



LEGAL FEATURES OF RENUNCIATION OF INHERITANCE

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ABSTRACT

The topic concerns the legal features of refusing to accept an inheritance. The prototype of rejection of inheritance originates from ancient times. Roman law occupies a special place among the ancient legal systems, which belongs to the strong values of the legal culture, emphasizing its enormous importance for the legal development of both European and other states. According to the legislation in force in Georgia, the law regulates relations related to the refusal to accept an inheritance. The heir has the right to refuse to receive the inheritance by law and by will from the circle of heirs. Refusal to accept inheritance is irreversible and requires special attention. In its content, it is clearly different from the avoidance of inheritance. It is not allowed to refuse to receive the inheritance partially, for a period or with any reservation.

If the heir refuses to accept the inheritance, he must altogether refuse it within the time limits defined by the law. An inheritance that passes to a decedent's heirs is considered the total of all assets and liabilities of the decedent.

Legal norms related to inheritance relations need to be adjusted. The central part of the legal norms regulating inheritance has not changed after the adoption of the Civil Code of Georgia. Georgian legislation and practice in this area are not without flaws, and problematic issues have accumulated that need to be understood in a new way.

The work is a legal study, the purpose of which is to review the legal features of the refusal to accept the inheritance, the shortcomings, the legal norms used, and judicial and notary practices based on the comparative legal analysis of the legal literature of foreign countries, related to the refusal to accept the inheritance and the avoidance (non-acceptance) of the inheritance. Also, the work aims to present the problems, which will allow us to develop conclusions and recommendations to determine how to regulate this relationship.

INTRODUCTION

Inheritance law has an important place in our daily life as well as in civil turnover. It gives each member of society a guaranteed opportunity to live and work with the knowledge that the material and spiritual good he created during his life, based on his own will, will pass into the hands of close people after his death. In exceptional cases, it is possible, in accordance with the established rule, to transfer part of such property to persons not foreseen by the will of the deceased. The acceptance of an inheritance and the refusal to accept it are essential components of the estate proceedings and are considered both by law and by will at the time of inheritance. It is the observance of the general provisions that ensure the protection of the interests of the deceased person and his successor, as well as other participants in the inheritance relationship.¹

LEGAL FEATURES OF REFUSAL TO RECEIVE THE INHERITANCE

Rejection of an inheritance, like acceptance of it, is a one-sided transaction and is subject to the general requirements of the transaction.² The main categories of inheritance law received detailed regulation within the Roman legal system, which fully addresses the institution of disinheritance. The ancient Roman institution of inheritance allowed only privileged heirs to disinherit.³

It is interesting to discuss the topic according to the Civil Code of Georgia and compare it with the norms of the Civil Code of foreign countries. According to German inheritance law, the heir can accept or refuse the inheritance from the moment of the opening of the estate,⁴ considered as acts

of a purely personal nature. According to Swiss law, legal or designated heirs can refuse the inheritance passed to them if the solvency of the heir is officially established at the time of his death.⁵ According to French inheritance law, an heir who refuses to accept an inheritance is considered never to be an heir.⁶ In the doctrine of the Russian Federation, refusal of inheritance is regulated based on Article 1157 of the Civil Code of the Russian Federation. 1140.1. On the basis of the Article, it is not allowed to refuse the inheritance if the property is transferred to the inheritance fund in the order of inheritance.⁷ As we can see based on comparison, the rejection of inheritance originates from ancient times, the law allows the heir to express his will freely, to refuse to receive the inheritance if he does not want to receive the inheritance.

To smoothly conduct the inheritance proceedings, the heir must submit the application of refusal within a reasonable time; that is why the terms related to the refusal to accept the inheritance are particularly emphasized. According to Article 1434 of the Civil Code of Georgia “an heir may renounce the estate inheritance within three months after the day when he/she became aware or ought to have become aware of the fact that he/she had been called to accept the inheritance. If there is a valid reason, a court may extend this period, but for not more than two months. [...]”⁸ In relation to time limits, German law is noteworthy, according to which the time limit for renunciation is the same as for the acceptance of the inheritance. In addition, it is important that the heir can no longer refuse the inheritance if he agrees to receive the inheritance or if the deadline for submitting an application on this issue has expired; from that moment the inheritance is considered accepted.⁹

