

CHARACTERISTICS OF THE INHERITANCE INSTITUTE IN THE CIVIL CODE OF ARMENIA

CARACTERÍSTICAS DE LA INSTITUCIÓN DE DERECHO SUCESORIO EN EL CÓDIGO CIVIL DE ARMENIA

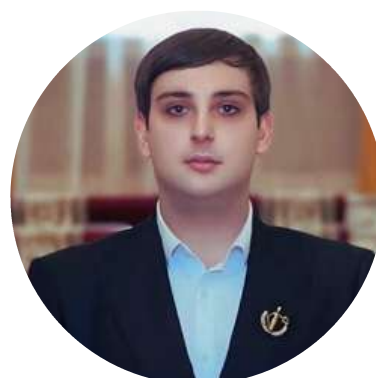
Recibido: 20.02.2025 / Aceptado: 02.03.2025



HAYK MKRTCHYAN

Eurasia International University Lecturer|
Candidate of legal science

 0009-0002-3833-0243



EDGAR MANUCHARYAN

Student of Eurasia International University
Lecturer | Master's Degree in Civil Law and
Procedure

 0009-0009-7472-5825

Abstract:

This scientific article concerns the study of the peculiarities of the legal institution of inheritance in the context of the civil legislation of the Republic of Armenia. During the research, we studied the formation and history of the development of the legal institution of inheritance, as well as comprehensively analyzed the existing legal regulations and legislative gaps regarding “worthy” and “undeserving heirs” as subjects of inheritance legal relations.

The relevance of the research topic is conditioned by social, economic and legal factors that determine the need to create a deep, comprehensive and effective mechanism for the protection of heirs' rights under the civil legislation of the Republic of Armenia, as well as the protection of the rights of worthy heirs in the event that a person is recognized as an unworthy heir.

Keywords:

Inheritance Institute, Worthy Heir, Unworthy Heir, Civil Law, Armenia.

Resumen:

Este artículo científico aborda el estudio de las peculiaridades de la institución jurídica de la herencia en el contexto de la legislación civil de la República de Armenia. Durante la investigación, estudiamos la formación y la historia de su desarrollo, así como un análisis exhaustivo de la normativa legal vigente y las lagunas legislativas en relación con los herederos legítimos e ilegítimos como sujetos de las relaciones jurídicas sucesorias.

La relevancia del tema de investigación está condicionada por factores sociales, económicos y jurídicos que determinan la necesidad de crear un mecanismo sólido, integral y eficaz para la protección de los derechos de los herederos en el marco de la legislación civil de la República de Armenia, así como para la protección de los derechos de los herederos legítimos en caso de que una persona sea reconocida como ilegítima.

Palabras clave:

Derecho de Sucesiones, heredero legítimo, heredero ilegítimo, Derecho Civil, Armenia.

I. Introduction

Throughout the thousand-year history of human society, inheritance relationships have always been considered one of the most important aspects of social relations and have attracted a stable and lasting place in the social values system.

The Institute of Inheritance has been known for its rights since ancient times. As a social institution, cultural law was regulated in advance, and when private property, classes, and states arose, inheritance relationships began to be regulated by legal norms, state laws. Therefore, as a judicial institution, the inheritance originated on the breakdown of clan order, the appearance of individual families, and private property; These were important prerequisites for the simple reason that relationships without ownership and without the right to transfer it simply could not have arisen[1].

From antiquity, after the death of the owner in all slave states, his property was transferred to other persons[2]. The legal regulation of the inheritance process began in ancient Rome, and laws, separate Senate decisions, and imperial constitutions were applied[3]. As a result, they were adopted in the civil laws of new congregations and still form the basis for the inheritance of various states. This institution, originated in the right to right to inherit almost all civilized countries, has been preserved. For example, in accordance with French legislation, the

descendants of the law queue up to the sixth-class relatives[4]. These were formerly described in detail in the inheritance of ancient Rome, as we see in the legislation of today's states.

In general, the norms of inheritance regulate the transfer of property rights and duties of the deceased to other entities of the right so for society. The existence of an inheritance is both in line with the interests of society, and indeed, if all the citizen's obligations ceased at his death, then the transactions signed with a physical person would be associated with great risks.

Inheritance is one of the most important institutions of civil law of the Republic of Armenia. The property of a citizen, ownership, passes to other citizens, heirs, according to the rules of inheritance law. Inheritance is the transfer of the rights and obligations of a deceased citizen (testator) to other persons (heirs), in accordance with the procedure established by law[5]. And according to Article 1184 of the Civil Code of the Republic of Armenia, in the event of inheritance, the property (inheritance) of the deceased in an unchanged state, as a single whole, passes to other persons (comprehensive succession), unless otherwise provided for by the rules of this Code[6].

