Artículo de investigación

Influence of Roman private law on the basic principles of singular succession in the inheritance law of Ukraine, Poland and Lithuania

Influencia del derecho privado romano en los principios básicos de la sucesión singular en el derecho de herencia de Ucrania, Polonia y Lituania

Influência do direito privado romano nos princípios básicos da sucessão singular na lei de herança da Ucrânia, Polónia e Lituânia

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Abstract

The authors of the article analyzed the hereditary laws of the present day based on the designs that were used during the time of ancient Rome. The object of the study of the article is the succession – universal and singular. Universal succession is characterized by the fact that civil rights and responsibilities pass directly to other persons directly, as a whole, in full, by a single act, at the same time. Singular succession is a legal succession of individual rights or duties. By singular succession to individuals, only certain property benefits passed without any burden on them. These were the so-called testamentary disposition, carried out in the form of a legate and fideicommissum. The authors concluded that in the modern civil law of Ukraine, with the help of a legate, the testator is given the opportunity to assign the heir to the will of execution of any property obligation in favor of the person - the legatee specified by the testator. Poland and Lithuania also have a singular succession. The comparative legal analysis made by the authors testifies that they differ only in certain details from the constructions contained in the legislation of Ukraine. Thus, on the example of the analysis of the rules of inheritance law of the above-mentioned states, one can be convinced that the influence of the rules of Roman law on

Resumen

Los autores del artículo analizaron las leyes hereditarias de la actualidad en función de los diseños que se utilizaron durante la época de la antigua Roma. El objeto del estudio del artículo es la sucesión - universal y singular. La sucesión universal se caracteriza por el hecho de que los derechos y responsabilidades civiles pasan directamente a otras personas directamente, en su totalidad, en su totalidad, mediante un solo acto, al mismo tiempo. La sucesión singular es una sucesión legal de derechos o deberes individuales. Por sucesión singular a individuos, solo ciertos beneficios de propiedad pasaron sin ninguna carga para ellos. Estas fueron las llamadas disposiciones testamentarias, realizadas en forma de legado y fideicomiso. Los autores concluyeron que en la ley civil moderna de Ucrania, con la ayuda de un legado, el testador tiene la oportunidad de asignar al heredero la voluntad de ejecución de cualquier obligación de propiedad a favor de la persona, el legatario especificado por el testador. . Polonia y Lituania también tienen una sucesión singular. El análisis jurídico comparativo realizado por los autores demuestra que difieren solo en ciertos detalles de las construcciones contenidas en la legislación de Ucrania. Por lo tanto, en el ejemplo del análisis de las reglas de la ley de herencia de los estados

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the corresponding testamentary constructions is present and is decisive.

Keywords: universal succession, singular succession, legate, fideicommissum, inheritance law, testator, will.

mencionados anteriormente, uno puede estar convencido de que la influencia de las reglas de la ley romana sobre las construcciones testamentarias correspondientes está presente y es decisiva.

Palabras claves: sucesión universal, sucesión singular, legado, fideicomiso, ley de herencia, testador, voluntad.

Resumo

Os autores do artigo analisaram as leis hereditárias dos dias atuais com base nos desenhos que foram usados durante a época da Roma antiga. O objeto do estudo do artigo é a sucessão - universal e singular. A sucessão universal é caracterizada pelo fato de que os direitos e responsabilidades civis passam diretamente a outras pessoas diretamente, como um todo, por um único ato, ao mesmo tempo. A sucessão singular é uma sucessão legal de direitos ou deveres individuais. Por sucessão singular a indivíduos, apenas certos benefícios de propriedade passavam sem qualquer ônus para eles. Estas eram as chamadas disposições testamentárias, realizadas sob a forma de um legado e fideicomissum. Os autores concluíram que na lei civil moderna da Ucrânia, com a ajuda de um legado, o testador é dado a oportunidade de atribuir o herdeiro à vontade de execução de qualquer obrigação de propriedade em favor da pessoa - o legatário especificado pelo testador. A Polónia e a Lituânia também têm uma sucessão singular. A análise jurídica comparativa feita pelos autores atesta que eles diferem apenas em certos detalhes das construções contidas na legislação da Ucrânia. Assim, no exemplo da análise das regras da lei de herança dos estados acima mencionados, pode-se convencer que a influência das regras do direito romano nas construções testamentárias correspondentes está presente e é decisiva.

