WEB OF SCIENTIST: INTERNATIONAL SCIENTIFIC RESEARCH JOURNAL
ISSN: 2776-0979, Volume 3, Issue 5, May., 2022

INTERNATIONAL HERITAGE RIGHT

Mamaraimova Gulrukh Makhmudovna
Senior Lecturer, Department of Civil Procedural and
Economic Procedural Law of Tashkent State University of Law
Email: g.mamaraimova@tsul.uz. ID: 0000-0002-2325-1350

Abstract

In recent years, interstate movements in the field of law have become more transparent, gaining unlimited status and strengthening. This, in turn, began to require cross-border regulation of legal relations. In particular, the assessment of cross-border legal issues at the intersection of different legal systems requires further research in these areas.

Inheritance law, in turn, has cross-border inheritance issues. It is known that in world practice there are two legal models based on understanding the legal essence of merson. The first legal model of inheritance is specific to countries with a continental legal system. Roman law exerted its influence on the inheritance law of these countries and was based on universal legal succession. This legal model also applies to our country. According to this model, the testator's inheritance passes to the heirs in full and in whole, without any changes (except for the collection of debts and other expenses from the inheritance). The heir is recognized as the legal successor of the testator's personality.

In the United States, the United Kingdom, India, Canada, Australia, and a number of other countries in the Anglo-Saxon legal system, the concept of succession law differs slightly from the model of the continental legal system. That is, according to the legislation of these countries, the property of the testator is liquidated and the net balance is inherited.

The cross-border problems of inheritance of intellectual property are related not only to the existence of different models of inheritance law, but also to the existence of national legal systems with different legal protection of intellectual property. In particular, differences in the concept of copyright in the Anglo-Saxon and continental legal systems reinforce the differences in their inheritance.

Inheritance of cross-border intellectual property objects is an inheritance in respect of intellectual property complicated by this foreign element, which has to refer to the national legislation of several countries. This issue is called the application of the norms of private international law to civil relations under the current Civil Code. In fact, we can take it as a cross-border legal issue. The reason is that not all issues subject to the legislation of the two countries are regulated by international law. It can be

WEB OF SCIENTIST: INTERNATIONAL SCIENTIFIC RESEARCH JOURNAL
ISSN: 2776-0979, Volume 3, Issue 5, May., 2022

limited to appealing to the law of only two or more countries. In order to understand cross-border inheritance work, we need to analyze the cases in which inheritance relations are complicated by foreign elements.

In which cases the inheritance is complicated by a foreign element. In this case, the testator or the object of inheritance may be outside the country. Hence, in three cases, the right of inheritance is complicated by a foreign element.

Let us consider the first case, intellectual property is objectively located on the territory of Uzbekistan. In this case, the following options are available:

first, the foreign citizen of the testator (author or other right holder) permanently resides in the territory of Uzbekistan;

secondly, the foreign citizen of the testator (author or other right holder) resides outside the territory of Uzbekistan;

thirdly, the testator (author or other person who has the property / exclusive right to the object of intellectual property) is a citizen or citizen of Uzbekistan, but has a residence permit in Uzbekistan and he permanently resides abroad.

The second case is a citizen of Uzbekistan, the object of intellectual property, which is objectively located outside the territory of Uzbekistan, the testator (author or other right holder) permanently residing in Uzbekistan.

The third case may be that the testator (author or other legal entity) permanently residing in Uzbekistan has objectively bequeathed an intellectual property object located in the territory of Uzbekistan and has chosen a foreign law in the will as a rule of inheritance.

In our country, the rules of inheritance law and the application of the rules of private international law to civil law relations are applied to the issues of cross-border heritage of intellectual property. Of course, we put forward this idea without excluding the application of the law of the country where the foreign element intersects.

The most important thing is to determine the law that applies to them in the legal regulation of complex inheritance relations with a foreign element. This issue is regulated by the seventh paragraph of Section VI of the Civil Code of the Republic of Uzbekistan. These norms determine which country's law applies to cross-border inheritance issues. In particular, according to Article 1197 of the Civil Code, the relationship of inheritance is determined by the law of the country where the testator has the last permanent residence, unless the testator has chosen the law of the country of which he is a citizen. That is, it is the norm that embodies the classical approach to the application of the law of the country in which the place of inheritance is inherited (the testator has the last permanent residence). However, this norm does not apply if

the inheritance includes real estate. Inheritance of real property is always determined by the law of the country where the property is located [1].

