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THE ISSUE OF LEGAL INHERITANCE IN CIVIL LAW

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ANNOTATION

this article includes the development of the institution of legal inheritance, various scientific conceptual points of view of scientists, the transfer of rights and obligations in inheritance from one person to another, as well as issues of legal inheritance when legal entities are reorganized.

Key words

inheritance, legal entities, civil law, rights and obligations, property rights, heirs.

One of the central and integral features of the reorganization is the legal succession that arises as a result of it. Before starting a study of this legal phenomenon in relation to the reorganization process, we should first turn to the general theoretical aspects of succession.

The institution of legal succession, for all its importance and significance, has not, it seems, received the necessary theoretical development in the scientific works of domestic civil scientists. The work of B.B. Cherepakhin [1] is currently virtually the only fundamental scientific research on this issue. At the same time, there is no doubt that the problem of succession deserves closer and more detailed study.

The term "succession" is used quite widely in the legal literature when covering many issues of civil law. However, there are different approaches both to defining the very concept of succession and to identifying its types. One of the theoretical prerequisites for solving the problem of succession is related to the development of its concept and the identification of its characteristics.

Issues of succession in science and in the academic discipline of civil law are considered and studied, as a rule, only when studying other issues of civil law - reorganization of legal entities, inheritance, civil transactions, including changes in persons in an obligation. At the end of the 19th - beginning of the 20th centuries problems of succession were covered mainly in relation to inheritance and various transactions [2]. The theoretical and practical aspects of reorganization had not yet been developed at this time, and existing forms of actual reorganization were considered only as types of grounds for terminating legal entities, without distinguishing them as independently existing procedures other than the

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liquidation of legal entities. The current situation with the scientific study of issues of legal succession can be explained by the fact that the institution of legal succession is of a secondary nature, dependent on other institutions of civil law.

In the process of presenting the general theoretical problems of succession, it seems possible to analyze the conclusions of scientists about succession, made by them both in the direct study of this institution and other aspects of civil law, since the object of scientific research in all these cases is one legal phenomenon. In addition, this approach will allow us to comprehensively consider succession, develop its definition, and show its types and elements.

The most common understanding in the legal literature is the understanding of succession as the transfer of rights and obligations from one person (legal predecessor) to another person (successor) [3]. But before we begin a detailed analysis of the concept of succession, it should be noted that some civil scholars in some cases practically deny the need for this category, believing that no transfer of rights occurs between subjects. Thus, V.A. Ryasentsev, considering the issue of derivative grounds (methods) for the emergence of property rights, concluded that "the term "transfer of property rights" used in legislation and in literature is conditional" [4]. In reality, in his opinion, it is a thing, not a right, that is transferred from one person to another. Rights and responsibilities are ideological categories; movement, like movement in space, is not inherent in them. Therefore, he believed that "in the case of known legal facts (for example, in a purchase and sale agreement), legal norms provide for the termination of property rights from one person and the emergence of it in another to a certain extent." The inconsistency of the author of this position is obvious. On the one hand, V.A. Ryasentsev points to the termination of the subject's right, and on the other hand, he speaks of the conditional transfer of this right to a third party. The conditional understanding of the transfer of rights and obligations proposed by the author inevitably entails a very conditional attitude towards the term "succession", turning it into a category that has neither theoretical nor practical meaning. With this approach, the need for this concept is completely lost.

N.D. Egorov, analyzing inheritance relations, came to the conclusion that it is not the subjective rights and obligations of the testator that are inherited, but the real material and some spiritual values that belong to him [5]. He considers the disadvantage of the position on the transfer to the heir of the rights and obligations of the testator, and therefore the change of persons in a continuing legal relationship, the fact that with this approach the conclusion about the existence of a civil legal relationship for a certain time without one of the subjects is inevitable. Heirs can become subjects of those civil legal relations in which the testator participated only after accepting the inheritance. Therefore, N.D. Egorov suggests

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talking not about hereditary succession, but about hereditary succession. In accordance with this, in his opinion, the right to accept an inheritance means the right to acquire civil rights and obligations similar to those that the testator had at the time of his death. However, like V.A. Ryasentsev, N.D. Egorov still admits that we can conditionally talk about the transfer of the subjective rights and obligations of the deceased to living persons. The conditionality of such a transition is determined by him in the form of termination of subjective rights and obligations belonging to the testator. Under such circumstances, even the conditional use of the term "transition" is paradoxical. It seems that the author, realizing the impossibility of completely abandoning the concept of succession developed in civil law, is trying in a certain way to combine it with his proposed position on the succession of only material objects. But this situation only leads to contradictions. The reference by N.D. Egorov in justifying the conditionality of the transfer of rights and obligations to the different content of the subjective rights of the heirs and the testator is unfounded. The discrepancy between the forms of ownership of the heir and the testator does not indicate the impossibility of succession. The real property relationship that existed before the succession is preserved; it is not replaced by any other real right. Earlier, B.B. Cherepakhin correctly noted that when replacing an active or passive subject in a legal relationship, the main legal characteristic of the transferable right or transferable obligation remains unchanged.