1 Shengelia, R., & Shengelia, E., (2007). Law of Inheritance. Tbilisi: “Meridian”, pp. 13-14.

2 Akhvlediani, Z., (2000). Commentary on the Civil Code of Georgia. Tbilisi: “Law”, p. 480.

3 Bichko, M., & Bichko, I., (2020). Heritage Pronunciation Institute History of Forms and Development. p. 144. <https://cyberleninka.ru/article/n/institut-otkaza-ot-nasledstva-istoriya-stanovleniya-i-razvitiya?fbclid=IwAR2MxelQDreLHjiEUmiX_eL2T6lfrq4h7bovxtHp>

4 German Civil Code (2019). Article 1946. <<http://www.library.court.ge/upload/giz2011-ge-bgb.pdf>> [Last seen May 5, 2022].

5 Chechelashvili, Z., (2018). Swiss Civil Code. Tbilisi: “Translator” Article 566, p. 160.

6 Gresse, M.E., (2014). Notarial Notebooks of European Comparative Law. France: Volume I, p. 65.

7 Shishmareva, T.P., (2021). Disputing Disinheritance Transactions in Insolvency Proceedings in Russia and Germany. Law, 41, p.195. <<https://cyberleninka.ru/article/n/spornye-voprosy-notarialnoy-deyatelnosti-v-oblasti-nasledovaniya-svyazannye-s-neprinyatiem-nasledstva-i-otkazom-ot-nego>>

8 Civil Code of Georgia (1997). Article 1434. <<https://matsne.gov.ge/ka/document/view/31702?publication=117>> [Last seen February 25, 2022].

9 German Civil Code (2019). Article 1943. <<http://www.library.court.ge/upload/giz2011-ge-bgb.pdf>> [Last seen

It is true that the concept of “silence” or “inaction” is not used in German law, but it is through “inaction” that the inheritance is considered. The heir can refuse the inheritance only within six weeks, and the issue is resolved differently if the heir had his last place of residence only abroad or the heir was abroad at the beginning of the term, the period of refusal to accept the inheritance is six months;¹⁰ As far as Greece is concerned, the refusal can be done within four months from the day when the heir learned of his departure and the reason for it. If the deceased lived abroad or the heir learned about the transfer of the estate while abroad, the term is one year and is suspended for the same reasons as the statute of limitations.¹¹

According to Swiss law, the time limit for the declaration of refusal of inheritance is three months. The term is counted from the moment when they became aware of the death of the heir unless they can prove that they learned about the opening of the estate later;¹² it is possible to extend the current term by the competent authority, or a new term is established.¹³ As we can see, in the legislation of all countries, people are given a reasonable period, it is also worth noting the different terms by which, due to a number of circumstances, certain benefits are provided for the heir in relation to the terms. It would be better to have some regulation regarding the deadlines in the Georgian legislation. Because the deadline is the necessary component that often becomes problematic in the inheritance proceedings due to a number of circumstances, such as: the heir's health condition, being in a prison, being abroad, lack of information of the heir and other factors.

Based on comparative law, it is worth noting the place of declaration of refusal to accept the inheritance: based on the legislation in force in Georgia, such an application must be submitted to the notary bureau, in Germany – before the court; In France, disinheritance is done by an authentic specific deed

by two notaries; In Greece, the refusal is carried out at the secretariat of the conciliation court; According to Swiss law, the refusal must be declared orally and in writing before the competent authority. It turns out that the place of declaration of refusal is the competent authority everywhere.

