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«RECEPTION» OF THE RUSSIAN SOVIET LEGISLATION IN THE REGULATION OF INHERITANCE AT THE UKRAINIAN LANDS (1918-1919 YEARS)

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The main context of this article is historical and legal analysis of the provisions of inheritance at the Ukrainian lands (1918-1919 gg.). The author of this article on the basis of historical study made an independent conclusion about the «reception» of the Russian legislation on inheritance property in Ukrainian law in the aforementioned period.

Key words: the right to inheritance, the testator, a will, the share of compulsory heir, testamentary disposition.

Половинкіна Р.Ю. «РЕЦЕПЦІЯ» РОСІЙСЬКОГО СОВЕТСЬКОГО ЗАКОНОДАТЕЛЬСТВА В СФЕРЕ РЕГУЛІРОВАНИЯ НАСЛЕДСТВА НА ТЕРРИТОРИИ УКРАИНСКИХ ЗЕМЕЛЬ (1918-1919 ГОДА) / Запорізький національний університет, Україна

Стаття посвячена історико-правовому аналізу положень о наследовании на территории украинских земель (1918-1919 гг.). На основе проведенного исторического исследования автор статьи предлагает самостоятельные выводы о «рецепции» российского наследственного законодательства украинским правом в вышеуказанный период.

Ключевые слова: право на наследство, завещатель, завещание, обязательная доля, наследник, завещательное распоряжение.

Половинкіна Р.Ю. «РЕЦЕПЦІЯ» РОСІЙСЬКОГО РАДЯНСЬКОГО ЗАКОНОДАВСТВА У СФЕРІ РЕГУЛЮВАННЯ СПАДКУВАННЯ НА ТЕРИТОРІЇ УКРАЇНСЬКИХ ЗЕМЕЛЬ (1918-1919 РОКИ) / Запорізький національний університет, Україна

Стаття присвячена історико-правовому аналізу положень про спадкування на території українських земель (1918-1919 рр.). На основі проведеного аналізу автор статті пропонує самостійні висновки про «рецепцію» російського спадкового законодавства українським правом у вищевказаний період.

У статті надається комплексний аналіз декретів, що регулюють право приватної власності та питання спадкування радянського уряду у вищезазначений період.

Автор розкриває історію прийняття Декрету ВЦВК РРФСР «Про відміну спадкування», а також аналізує погляди сучасників на правову природу вищезазначеного нормативно-правового акту. У науковій статті було проведено дослідження інструкції, яка визначає застосування вищезазначеного декрету.

Актуальність дослідження історико-правових питань спадкування зумовлена зростаючим значенням приватної власності громадян і порядку її спадкування, необхідністю розроблення правового механізму, який належним чином міг би захистити права й інтереси громадян України. Огляд історії розвитку спадкового права має важливе не тільки наукове, але й практичне значення, оскільки дозволяє простежити на конкретному матеріалі складні процеси становлення та розвитку основних рис та інститутів спадкового права й можливість сприйняття кращих історико-правових конструкцій у цивільному законодавстві України.

Метою статті є аналіз норм спадкування на території українських земель у 1918-1919 роках, розкриття протиріччя становлення радянського спадкового права під час прийняття відповідних декретів, виявлення тенденцій розвитку спадкового права того часу та їх вплив на формування спадково-правових відносин.

Ключові слова: право на спадщину, заповідач, заповіт, обов'язкова частка, спадкоємець, заповідальне розпорядження.

There are many legal acts today in Ukraine which are affecting property interests of citizens, not the exception, and it became a question of succession. However, the problem of regulatory consolidation

genetic relationship is still valid. Chapter 6 of the Civil Code of Ukraine, in 2004, dedicated to the succession law, but in practice there are many questions about the practice of these provisions. To implement inheritance rights as the decedent and the heirs, there are notaries public and private notaries, who are led by the laws of Ukraine and subordinate regulatory acts. Some provisions of legal acts were adopted from the Soviet decrees, such as Agenda notarial acts notaries of Ukraine, approved by the Ministry of Justice of Ukraine.

The relevance of the study of historical and legal issues of inheritance caused by the growing importance of private property and public order of succession, the need to develop a legal mechanism that would adequately protect the rights and interests of citizens of Ukraine. Review the history of succession is essential not only scientific but also of practical importance, as it allows to trace the particular material complex processes of formation and development of the basic features and institutions of succession and the possibility of perception of the best historical and legal structures in civil legislation of Ukraine.

The subject of inheritance law is a part of many scientific works in law, especially in Soviet period, which are presented by such authors as B.S. Antimonova, I.N. Asimov, S.N. Bratus, M.N. Boguslavskiy, N.V. Gordon, K.A. Grave, D.C. Joffe, T.P. Kovalenko, A. Nyemkova V.I. Serebrovsky, R.Y. Halfinoyi and others. There are number of modernspecialists in this area – V.V. Vasil'chenko, O. Zeri, I.V. Zhylinkovoyi, Z. Romovska, N.A. Saniahmetovoyi, S.J. Furs, A.I. Kharitonov and others.