Palavras-chave: sucessão universal, sucessão singular, legato, fideicommissum, lei de herança, testador, testamento.

INTRODUCTION

The embodiment of the basic ideas and concepts of Roman law in the modern legal systems of European countries is a well-established fact. It is no exception to the rules of inheritance law, which are based on the basic principles of inheritance that were initiated during the time of the existence of Roman statehood as such.

One way of transferring an existing right from one subject to another is to transfer it in the order of succession, which implies the transition on the basis of the inheritance of property, as well as certain non-property rights and responsibilities of the testator (such rights and responsibilities that he belonged at the time of the discovery of the inheritance) (Musaev, 2007).

Thus, inheritance is one of the manifestations of civilian legal capacity and is one of the derivatives based on succession, ways of acquiring rights and obligations. It relates to cases of universal succession, which is characterized by the fact that civil rights and obligations pass directly to other persons as a whole, in full, one-off act, at the same time.

The singular succession is closely linked to the universal (succession in individual rights or duties). It is an indirect succession since individual rights from the hereditary mass go to the beneficiaries not directly from the testator but from the heir. However, singular succession cannot exist separately from the universal, because it arises only after the implementation of the universal successor of the testator's will, aimed at making the inheritance (Vasy`l`chenko, 2006).

METHODOLOGY

The authors of the article used dialectical, synergetic, anthropological, philosophical approaches, formal-logical, systemic, historical, comparative-legal, formal-legal and other methods of research.

In particular, on the basis of the dialectical method, the Institute of singular succession as a social phenomenon, which undergone minor transformations during its historical development and was preserved in the legislation of many countries, was considered.

The system method was used to highlight the current state and prospects of the development of domestic and foreign Inheritance law.

The comparative legal method was used to study and compare the Inheritance law of Ukraine, Poland, and Lithuania in the part of the normative consolidation of the Institute of singular succession.

PRESENTATION OF KEY RESEARCH FINDINGS

The concept of the distribution of succession to universal and singular succession is borrowed by the legislation of a number of states belonging to the Romano-Germanic legal family, in particular, Ukraine, Poland, and Lithuania, from the traditions of Roman private law.

Thus, inheritance in Rome was carried out in the two forms mentioned above: universal and singular succession.

The universal nature of inheritance was associated with the notion of the Romans about the immortality of the individual in his descendants. It was considered that the heir replaced the deceased decedent and is his natural successor, in particular, in the property legal relations of the deceased (Fedushhak–Poslavs`ka, 2004).

By singular succession to individuals, only certain property benefits passed without any burden on them (Pidopry`gora, & Kharytonov, 2004). So the testator could predict in the will that certain things from the succession get to third parties (Dozhdev, 2004). These were the so-called testamentary disposition.

Testamentary disposition - is a distinction from the hereditary mass, which was carried out not by the appointment of the heir, but by the entry into some kind of right or obligation of the deceased.

In Roman law, the writing had two forms:

- legatum;
- fideicommissum.

The legatum existed in the old right, they were marked by a severe character, which was inherent in all civil law institutions, and gave the right to bring a lawsuit. Therefore, the nature of the claim distinguished four of their species.

- Legatum per vindicationem.

For this form of legate, some kind of thing was given to a certain person: do-lego. The testator - the owner of the thing - the legatee received the right of ownership from the moment of the heir's entry into possession of the inheritance or since the discovery of the inheritance (Puxan, & Polenak – Aky`movska, 2000). If the heir was suus (his), he could demand a thing by way of a lawsuit action rei vindicatio, whose name is also named legate.

- Legatum per damnationem.

Under this form, the heir was obliged to give a certain thing to the legacy - dare damnas esto. The successor could write off his or her other thing, for example: his heir obliged to buy a house and transfer the legatee. Legatee had only the personal heir - action in personam.

- Legatum per praeceptionem (via permit).

The successor wrote to the heir a certain thing in addition to the hereditary part. This legate was protected by a lawsuit on the division of the inheritance - actio familie herciscundae.

- Legatum sidnendi modo.

This is the legate of the most recent origin. Subsequent to him was the thing belonging to the testator or heir (Kalyuzhny`j, 2005).

In modern civil law of Ukraine, with the help of the design of a legate, the testator is given the opportunity to put on heir (by the will) the execution of any property obligation in favor of the person - the final recipient indicated by the testator (Articles 1237 - 1238 of the Civil Code of Ukraine) (Baranny`k, 2005).

