INHERITANCE BY LAW IN THE LEGISLATION OF THE REPUBLIC OF TAJIKISTAN AND THE KYRGYZ REPUBLIC

YUSIFOV Shukur Mahammad oghlu - Head of the Department of "Civil Law" of Baku State University, Doctor of Philosophy in Law, Associate Professor
DOI: https://doi.org/10.71404/LAW.UA.2025.2.30

The article states that after gaining independence, a new Constitution and Civil Code were adopted in both the Republic of Tajikistan and the Kyrgyz Republic. The Constitution of both states guarantees the right to inheritance. By law, issues related to inheritance are regulated by the Civil Codes of those states.

Keywords: Constitution, Civil Code, article, state, section

Any person, doing business or working in various sectors of the national economy, becomes the owner of this or that property. After a certain time, he inevitably faces the question of who will inherit this property and in what order [1, p. 3].

According to the first part of Article 32 of the Constitution of the Republic of Tajikistan dated November 6, 1994 (as amended and supplemented on May 22, 2016), consisting of 10 (ten) chapters and 100 (one hundred) articles, everyone has the right to property and the right to inheritance [5]. This article is reflected in the second chapter of the Basic Law, entitled "Rights, Freedoms, and Basic Duties of Man and Citizen".

Section VII of the Civil Code of the Republic of Tajikistan dated December 24, 2022 (this Code entered into force on July 1, 2023), consisting of 1351 (one thousand three hundred and fifty-one) articles, is devoted to the right of inheritance [3]. Chapter 69, which is included in that section is called "General provisions on inheritance" (Articles 1252-1259), Chapter 7 "Inheritance by will" (Articles 1260-1272), Chapter 71 "Inheritance by law" (Articles 1273-1281), Chapter 72 "Acceptance of inheritance and refusal of inheritance" (Articles 1282-1305).

Article 1273 of the Code, consisting of 7 (seven) parts, entitled "General Provisions on Inheritance by Law", states:

«1. In the absence of a will (the testator does not bequeath, part of the property is not bequeathed, the will is declared invalid, the heir does not accept the inheritance according to the will, etc.), a will is made according to the law

2. Heirs by law are called to inherit in the order of priority established by this Code.

3. The heirs of each subsequent line receive the right to inherit in the event of the absence of heirs of the previous line, their removal from the inheritance, their failure to accept the inheritance or their refusal of it.

4. Heirs of each order with equal shares have the right to inherit, with the exception of inheritance by representation. The receipt of an inheritance by will by an heir cannot affect his share in the event of his receiving an inheritance by law.

5. The provisions of this Code on the order of calling heirs by law and to inheritance, and on the size of their shares in the inheritance may be changed by a notarized agreement of interested heirs concluded after the opening of the inheritance. Such an agreement must not affect the rights of heirs who do not participate in it, as well as heirs who have the right to a compulsory share.

6. In inheritance by law, the adopted child and his descendants on the one hand, and the adopter and his relatives on the other hand, are equal to blood relatives. Adopted children and their descendants do not inherit by law after the death of the adopted child's true (blood) parents, other blood relatives. The adopted child's parents and other true (blood) relatives do not inherit by law after the death of the adopted child and his descendants.

7. If, upon adoption, in accordance with a court order, the relationship with the father or mother or other true relatives is maintained, the adopted person and his descendants after the death of these persons and in turn after the death of the adopted person and his descendants, may receive an inheritance by law. Receiving an inheritance in accordance with this rule does not apply to the inheritance provided for by the rules of Part 6 of this Article".

First of all, the inheritance by law is received in equal shares by the children (including adopted children), spouse and parents, adoptive parents of the testator, as well as the child of the deceased born after his death.

The grandchildren of the testator and their descendants inherit by right of representation (Article 1274 of the Civil Code of the Republic of Tajikistan).

According to the Article1275 of the mentioned Law, The second-order heirs are the testator's brothers and sisters, as well as his grandfather and grandmother, both on his father's side and on his mother's side. The children of the testator's brothers and sisters (nephews and nieces) inherit by right of representation, according to Article 1276, The third-order heirs are the testator's parents' brothers and sisters (paternal and maternal uncles and paternal and maternal aunts). The testator's cousins inherit by right of representation.

Article 1277 of the Civil Code of the Republic of Tajikistan, consisting of 3 (three) parts, entitled "Inheritance by Right of Representation" states:

"1. The share of the heir by law who died before the opening of the inheritance or simultaneously with the testator shall pass by right of representation to his respective descendants in the cases provided for in parts 2 of Article 1274, 1275 and 1276 of this Code, and shall be divided equally between them.