V.A. Belov is also a supporter of the position that does not allow the definition of succession as the transfer of rights and obligations from one person to another. The starting point for him is the impossibility of classifying property rights as objects of civil legal relations. He believes that subjective rights and legal obligations constitute only the content of a legal relationship. This point of view is "incompatible with the prescription of Art. 128 of the Civil Code on classifying property rights as objects of civil rights, because the content of a legal relationship cannot at the same time be the object of even a different legal relationship." Therefore, he concludes that it is impossible to talk about rights to rights and rights to obligations, therefore the existence of categories such as "transfer of rights", "transfer of rights" is unacceptable. In support of his position, V.A. Belov points to the following arguments of logical and legal nature.

Firstly, he, like N.D. Egorov, gives the argument that when transferring rights or obligations, the legal relationship for a certain time (even if infinitely short in duration) remains without one of the subjects, and the right or obligation is actually to no one do not belong. However, "rights and obligations cannot exist on their own, regardless of the subjects (persons). There are no rights that belong to no one, just as there are no responsibilities." Secondly, V.A. Belov, conducting a legal analysis of property rights as objects of civil legal relations, comes to the conclusion

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that in this case there is a category "right to right", the presence of which is not necessary, since "all powers that could to form the composition "right to right" are always included in any subjective right. Consequently, property rights are not objects of civil rights at all, and therefore do not have such an important quality as negotiability, i.e. cannot pass from one owner to another."

At the same time, the conclusions made by V.A. Belov, as he points out, do not exclude the possibility of the existence of the institution of "legal succession", but not in the sense of transfer (transfer) of rights, but as a process of their termination by the predecessor and emergence by the successor. At the same time, V.A. Belov notes that the term "succession" is not suitable to refer to these processes. The author proposes to speak simply about "succession", because we are talking about: a) about the "transition" of the quality of a participant in a legal relationship, the transition of a "place" in a legal relationship and b) about continuity in the content, advantages and disadvantages of subjective rights and (or) legal obligations.

The above-mentioned positions of the above authors about the absence in a number of cases of succession in rights and responsibilities seem erroneous. V.A. Ryasentsev's indication of the inability to move rights and obligations in space cannot serve as a determining criterion for the impossibility of transferring them to another person. The choice of this characteristic does not allow the author to extend it to a whole range of things, the movement of which in space also does not occur when the owner changes (for example, real estate). In addition, one should agree with the remark of B.B. Cherepakhin that "the transfer of the right to a thing and the transfer of actual ownership of a thing are not the same thing, the transfer of a right is not identical to the spatial movement of a thing as an object of this right."

The point of view of N.D. Egorov in the legal literature was also subjected to fair criticism. Thus, Yu.K. Tolstoy quite correctly considers N.D. Egorov's position "vulnerable already because it takes the liability of the hereditary mass beyond the limits of inheritance. Meanwhile, not only benefits are inherited, but also the burdens that lie on it" [6]. Yu.K. Tolstoy admits that "from the moment the inheritance is opened until its acceptance by the heirs, the inheritance is a set of non-subject rights and obligations. However, this condition is short-lived. It lasts only until the inheritance is accepted by the heirs or passes to the state." Indeed, considering succession as a change in the subject composition of a legal relationship, it should be noted that in this process, in most cases, two stages can be distinguished: the departure of one person from the legal relationship (legal predecessor) and the entry into it of another person (legal successor). Both stages of succession can either coincide in time (for example, when making a bilateral transaction), or be separated in time (for example, during inheritance, sometimes during reorganization). In the latter case, the replacement of a party in a legal

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relationship occurs within a certain period of time and is associated with the procedure established in the rules of law for a person to enter into a legal relationship and transfer the corresponding rights and obligations to him. A replacement of a party can be considered to have occurred only after another entity, the legal successor, has entered into a legal relationship. All this time, the legal relationship that has arisen is protected by the state. In this case, only certain persons, generally indicated in the law and specified in relation to the relevant situation in special acts, can become legal successors. Thus, during reorganization, newly created or already existing legal entities become legal successors, to which, in accordance with the transfer deed or separation balance sheet, rights and obligations are transferred. In addition, no changes can occur in the legal relationship that require the expression of the will of the changing party before the person enters into the legal relationship and the transfer of rights and obligations to him.

To substantiate his position regarding the essence of succession, V.A. Belov used, as shown above, in addition to the arguments already given in the legal literature, the thesis that property rights are not the object of civil legal relations1. We cannot agree with this conclusion of the author. Indeed, the most common point of view in the legal literature, both of a general theoretical and civil law nature, is associated with the consideration of rights and obligations as the content of the corresponding legal relationship.

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