The domestic legislator described only the legate, known as "legatum per damnationem". It should be noted that his subject is the implementation of certain actions - something to dare or make (facere). Such an order generates in a legacy instead of substantive binding law, that is, the right to claim against the heirs (Novy`kov, 2006).

After analyzing the above, we can state that the basis of the testamentary disposition lies in the binding relationship between the heir, which is responsible for the implementation of the rejection, and the legatee who has the right to demand execution of the rejection. In this case, the legal agent acts as a creditor, and the heir is a debtor.

Testamentary disposition is always a right, not a duty. The testamentary disposition consists of one or several specific rights, and this is different from the universal inheritance, which is the right to enter into a set of legal relations, active and passive, which remained after the testator, at least not the whole, but only part of it.

Thus, the establishment of the content of the relationship between the testamentary disposition and the rules of liability for the debtor's debts has practical value, first of all, for the testator, since the determination of the difference between the heir and the disposer, in turn, is necessary to determine the legal consequences that the offender seeks to achieve after the discovery of his will.

Testamentary disposition or legate, as we see, is a convenient and effective means of giving the property benefits of persons in relation to which the testator does not want to create a relationship of inheritance, but seeks to give them a certain property benefit in the event of his death.

It should be noted that the establishment of legates under Roman private law was accompanied by a very formalized procedure. The testator could not either set nor cancel the legate (for example, before death) without complicating the rite. It was only legacies that could be imposed on the heirs of the will.

Therefore, along with the formal legates appear so-called fideicommissum - the commission of conscience. They could be imposed without excessive formalism, both before and after the making of the will.

Fideicommissum could be imposed on heirs by law. Initially, for the heir, the fideicommissum was a commitment to the moral plan - the heir turned as to fideicommissum, that is, honor of the heir, but eventually he received the protection of the law.

The so-called fideicommissum heredatis - the universal fideicommissum was used to oblige the heirs to transfer all or most of the property to a third person.

Often, in such will, it was talked about the emperor, the legal persons or the church (since legal entities were deprived of the possibility of inheriting the property of natural persons in accordance with the norms of civil law). But, of course, it could also be the case of individuals, to which the heir so far showed his favor. The heir remained only debts. Of course, it was unprofitable for him. The only way out was the abandonment of the inheritance, then the third person also did not receive anything.

In the 1st century AD, the Falsidia law was adopted, according to which the fiduciary heir in the event of the adoption of the inheritance gets the right to its fourth part - quatra. In the case of refusal to accept a heritage fiduciary (for example, in protest, so that the fideicommissum also received nothing), they are forced to take it by law and fulfill the requirement of the testator, but without allocating a proper fourth share.
Despite the fact that subsequently legate and fideicommissarium were merged in essence and in form: it was established that any legate or fideicommissarium creates for a person in whose favor it is established, a mandatory requirement of the heir, secured by a legitimate mortgage on the hereditary property (Kalyuzhny`j, 2005), it should be noted that in the matter of fideicommissarium of significant development acquired such special encumbrances beneficiary of free enrichment, as modus - a special encumbrance beneficiary free enrichment. For example, the testator assigns to the heir or a legatee a duty to erect a monument on a grave (monumentum).

Familiarity with the underlying principles of the succession in Roman law in the comparative context with the relevant norms of Ukraine, Poland and Lithuania may provide grounds for identifying common and distinctive features that are inherent in a designation similar to that which the heir in the making of a will can foresee in its content. Such orders include: "testamentary disposition " (Civil Code of Ukraine, 2003), "zapis" and "zapis windykacyjny" (Civil Code of Poland), "testamentary testamentinė išskirtinė" (Civil Code of Lithuania).

Ukraine.

The main act of civil law in Ukraine is the Civil Code of January 16, 2003 (hereinafter - the CC of Ukraine). The inheritance rights in this legal act are devoted to the book Sixth, entitled "Inheritance law ". The ability to make an expression of will within the will in the form of an order called the "testamentary disposition" is governed by Articles 1237-1239.

Testamentary disposition is the order of the testator within the limits of the will, the purpose of which according to Art. 1238 of the CC of Ukraine is to oblige the heir to perform certain actions of property character (to convey the real right or transfer to the property or other material

right the thing included or not included in the inheritance), within the real value of the property that has been transferred to he, with the deduction of the proportion of the debtor's debts attributable to this property, in favor of the final recipient, who, in turn, has the right to claim the heir.