2. The descendants of the heir by law who was deprived of the inheritance by the testator shall not inherit by right of representation.

3. The descendants of the heir who died before the opening of the inheritance or simultaneously with the testator and who would not have had the right to inherit in accordance with the requirements of Article 1258 of this Code shall not inherit by right of representation".

Article 1258 of the Civil Code of the Republic of Tajikistan, consisting of 6 (six) parts, entitled "Unworthy heirs" states:

"1. Persons who intentionally took the life of the testator or any of the possible heirs, or made an attempt on their life, shall have no right to inherit either by will or by law.

2. Persons who intentionally prevented the testator from implementing his last will and thereby contributed to their own or close persons being called to inherit or to an increase in the share of the inheritance due to him or them, shall have no right to inherit either by will or by law.

3. Parents who have had their parental rights revoked and have not had these rights restored by the time the inheritance is opened, as well as parents (adoptive parents) and adult children (adopted children) who have evaded fulfilling their obligations imposed on them by law to support the testator, shall have no right to inherit by law.

4. The circumstances that serve as grounds for excluding unworthy heirs from inheritance shall be established by the court. If the testator, when drawing up the will, is aware of the circumstances provided for in parts 1 and 2 of this article, but, despite this, bequeaths his property, such a person will not be recognized as an unworthy heir.

5. A claim for recognition of a person as an unworthy heir must be filed by interested parties within three years from the moment when this person took possession of the inherited property.

6. The rules of this article shall apply accordingly to a testamentary trust (legacy)".

Article 1278 entitled of the mentioned Law "Inheritance of disabled persons who are dependent on the testator" states that, the number of heirs by law includes incapacitated persons who were dependent on the testator for at least one year before his death and lived together with him. If there are other heirs by law, they inherit together with the heirs of the order that is called to inheritance.

Incapacitated persons who are among the heirs by law, but who are not included in the circle of heirs of the order that is called to inheritance, inherit together and equally with the heirs of this order, if they were dependent on the testator for at least a year before his death, regardless of whether they lived together with the testator.

The Civil Code of the Republic of Tajikistan also provides for the mandatory share of some heirs in the inheritance. Thus, Article 1279 of the aforementioned Code, consisting of 4 (four) parts, entitled "The Right to an Obligatory Share in the Inheritance", states:

"1. Minor or disabled children of the testator, as well as his disabled parents or disabled spouses, as well as children conceived during the testator's lifetime and born alive after the opening of the inheritance, inherit, regardless of the contents of the will, at least two-thirds of the share due to each of them in the case of inheritance by law (compulsory share). Incapacitated persons who are dependent on the testator also have the right to a compulsory share (Article 1278 of this Code).

2. The right to a compulsory share of the inheritance is satisfied at the expense of a part of the uninherited property, regardless of the reduction in the rights of other heirs by law to this part of the property. If the uninherited property is insufficient, the right to a compulsory share is satisfied at the expense of the inherited property.

3. The compulsory share includes everything that the heir entitled to such a share receives from the inheritance on any basis, including the value of the testamentary instruction established in the interests of such heir.

4. Any restrictions and encumbrances established in a will for an heir entitled to a compulsory share in the inheritance are valid only with respect to that part of the inheritance transferred to him that exceeds the compulsory share".

Article 1280 of the aforementioned Code deals with the rights of spouses during inheritance. According to that article the right of inheritance belonging to spouses by virtue of a will or law does not affect their other rights related to their marriage to the testator, including the right of ownership of a portion of the property jointly acquired during the marriage. The share of the deceased spouse in this property, determined in accordance with Article 327 of this Code, is included in the estate, and it is inherited. Spouses may receive an inheritance if their marriage is not officially dissolved. In accordance with a court decision, spouses may be removed from inheritance if it is confirmed that the actual marital relationship between them ceased before the opening of the inheritance, and they did not run a common household for at least three years.

In the following cases, the inheritance passes to the state of Tajikistan: the testator has deprived all the heirs of the right of inheritance; all the heirs have no right to receive the inheritance; all the heirs have refused the inheritance without specifying the heir in whose favor the refusal is made; all the heirs have not accepted the inheritance; the testator has no heirs either by law or by will.

If any of the heirs has refused the inheritance in favor of the state, the share of the inherited property due to this heir passes to the state.

If, in the absence of heirs by law, only part of the testator's property is bequeathed, the rest passes to the state.

