



## PERSPECTIVES OF IMPROVEMENT OF THE LAW ENFORCEMENT PRACTICE OF INHERITANCE FORMALIZATION WITH A FOREIGN ELEMENT IN UZBEKISTAN BASED ON INTERNATIONAL EXPERIENCE

**Akhmedova Guzalkhon Utkurovna,**  
Tashkent state university of law, Tashkent, 100047, Uzbekistan

**Annotation:** *The article reflects the actual issues of the modern notary, based on comparative legal analysis of inheritance with existing foreign element; the author examines points of the law application and some aspects of the notary system improvement. According to the analysis of notarial practice in Uzbekistan, the author proposes the recommendations to restructure and improve the notary services in the country.*

**Key words:** *Heritage, foreign citizen, notarial activity, international agreements, chamber of notary.*

**Аннотация:** *мақолада ворисликнинг чет эл элементлари билан қиёсий-таҳлили асосида замонавий нотариатнинг долзарб масалалари ёритилган, ҳуқуқни қўллаш масалалари ва нотариат тизимини такомиллаштиришнинг баъзи томонлари ўрганилган. Меросни расмийлаштириш амалиёти таҳлили асосида нотариат институтини такомиллаштириш ва қайта шакллантириш бўйича бир нечта таклифлар келтирилган.*

**Калим сўзлар:** *ворислик, чет эл фуқароси, нотариал фаолият, халқаро шартнома, нотариал палата.*

**Аннотация:** *в статье отражены актуальные вопросы современного нотариата на основе сравнительно-правового анализа наследования с присутствием иностранного элемента. Автор рассматривает вопросы применения права, а также некоторые аспекты совершенствования системы нотариата. На основе анализа практики оформления наследства, автор выдвигает некоторые предложения по совершенствованию и реструктуризации института нотариата.*

**Ключевые слова:** *наследство, иностранный гражданин, нотариальная деятельность, международный договор, нотариальная палата.*

The Civil Code of the Republic of Uzbekistan defines the basic concepts of inheritance and cancellation of a will. As well as the form of the will and the act of its cancellation are determined by the law of the country where the testator had permanent residence at the time of drawing up the act, unless the testator chooses the law of the country of which he is a citizen. However, the will and its cancellation can not be invalidated due to non-compliance with the form, if the latter satisfies the requirements of the law of the Republic of Uzbekistan.

In addition, the Article 1199 of the Civil Code of the Republic of Uzbekistan determines that the law of the country where the property is located determines immovable property inheritance, and the law of the Republic of Uzbekistan determines the property that is enrolled in the state register of the Republic of Uzbekistan.

The problem of foreign citizens' inheritance registration whose property is located on the territory of the republic is considered to be very relevant in the notarial practice of Uzbekistan. When heirs appeal to a notary, in accordance with the generally accepted principle of the legislation of Uzbekistan, first of all, the notary reveals the place of opening the inheritance. In recent years, with the acquisition of independence, the citizens of Uzbekistan increasingly began to change citizenship, permanent residence, reserving the right of property ownership in the country.

As V.Ral'ko notes, it is of great practical importance determining which country's jurisdiction authorities own the proceedings on inheritance cases. Usually in contracts of legal assistance, proceedings of the inheritance of real estate is stipulated to be conducted by the institutions of justice of the country in whose territory the real estate is located. A number of treaties on legal assistance and legal relations consider the proceedings on the inheritance of movable property are competent to be conducted by the institutions of justice of the contracting party in whose territory the testator had the last place of residence [1].

The article 45 of the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, from January 22, 1993, assume the right to inherit property, with exception of the case

provided in paragraph 2 of this article (the right to inherit the real estate is determined by the legislation of the Contracting Party in the territory of which the property is located, and is determined according to the legislation of the Contracting Party in whose territory the successor had the last permanent place of residence).

The legislation of Uzbekistan determines the place of opening the inheritance as the last permanent residence of the testator. If the last place of residence of the testator is in one of the CIS member states or other foreign states, according to the international treaties on legal assistance and legal relations in civil, family and criminal matters, at the place of opening the inheritance, due to location of the property or its main part the notary checks the range of heirs and issues the inheritance right certificate.

