

LEGAL FEATURES OF THE REAL PROPERTY INTESTATE SUCCESSION

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Abstract. Succession is the devolution of property rights, duties and some other personal non-property rights of a deceased natural person to his heirs by operation of law (intestate) or/and to successors by the will (testate). Subject of succession is legacy – property of a deceased person, which passes to the heirs on the grounds of succession.

The problem analyzed in this paper is important from both theoretical and practical points of view, as this is the effort to reveal the essence and importance of the succession under the law. The research is based on the analysis of the laws, various sources of scientific juridical literature and judicial experience.

The Lithuanian Republic legislation regulates all cases of inheritance of the land, buildings and other real estate located in the territory of the Lithuanian Republic. Therefore, in the cases when the last place of domicile of the bequeather is in a foreign country, but the real estate is in Lithuania, the Notary Office of the area of the property location issues the certificate of the inheritance.

Other countries also follow the similar approaches of succession; but they differ from each other in the scope of the successors, the sequence of succession, the forms of succession, the conduction of succession and so on.

Key words: succession, inheritance under the law, real property, legacy.

Introduction

Succession shall arise by operation of law and by a will. Succession shall arise by operation of law unless the testator has changed, and to the extent he has changed, the grounds for succession by his testamentary disposition. In the instances when there are no successors either by operation of law or by a will, or none of the successors accepts succession, or when the testator deprives all the heirs of the right to succession, the estate of the deceased shall devolve to the state pursuant to the right of succession. (Lietuvos Respublikos civilinis..., 2000).

In the event when there is no testament or the the testament has been invalidated, the succession shall arise by operation of law (*intestate succession*).

Succession of land, buildings and other real estate existing in the Lithuanian Republic shall be regulated by the LR laws.

Aim of the research – to analyze the main aspects of intestate succession.

Object of the research – the peculiarities of the intestate succession.

Research methods – analysis of scientific literature, analysis of legal acts, systematic and comparative analysis, specification and generalization, logical abstract.

Essential peculiarities of succession and object of succession

The Law of Succession is the institute of the Civil Law, which regulates the devolution of property and property rights of a deceased natural person to his heirs. Death of the deviser does not bring

his property, property rights and duties to a termination. They devolve to the heirs of the deceased, and, in the instances when there are no successors, or none of the successors accepts succession, the rights of the deceased shall devolve to the state. After the deviser's death the universal devolution of his estate to the heirs (the persons, who inherit the deviser's peoperty after his death) takes place. In the cases when there exist several descendants, they inherit the deviser's rights and duties in corresponding parts. Succession is the devolution of property rights, duties and some other personal non-property rights of a deceased natural person to his heirs by operation of law (intestate) or/and to successors by the will (testate). The legitimate heir does not get the subjective right of inheritance until it belongs to at least one of testamentary heirs (Lietuvos Aukščiausiojo Teismo..., 2002).

The following shall be subject to succession: material objects (movable and immovable things) and non-material objects (securities, patents, trade marks, etc.) claims of patrimonial character and property obligations of the bequeather; in cases provided for by laws – intellectual property (authors' property rights to works of literature, science and art, neighbouring property rights and rights to industrial property), as well as other property rights and duties stipulated by laws¹.

Real rights (the right of superficies, the right of possession, etc.) as well as property rights are the subject of succession. In the instances of rights' restrictions (mortgage, servitude, right of superficies, etc.), the successor shall take all the related obligations (restrictions of the real right). In the ca-

¹ www.lygus.lt/gm/admin/files/CE

ses when registration of the real right restrictions is obligatory (e.g. servitude), only registered restrictions shall devolve to the successor (Lietuvos Respublikos civilinis..., 2000).

The principal things as well as auxiliary things (fruits, income, appurtenances of the principal thing) shall be subject to succession.

The auxiliary thing is in the line of the principal thing (Lietuvos Respublikos civilinis..., 2000), therefore, those who inherit the principal thing (heirs) may demand devolution of the auxiliary thing unless it is proved that the auxiliary thing was not owned by the devisor.