According to the second part of Article 15 of the Constitution of the Kyrgyz Republic dated April 11, 2021, which combines 116 (one hundred and sixteen) articles and consists of 5 (five) sections, The right of inheritance is guaranteed [4]. This article is reflected in the first section of the Basic Law, entitled "Fundamentals of the Constitutional Structure".

Section VI of the Civil Code of the Kyrgyz Republic dated January 5, 1998 is devoted to the right of inheritance [2]. Chapter 60 in that section is entitled "General Provisions on Inheritance" (Articles 1118-1126), Chapter

61 "Inheritance by Will" (Articles 1127-1140), Chapter 62 "Inheritance by Law" (Articles 1141-1152), and Chapter 72 "Acquisition of Inheritance" (Articles 1153-1166).

Article 1141 of the Code, entitled "General Provisions", consisting of 3 (three) paragraphs, states:

"1. Heirs at law shall be called to succession pursuant to the ranking of priorities stipulated in Articles 1142-1146 of this Code.

2. In intestate succession adopted persons and their descendants on the one hand and adoptive parents and their relatives on the other hand shall be deemed as blood relatives.

Adopted persons and their descendants shall not inherit at law after the death of blood parents of the adopted person, his other blood relatives in the line of ascent.

Parents of the adopted person and his other blood relatives in the line of ascent shall not inherit in intestate succession after the death of the adopted person and his descendants.

3. Every subsequent priority of heirs at law shall receive the right to succession in the event of the absence of the successors of the prior ranking, their elimination from the succession, their non-acceptance or renunciation of succession".

According to the Article 1142 of the mentioned Code, children of the testator, including adopted, as well as the spouse and the parents (adoptive parents) of the testator shall have top priority in intestate succession. Children of the testator who were born after his death shall also be referred to top priority heirs.

According to the Article 1143 of the mentioned Code, if there are no first-order heirs, the right to inherit by law in the second order is received in equal shares by the full and half-siblings of the testator, as well as his paternal and maternal grandparents

Children of full and half brothers and sisters of the testator (nephews and nieces of the testator) inherit by right of representation.

In accordance with Article 1144 of the Civil Code of the Kyrgyz Republic, if there are no heirs of the first and second order, the right to inherit by law in the third order is received in equal shares by the testator's uncles and aunts.

The testator's cousins inherit by right of representation

Article 1145 of the Code, entitled "Heirs of subsequent successions", consisting of 3 (three) paragraphs, states:

"1. If there are no heirs of the first, second and third order, the right to inherit by law is received by relatives of the testator of the third, fourth and fifth degree of kinship who are not related to the heirs of the previous order.

The degree of kinship is determined by the number of births separating relatives from one another. The birth of the testator himself is not included in this number.

2. In accordance with paragraph 1 of this article, the following are called to inherit:

as heirs of the fourth order - relatives of the third degree of kinship - great-grandfathers and great-grandmothers of the testator; as heirs of the fifth order - relatives of the fourth degree of kinship - children of the testator's own nephews and nieces (second cousins) and the full brothers and sisters of his grandfathers and grandmothers (second cousins);

as heirs of the sixth order - relatives of the fifth degree of kinship - children of the testator's second cousins (second cousins), children of his second cousins (second cousins), and children of his second cousins (second cousins).

3. If there are no heirs of the previous lines, the stepsons, stepdaughters, stepfather and stepmother of the testator are called to inherit as heirs of the seventh line by law".

The share of a legal heir who died before the opening of the inheritance or simultaneously with the testator shall pass by right of representation to his children in the cases provided for in paragraph 2 of Article 1142, paragraph 2 of Article 1143 and paragraph 2 of Article 1144 of this Code, and shall be divided equally between them.

The children of an heir by law who has been deprived of inheritance by the testator do not inherit by right of representation. The children of an heir who died before the opening of the inheritance or at the same time as the testator and who would not have had the right to inherit in accordance with Article 1126 of this Code do not inherit by right of representation (Article 1147 of the Civil Code of the Kyrgyz Republic).

Article 1126 of the Civil Code in question is called "Elimination of Unworthy Successors from the Succession". According to this article, which consists of 6 (six) paragraphs, persons who have committed wilful homicide of the testator or of some potential successors or committed some criminal attempt to their lives shall not have the right to succession either intestate or testamentary. Except the cases where the testator names these persons in the will after the criminal attempt to his life.