We can say that study of inheritance law is still important subject for today. The proof of this thesis is series of PhD works by O. Zaika «Formation and development of inheritance law in Ukraine» (2007), O. Nonlinear «Evolution of succession in Ukraine: historical and legal aspects» (2010). This works are related to the history of succession in the Soviet period, but the «reception» of the Russian Soviet legislation on regulation of inheritance in the Ukrainian lands (1918-1919 years) not been sufficiently studied, what determines the relevance of this research.

The purpose of this article is to analyze the rules of succession in the Ukrainian lands in the 1918-1919 years, the disclosure of conflicts of becoming a Soviet inheritance law in the appropriate decrees, identifying trends in the inheritance law of that time and their impact on the hereditary relations.

Pre-revolutionary law recognized only kind of property rights – the right to private property, which included the concept of property in one of the instruments and means of production, including land ownership landowners, and private ownership of the means of production of small producers (farmers – middle peasants, artisans and craftsmen) and the right of citizens to private property in the means of consumption. The October Revolution of 1917 brought change in the order. By the night of Oct. 26 (Nov. 8) 1917 Second Congress of Soviets adopted a decree on the ground that immediately without any ransom canceled landlord ownership of land. According to the peasant order, the SRs compiled on the basis of 242 local peasant orders, all the land – state, unit, monastery, church, possessional, mayoratni, private, public, peasants, etc, were announced the national heritage and acted "in the use of workers". All the earth came into public land fund. Land use rights granted to all citizens who want to handle it by their labor, hired labor is not allowed. Land use was egalitarian, that the land was distributed among the workers, the so-called «labor» or «consumer» norm.

Ukrainian Bolshevik's government entirely dependent of Moscow and did not try to pursue an independent policy. In the government declaration of 25 January 1919 year proclaimed the need of unification of the RSFSR USSR on the basis of a socialist federation and bring «socialist revolution to the end».

6-10 March 1919 held the third Congress of Soviets, which adopted the first Constitution of the USSR, which was develop on the basis of the constitutional model of the RSFSR, which included «the transition from socialism to bourgeois society...». This basic law was placed «Declaration of the rights and duties of Working and Exploited People of Ukraine» and other constitutional articles [2, 242].

On the subordinates lands in Ukraine, according to the Third Congress of Soviets, introduced a policy of «war communism» is established a state monopoly on the procurement of grain and other food products. To make a food dictatorship created committees of poor peasants, formed for requisition of forced grain requisitions.

Since the Soviet government was guided by the same principles of Russian at enforcing «policy of war communism» throughout its borders Ukraine, there was a «reception» of legislation, which has operated in the territory of the RSFSR.

February 19, 1918 the Central Executive Committee of the RSFSR decree was adopted – «About the socialization of the land» in Article 1, which stated that «any ownership of land, minerals, water, forests and the living forces of nature within the Russian Socialist Federal Soviet Republic abolished forever» and land use goes into the whole working people.

Later was adopt III Congress of Soviets of Workers', Peasants ' and Soldiers' Deputies «Declaration of Rights of Working and Exploited People» as the socialization of land declared: «In the exercise of socialization earth – read it – private ownership of land is abolished, and all the land is declared national property and transmitted to workers without any ransom, based on egalitarian land».

Number of scientists proclaimed that «socialization» was essentially a «proletarian nationalization» of land as private land ownership was abolished: «The abolition of private ownership of land, the exclusion of land from private sales, prohibition of private land transactions: sale, lease, donation, inheritance, etc» (Note 3 to c. decree 39 on the socialization of land), the provision for use only by the state were the main elements of state ownership of ground.

Later the Soviet Government turned to the nationalization of whole branches of production (Sugar industry was nationalized by the Decree of the Sovnarkom (Council of People's Commissars) of the RSFSR in 1918, the 2nd of May, petroleum industry was done by the Decree in 1918, the 20th of July). In 1918, the 28th of June the biggest manufacturing firms of all industries were nationalized by the Decree. But all enterprises of some industries were done. The nationalization was in banking area (On December 14, 1917 the Sovnarkom issued the decree of the banking nationalization) all banking shares were canceled and payments of dividends were stopped.

T.E. Novitsky indicates that the aspiration of the legislator in the first year of Soviet power to limit the sources of private property rights gave rise to the decree of the Central Executive Committee RSRFR on April 27 1918 «On the abolition of rights of inheritance».

Complete abolition of inheritance both in law and in willed to the disappearance of inheritance law – an important part of civil law [3, 19].

In the USSR Council of People's Commissars issued two decrees on the abolition of inheritance: the 1st one was on March 11, 1919, the second one – on March 21, 1919.

In particular, Art.1 of the decree of the Council of People's Commissars of USSR «On the abolition of rights of inheritance» (in 1919, 11th of March), declared that the inheritance right as by law and by will for all property, which is located on the territory of the USSR, regardless of the nationality of the heirs, is repealed. At the same time, in a footnote to this article, it was noted that the effect of Article does not apply to cases where the estate is less than 10 000 Karbovanets in gold.