This paragraph also sets the norm for which country's law should be applied to cross-border inheritance relations in relation to the form of a will. That is, a person's ability to draw up and revoke a will, as well as the form of the will and its annulment document, is determined by the law of the country where the testator has a permanent residence at the time the document is drawn up, unless the testator chose the law of the country of citizenship. However, a will or its annulment shall not be invalidated as a result of non-compliance with the form, if the form meets the requirements of the place of the document or the law of the Republic of Uzbekistan.

The national legislation of all countries defines which law should be applied in resolving issues of cross-border inheritance. However, there is no single approach to the issue of succession in the doctrine of private international law, as expected. This is because countries take into account the traditions and customs of the country, as well as the mentality, in determining their legislation on succession. Thus, our national inheritance legislation is significantly different from the legislation of other states. That is why choosing the right law to address cross-border inheritance issues is an important step.

The choice of law to be applied in resolving cross-border inheritance issues requires special knowledge from the law enforcer. We will consider the issue of cross-border inheritance through a specific example.

For example, a citizen of the Republic of Uzbekistan who has a house and other property moved to Italy for permanent residence, where he got married and had children. Before moving to Italy, he wrote and published a book called "Qaqnus" in Uzbekistan. Even after moving to Italy, he created several works and bought property. Some time later, the citizen died in Italy. In this case, it is necessary to determine the law applicable to address the issue of cross-border inheritance.

According to the legislation of our country, 3 different regimes are applied to inherited objects, ie

law of inherited land in respect of movable property,

real estate location law in relation to real estate,

The law of Uzbekistan applies to the property registered in the register of the Republic of Uzbekistan [2].

In addition, the citizen may specify the law of any country in the will.

In contrast to our legislation, under the Italian Civil Code, a single law applies to the entire inheritance. According to Article 46 of the Italian Convention No. 218 of 1995

WEB OF SCIENTIST: INTERNATIONAL SCIENTIFIC RESEARCH JOURNAL
ISSN: 2776-0979, Volume 3, Issue 5, May., 2022

on Private International Law, at the time of the opening of the inheritance, the law of the country in which the deceased was a national or in which he resided shall apply. In addition, Article 50 of the law specifies when Italian law may apply to inheritance. According to him,

- Was an Italian citizen at the time of death;
- If the inheritance was opened in Italy;
- Most of the heritage by economic category is located in Italy;
- If the deceased is a permanent resident of Italy and is its resident or has chosen Italian law, except for real estate located outside Italy;
- If the application concerns assets located in Italy [3].

As a general rule, if the inheritance is opened in Italy, the law of the country of citizenship of the deceased or the country of his permanent residence applies to all inherited property. If the law of the country of citizenship is chosen, the Italian law applies to real estate located in Uzbekistan and property other than those included in the Unified Register of the Republic of Uzbekistan. If the law of the last place of residence of the deceased is chosen, the Italian law shall apply to the whole inheritance. It is also open whether the application of Italian law to real estate and property in Uzbekistan will be recognized in our country.

The second issue on cross-border inheritance is the question of whether there is a will made in another country.

It is known that the notarial sphere in our country has been significantly reformed and a lot of information has been digitized. In the past, an alphabetical book of wills was kept. One book was kept in each district, and the notary had to send a request to the notary offices in all districts to determine whether the deceased had left a will. A request may have been sent to the addresses where the deceased lived or worked.

Today, this problem has been solved due to the electronic nature of notarial activity in our country. However, there are no guidelines in the procedural norms on the verification of information from the electronic database of the notary in the case of inheritance by the courts. To the courts, this electronic database of the notary should be divided into integrated. In addition, there is no agreement on the procedure for searching information in the interstate register on cross-border heritage issues. In addition, there is a principle of confidentiality of the will, and mechanisms should be developed to implement the procedure for obtaining information from these registers without violating the principle of confidentiality of the will. In addition, the guidelines defining the procedure for notarial acts should include a rule on the procedure for conducting such correspondence, the country of the deceased and the country of residence in cross-border inheritance should apply to the head of notarial activities

WEB OF SCIENTIST: INTERNATIONAL SCIENTIFIC RESEARCH JOURNAL
ISSN: 2776-0979, Volume 3, Issue 5, May., 2022

for information on whether the will was written by the deceased. In addition, it is recommended that our Notary Chamber implement agreements with other countries on a simplified procedure for the exchange of information.