Possibility to establish a testamentary refusal in the will is provided for in Part 1 of Art. 1237 of the Civil Code of Ukraine, according to which the testator has the right to make a testamentary disposition in the will. A similar provision is provided in par. 1 pp. 4 Paragraph 16 of the Resolution of the Plenum of the Supreme Court of Ukraine dated May 30, 2008 No. 7.

Poland.

The main act of civil law in the Republic of Poland is the Civil Code of April 23, 1964 (hereinafter - the CC of Poland) (Kodeks cywilny, n.d.). The inheritance rights in this legal act are devoted to the fourth book entitled "SPADKI". The possibility of making a will within the will in the form of an order called "zapis" is governed by Articles 968, 970 - 981 of the CC of Poland (the first chapter "Zapis zwykły", the third section "Zapis i polecenie", the third title "ROZRZĄDZENIA NA WYPADEK ŚMIERCI", the Book of the Fourth CC Poland).

Of course, only by the analysis of the norms contained in each of these articles will allow to fully determine the characterization of the testamentary order called "zapis".

It is worthwhile to note that none of these norms defines the concept of "zapis". However, from the content of §1 of Art. 968 of the CC of Poland sees what the main purpose of such an order is. Thus, in this norm it is stated that "spadkodawca", that is, the heir, may in the will oblige spadkobiercę, that is, the heir by law or by will, to provide certain property in favor of the mentioned person. That is the right of a person who decides to make a will, to provide in it an order that it may oblige the heir, both by law and by will, to perform a certain act concerning the transfer of a specified in favor of the one specified in the will. This feature is called "zapis zwykły", which can be translated as "normal record". After such an interpretation, the next question arises as to which of the orders of similar content is not a "normal record". The answer to this question can be found in §2 of the same article. Its content assumes that the testator can put an ordinary record also on "zapisobiercę", that is, the payee. Such a record already has the name "dalszy zapis", which is translated as "further record". Consequently, the first conclusions, which can be reached after reading the contents of Art. 968 of the CC of Poland, are as follows:

- firstly, the record is an order within the will, with the help of which the testator may impose the obligation to perform a certain act, to transfer the property specified in the will, in favor of the identified person (the beneficiary);
- secondly, by persons whom the testator may be obliged to perform such act by means of the record may be heirs (by law or by will), as well as the beneficiary himself in favor of another defector;
- thirdly, depending on who will be burdened with such a duty, the record can be of two kinds ("zwykły" - normal and "dalszy" - further).

In Art. 970 of the CC of Poland, two cases have been identified for determining the moment at which the beneficiary (receiver) may require performance of the record. So, if the record is normal, then in the absence of the other will of the testator, the payee may require performance of the record immediately after the announcement of the will. In the event that the record is further, the receiver, encumbered with such a record, may refrain from performing it until the time the record is made by the heir.

If the legate is accepted by several heirs, the record aggravates them in proportion to the size of their share in the inheritance, unless the heir decided otherwise. This provision is applied, respectively, for further recording and provides Art. 971 of the CC of Poland.

The norm contained in art. 972 of the CC of Poland provides that, in relation to the records, the general rules on the appointment of successors, their ability and/or impossibility to inherit apply.

The norms of the fourth book "SPADKI" of the CC of Poland contain a provision according to which the grounds for the release of a person who is burdened with a record of taking appropriate actions regarding the transfer of property. So, if the person in whose favor the recording was made does not want or can not be the debtor, the person who is burdened with the record is exempted from the obligation to perform it, however, in the absence of the other will of the testator, he must execute further records (Article 973 of the CC of Poland). Art. 974 of the CC of Poland contains a provision that provides additional grounds for exemption from the

obligation to do such acts, but they relate exclusively to the recipient. That is, it can be argued that the bases defined in this article are characteristic of a record called "dalszy". Such reasons are:

- first, the implementation by the legatee of the free transfer of rights to things received as a result of the record;
- secondly, the transfer of the right of claim arising out of the record of the legatee.

