдау көрсеткендей, бұл институт туралы кейбір ережелер әділеттілік туралы заманауи идеяларға сәйкес келмейді, ал басқалары заңды түрде дәл емес, бұл азаматтардың бұзылған құқықтарын қорғауда сот тәжірибесін қиындатады. Сондай-ақ, мұрагерлік субъектілерін, әсіресе мұра қалдырушыны күтіп-бағу жөніндегі міндеттерді орындаудан жалтаратындарды лайықсыз мұрагерлер деп тануға мүдделі адамдардың талаптары бойынша сот практикасы қаралады. Зерттеудің негізгі мақсаты қолданыстағы заңнама мен сот практикасын ескере отырып, аталған елдердегі лайықсыз мұрагерлер институтының теориясы мен практикасының проблемалық мәселелерін кеңінен зерттеп, сондай-ақ оларды шешу жолдарын ұсыну. Бұл жұмыс осы тақырыпты ғылыми зерттеуге жаңалық пен құндылық енгізуге бағытталған.

Кілт сөздер: мұрагерлік құқық, мұрагерлер, лайықсыз мұрагерлер, сот талқылауы, азаматтық құқықтарды қорғау.

Н.Р. Максатов, Л.М. Токарчук

Признание недостойным наследником в судебном порядке: сравнительный анализ законодательств Республики Казахстан и Украины

Цель данной статьи заключается в анализе института недостойных наследников в Республике Казахстан и Украине. Авторы исследовали теоретические и практические проблемы, связанные с его правоприменением в судебной практике, а также провели сравнительно-правовой анализ между указанными странами. Изучены вопросы, связанные с наследованием, а также предложены научно обоснованные способы совершенствования этого правового института. В работе рассмотрены применение и внедрение оснований признания наследников недостойными в указанных выше странах. Институт недостойных наследников существует в различных правопорядках и подвергается изменениям на протяжении истории. Анализ казахстанского и украинского наследственного законодательств показывает, что некоторые положения об этом институте не соответствуют современным представлениям о справедливости, а другие не являются юридически точными, что затрудняет судебную практику, при защите граждан своих нарушенных прав. Также изучена судебная практика по требованиям лиц, заинтересованных в признании недостойными наследниками субъектов наследования, особенно тех, кто уклоняется от исполнения обязанностей по содержанию наследодателя. Основная цель исследования — всестороннее изучение проблемных вопросов теории и практики института недостойных наследников в двух странах с учетом существующего законодательства и судебной практики, а также предложении способов их решения. Настоящая работа направлена на внесение новизны и ценности в научное исследование по данной теме.

Ключевые слова: наследованное право, наследники, недостойные наследники, судебное разбирательство, защита гражданских прав.

References

1 Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaia chast) ot 1 iiulia 1999 goda N 409–I (s izmeneniiami i dopolneniiami po sostoianiiu na 01.01.2024 g.) [The Civil Code of the Republic of Kazakhstan (Special part) dated July 1, 1999 No. 409-I (with amendments and additions as of 01.01.2024)]. *online.zakon.kz.* Retrieved from https://online .zakon.kz/Document/?doc_id=1013880 [in Russian].

2 Grazhdanskii kodeks Ukrainy ot 16 yanvaria 2003 goda N 435–IV (s izmeneniiami i dopolneniiami po sostoianiiu na 30.01.2024 g.) [The Civil Code of Ukraine dated January 16, 2003 No. 435-IV (with amendments and additions as of 30.01.2024)]. *online.zakon.kz.* Retrieved from https: //online.zakon.kz/Document/?doc_id=30418568&doc_id2=30418568#activate_ doc=2&pos=199;103.19999694824219&pos2=7455;-69.19999694824219 [in Russian].

3 Dolinskaya, V.V. (2004). Nasledovannoe pravo Rossiiskoi Federatsii [Inherited law of the Russian Federation]. (2d ed.). Moscow: Prior [in Russian].

4 Kodeks Respubliki Kazakhstan ot 26 dekabria 2011 goda No 518–IV «O brake (supruzhestve) i seme» (s izmeneniiami i dopolneniiami po sostoianiiu na 01.01.2024 g.) [The Code of the Republic of Kazakhstan dated December 26, 2011 No. 518-IV "On Marriage (Matrimony) and family" (with amendments and additions as of 01.01.2024)]. *online.zakon.kz.* Retrieved from https://online .zakon.kz/Document/?doc_id=31102748 [in Russian].