If we analyze the history and foreign experience in this regard, in particular, as early as 1961, the first register of wills was compiled in the Canadian province of Quebec. It contains information about the testator, the acts of amendment and revocation of the will, as well as the notary who certified the will. At present, an electronic register of wills is maintained in all countries of the world. This will certainly serve to prevent various conflicts.

As for the norms of the will, the form of the will is not valid due to non-compliance with the form of the will, if the form of the will is based on the law of the country specified in it, if it is not selected, according to the law of the country where the will is made. cannot be found. In such cases, there are certain requirements for the will to be legal in our country. If the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002 (Kishinev, October 7, 2002) is made under the jurisdiction of the member states, it is directly legal and must be translated if there is a language problem in the notary office [4]. If a will is made under the jurisdiction of the member states of the 1961 Hague Convention [5], which repeals the requirement to legalize foreign official documents, it must be apostilled and translated. A will must be legalized if it is made under the jurisdiction of states not party to the above Chisinau and The Hague Conventions. In addition, in the event of a dispute over the form of the will, a court decision is required.

The next problem is the difference between the subjects of inheritance in matters of cross-border inheritance, according to the legislation of some countries of the world, a person can inherit his property to animals.

In particular, under certain U.S. state laws, animals can be bequeathed. In 2009, Massachusetts law introduced a similar provision. According to the law, we can be inherited only by an individual, a legal entity and the state.

The next problem with the composition of heirs in cross-border inheritance matters is the question of the inheritance of the surviving party between same-sex marriages. It is known that such marriages are allowed in some countries of the world (Denmark, the Netherlands, Iceland, South Africa). According to the second part of Article 235 of the Family Code, if such marriages are concluded by non-citizens of Uzbekistan, they are recognized as valid in our country. That is, marriages between foreign citizens outside the Republic of Uzbekistan, concluded in the territory of another state in accordance with the legislation of that state, are recognized as valid in the Republic of Uzbekistan. Thus, if the issue of cross-border inheritance is considered by a foreign

citizen in the territory of Uzbekistan with the application of the law of our country, the same-sex marriage of the deceased is recognized. It is unknown at this time what he will do after leaving the post. Because in such marriages they are not called couples.
The next problem with the composition of heirs is cohabitation, and in most countries the existence of the right of inheritance if one of the cohabitants dies without legal marriage. This norm is stipulated in the legislation of Germany, Italy, Japan and Georgia.
Another issue is that the failure of a couple to live together and run a business (except for business trips, study abroad, imprisonment, etc.) prior to the opening of the inheritance under the law of the country is grounds for deprivation of inheritance by a court decision.
For example, Article 1933 of the German Civil Code sets out the grounds for excluding a couple's right to inherit. According to him, if the testator met the conditions for divorce at the time of his death and the deceased filed or consented to the divorce, the living husband or wife is excluded from the right to inherit. This rule also applies if the testator has the right to declare the marriage invalid and submits it [6]. It is clear from German law that in fact there are cases that exclude the right of the couple to inherit, and to better understand these, we also have to analyze the German legislation on divorce. Pursuant to Article 1564 of the German Civil Code, a marriage may be divorced by a court decision on the application of both or one of the spouses. According to the analysis of Articles 1564-1568 of the German Civil Code, divorce is allowed at the request of one of the spouses if they have not lived together for at least one year and both spouses have filed for divorce or if one of them has consented to the application. is placed. It can also be considered that the marriage has been dissolved if the couple has not lived together for at least three years. That can be grounds for divorce.
If the couple has lived separately for less than a year, this is allowed if the continuation of the marriage is unbearably cruel to the applicant for reasons related to the identity of the other party. The content of German divorce norms considers that the couple’s separate living is one of the important factors for divorce.
The conclusion is that if a husband and wife who have not lived together for at least one year have filed for divorce or one of them has applied for and the other has consented and one of them has died during this period, the surviving husband or wife shall receive a share of the deceased wife's or husband's inheritance loses the right. The same party also loses the right to inherit in the event of the death of the husband or wife who filed a lawsuit in these circumstances, if there are grounds to declare the marriage invalid.

According to Article 1341 of the Civil Code of Georgia, the inheritance can be revoked after the death of a couple who did not live together in practice before the opening of the inheritance. That is, at least three years before the opening of the inheritance, if it is confirmed that the marriage was actually dissolved and the couple lived separately from each other, the other party may be deprived of the right to inherit under the law [7].

The French Civil Code also provides for the court to deprive a surviving spouse who has in fact terminated his or her family relationship with the testator and lived separately [8].