I would like to touch on the problem of the heir's refusal to accept the inheritance by the heir's evasion, non-acceptance. In such a case, the heir does not apply to the Notary Bureau for acceptance of the inheritance, nor does he refuse to accept it. It is implied that he does not want to receive the inheritance. Such behavior puts the heirs receiving other estates and creditors of the heir in an uncertain situation. It is better if the will of heir will be expressed from the beginning. Expiration of the term indicates the termination of the possibility of the heir being involved in inheritance-legal relations.¹⁴ It is important to distinguish whether the heir refuses or avoids receiving the inheritance. In Georgian inheritance relations, a person at any time can make a statement confirming the fact of non-receipt of inheritance.¹⁵ The fact of evading inheritance is unclear and disorderly. The main reason for this is the presence of creditors of the heir, which hinders the heir.¹⁶

There are often cases when the heir's creditors are present when receiving the inheritance; therefore, the heir has to satisfy their demands. Avoidance of responsibility by the heir has become more common in recent years. The cases revealed in judicial and notary practice show the difficulties associated with evasion of inheritance both by will and by law during inheritance.¹⁷ The heirs do not intentionally receive the inheritance within the period defined by the law, nor refuse it and/or in the second case when they did not receive the inheritance. However, it is proved that they own it. But if the heirs want to avoid liability to the decedent's creditors in the first place, the question of meeting the creditor's demands comes into question.

May 5, 2022].

10 Also, there is Article 1944.

11 Greek Inheritance Proceedings. Article 1847. <https://www.notary.ge/res/docs/sakanonmdeblo/elegtronuli_biblioteka/saberdznetis_memkvidreoba.pdf> [Last seen April 30, 2022].

12 Chechelashvili, Z., (2018). Swiss Civil Code. Tbilisi: “Translator” Article 567, p. 160.

13 Also, there is Article 576, p. 162.

14 Shengelia, R., & Shengelia, E. (2007). Law of Inheritance. Tbilisi: “Meridian”, p. 158.

15 Ministry of Justice of Georgia (2010, March 31) Order #71, “On the rules of notarial execution”, Article 78. <<https://matsne.gov.ge/ka/document/view/1010061>> [Last seen May, 2022].

16 Shengelia, R., & Shengelia, E. (2007). Law of Inheritance. Tbilisi: “Meridian”, p. 159.

17 Akhvlediani, Z., (2000). Commentary on the Civil Code of Georgia. Tbilisi: “Law”, p. 468.

A comparative legal analysis of the laws of foreign countries is important for considering the issue in every way.¹⁸ As can be seen from the research, the absence of an open expression of the heir to receive the inheritance by the heir has been considered since the early period, which historically originates during the reign of Emperor Justinian, and continues in German and Swiss law. In German law, the law “by omission” provides for the acceptance of the inheritance; it contains an indication that the inheritance is considered accepted if the deadline for its acceptance has expired. According to Swiss law, if the heir does not apply for a refusal to accept the inheritance within the prescribed period, then he is considered to have accepted the inheritance without any reservations. It is worth noting that, as a result of settling the issue in this way, it is possible to consider the heir as having received the inheritance, giving the heir a certain responsibility and obligation. He will try to appear on time to apply to the relevant competent authority, if he does not want to get involved in the legal relations of inheritance, he will to some extent, regulate the uncertainty related to the avoidance/non-acceptance of inheritance, which is often expressed by the inaction of the heir.

18 Johnson, E., Successor Liability: A Key Consideration for Business Acquisition Planning, FryBerger Law firm press, 2019. <<https://www.fryberger.com/articles/successor-liability-a-keyconsideration-for-business-acquisition-planning/>> [18.03.2022].

CONCLUSION

In conclusion, it can be said that to be citizen-oriented and simplify the problematic circumstances related to inheritance proceedings, it would be better to share and use the experience of other countries. Based on the consideration of a number of circumstances, such as the health condition of the heir, stay in prison, stay abroad, and other factors, the existing legislation of foreign countries on the mentioned issue should be shared in the Georgian law, in the light of legislative regulation, the terms of acceptance of inheritance and refusal to accept inheritance should be equalized, as well as acceptance of inheritance and determining a single period of refusal to accept the inheritance for a period of up to one year, which is enough time for the heir to decide to refuse to accept the inheritance and take appropriate measures. In addition, if the heir expires the refusal period to accept the inheritance and does not apply to the relevant competent body with a statement of refusal, he should be considered to have received the inheritance. Against the background of the legislative regulation of the mentioned issues, it will be possible to reduce the appeal to the court for citizens, creditors, and interested persons, to partially solve the problems related to the refusal to receive the inheritance and the avoidance of receiving the inheritance.

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