According to Art.2 of the decree disabled relatives of the testator in a straight ascending line, and full under-age siblings and spouses were attached to a preferential right to the 1st of July in 1919 or the publication of the Regulations on social security when it comes to the 1st of July in 1919, to get hold of estate of the deceased is not above the subsistence level, provided that such persons are in need (decree of the Sovnarkom USSR on June 14, 1919 the term was extended to January 1, 1920). The notes 1 and 2 of this article stated that the illegitimate relationship equal to marriage, adopted, named children, and their descendants were treated as family by descent [4, 268].

Thus, inheritance of property, not to exceed 10 000 gold Karbovanets was stored and passed directly to heirs.

Inheritance in property which exceed 10 000 gold Karbovanets repealed and changed maintenance issue (besides the only well-defined entities) of the decedent's estate within not more than a living wage. One minor difference was that the Ukrainian decree did not decide the fate of property which exceed 10 000 gold Karbovanets. Clarification of this situation has been given a new decree "On the Abolition of inheritance " of 21 March 1919, which stated that the property that is less than 10 000 gold Karbovanets passes for use of the spouse survived the decedent, children, full and half siblings and parents if they are disabled and needy [5, 304-305].

The second decree «On the Abolition of inheritance» of 21 March 1919, which is a supplement to the first one, is assumed that if all the estate does not exceed 10 000 gold Karbovanets, it goes to the use of the spouse survived the decedent and children, full and half siblings, parents' dead, if they are unable to work and need help (Art.1). These people did not have title to the property remaining after the death of the testator (Art.2) and the procedure for use of the property was determined special instruction designed People's Commissariat for Justice, People's Commissariat for Finance and People's Commissariat Social Security (Art.3).

Statements disabled relatives (referred to in Art. 2 of the decree and who needed help) to provide maintenance of the estate of the deceased were submitted to the Department of Social Welfare appropriate, which determined the size and shape retention of the decedent's estate.

The closest considered the next generation (including illegitimate, adopted children, adoptee and their descendants), and finally, brothers and sisters (claim 19) [5, 305].

Family relations are regulated by the Decree of the RSFSR «On marriage, children and books about doing acts of state» of 20 December in 1917, and subsequently the Code of Laws of acts of civil status, marriage, family and the organizing committee of the RSFSR Law 1918 in Art.52 which stated that «only a civil (secular) marriage registered in the department of vital records, creates rights and duties of marriage...» in a footnote to this article stated that the marriages to the publication of new revolutionary laws were treated to registered marriages. The Code of 1918 was recipient by all the other Soviet republics [6, 102].

For the practical application of the decree by the People's Commissariat of Justice was developed and approved August 6, 1920 – Special Instructions «On the application of the decree on the abolition of inheritance». In paragraph 10 of the Regulations provided that for every death subdivisions of civil status shall notify the local council of deputies at the last place of residence of the deceased, and the Council of Deputies, having received such a message, takes custody of the property of the deceased and spends description (p.13) [5, 307].

As published in the «Vesti» VTsIK August 6, 1920 – How the People's Commissariat of Justice «on the application of the prohibition on the abolition of inheritance» stated that «the size and shape of the subordinate issuing maintenance of a decedent's estate is determined by the Department of Social Welfare in the city or county Council of deputies. If the property is left is not enough to provide maintenance to all the relatives who remained, the priority is given to more needy, and above all provided the closest (including extramarital named children, and then their descendants)». Next in order of relationship were: one of the couple, who is alive, their descendants, and finally, his brothers and sisters (p.19) [7, 90].

The author believes that the rules of the Decree «On the contrast inheritance» does not abolish inheritance, because inheritance is defined – transfer of property of the deceased to his heirs, and as we can see, there was a transfer of property within the prescribed amount of the property and to a certain audience. Difficult don't agree with the opinion of B.S. Antimonov and K.A. Grave as Social Security to establish a state in the presence of the fact of needs and disability, and the death of the testator is not required. If we look at the names of the decree, it really inheritance was abolished, but the transfer of property of the deceased to his relatives remained, which, in turn, inherit, therefore, was completely eliminated only inheritance by will. Given that private property is not recognized, respectively, and the Institute of succession was changed. The right of inheritance was conditional, since ownership is not legally formulated, but in fact remained, and was associated with the right management.

T.E. Novitsky considers it appropriate to note that the legislation of the USSR was a lot to do with the law of the RSFSR, and it is quite natural. Proven reception in Ukraine norms of Russian law, which once again affirms the decree on the abolition of inheritance in Ukraine. March 11, 1919 was passed the first decree. He spoke directly to the transition in ownership heirs of property which does not exceed the estimated 10 000 gold Karbovanets. However, a month later, on 21 March of 1919, another decree removed all transition to the heirs of ownership: no property evaluation it became the property of the USSR. Hence, Ukrainian lawmakers corrected his decree of inheritance like Russian one [3, 23-24].

Historical analysis of the inheritance enables researchers and practicing figures in law provide for solutions to critical problems associated with the development of new facilities and ownership, as the Soviet inheritance law is the continuation of modern Ukrainian succession. The conclusions and

recommendations made in these articles may be used in the studied course «History of State and Law of Ukraine» and the special course «Inheritance Law of Ukraine».

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