At present the number of family farms in Lithuania is rapidly increasing. The Law of Family Farm, art. 2 (Ūkio..., 2002) describes family farm as the whole of farmer's property and moral rights and obligations. A farmer is a natural person, who alone or with partners is engaged in agricultural production of forestry, and the farm is included in the Registry of Family Farms. The family farm is the subject to succession.

In the case when there is a partnership contract with other persons, only that part of general property that belongs to the decedent farmer shall be inherited.

When the contract of joint activity does not provide its retention after one of the partners dies, or if the remaining alive partners discord on that, the joint activity contract is terminated (Lietuvos Respublikos civilinis..., 2000).

The joint property of partners will be divided and heirs of the decedent partner shall inherit his part as provided by the general order.

Having inherited the farmer's farm in kind the heir should pay corresponding compensations to other successors.

In the case of dispute, if the successor of the family farm is not able to pay compensations to other successors straight away, the court may spread the payment of compensations for the period of 10 years by putting forced mortgage on all immovable belongings of the inheritor (Lietuvos Respublikos Civilinis..., 2000).

If the heir (heirs) cannot manage the family farm or if the creditors bring a lawsuit before the legacy is accepted, the court appoints the administrator, who manages the family farm until the inheritor(s) accepts the legacy (Lietuvos Respublikos Civilinis..., 2000).

The LR legislation provides certain details for the inheritor of land as real estate when the heirs are foreign subjects. The LR Constitution article 47 provides that ownership of land, inner water bodies and forests should follow the Constitutional Law.

The Constitutional Law of the LR Constitution article 47 (Žin., 1996, Nr. 64-1503, 2003, Nr. 34-1418) distinguishes two groups of foreign subjects. The land ownership right is available only to tho-

se foreign subjects, who meet the criteria of transatlantic integration, chosen by the Lithuanian Republic. Foreign juridical bodies as well as other foreign organizations established in the EU member states or in the states, which have signed the European contract with the European communities or their member states, in the European Collaboration and Development organization member states, in NATO member states and in the states participants of the European Economical Space Agreement meet these. Citizens and residents of the named states also meet these criteria.

Other foreign subjects have no land ownership right in the Lithuanian Republic, therefore, they cannot obtain the land by succession.

An important note is that ownership and inheritance of agricultural and forest land are not provided for the foreign subjects that meet the above criteria until the end of 7-year transitional period, indicated in the EU entrance requirements, with exception of the foreigners, who have had 3-year long residence in Lithuania and had been involved in agricultural activity, as well as foreign juridical persons and other organizations that have their agencies or branches in Lithuania.

In the cases when land is inherited not by the LR Citizen, but by other physical or juridical persons of the LR or foreign states, they get the right to the sum of money received having sold the parcel. Following the order established by the LR Government, on the basis of the inheritor's request this parcel is sold to the indicated buyer – the LR Citizen, or put up to auction and the issued certificate of inheritance indicates the sum received having sold the land parcel and deducted the sale or auction related expenditure (Gaivenis, et al., 1998).

Having received the certificate of inheritance right, which includes land, the inheritor must address the district chief with the application to sell the inherited parcel to the indicated buyer or at an auction.

The land parcel is sold following the order established by the LR Government decision No 475, made on April 18th, 1996 „Approvement of the Rules for Transfer of the Parcels, Inherited by the Heirs, Who Cannot Have Land Ownership Rights According to the LR Legislation“ (Žin., 1996, Nr. 36-914, 2005, Nr. 113-4122).

The sum of money, which is received having sold the land and deducted the sales or auction related expenses, is transferred to the account indicated by the heir of the deceased land owner.

