THE MAIN PROBLEMS OF INTERNATIONAL SUCCESSION LAW

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ABSTRACT. *International inheritance law is a set of norms regulating hereditary relations, which are directly related to the legal order of several states. Inheritance relations are a very "conservative" sphere of civil turnover, connected with moral ideas, family customs and established traditions in society. In such countries as: the USA, Canada, Australia, inheritance does not matter, but the liquidation of the property of the testator, which is carried out in the form of a separate procedure and under the direct control of the court. Upon completion of the personal administration procedure, the remaining property will be forwarded to the heirs. The opening of an inheritance is a legal fact, as a result of which inheritance relations are created.*

Keywords: *international law, inheritance, legal order, traditions, property, control, legal fact, civil roll.*

REZUMAT. *Dreptul moștenirii internaționale este un set de norme care reglementează relațiile ereditare, care sunt direct legate de ordinea juridică a mai multor state. Relațiile de moștenire sunt o sferă foarte „conservatoare" a rotației civile, legată de idei morale, obiceiuri familiale și tradiții consacrate în societate. În țări precum: SUA, Canada, Australia, moștenirea nu contează, ci lichidarea proprietății testatorului, care se realizează sub forma unei proceduri separate și sub controlul direct al instanței. La finalizarea procedurii de administrare personală, bunurile rămase vor fi transmise moștenitorilor. Deschiderea unei moșteniri este un fapt juridic, în urma căruia se creează raporturi succesorale.*

Cuvinte-cheie: *drept internațional, moștenire, ordine juridică, tradiții, proprietate, control, fapt juridic, rulaj civil.*

Introduction: There are following types of inheritance: - inheritance by will; - inheritance by law, where inheritance by will is the main type of inheritance, i.e. combines two main principles: freedom of will and protection of family interests. A will is interpreted as a unilateral transaction in which the will of the testator is expressed. It is necessary to disclose the unimportant concept of obligatory destiny, which consists in limiting the principle of freedom of will in favor of members of the testator's family.

Legislation on the Small and Medium Enterprise, namely Art. 1.62 of the Civil Code of Lithuania [8] regulates the following rights: "If the inheritance is left after the death of a citizen of the Republic of Lithuania, the law of the Republic of Lithuania is applied, with the exception of issues of inheritance of immovable property, if the heirs live in the Republic of Lithuania and declare their rights to a mandatory (le-

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gal) share of the inheritance". French legislation interprets the concept of "free destiny" as a destiny available to the owner for testamentary dispositions and lifetime gifts; the remaining property is subject to distribution among close relatives of the testator (children and parents). The size of the free share is determined depending on the number of children, because the more children, the smaller the size of this fate. Until 1938 in England, the testator could leave the entire family the right to inherit; at present, the surviving spouse, the ex-spouse who did not remarry, and the testator's children (including illegitimate children) have such a right.

According to the legislation of Portugal, namely Art. 2223 of the Civil Code of Portugal [7]: "A will executed by a Portuguese citizen in a foreign state in compliance with the competent foreign law has consequences in Portugal only if any solemn form of its execution or approval has been observed". Based on the legislation of France and Spain, the right to sign closed wills is provided, and joint wills are not allowed in Italy and the Netherlands.

Law on Emergencies of Estonia in Art. 29 [12] stipulates that: "a mutual will at the time of its drafting must comply with the law of the state of residence of both testators or the law of the state of residence of one of the spouses jointly chosen by them". Inheritance according to law has a subsidiary meaning: a) the will is revoked, declared invalid; b) according to the will, only a part of the inheritance is inherited; c) there are subjects who have the right to a mandatory share in the inheritance; d) the heir refused the inheritance by will. The definition of the circle of heirs by law is based on the principles of kinship, marriage and state affiliation of the testator [1, p. 54]. In Switzerland, for example, the procedure for calling relatives to inherit is established by the "parentell" system: a) the inheritor and his descendants; b) parents of the testator; c) paternal and maternal grandfather and grandmother of the testator. Here, the circle of heirs is limited by law to three parentelles: the surviving spouse is not included in any of the parentelles, but must be called to inherit in the same way as the relatives who are part of the first three parentelles, unlike in England, where the honorary position is held by law surviving spouse In the event that the inherited property is less than the established monetary amount, then it passes to the surviving spouse. If the surviving spouse is absent, inheritance is carried out in turn: a) descending heirs; b) parents of the testator; c) full-born brothers and sisters; d) half-born brothers and sisters; e) grandfather and grandmother; f) full-born uncles and aunts; g) half-born uncles and aunts.