Persons who intentionally obstruct the testator to express his last will or interfered with its performance which leads to their acknowledgment or acknowledgment of their relatives as successors or results in the increase of their share in succession shall not have the right to succession either intestate or testamentary.

Parents who outlived their children and who were deprived of parental rights towards them and were not restored in these rights by the time of commencement of the succession, as well as parents (adoptive parents) and major children (adopted children) who avoid to perform obligations of maintaining the testator imposed on them by law shall not have the right to intestate succession.

Circumstances providing the grounds for elimination of unworthy successors from the succession shall be defined by a court at the claim of a person who by this elimination shall have property consequences related to succession.

The rules of Article 1126 of the Civil Code of the Kyrgyz Republic also apply to testamentary refusal.

The rules of Article 1126 of the Civil Code of the Kyrgyz Republic apply to any heirs, including those entitled to a compulsory share.

N.P. Prigoda indicates that the following are proposed to be distinguished as principles of inheritance by law in the Kyrgyz Republic: calling citizens to inherit in order of priority; determining persons included in the circle of heirs by law, based on the criteria of a birth record (establishing the presence of kinship where there is none, or confirming blood origin), marriage, adoption and dependent status; taking into account not only the actual, but also the expected will of the testator [6, p. 8].

According to the civil legislation of Kyrgyzstan, the number of heirs by law includes disabled persons who were dependent on the testator for at least one year before his death and lived together with him. If there are other heirs by law, they inherit together with the heirs of the order that is called to inheritance.

Incapacitated persons who are among the legal heirs specified in Articles 1143-1145 of the Civil Code of the Kyrgyz Republic, but who are not included in the circle of heirs of the order called to inherit, inherit together with the heirs of this order, if they were dependent on the testator for at least one year before his death, regardless of whether they lived together with the testator.

Persons called to inherit on the basis of Article 1148 of the Civil Code of the Kyrgyz Republic, in the presence of other heirs by law, inherit together no more than one fourth of the inheritance.

Article 1149 of the said Code is entitled "The Right to an Obligatory Share in the Inheritance". According to the first part of that article, which consists of 3 (three) paragraphs, children or incapacitated children of the testator, including adopted ones, as well as his incapacitated spouse and parents, including adoptive parents, inherit, regardless of the content of the will, no less than two-thirds of the share that would be attributed to each of them upon inheritance by law (obligatory share).

On November 4, 2022, the Plenum of the Supreme Court of the Kyrgyz Republic adopted a 45-point Decision entitled "On civil practice related to the consideration of disputes arising from hereditary law" [7]. Paragraph 10 of this Decision states that, heirs, both by law and by will, may be persons specified in Article 1125 of the Civil Code of the Kyrgyz Republic.

The courts should take into account that legal entities may inherit regardless of their organizational and legal form. In this case, a necessary condition for recognition as heirs is the presence of state registration of a legal entity at the time of opening of the inheritance in accordance with the requirements of the Law of the Kyrgyz Republic "On state registration of legal entities, branches (representative offices)".

Article 1125 of the Civil Code of the Kyrgyz Republic is entitled "Successors". According to that article, individuals who are alive on the date of the commencement of succession, as well as those conceived during the testators lifetime and born alive after the commencement of the succession may be heirs at will or heirs at law.

Legal entities established before the commencement of the succession and existing by the time of the commencement of the succession, as well as the state and local communities may be heirs at will.

References

1. Abdukhalikov, A.M. Inheritance in international private law: / abstract of a thesis for a PhD in Law: / - Dushanbe, 2010. - 26 p.

2. Civil Code of the Kyrgyz Republic of January 5, 1998 (Part II: as amended on 12-02-2025): [Electronic resource] / https://is.gd/0x2KYs

3. Civil Code of the Republic of Tajikistan of December 24, 2022 (as amended of the Law of the Republic of Tajikistan of 13.11.2024): [Electronic resource] / https://cis-legislation.com/document.fwx?rgn=146565

4. Constitution of the Kyrgyz Republic (Accepted by referendum (national vote) on April 11, 2021): [Electronic resource] / https://is.gd/dx6RsU

5. Constitution of the Republic of Tajikistan: [Electronic resource] / https://is.gd/vktJfs

6. Prigoda, N.P. Inheritance by law in the Kyrgyz Republic: / abstract of a thesis for a PhD in Law: / - Bishkek, 2006. – 26 p.

7. Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic dated November 4, 2022 No. 23 "On judicial practice in civil cases related to the consideration of disputes arising from inheritance legal relations": [Electronic resource] / https://is.gd/NyoUmf