In the solution of the problem of the object of the Inheritance Law, a significant importance is given to the juridical practice formed by the Supreme court, according to which the right to the restoration of property rights to the real estate remained is a property right, thus, after death of the person, who has expressed his will of the property rights' restitu-

tion within the terms set by the law, this right is inherited on general grounds, and the property rights to the real estate remained is restituted following the order provided by the law on „The Citizens' Property Rights to the Real Estate Remained“ article 2 (July 1st, 1997). This law provides that in the case when the person, who has expressed his will of the property rights' restitution within the terms set by the law dies, the property rights are restituted in the name of the deceased and then transferred to the heir (Piliečiū..., 1997).

The following shall not be subject to succession: personal non-property and property rights inseparable from the person of the bequeather (right to honour and dignity, authorship, right to author's name, inviolability of creative work, to the name of performer and inviolability of performance), right to alimony and benefit paid for the maintenance of the bequeather, right to pension, except in cases provided for by laws. (Vileita, 2004).

The place of the opening of succession shall be considered the last place of domicile of the bequeather, when it is not known – the place of location of property or its principal part (Lietuvos Respublikos civilinis..., 2000).

The place of domicile shall be considered the place where the natural person lived permanently or most time. Thus, the place of the opening of succession and the place of death of the natural may not concur.

The place of residence of juvenile under 15 years of age and of the natural persons in ward shall be considered the place where, respectively, their parents, step-parents or custodians live. This provision is also applied in the case when the succession opens when the court declares the natural person to be deceased.

It is very important to establish the place of the opening of succession as this is the basis according to which the Notary Offices issue the certificate of the inheritance law, creditors lay their claims, the measures are taken to protect the property to be inherited and to appoint the custodian.

Adoptive parents and their relatives entitled to inherit after the death of their adoptive child or his descendants shall be equalled to the parents and other blood relatives. Parents of the adopted child and other blood relatives of a superior degree in the line of descent shall not inherit by operation of law after the death of the adopted child or his descendants.

Entitled to inherit by operation of law shall be the children of the bequeather born to their parents in marriage, or to the parents whose marriage was acknowledged null and void, likewise children born out of wedlock with their paternity established in accordance with laws. (Lietuvos Respublikos Civilinis..., 2000).

The bequeather's grandchildren shall inherit

alongside with the first and second degree heirs entitled to inherit in the event of the predecease at the time of the opening of succession of any of their parents who would have been a heir (Lietuvos Respublikos civilinis...,2000). They shall be entitled to equal shares of that part of estate which would have been inherited by their deceased father or mother pursuant to intestate succession. In the cases when there are several grandchildren, they all inherit equal shares. If the bequeather had 3 children, one of which died earlier and 2 children (grandchildren) remained, the legacy of the bequeather is to be divided into 3 shares. Two shares are passed to the 2 children still alive, and one – to the 2 grandchildren of the bequeather.

The bequeather's great-grandchildren shall inherit alongside with correspondingly the second and third degree heirs entitled to inherit in the event of the predecease at the time of the opening of succession of any of their parents who would have been a heir. They shall be entitled to equal shares of that part of estate which would have been inherited by their deceased father or mother pursuant to intestate succession (Lietuvos Respublikos civilinis...,2000).

The discussed grandchildren' and great-grandchildren's right in the inheritance relations is named as succession by the right of representation. It is important to note that this right does not deprive the grandchildren and great-grandchildren of the right of inheritance as it is the case with, respectively, the second and third degree heirs. In the case of the same inheritance relationship they can succeed by the right of representation as well as the second and third degree heirs can.

Spouses' right of inheritance also has certain specific features. The surviving spouse of the bequeather shall be entitled to inherit pursuant to intestate succession or alongside with the heirs (if any) of either the first or second degree of descent. Together with the first degree heirs, he shall inherit one fourth of the inheritance in the event of existence of not more than three heirs apart from the spouse. In the event where there are more than three heirs, the spouse shall inherit in equal shares with the other heirs. If the spouse inherits with the second degree heirs, he is entitled to a half of the inheritance. In the event of absence of the first and second degree heirs, the spouse shall inherit the whole inheritable estate (Lietuvos Respublikos civilinis..., 2000).