The inheritance law of a number of states defines the institution of an unworthy heir, who is excluded from inheritance on certain grounds fixed in law. According to the legislation of Iran, non-believers and persons who committed intentional murder of the testator, as well as spouses, if one of them accused the other of adultery in court, are deprived of inheritance rights [10, p. 754]. The Spanish Inheritance Law of 1981 [16] enumerates the circle of persons who do not have the right to inherit either by law or by will: a) parents who abandoned their children or forced their daughters

to engage in prostitution; b) persons convicted of actions aimed at the testator, his spouse, their relatives; c) persons who intentionally accused the testator of committing a crime for which he was subsequently convicted; d) an adult heir, who knew about the violent death of the testator, did not report it to the investigative authorities within a month from the day of the testator's death.

A very important issue of international inheritance law is the definition of movable and immovable property. Historically, property was divided into real property - land, material things connected with land and forming a single whole and personal property.

Conflict Regulation in International Succession Law

In the field of hereditary rights according to Art. 997 of the Civil Code of Chile [4]: "Foreigners are called to inherit, for which there is no will, in the same way and according to the same rules as Chileans". In a number of US states (California, Nevada, Iowa) there are laws where the right to inherit property located in the US is recognized by foreigners living abroad in the case of reciprocity, where the burden of proving reciprocity is inherent in the foreigner called to inherit, namely: he proves that his state residence gives American citizens the right to inherit property located on the territory of this state. The laws of such states as: New Jersey, New York determine the right of courts to refuse permission to pay inheritance amounts to those heirs who are abroad.

The Law on Emergency Situations of Romania, namely Art. 68 [19] regulating inheritance issues establishes: 1) the time of opening the inheritance; 2) a list of persons who may be called to inherit; 3) a list of qualities that the heirs must possess; 4) the process and order of ownership of the property left by the testator; 5) list of conditions and consequences of the heir's disposition in case of death; 6) obligations of the heirs to pay the debts of the testator; 7) the right of the state to inherit forfeited property".

The legislation of a number of countries defines a single statute of inheritance, i.e. the volume of hereditary relations connected with the foreign legal order and regulated by means of a single collision binding: for example, Art. 28 of the Civil Code of Greece [5] reads: "Inheritance relations are determined by the law of the state, the citizen of which was the decedent at the time of his death", and based on Art. 2100 of the Civil Code of Peru [6]: "Inheritance is determined, regardless of the location of the property, by the law of the last place of residence of the testator", while Art. 2400 of the Civil Code of Uruguay [9] defines that: "The law of the place where the inherited property is located at the time of the death of the person, the inheritance after which is discussed, determines everything related to the inheritance by law and by will".

According to Tunisian legislation, namely Art. 54 of the Code of Civil Procedure of Tunisia [20] establishes an alternative application of conflicting principles,

which is as follows: “The succession is subject to the internal law of the state, the citizenship of which the testator had at the time of death, or the law of the state of his last place of residence, or the law of the state in which he left behind his property”. In most states, the division of the hereditary statute is defined, that. when the legislator fixes branched chains of conflict norms that extend to various aspects of hereditary relations. Turkish legislation establishes that the opening, acceptance and division of inheritance are subject to the law determining the location of the inheritance. The moment of entering into the inheritance or disposing of it is subject to the law of the heir at the time of his death according to the legislation of Hungary. As stated in Art. 3529 of the Louisiana Civil Code [13]: “A person is capable of making a will if, at the time of making the will, he possessed this capacity under the law of the state in which he was domiciled either at that time or at the time of death”.

In a number of states, it is determined that the testator has the right to specify the right to be applied to his property. Inheritance of movable property is determined by the law of the state where the testator had a place of residence at the time of his death, as for inheritance of immovable property, it is determined by the law of the state where the property is located. The heir has the right to choose that the inheritance of his property is fully determined by the law of the state of which he was a citizen at the time of the choice [10, p. 761].