According to Art. 975 of the CC of Poland, the record can be made under the condition or with a deadline.
The subject of the record, as already indicated, may be the obligation to execute an action regarding the transfer of property specified by the record. Such property may consist of a thing or things that are individually defined, a thing or things that are identified by generic features. Depending on the type of thing to be transferred to the beneficiary, CC of Poland envisages different legal consequences of staying in such a relationship. Art. 976 of the CC of Poland states that in the absence of the other will of the testator, the transfer of individually determined things to the beneficiary is impossible if this thing is not inherited at the time of its discovery, or if the testator at the time of his death was obliged to alienate this thing. Despite the existence of an obligation between the person and the beneficiary of the encumbered record, the Polish legislature decided to apply to them a rule that is characteristic for settlements between the non-owner of the thing and the owner of the non-owner (the actual owner), which is applied as a result of satisfaction of the vindication requirements. Thus, there is an unusual situation for our perception when, for the protection of their rights, the beneficiary and the person who is burdened with the record can apply such methods that are of a speech-law nature. Yes, according to Art. 977 of the CC of Poland, if the subject of the record is an individually determined thing, then the legatee may submit one of the specified requirements, namely:

- a reward for the use of such things;
- about returning income;
- about the cost of things.

In turn, a person who is burdened with a record has the right to demand from the beneficiary the reimbursement of expenses for a thing, because, accordingly, the rules of the relationship between the owner and the actual holder of the thing are applied.

Another feature of the record, the subject of which is an individual-definite thing, is contained in the norm provided for in Art. 978 of the CC of Poland. According to its content, if the subject of the record is an individual-definite thing, the person burdened with the record bears, in relation to the lessee, the responsibility for the shortcomings of the thing, as the donor.

Its characteristic features are records, the subject of which is a thing or things defined by generic features (Articles 979 – 980 of the CC of Poland). In the case where the subject of the recording is things defined only by generic features, the encumbered person should provide things of average quality, taking into account the needs of the recipient. Legal consequences as a result of improper fulfillment of the obligation arising out of the recording, the subject of which are things determined by generic features, are as follows:

- the encumbered person with respect to the final recipient is responsible for the physical and legal defects of the things, since, accordingly, the rules of guarantee on sale are applicable.
- the legatee may require a person who is encumbered with a record only to compensate for the improper performance of the record or to provide, instead of defective things, things of the same kind, free of defects, and compensation for losses caused by the delay of the transfer of things.

In the article of the CC of Poland (Article 981), the legislator also defined the limitation period. Thus, the limitation period in relation to the filing of a claim for performance of an act prescribed by the bill expires five years from the day the right to demand the corresponding action came into effect.

Having become acquainted with the content of the norms of the CC of Poland, which provide for the possibility of establishing a testamentary order under the name "zapis", one can draw the following conclusions:

- is established within the will;
- provides for the obligation to transfer property from the composition of the inheritance in favor of the identified person (the remitter)
- there are two types - "zapis zwykły" and "dalszy zapis";
- "zapis zwykły" implies that the encumbrance of the order occurred in

relation to the heir, either by law or by will;
- "dalszy zapis" provides for encumbrances already by the final recipient in favor of the next remitter;
- the subject of the recording may be a thing or things that are individually defined, and also a thing or things that are determined by generic features;
- the right of the debtor's claim arises immediately after the announcement of the will (characteristic for "zapis zwykły"), or from the moment of recording (characteristic for "dalszy zapis");
- the limitation period in relation to the submission of a claim for the execution of an act prescribed by the notice expires five years from the date of the right to demand the corresponding action.

It is worthwhile to note that besides the testamentary order, entitled "zapis", with the help of which the heir can transfer the property specified in the will to non-heirs, while assigning the corresponding obligation to perform such an act as the heirs themselves (independently on whether they are successors by law or by will) and on the downstream recipients with their subsequent obligation to perform an appropriate action in favor of the next payee, of the CC of Poland also provides for other types of testamentary orders, for extra which can be used to provide property to third parties, without giving them the legal status of the heir, namely:

- "zapis windykacyjny" (the head of the second "Zapis windykacyjny" section of the third "Zapis i polecenie", the third title "ROZRZĄDZENIA NA WYPADEK ŚMIERCI", the book of the fourth Central Committee of Poland);
- "polecenie" (chapter three of the "Polecenie" section of the third "Zapis i polecenie", the third title "ROZRZĄDZENIA NA WYPADEK ŚMIERCI", Fourth book of the CC of Poland).

Lithuania.