In summary it can be assumed that spouses' intestate succession can be a very complicate one, therefore, the spouses should be advised to make a joint will of spouses, according to which after the death of one of the spouses, the whole property of the deceased (except the mandatory share of succession) shall be inherited by the surviving spouse.

Peculiarities of intestate succession in foreign states

Different foreign countries have similar principles of inheritance although certain variation also exists. For example, in France the principle of universal inheritance stands, i.e. the entire property of the devisor makes the total whole of the legacy. After death of a person all property of the deceased passes to his legitimate heirs. The legitimate heirs can accept the legacy in two following ways:

1. simple acceptance of legacy means that the inheritor takes responsibility for all debts of the devisor;
2. acceptance of the inventory legacy means that on the basis of special application to court the inheritor's responsibility for the rights of the devisor is limited by the heirloom, i.e. the legacy is separated from the inheritor's property.

The French Civil Code distinguishes the following degrees of legitimate descendants:

1. first degree descendants are bequeather's children, grandchildren, etc.;
2. second degree descendants - bequeather's parents, brothers and sisters;
3. third degree descendants - bequeather's grandparents and great-grandparents;
4. fourth degree descendants - other relatives of the bequeather: cousins, aunts and uncles, etc. to the sixth degree relationship.

The second degree descendants inherit only in the cases when there are no first degree descendants, the third degree descendants - when there are neither first nor second degree descendants, and the fourth degree descendants - when there are neither first nor second or third degree descendants. In the cases when there are several heirs in the same line of descent, the property is inherited with respect to the degree of relationship: the person of closer degree of relationship debar the person of further degree of relationship from the inheritance. When there are several heirs of the same degree, they inherit the property in equal shares.

In the case when the heir dies before the devisor, the share of the deceased passes to his descendants. For example, if the devisor's daughter dies earlier, then her daughter, i.e. the devisor's granddaughter inherits her mother's share. The inheritance of the survived spouse follows different rules. The spouses can agree on the share of the property to be inherited after one of them dies in the marriage contract. If such agreement has not been made, the property of the deceased passes to his children and the spouse that survives gets the right of usufruct to one half of the legacy (Dickson, 1994).

The German Civil Code of 1924-1928 distinguishes the following five degrees of legitimate descendants. However, this is not a finite list:

1. first degree descendants are bequeather's children;
2. second - parents and their descendants;
3. third - grandparents and their descendants;
4. fourth - great-grandparents and their descendants;
5. fifth - great-great-grandparents and their descendants.

The descendants of closer degree of relationship debar the descendants of further degree of relationship from the inheritance. In the case when there are several first degree descendants, they inherit the property in equal shares. The principle applied in other lines is similar to that in France - the share of the deceased descendant is inherited by his descendants. The surviving spouse inherits one-fourth of the property when there are first degree descendants, or one half of the property when there are second and third degree descendants.

The general principle provides that the descendant is responsible for all debts of the devisor (German civil Code, art. 1967). However, the descendant's responsibility can be limited to the amount of the legacy by establishing the guardianship of the legacy or public tender (German civil Code, art. 1975).

In England the intestate succession is regulated by the laws of the years 1925 and 1952. After the bequeather's death his property passes in trust to the legacy administrator, who deals with the issues of the property distribution among the descendants. The property can be sold and the money is divided among the descendants, or the property is divided in kind. The legitimate descendants are divided into five following groups:

1. surviving spouse;
2. children;
3. parents;
4. brothers and sisters;
5. other relatives.

The surviving spouse inherits all property when there are neither second nor third or fourth degree descendants. In the case when there are the bequeather's children, the surviving spouse has to be paid 75 thousands pounds sterling and also he inherits personal items of the deceased. If the bequeather had no children but his parents are alive, the surviving spouse has to be paid 85 thousands pounds sterling and also he inherits personal items of the deceased. The heritage is divided after the administrator has got even with creditors of the bequeather. Thus, in practice the descendants are not responsible for the bequeather's debts. Court appoints the administrator and supervises his activity.