Based on Art. 46 of the Law on the State of Emergency of Italy: “Persons participating in the division may agree on the application to their relations of the right of the place of discovery of the inheritance or the place of location of one or more items of hereditary property”. As a result of the resolution of conflicts in the field of hereditary relations, the problem of return is brewing. The theory of references was formulated in the doctrine after the case of Forgo (1878), which affected inheritance by law [14, p. 90]. The legislator of Belgium fixes the problem of references in hereditary relations as follows, in Art. 78.2 of the Code of Civil Procedure of Belgium [18]: “Inheritance of immovable property is governed by the law of the state in whose territory the immovable property is located. However, if the foreign law refers to the law of the state in the territory of which the deceased had a permanent place of residence at the time of his death, then the latter is subject to application. Problems in hereditary relationships are very complicated, because a number of such legal concepts as: usufruct, testamentary trust are not at all known in other countries.

Collision Regulation of Inheritance Movable and Immovable Property

Collision regulation of inheritance of both movable and immovable property of the state is observed by the following systems: a) Universal system, where the totality of hereditary property, regardless of its location, is subject to a single law, for example, in Portugal, in Germany. b) Separate system, when the person is divided between immovable property and movable property, for example, in Ireland. In the

framework of the universal system, inheritance is considered as autonomous property, which must be transferred on the basis of a single law [11].

Currently, inheritance law is the only area where the right to movable property is established by personal law. The difference between a movable object and an immovable object is that the legal regulation of the circulation of an immovable object is determined by its location and provides for the execution of a number of administrative acts. When the fact of the location of a thing in a foreign state determines a special procedure for the transfer of ownership rights to this thing, it is possible to speak of real estate [15, p. 54].

International Legal Regulation of Hereditary Relations

In the field of international inheritance law, a small number of universal interstate agreements have been adopted. Conventions define the legal order based on the principle of closest connection, namely, when a person has been in the territory of one state for at least five years, but at the same time continues to be a citizen of another state, the application of the right of state citizenship is assumed, i.e. the subject has the right to choose the legal system.

An international will is a hybrid form, a type of closed will. The will must be filled out and signed by the testator personally in the presence of two witnesses and an authorized person, and when the testator cannot sign the will in person, he informs the authorized person and the person who will sign the will on his behalf is indicated to him. The heir may express autonomy of will regarding the law applicable to his property, but the choice of the applicable law will apply to the entire inheritance. The choice of law presupposes clarity and without doubt.

The Regime of "Exempt" Property in Private International Law

Probate property is property left after the death of a person who has no heirs either by law or by will. According to Art. 20.3 of the Code of Civil Procedure of Turkey [17]: "Property located in Turkey, and in respect of which there are no heirs, belongs to the state", which presupposes the prevention of the loss of ownership of inherited property and its recognition as ownerless, namely, forfeited property passes to the state free from any encumbrance and debts If it is recognized that the forfeited property becomes the property of the state by right of inheritance, then the state has the right to claim the entire inheritance. The fate of the forfeited property must be regulated by the general statute of inheritance or the law of the place where the thing is located, for example, §29 of the Austrian Civil Code Act [3] reads: "If there are no heirs to the inheritance, or if it passes to any territorial public legal entity as an heir by law, then determined by the law of the state in which the property of the testator is located at the time of his death." In France, the property of a foreign citizen passes to the state under the right of occupation and on the basis of the principle of public

order, the essence of which is to prevent the foreign state from acquiring property on the territory of France [2, p. 43]. It is practically universally recognized that the fate of forfeited property is determined by the law of the state on whose territory the property is located, and depends on what concept of the transfer of forfeited property the given state adheres to: "The decisive word belongs to the law to which inheritance is subject: if this law qualifies the transfer of forfeited property to the state as inheritance, then the property passes to the state to which the inheritance is subject; if the law considers that occupation takes place when the property is exhausted, then it is obvious that the occupying state can only be the one on the territory of which the property is located" [14, p. 98].

The most acceptable solution in relation to forfeited property was determined by the Lithuanian legislator in Art. 1.62 of the Civil Code of Lithuania [8]: "If according to the law applicable to inheritance relations, the property cannot be exported to a foreign state, while there are no other heirs and this property is located in the Republic of Lithuania, the property becomes the property of the Republic of Lithuania".

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