The main act of civil law in the Republic of Lithuania, as already mentioned, is the Civil Code, which was adopted on July 18, 2000, and since September 6, the same year, it came into force. The fifth book of the CC of Lithuania is called "PAVELDĖJIMO TEISĖ", which in translation means "Ancestral right", and therefore regulates the inherited legal relationship (Lietuvos Respublikos civilinis kodeksas, n.d.).
The basic principles of the hereditary right of Lithuania are enshrined in Art. 5.1 of the CC of Lithuania. Thus, under hereditary succession should be understood as the transfer of property rights, liens and other property rights of a deceased person, his successors in law and/or will. The inheritance may include the following property rights and obligations:

- objects of the material world, ie movable and immovable things;
- intangible objects, in particular, securities, patents, trademarks;
- requirements of property character and property obligations of the testator;
- Intellectual property rights (copyrights for literary works and works of science and art, property related rights, as well as industrial property rights).

List of property rights and obligations in accordance with Part 2 of Art. 5.1 of the CC of Lithuania is inexhaustible, as the content of this provision provides that other rights and obligations stipulated by law may also be part of the inheritance.

Non-members of the inheritance are personal non-property and property rights that can not be separated from the person of the testator, namely:

- right to honor and dignity, authorship, right to author's name, the integrity of works, name of performer and integrity of performance;
- the right to alimony and other benefits paid to the testator in connection with his maintenance, as well as the right to a pension, except in cases provided for by law.

As can be seen from the contents of the above article, as well as from Art. 5.2 of the CC of Lithuania the Inheritance may be of two types - by law and by will. In the occasion when there are no successors by the law and/or by the will, or the inheritance was not accepted by any of the heirs, or the successor has deprived all heirs of the right to inherit, the property of the deceased is passed to the state in the order of hereditary succession.

The list of persons who may be successors by law and by will is set in Art. 5.5 of the CC of Lithuania. The heirs by law can be:

- individuals who survived the testator, including the children of the testator who were born after his death;
- the state of Lithuania.

According to Art. 5.15 of the CC of Lithuania may have a will made personally by the testator who is a capable person and can understand the significance of his actions and their consequences. The CC of Lithuania envisages the possibility of the testator to set separate orders in the will, among which there is a testamentary order entitled "testamental exclusivity" (Articles 5.23 - 5.25 of the Fifth Book of the CC of Lithuania).

No legal provision from these articles contains a definition of this notion. In Part 1 of Art. 5.23 of the CC of Lithuania only states that the testator is entitled to oblige the heir by will perform a duty in favor of one or more persons. In turn, such beneficiary (or beneficiaries) acquire the right to require performance of such duties. The above gives reasons to assert that on the basis of the "testamentinė išskirtinė" ordinance established in the will, there is an obligation between the heir to the will, on which the testator is assigned a certain obligation, and the beneficiary, in which the right of claim arises, which corresponds to such obligation.

The content of this article also defines the list of persons who may be beneficiaries on the basis of such a will within the will. They can be:

- heirs;
- other persons.

Thus, we can conclude that "other persons" should be understood as other participants in civil legal relationships that are not included in the circle of heirs by law and by will, as indicated above.
The heir to the will, whose share in the inheritance is burdened by such an order, must execute it only at the expense of the inherited property after satisfaction of the claims of the creditors of the testator (part 2 of article 5.23 of the CC of Lithuania).

Special rules for the execution of such an order are provided by the CC of Lithuania and the heirs heavily burdened by them, who have the right to a so-called mandatory share. Part 3 of Art. 5.23 of the CC of Lithuania states that such heir fulfills his duty at the expense of the inheritance only in that part that exceeds the size of his mandatory share.

The CC of Lithuania in Part 4 of Art. 5.23 refers to the grounds in the presence of which the obligation to comply with the actions provided for by this order may pass to other heirs. Such grounds include cases where:

- the obligated heir to the will died before the opening of the inheritance;
- the obligated heir to the will refused to accept the inheritance.

As a result of these reasons, the share in the inheritance burdened by this order of the heir is distributed among the other heirs who adopted it, in proportion.

The situation is interesting, provided by Part 5 of Art. 5.23 of the CC of Lithuania, according to which in the event that the immediate executor of the obligation arising out of the testamentation of an ordinance in the will, named «testamentinė išskirtinė», is not specified, then such an obligation will not be fulfilled until the determination of the inheritance of all heirs.

The CC of Lithuania calls only one reason for the "testamentinė išskirtinė" order to cease to exist. Such a ground in accordance with Part 6 of Art. 5.23 of the CC of Lithuania states that the death of the beneficiary prior to the opening of the inheritance.