It should be noted that in the Republic of Armenia it is not considered an independent branch of law, since it

does not meet the requirements for the branch of law regarding the subject of regulation and the method of regulation. It should only be added that the right of inheritance is not a purely civil law institution.

According to Article 1201 of the Civil Code of the Republic of Armenia, the testator has the right to deprive one, several or all of the heirs at law of their inheritance without explaining the reasons. If the testator has deprived the person who is entitled to a mandatory share on the day of opening the inheritance, the will is considered invalid in the relevant part[7].

II. Order of inheritance which applies in the Republic of Armenia

- First-order heirs are the testator's children, spouse, and parents. The testator's grandchildren inherit by right of presentation.
- Second-order heirs are the testator's full-blood, half-brothers, or half-sisters. The children of the testator's brothers and sisters inherit by right of presentation.
- The third-degree heirs are the testator's paternal and maternal grandparents.
- The fourth-degree heirs are the testator's parents' brothers and sisters (uncles, aunts, uncles, and aunts). The children of the testator's uncles and aunts and uncles and aunts inherit by right of presentation.

The Civil Code of Affairs has legally regulated the cases under consideration, but an analysis of liberal practices and legislation shows that they are insufficient to regulate these social relationships effectively.

In our research, we have studied in detail the legal regulations and legislative gaps presented by worthy and unworthy descendants as subjects of inheritance.

Perhaps the legislation of Armenia provides for the Institute of Unworthy Descendants, but this institution is not yet clearly understood by the judicial framework. There are considerable legal gaps and unregulated issues in terms of full legislative investment at this institute, some of which we study in our research.

The current civil law of Armenia necessarily envisaged the institution of an unworthy heir, for its necessity had proved the practice itself. In Article 1191, the present Civil Code of Armenia identified individuals who were isolated from an inheritance, referring to them as «*unworthy descendants*»[8].

In accordance with Sections 1 and 2 of Article 1191 of the Civil Code.

- In accordance with the law and by law, those who have deliberately obstructed the execution of the last will of the heir are isolated; They have deliberately deprived an heir or any of the possible descendants or executed for their lives.
- In the case of the law, inheritance is isolated from parental rights, whose parental rights have not been restored when the inheritance is opened.

In envisaging the Institute of Unworthy Descendants in civil law, the legislature depends on the actual and supposed will of the heir and the desire that the heir would have done so if he were alive and had the opportunity, that the state plays the role of the heir's «*representative*», crediting himself with acting on behalf of the representative and dog the investment of the institute of unworthy descendants is considered to be an independent foundation as an expression of the actual or supposed will of the heir.

The legislative reservation of the Institute of Unworthy Descendants was the result of a requirement from practice that at the same time received widespread practical distribution and implementation, thereby becoming a subject of intense scientific debate[9].

Speaking of «*Worthy Heirs*», note that the civil law mechanism for the protection of the rights of these subjects is to guarantee the real right of inheritance for worthy heirs. Are the functions of this mechanism. First, the need to prevent crimes committed by an unworthy heir in the inheritance. Second, the elimination of obstacles to obstruction by an «*inheritance-worthy heir*». Third, the restoration of violated inheritance rights and the legitimate interests of a worthy heir; fourth, strengthening law and order in the field of inherited circumstances.

The main way to protect the rights of heirs from encroachments on inherited property by unworthy heirs is to apply the rule established by law regarding unworthy heirs.

The structure of the mechanism for protecting the rights of worthy heirs includes the following elements:

- a set of legal facts, i.e. legal norms, which allow worthy heirs to initiate a process of legal protection of their inheritance rights,
- the legal relationship of recognizing a person as an unworthy heir, in which it is possible to distinguish between legal relationships preceding the protection of the rights of worthy heirs and legal relationships mediating the fact of the violation of the rights of a worthy heir, i.e., illegal seizure or attempted seizure of property by an unworthy heir,
- the subjects of the legal mechanism for the protection of the rights of worthy heirs, among which one can distinguish interested persons, among whom are direct holders of subjective rights that are subject to protection, that is, worthy heirs or representatives of their rights and legitimate interests,

- the object of the legal mechanism for the protection of rights, that is, the realization of the right to inheritance by a worthy heir.

In general, in connection with the synonyms of the concepts of «*heir and worthy heir*», the lack of unity of categories, and the inaccuracy of the formulation of the current norm on unworthy heirs, it seems necessary to classify the types of behavior of the heir, which imply the right to inherit or to be excluded from the right of inheritance. It should be carried out by the criterion of the will of the interested parties. In this classification, in accordance with the grounds of the RA Civil Code for recognizing a person as an unworthy heir, it is proposed to call persons «*persons not entitled to inherit*» and «*persons excluded from inheritance*».