5 Semeinyi kodeks Ukrainy ot 10 yanvaria 2002 goda N 2947–III (s izmeneniiami i dopolneniiami po sostoianiiu na 01.01.2024 g.) [The Family Code of Ukraine dated January 10, 2002 No. 2947-III (with amendments and additions as of 01.01.2024)]. *online.zakon.kz.* Retrieved from https://online.zakon.kz/Document/?doc_id=30418309 [in Russian].

6 Normativnoe postanovlenie Verkhovnogo Suda Respubliki Kazakhstan ot 29 iiunia 2009 goda No 5 «O nekotorykh voprosakh primeneniia sudami zakonodatelstva o nasledovanii» (s izmeneniiami ot 31.03.2017 g.) [Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated June 29, 2009 No. 5 "On certain issues of application of inheritance legislation by courts" (as amended on 31.03.2017)]. *online.zakon.kz.* Retrieved from https://online.zakon.kz/Document/?doc_id=30425715 [in Russian].

7 Kodeks Respubliki Kazakhstan ot 31 oktiabria 2015 goda No 377–V «Grazhdanskii protsessualnyi kodeks Respubliki Kazakhstan» (s izmeneniiami i dopolneniiami po sostoianiiu na 01.01.2024 g.) [Code of the Republic of Kazakhstan dated October 31, 2015 No. 377-V "Civil Procedure Code of the Republic of Kazakhstan" (with amendments and additions as of 01.01.2024)]. *online.zakon.kz.* Retrieved from https://online .zakon.kz/Document/?doc_id=34329053 [in Russian].

8 Grazhdanskii protsessualnyi kodeks Ukrainy ot 18 marta 2004 goda No. 1618–IV (s izmeneniiami i dopolneniiami po sostoianiiu na 31.12.2023 g.) [The Civil Procedure Code of Ukraine dated March 18, 2004 No. 1618-IV (with amendments and additions as of 12/31/2023)]. *online.zakon.kz.* Retrieved from https://online.zakon.kz/Document/?doc_id=30418564 [in Russian].

9 Statistika Verkhovnogo Suda Respubliki Kazakhstan [Statistics of the Supreme Court of the Republic of Kazakhstan]. *www.sud.gov.kz.* Retrieved from https://www.sud.gov.kz/rus/analitika/statistika [in Russian].

10 Sudebnyi kabinet. Edinoe okno dlia dostupa k elektronnym servisam sudebnykh organov Respubliki Kazakhstan [The judicial office. A single window for access to electronic services of the judicial authorities of the Republic of Kazakhstan]. *office.sud.kz.* Retrieved from https://office.sud.kz/form/proceedings/services.xhtml [in Russian].

11 Gosudarstvennyi reestr sudebnykh reshenii Ukrainy [The State Register of Judicial Decisions of Ukraine]. *5140.org.* Retrieved from https://5140.org/courts/page-10?cort_id=118&region_id=1 [in Russian].

12 Ugolovnyi kodeks Ukrainy ot 5 aprelia 2001 goda No 2341–III (s izmeneniiami i dopolneniiami po sostoianiiu na 09.12.2023 g.) [The Criminal Code of Ukraine dated April 5, 2001 No. 2341-III (with amendments and additions as of 09.12.2023)]. *online.zakon.kz.* Retrieved from https://online .zakon.kz/Document/?doc_id=30418109 [in Russian].

13 Ugolovnyi kodeks Respubliki Kazakhstan ot 3 iiulia 2014 goda № 226–V (s izmeneniiami i dopolneniiami po sostoianiiu na 12.09.2023 g.) [The Criminal Code of the Republic of Kazakhstan dated July 3, 2014 No. 226-V (with amendments and additions as of 09/12/2023)]. *online.zakon.kz.* Retrieved from https://online .zakon.kz/Document/?doc_id=31575252 [in Russian].

Information about the authors

Tokarchuk, Lyudmila Mikhailovna — Doctor of Law, Professor of the Department of Civil Law Disciplines, Dean of the Faculty of Economics and Law of Odessa I.I. Mechnikov National University, e-mail: zilkovska@ukr.net, Odessa, Ukraine;

Maksatov, Nurzhan Rishatuly — Master of Law, Senior lecturer at the Higher School of Law “Adilet”, Almaty, Kazakhstan.