In Art. 5.24 of the CC of Lithuania rules for the adoption of property benefits provided for the content of such a will in the will of the will are regulated. Under the general rule, the beneficiary is entitled to receive such benefit within three months, calculated from the day that he became aware or should become aware of his claim. Part 2 of this article lists the persons who must notify the beneficiary of the acceptance of "testamentinė išskirtinė". These include:

- the executor of the will or heritage manager;
- the heir must be obliged;
- or public notary at the place of the opening of the inheritance.

If the subject of such an order relates to the right to immovable property, the notary's communication is obligatory, since the latter must issue the certificate of the right to inheritance, and information about acceptance of "testamentinė išskirtinė" must be registered in the state register.

The CC of Lithuania allocates certain types of "testamentinė išskirtinė" orders. As seen from the

contents of Art. 5.25 of the CC of Lithuania the division of this order into types took place depending on what is the subject of such an expression of will within the will. Consequently, the subject of this order may be the transfer or provision of the following:

- things determined by individual characteristics;
- claims right;
- generic moving things;
- rights to use a foreign land, etc. immovable property or enterprise and (or) receipt of such use of profit and other useful properties;
- money supply.

Depending on what is the subject of a testamentary order entitled "testamentinė išskirtinė", the norms of Art. 5.25 of the CC of Lithuania contain their peculiarities of the legal regulation of the execution of each of the foreseen cases separately. In connection with this, it is advisable to stay in more detail on them.
First, if the object is a thing, defined by generic features, the beneficiary of such order becomes its owner from the moment of acceptance of the inheritance. It is from this moment that such a thing must be passed on to the beneficiary, together with all the rights and obligations associated with this thing, which belonged to the testator. The components of things in such a situation also pass into the ownership of the beneficiary.
Secondly, when the claim is a subject that constitutes the substance of the obligation in which the testator is a creditor, then all additional requirements arising from such an obligation and to be fulfilled prior to the death of the testator shall be transferred to the beneficiary together with the fundamental right requirements.
Thirdly, in the case when a subject acts as a moving object that is defined by generic features, "testamentinė išskirtinė" must be performed regardless of the presence of such things within the inheritance. If there are several things of the same kind in the inheritance, then the right to choose one of them belongs to the beneficiary only under the condition that the other is not foreseen by the will.

Fourthly, the norm in Part 4 of Art. 5.25 of the CC of Lithuania indicates the possibility for the testator with the help of the "testamentinė išskirtinė" to oblige the heir, to whom the immovable thing (land, house, apartment, etc.) or private enterprise passes, to provide another person, that is, the beneficiary, the right to use such a land plot, etc. real estate or business and / or receiving from such use of profit, and other useful properties.

Fifthly, the situation in which the heir has, by his testamentary guideline, established monetary security for the beneficiary, but without indicating its intended purpose, means that such beneficiary is entitled to:

- to provide him with money to pay for housing, food, medical services, and the purchase of clothes;
- to receive payment for the whole period of study, if such a beneficiary studies, but not more than twenty-four years of age.

On the example of the analysis of the rules of inheritance law of the above-mentioned states, one can be convinced that the influence of the Roman law on the corresponding testamentary constructions in the aforementioned sphere took place. And this, in turn, intensifies the interest in a more detailed consideration of the above issue within further scientific works.

CONCLUSIONS

Hereditary laws of the present day based on the designs that were used during the time of ancient Rome. There were two typed the succession – universal and singular. Universal succession is characterized by the fact that civil rights and responsibilities pass directly to other persons directly, as a whole, in full, by a single act, at the same time. Singular succession is a legal succession of individual rights or duties. By singular succession to individuals, only certain property benefits passed without any burden on them. These were the so-called testamentary disposition, carried out in the form of a legate and fideicommissum. In the modern civil law of Ukraine, with the help of a legate, the testator is given the opportunity to assign the heir to the will of execution of any property obligation in favor of the person - the legatee specified by the testator.

Testamentary disposition is the order of the testator within the limits of the will, the purpose of which according to Art. 1238 of the CC of Ukraine is to oblige the heir to perform certain actions of property character (to convey the real right or transfer to the property or other material right the thing included or not included in the inheritance), within the real value of the property that has been transferred to he, with the deduction of the proportion of the debtor's debts attributable to this property, in favor of the final recipient, who, in turn, has the right to claim the heir.