In Spain, the main laws relating to the inheritance issues are: (i) the Civil Code; (ii) the Rules of Civil Procedure; (iii) the Judicial Organic Law; (iv) the relevant regional regulations of the Autonomous Communities; and (v) the Hague Convention

of 5 October 1961 on the Conflicts of Laws relating to the Form of Testamentary Dispositions. As to the succession that occurs in Spain, several significant points can be summarized. First, there is no distinction made between foreigners of different nationalities or religions. Any person can acquire property in Spain by way of inheritance. Second, the ownership of real property is regulated by the laws of the region where it is situated (*lex rei sitae*). Third, the inheritance of most assets (excluding real property) is regulated by the law of the deceased's nationality, irrespective of the nature of the property or the country where they are located (*lex personae*) (International succession..., 2010).

In the People's Republic of China, the Law of Succession of (hereinafter 'the PRC') was promulgated in 1985 with the aim of protecting the citizens' right to inherit private property in accordance with the Constitution of the PRC. This is the first law after the founding of the PRC to specifically regulate the matters on succession, although the tradition of succession has actually long been residing in the Chinese history. It is held that the earliest Chinese law of succession was established in the dynasties of Xia and Shang around 2070 BC to 1046 BC (The Earliest Law of Succession in Chinese History, Contemporary Law Review, 1996).

The earliest Chinese law of succession mentioned above was actually about the succession of throne in the royal families. Nowadays, it is not the throne but the property that can be inherited within the domain of the PRC. The property that can be inherited refers to the lawful property of a citizen owned by him personally at the time of his death, which consists of: (1) his income; (2) his houses, savings and articles of everyday use; (3) his forest trees, livestock and poultry; (4) his cultural objects, books and reference materials; (5) means of production lawfully owned by him; (6) his property rights pertaining to copyright and patent rights; and (7) his other lawful property (Article 3, the Law of Succession). Anyhow, the property that can be inherited doesn't comprise the property of which the ownership can only be attributed to the state or the collectives. In the PRC, all mineral resources, waters, forests, mountains, grasslands, wasteland, beaches and other natural resources are owned by the state or the collectives (Article 9, the Constitutional Law); furthermore, the land in the cities is owned by the state, and the land in the rural and suburban areas is owned by the collectives except for the portions which belong to the state according to the law (Article 10, the Constitutional Law). Therefore, the real properties cannot be the object of inheritance, which is quite different from the situation in Lithuania and other countries. Except for the property the ownership of which can only belong to the state or the collective, the other kinds of property can be inherited. Pursuant to the Law of Succession, there

are two categories of succession, namely the legitimate succession and the testamentary succession, which are governed by two separate sets of rules. And there is a sequence of the two kinds of succession; the testamentary succession prevails over the legitimate succession if there is a will (Article 5, the Law of Succession).

In the USA, in the case when there is no testament, property of the deceased person passes in trust to the legacy administrator, who is appointed and supervised by special court of inheritance affairs (*probate court*). The administrator estimates the property of the deceased person, names his creditors and debtors, gets even with creditors of the bequeather, pays taxes, etc. the remaining property is divided among the descendants. The surviving spouse usually inherits some part of property in terms of money (e.g. 50 thousands dollars) and part of the legacy – from 1/3 to one half, depending on the existence or absence of other descendants (Nekrošius, 1997).

Conclusions

1. The LR legislation regulates all cases of inheritance of the land, buildings and other real estate located in the territory of the Lithuanian Republic. Therefore, in the cases when the last place of domicile of the bequeather is in a foreign country, but the real estate is in Lithuania, the Notary Office of the area of the property location issues the certificate of the inheritance.
2. The legitimate heir does not get the subjective right of inheritance until it belongs to at least one of testamentary heirs.
3. In the cases when land is inherited not by the LR Citizen, but by other physical or juridical persons of the LR or foreign states, they get the right to the sum of money received having sold the parcel.
4. The surviving spouse of the bequeather shall be entitled to inherit pursuant to intestate succession or alongside with the heirs (if any) of either the first or second degree of descent. Together with the first degree heirs, he shall inherit one fourth of the inheritance in the event of existence of not more than three heirs apart from the spouse. In the event where there are more than three heirs, the spouse shall inherit in equal shares with the other heirs.
5. Legitimate representatives (parents or guardians) accept the legacy on behalf of the incapable heirs.
6. The scope of succession in the PRC is limited; the ownership of the land as well as other important natural resources can only be in the hand of the state or the collectives; therefore, it is impossible for these property to be the objects of succession.