In our country, according to the law, it is necessary to reconsider the rule that a couple inherits in relation to the surviving inheritance without living together for many years without divorce. Firstly, it ensures that justice is reflected in the law, and secondly, by inheriting the positive experience of foreign legislation into our legislation, our inheritance laws are unified with the legislation of other countries. This, in turn, gives a positive result in the consideration of cross-border heritage cases.

In a related civil case, the couple did not live together for twenty years without being legally divorced, and after the death of their husband, the wife was also called upon to inherit as one of her first legal heirs. In practice, the absence of a marital relationship does not affect the rights of the husband or wife as heirs under current law at all.

We will look at how this situation is addressed in the legislation of other countries. In particular, it is difficult to provide accurate statistics on the number of cases in which a couple's legal marriage has not been annulled even though they have not lived together for many years. This requires a nationwide survey. However, there are statistics on cases of divorce after not living together for many years. In particular, the Agency for Public Services under the Ministry of Justice of the Republic of Uzbekistan in 2017 studied the reasons for the rulings. In 2017, 8011 divorces were registered by the Registration of civil status acts authorities on the basis of a joint application of the couple, of which 133 cases (1.6%) were due to the couple not living together for a long time. In addition, in 2017, the courts upheld 23,919 divorce applications. In 695 of these divorce cases heard by the courts, the reason for the divorce was that the couple had not lived together for a long time [9,-p. 8-9].

In 2019, the Family Research Center under the Cabinet of Ministers of the Republic of Uzbekistan conducted a survey of judges of civil courts operating in the country. The survey examined the reasons for divorce in divorce cases

In 1.8% of cases, divorce was based on the fact that the couple did not live together for a long time.

These figures show that in practice there are cases when a couple does not live together for a long time without annulment of a legal marriage. In practice, it is necessary to reconsider the issue of succession of a couple who have actually terminated the family relationship.

Second, we also see many cases where a husband and wife have in fact started another family relationship without annulment of their legal marriage. It is more difficult to get real and complete statistics on this, which requires a nationwide survey. However, we will try to make effective use of available statistics. In particular, 31,930 divorces were registered in the country in 2017, of which 1,629 were due to the fact that one or both spouses were actually married to another person [10, -p. 8-11]. In 2019, 2.6% of the applications approved by the courts in divorce cases were cited as the reason why both or one of the spouses entered into a de facto family relationship with another person after a sharia marriage. This means that in practice, a couple may start a family relationship with another person without divorcing them legally. In this case, in practice, the family relationship is considered over. In practice, persons whose family relationships have ended are considered heirs to each other because of the existence of an actual marriage. We believe that we need to reconsider these norms in our legislation. If we look at the legislation of other countries in this regard, especially in Germany, the fact that a couple has actually started a family relationship with another person gives the other person the right to file for divorce, and if he filed such an application but still died without a divorce case, the court in another practice, the party initiating the family relationship may be deprived of the inheritance share [11].

In this regard, we propose to include in the Civil Code of the Republic of Uzbekistan a provision excluding the right of the couple to inherit. Currently, a new draft of this code is being prepared, and it would be expedient if the proposed norm is included in the rules of succession of the succession department. According to Uzbek law, the husband or wife of the deceased is his first legal heir.

The content of our proposed norm: According to the court decision, the surviving husband or wife, who in practice terminated the family relationship, may be found to have lost the right to inherit in accordance with the law in respect of the inheritance of the deceased husband or wife:

has not lived together as a farm in practice for at least three consecutive years prior to the opening of the inheritance;

has not actually lived together as a household and has started living on the same farm with another person.

In conclusion, the institution of inheritance of intellectual property rights in different countries belonging to the Aglo-Saxon and continental legal systems is characterized,

firstly, by the existence of different doctrinal approaches to the legal regulation of intellectual property, and secondly, different models of inheritance law.

Second, in the context of the rapid development of cross-border civil relations, the issues of extraterritorial heritage of rights to intellectual property are relevant, which can be achieved by converging approaches to a positive solution in this area and harmonizing them with national legislation.

Third, the information in the electronic register of wills should be used not only in cross-border inheritance cases, but also in any inheritance cases by subjects dealing with inheritance issues around the world. Perhaps the time has come to maintain a global registry of wills, similar to the WIPO register of intellectual property, and we recommend that this be promoted in international partnerships.