Possibility to establish a testamentary refusal in the will is provided for in Part 1 of Art. 1237 of the Civil Code of Ukraine, according to which the testator has the right to make a testamentary disposition in the will.

The Polish legislation contains more rules governing the relevant relationship. So, having got acquainted with the content of the norms of the CC of Poland, which provide for the possibility of establishing a testamentary order under the name "zapis", one can draw the following conclusions:

- is established within the will;
- provides for the obligation to transfer property from the composition of the inheritance in favor of the identified person (the remitter)
- there are two types - "zapis zwykły" and "dalszy zapis";
- "zapis zwykły" implies that the encumbrance of the order occurred in relation to the heir, either by law or by will;
- "dalszy zapis" provides for encumbrances already by the final recipient in favor of the next remitter;
- the subject of the recording may be a thing or things that are individually defined, and also a thing or things that are determined by generic features;
- the right of the debtor's claim arises immediately after the announcement of the will (characteristic for "zapis zwykły"), or from the moment of recording (characteristic for "dalszy zapis");
- the limitation period in relation to the submission of a claim for the execution of an act prescribed by the notice expires five years from the date of the right to demand the corresponding action.

As for Lithuania, the legislation of this country most closely regulates the relations that arise in connection with the use of testamentary disposition. Depending on what is the subject of a testamentary order entitled "testamentinė išskirtinė", the norms of Art. 5.25 of the CC of Lithuania contain their peculiarities of the legal regulation of the execution of each of the foreseen cases separately.

First, if the object is a thing, defined by generic features, the beneficiary of such order becomes its owner from the moment of acceptance of the inheritance. It is from this moment that such a thing must be passed on to the beneficiary, together with all the rights and obligations associated with this thing, which belonged to the testator. The components of things in such a situation also pass into the ownership of the beneficiary.

Secondly, when the claim is a subject that constitutes the substance of the obligation in which the testator is a creditor, then all additional requirements arising from such an obligation and to be fulfilled prior to the death of the testator shall be transferred to the beneficiary together with the fundamental right requirements.

Thirdly, in the case when a subject acts as a moving object that is defined by generic features, "testamentinė išskirtinė" must be performed regardless of the presence of such things within the inheritance. If there are several things of the same kind in the inheritance, then the right to choose one of them belongs to the beneficiary only under the condition that the other is not foreseen by the will.

Fourthly, the norm in Part 4 of Art. 5.25 of the CC of Lithuania indicates the possibility for the testator with the help of the "testamentinė išskirtinė" to oblige the heir, to whom the immovable thing (land, house, apartment, etc.) or private enterprise passes, to provide another person, that is, the beneficiary, the right to use such a land plot, etc. real estate or business and / or receiving from such use of profit, and other useful properties.

Fifthly, the situation in which the heir has, by his testamentary guideline, established monetary security for the beneficiary, but without indicating its intended purpose, means that such beneficiary is entitled to:

- to provide him with money to pay for housing, food, medical services, and the purchase of clothes;
- to receive payment for the whole period of study, if such a beneficiary studies, but not more than twenty-four years of age.

Based on the foregoing in this article, one can come to the conclusion that the main purpose of the decree of the testator in the will, entitled "testamentinė išskirtinė", is to provide certain property benefits from the composition of the inheritance to third parties, beneficiaries, without encumbrance with their respective responsibilities, that exist with respect to such property and are part of the inheritance. The existence of such a will of the testator, subject to acceptance of the inheritance heavily burdened by heirs and beneficiaries, generates a

relationship of obligation nature, in which the heir burdened by the debtor acts, and the beneficiary - the creditor.

The CC of Lithuania allocates certain types of "testamentinė išskirtinė" orders. As seen from the contents of Art. 5.25 of the CC of Lithuania the division of this order into types took place depending on what is the subject of such an expression of will within the will. Consequently, the subject of this order may be the transfer or provision of the following:

- things determined by individual characteristics;
- claims right;
- generic moving things;
- rights to use a foreign land, etc. immovable property or enterprise and (or) receipt of such use of profit and other useful properties;
- money supply.

Kharytonov, Kharytonova, Tolmachevska, Fasii and Tkalich (2019) state that modern civil society is created with the help of certain forms of self-constitution and self-mobilization.

Thus, on the example of the analysis of the rules of inheritance law of the above-mentioned countries, one can be convinced that the influence of Roman law on the respective testamentary constructions is present and is decisive for the investigated legal institutions of Ukraine, Poland and Lithuania.

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