In the first case, citizens will not be able to exercise the right of inheritance regardless of the will of the interested parties, therefore they should be defined as persons not entitled to inheritance. In the second case, citizens are excluded from the right of inheritance by the will of the interested parties, who initiate legal proceedings to recognize the person as an unworthy heir.

As for the first category of unworthy heirs, it is necessary:



- To expand the list of grounds for deprivation of the right to inheritance to include preparation for a crime, as well as the subsequent pardon of an unworthy heir of this category by the will of the testator, if the latter has learned about the attempted murder.
- To recognize as acceptable grounds for deprivation of the right to inheritance court decisions in a criminal case on the application of medical measures to an unworthy heir in the event of committing a crime against the testator while he was in a state of mental capacity,
- Expand the subject matter of unworthy heirs with provisions on legal entities as unworthy heirs of a will,
- Provide for the one-time use of the grounds for malicious evasion of alimony payment, which is currently used as a crime against the interests of the family and minors, which are necessary for the deprivation of parental rights, as well as a separate ground for removing a person from the right to inheritance,
- The analysis of the concept of «unworthy heirs» allows us to draw a conclusion about its evaluative nature, multi-level, randomness and non-compliance with the requirements set when formulating legal concepts.
- The situation when a worthy heir protects his inheritance rights from encroachments on the inherited property by unworthy heirs, the only act of exercising the right can be recognized as a certificate of inheritance rights.

In our scientific article, a thorough study of the characteristics of the Inheritance Institute, As defined in the civil law of Armenia, the legal status of «worthless» and «unworthy» descendants as subjects of inheritance circumstances and existing legislative gaps.

We propose:

- To expand the subject composition of legal relations in the Civil Code of the Republic of Armenia to protect the rights of heirs. It is desirable to give the

right to apply to the court with a request to be removed from the right of inheritance to those persons who knew about the unfair, unworthy behavior of the heir towards the testator, but who do not have a material interest in increasing their share or claiming the inheritance.

- The status of an unworthy heir who has appealed the fact of unworthy behavior towards the testator in court («former unworthy heir») is comparable to the status of a late or absent heir. In the event of restoration of the rights of an unworthy heir through judicial proceedings, the court, in addition to compensation for property damage, must also eliminate the consequences of moral damage, restore labor, pension, housing and other rights, and also consider the issue of compensating the specified person's share of the inheritance at the expense of state funds.

III. Conclusion

Thus, summing up our research, it becomes clear to both Armenian and foreign society that the right of inheritance plays a huge role in the modern world, as it is one of the ways to acquire property and one of the main guarantees of protecting the rights of the testator and heirs. It is based, first of all, on the national and moral traditions of society.

The degree of guarantee of inheritance rights depends on the quality of legal regulation of relevant relations, expressed, in particular, by the creation of a mechanism for protecting the rights of heirs that meets the objective needs of society and reflects the changes taking place in the socio-economic life of the country[10].

By clarifying the issues studied in our research, we have come up with relevant recommendations, the implementation of which will contribute to the improvement of the legislation of the Republic of Armenia and the further improvement of the legal institution of inheritance in the Republic of Armenia.

IV. References

- [1] Karakhanyan, G. H., Inheritance Rights, Educational Manual, E.R., 2000.
- [2] PAUL J. / CLIFFORD A. / KAIUS T., The Oxford Handbook of Roman Law and Society, 2016. Available in: <https://doi.org/10.1093/oxfordhb/9780198728689.001.0001>.
- [3] BABALYAN, L., Roman Private Rights, E.R., 2004, p. 128.
- [4] Покровский И.А. История римского права, с. 300.
- [5] BARSEGHYAN, T., Civil Rights Manual for Institutions, third part, EPA edition, 2011, p. 504.
- [6] Civil Code of Armenia, adopted on 05.05.1998, Source: APRIL 1998.08.10/17(50), HO-239. Available in: arlis.am/DocumentView.aspx?docID=74658.
- [7] Civil Code of Armenia, adopted on 05.05.1998, Source: APRIL 1998.08.10/17(50), HO-239. Available in: arlis.am/DocumentView.aspx?docID=74658.
- [8] Civil Code of Armenia, adopted on 05.05.1998, Source: APRIL 1998.08.10/17(50), HO-239. Available in: arlis.am/DocumentView.aspx?docID=74658.
- [9] KUTANYAN, N., Institute of Unworthy Descendants in accordance with the laws of Armenia, "Justice" N. 1 (28), 2015.
- [10] Вавилин, Е. В., Осуществление и защита гражданских прав / Е. В. Вавилин. - 2-е изд., перераб. и доп. - Москва : Статут, 2016. - 415 с.