7. There are two basic types of succession: legitimate succession and succession according to a will. Normally, the latter form of succession prevails. The Law of Succession provides for strict conditions for the conduction of the succession in the PRC.
8. The Law of Success of the PRC has remained intact for more than two decades; the contemporary China really calls for a reconsideration and revision against this law.
9. Other countries also follow the similar approaches of succession; but they also differ from each other in the scope of the successors, the sequence of succession, the forms of succession, the conduction of succession and so on.
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TEISINIAI NEKILNOJAMOJO TURTO PAVELDĖJIMO YPATUMAI PAGAL ĮSTATYMĄ

Santrauka

Paveldėjimas yra nuosavybės teisių, pareigų ir kai kurių kitų asmeninių neturtinių teisių mirusio fizinio asmens perėjimas jo įpėdiniams pagal įstatymą arba/ir pagal testamentą. Paveldėjimo teisė – tai civilinės teisės institutas, kurio normos reglamentuoja mirusio fizinio asmens (palikėjo) turto, jo turtinių teisių perėjimą įpėdiniams. Mirus palikėjui, jo turtas, turtinės teisės ir pareigos nesibaigia. Jos pereina mirusio asmens įpėdiniams, o jei įpėdinių nėra, ar jie negali paveldėti arba atsisakė palikimo, tai mirusio asmens teisės pereina valstybei. Mirus palikėjui, įvyksta universalus jo turto perėjimas jo įpėdiniams (asmenims, kurie paveldi palikėjo turtą po jo mirties). Jeigu įpėdinių yra keletas, jiems palikėjo teisės ir pareigos pereina atitinkama dalimi.

Lietuvos Respublikoje esanti žemė, pastatai ir kitas nekilnojamasis turtas visais atvejais paveldimi pagal Lietuvos Respublikos įstatymus. Todėl kai paskutinė nuolatinė palikėjo gyvenamoji vieta yra užsienyje, o nekilnojamasis turtas – Lietuvoje, turto paveldėjimo teisės liudijimą išduoda turto buvimo vietos notarų biuras.

Kai žemę paveldi ne Lietuvos Respublikos pilietis, o kiti Lietuvos Respublikos ar užsienio valstybių fiziniai ar juridiniai asmenys, jie įgyja teisę tik į pinigų sumą, gautą pardavus paveldėtą žemės sklypą. Šis žemės sklypas Lietuvos Respublikos Vyriausybės nustatyta tvarka įpėdinio prašymu parduodamas jo nurodytam pirkėjui – Lietuvos Respublikos piliečiui, arba aukcione išduodamame paveldėjimo teisės liudijime nurodoma suma, gauta pardavus žemę ir atskaičius pardavimo arba aukciono organizavimo išlaidas.

Kitos šalys taip pat vadovaujasi panašiais paveldėjimą reguliuojančiais metodais, tačiau įstatymai skiriasi vienas nuo kito, atsižvelgiant į turto įpėdinius, jų eiles, palikimo priėmimo tvarką ir pan.

Šiame darbe analizuojama problema yra svarbi tiek teoriniu, tiek ir praktiniu požiūriu, kadangi siekiama atskleisti paveldėjimo pagal įstatymą esmę ir svarbą. Tyrimas grindžiamas įstatymais, įvairių šaltinių mokslinės literatūros ir teismų praktikos analize.

Raktiniai žodžiai: paveldėjimas, paveldėjimas pagal įstatymą, nekilnojamasis turtas, palikimas.

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