On the basis of international treaties on legal assistance and legal relations in civil matters, family and criminal matters, and if the testator's last place of residence is one of the CIS states or other foreign states, a certificate of inheritance is issued due to place of residence of the testator in the case of the existence of movable property [2].

If there is a foreign principle in inheritance in Uzbekistan, a series of problems arises in determining the range of heirs and queues. Therefore, for example, a citizen of Afghanistan, who had a residence permit in Uzbekistan, died in Afghanistan, but real estate remained in Uzbekistan. In the Islamic Republic of Afghanistan, there is Muslim law in determining heirs, which is confirmed by the Sharia court in each city or province. Thus, the heirs, appealing to the notary in Uzbekistan with the court decision, must first prove their family relationship with the deceased testator. However, in the instruction on the procedure for notarial actions committing by notaries of the Republic of Uzbekistan, the norm for proving the fact of kinship by submitting a birth certificate of children and a certificate of marriage with a spouse prevails. Consequently, due to the norm, inclusion of the Sharia court's decision is not confirmed as an evidence document by the regulatory act for the practice of notaries. I.G.Medvedev, points out exercising his professional functions in the framework of undisputed jurisdiction, the notary can base his findings on the legal situation exceptionally relying on undisputed sources of information that do not cause doubts about their relevance, acceptability, sufficiency and authenticity. In this sense, the activity of a notary in evaluating materials submitted by the parties or collected by him personally is similar to the role of a judge in proving and is subject to the same logical and largely procedural rules [3].

L.M.Makhmutova, I.Z.Shagivaleyeva, perform in their work a conflict example of notarial practice of the Russian Federation: The case was conducted by a notary of the city Rostov. According to the law, five children of an Algerian citizen who died in Rostov at the place of permanent residence applied to him with a statement about issuing the certificate of inheritance right. Inheritance property consisted of a house in Algeria, an apartment in Rostov and a certain amount of money in the bank account. The material norms of Russian inheritance law are applicable to the inheritance of an apartment and a bank deposit. At the same time, the hereditary norms of Algerian law, applicable to the inheritance of a house in Algeria, proceed from the inequality of the first line male and female heirs' shares. Here the question arises, what should a notary take into account while conducting this inheritance case [4].

In another example of conflict, a hereditary case conducted by the notary of St. Petersburg in 2014 [11], in which, after the death of a Russian citizen who temporarily lived in Germany, an inheritance including deposit in a Russian bank was opened. According to Article 1224 of the Civil Code of the Russian Federation, for this deposit, as well as for other personal estate, a certificate of the right to inheritance should have been issued by an authorized German body, in this case the court. However, in practice, it is difficult for the German court to issue such certificate, especially to the heir who is in Russia.

Indeed, it is hardly appropriate to require a German court to issue a certificate of inheritance of such specific property as a deposit in a Russian bank. Eventually, the heir appealed to the Russian notary at the location of the contribution, which issued the above certificate of the right to inheritance. This case is the best way to show that not all arrangements and principles of the current legislation contribute to the rapid and adequate resolution of the hereditary relationship, and, often, only aggravate the process of accepting an inheritance [5].

Similar situations in the design of inheritance rights take place and become frequent in the practice of notaries of Uzbekistan. For example, a citizen of Russia had an apartment in the Republic of Uzbekistan, in the city of Tashkent, but in accordance with requirements of the Minsk Convention as the result of correspondence of the two countries judicial authorities, a hereditary case was identified in the Russian Federation at the place of his last residence. Uzbek notaries were provided by a certain dilemma to register an apartment in accordance with a hereditary case opened by Russian notary.

The rules regulating hereditary relations with a foreign element in Kazakhstan are also notable. For example, the testator lived in Kazakhstan and was a citizen of the Republic of Kazakhstan, hereditary

property is located in Kazakhstan, and here his successor lives in the republic too, who turned out to be a foreign citizen. Although this circumstance is a foreign element, it does not lead to the application of the norms of foreign law. Moreover, even the fact that the heir permanently resides abroad does not change matters: and in this case, not foreign law, but the Law of Kazakhstan is applicable. It is another case, if the testator permanently lived abroad, or if he was a foreign citizen. Here each of these foreign elements has significant weight and importance, therefore their existence leads to the application of the foreign law norms. In other words, the meaning of each foreign element may be different. Kazakh citizens have the right to receive hereditary property if the inheritance has opened abroad. The inheritance rights arising from the relevant foreign laws are fully recognized in Kazakhstan.