Fourth, the deprivation of the right to inherit by a court decision of a surviving spouse whose legal marriage to the testator has not been annulled but who has not lived together for many years before the death or who has actually started a family relationship with another person serves to prevent legitimate objections in practice that arise when a spouse who has terminated and subsequently died is called as heir to the inheritance.

References

1. Article 1199 of the Civil Code of the Republic of Uzbekistan // Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 1996, No. 11-12, Article 1. [1], [2], [6];
2. Riforma del sistema italiano di diritto internazionale private // Electronic source URL: https://www.altalex.com/documents/codici-altalex/2014/07/09/riforma-del-sistema-italiano-di-diritto- internazionale-privato-ed-luglio-2014 # art46.
3. Law of the Republic of Uzbekistan on Accession of the Republic of Uzbekistan to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau, October 7, 2002) // National Database of Legislation, 26.08.2019, 03/19/554 / 3648-son. [4];
4. The Hague Convention abolishing the requirement to legalize foreign official documents // Electronic source URL: https://lex.uz/docs/2683556. [5];
5. Bürgerliches Gesetzbuch (BGB) // Electronic source URL: http://www.gesetze-im-internet.de/bgb/index.html. [6], [11];
6. Civil Code of Georgia // Electronic source URL: https://matsne.gov.ge/ru/document/download/31702/75/ru/pdf. [7];
7. Civil Code of Franch // Electronic source URL: http://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Frances-French-Civil-Code-english-version. pdf [8];

8. X.Nasimov, G. Mamaraimova. Marriage: a national and foreign experience. Information-analytical material. Tashkent, 2019. [9], [10].
9. Mamaraimova G. INHERITANCE ISSUES OF NON-PROPERTY (MORAL) RIGHTS OF INTELLECTUAL PROPERTY // Norwegian Journal of Development of the International Science. 2021. №65-1.
10. Мамараимова Г. М. Проблемы наследования интеллектуальных прав доменных имен по законодательству Республики Узбекистан //Журнал правовых исследований. – 2020. – Т. 5. – №. 2.
11. Makhmudovna M. G., Shurakhanovna A. G. Legal Aspects Of Implementation Of The Spouse's Inheritance Right //The American Journal of Interdisciplinary Innovations Research. – 2021. – Т. 3. – №. 09. – С. 4-8.
12. Makhmudovna M. G. LEGAL PROBLEMS RELATED TO THE IMPLEMENTATION OF THE SPOUSE'S INHERITANCE RIGHT //European Journal of Research volume. – 2020. – Т. 5. – №. 9. – С. 52-56.
13. Мамараимова Гулрух ПРАВОВЫЕ ПРОБЛЕМЫ ТРАНСГРАНИЧНОГО НАСЛЕДОВАНИЯ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ // Review of law sciences. 2020. №Спецвыпуск.
14. Davronov, D. "COERCIVE MEASURES IN THE CIVIL PROCEEDINGS: ITS IMPORTANCE AND TYPES." Norwegian Journal of Development of the International Science 76-2 (2021): 17-20.
15. Мамараимова Г. М. ХИЗМАТ КЎРСАТИШ БЕЛГИСИГА НИСБАТАН МУТЛАҚ ҲУҚУҚЛАРНИНГ МЕРОС БЎЛИБ ЎТИШИ МАСАЛАЛАРИ //ЖУРНАЛ ПРАВОВЫХ ИССЛЕДОВАНИЙ. – 2019. – №. SPECIAL.
16. Bebutova Z. THE ESSENCE OF THE INSTITUTION OF PRO BONO AND ITS IMPORTANCE IN CIVIL COURTS //Norwegian Journal of Development of the International Science. – 2021. – №. 77-3. – С. 46-50.
17. Davronov D. COERCIVE MEASURES IN THE CIVIL PROCEEDINGS: ITS IMPORTANCE AND TYPES // Norwegian Journal of Development of the International Science. 2021. №76-2.
18. Mamaraimova G. DEFINITIONS OF A CHILD'S ORIGIN //Norwegian Journal of Development of the International Science. – 2021. – №. 77-3. – С. 42-46.
19. Mamaraimova G., Atalykova G. LEGAL ASPECTS OF THE SPOUSE'S INHERITANCE RIGHT //Norwegian Journal of Development of the International Science. – 2021. – №. 77-3. – С. 39-41.
20. Khakimov B. THE PURPOSE AND FUNCTION OF INSTITUTION OF CASSATION REVIEW IN THE LEGISLATION OF UZBEKISTAN // Norwegian Journal of Development of the International Science. 2022. №77-3.