In the republic of Kazakhstan, the hereditary rights issues of citizens are dealt by the following international juridical agencies: the International Association "AsiaInterCollege", formed on December 10, 1990 and the "KazakhInclusive Board", approved by the decree of the Ministry of Justice collegium N15 of December 18, 1993. The following hereditary cases have been under the practice of above-mentioned bodies:

- on the inheritance of property of A., who died in Poland (hereditary property constitutes a house and a land plot),
- on the inheritance of a deposit in one of the banks in London, the heirs of the deceased live in Kazakhstan, (the sum of the contribution is 2 million US dollars),
- on the inheritance of the hotel and the land after the death of Saudi citizen [6].

Due to clause 13 of the Instruction on the procedure for notarial acts performed by notaries in the Republic of Uzbekistan, the notary takes measures to protect the hereditary property, by studying facts and documents, by personal conversation. It is important to note the fact of identifying by the notary of Uzbekistan about the presence or absence of a will of a foreign citizen (testator), whose property is hereditary. This type of action is important for identifying heirs, preventing disputes and taking measures to protect the hereditary property of a foreign citizen (testator). Based on the results of studying the experience of foreign notaries, about the registration of wills and the exchange of information on them, their registration is considered to be in confirmation with a special international convention concluded on May 16, 1972 in the city of Basel.

Using the data from the registry of wills of the Convention party countries, the international circulation of wills and their revocation, ensuring equal access to justice is greatly facilitated, and cooperation is being strengthened. Currently, in the notary system of Uzbekistan starting from 2018, a single base of testaments at the republican level has been created. In this direction, the efficiency of notaries has increased significantly and the red tape with the workflow has decreased.

The existence of the International Union of Latin Notaries is important in the world system of notaries. Creation of the Union is due to the achievement of the following goals:

- for the representation of the notary in international organizations;
- for cooperation with national, including notarial organizations;
- to study and improve the law in the field of notarial activities;
- to disseminate the principles of Latin notaries;
- for the international notarial congress organization.

Today, the International Union of Latin Notaries has a serious political weight. In particular, the interests of the Union are represented at the UN, UNESCO, the Hague Conference on Private International Law, the European Commission and the European Parliament, the Council of Europe, *UNIDROIT* and other international organizations. In the countries of the International Union of Latin Notaries, the continental acts, i.e. Roman-Germanic legal system is implemented, and notarized documents have public recognition and increased evidentiary force.

In view of the reforms of the Republic of Uzbekistan carried out in the judicial-legal system, the institute of notaries gradually goes over to the institute of preventive justice. The need to bring legislation in accordance with international standards has risen. The creation of an off-budget notary has been identified as a priority task of implementing the measures specified in the Action Strategy for 2017–2021 in the field of notaries. With in several years, discussions on the creation of the Notary Chambers in the Republic of Uzbekistan have been held which are expected to function jointly with the judicial authorities for:

- ensuring that all notaries, members of the chamber fulfill their professional duties in accordance with applicable law;
- enhancing the professional training of notaries;

- conducting classes for members of the chambers inviting foreign specialists to these classes;
- holding international conferences, round tables with the participation of representatives of the International Union of Latin Notaries;
- developing and implementation the innovative methodological recommendations on the notarial practice, including inheritance.

The creation of the Notary Chambers will create the opportunity of conducting classes and discuss problems arising from the new legislation application, mastering the practice of applying the norms of foreign law and international treaties.

The issue of international inheritance, along with other actions where a foreign element is evident in Uzbekistan is regarded as difficult. In conditions of an active process of investing in the economy of the country by foreign entities and acquisition of property by them in Uzbekistan revising the procedure for international inheritance has become necessary. Thus, the need for methodologically developed instructions, the experience exchange with foreign notaries, the standards unification for inheritance with the CIS countries, determines the prerequisites for the creation of the Notary Chambers. This will firstly allow notaries to determine the law enforcement practice, to identify the procedure for registration of inheritance and other notarial actions, to simplify the procedure for requesting the presence or absence of a will, a hereditary case in another state and finally, as the major issue - to avoid disputes.

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