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INHERITANCE BY LAW IN THE LEGISLATION OF THE REPUBLIC OF AZERBAIJAN AND THE REPUBLIC OF MOLDOVA

Açar sözlər: Konstitusiya, Mülki Məcəllə, vərəsəlik hüququ, qanunvericilik, maddə.

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Comparative law has gone through a long and complex path of development, which continues to this day – its goals and objectives are being clarified. The historical evolution of legal comparative studies is characterized by both upswings, accompanied by unfounded attempts to give comparative law universal significance in the transformation of the law of various states and peoples, and downswings, when it was seen as only one of the auxiliary technical and legal means in the study of law, which led to an unjustified underestimation of its role.

It is important to note that inheritance law is one of the key institutions of civil law in any legal system, ensuring the stability of property transactions and protecting the rights of citizens. In the early stages of the formation of human so-

ciety, inheritance norms as such did not mediate the relationships between individual members of society related to death. And this is quite understandable: at the stage of the emergence of society, people's needs and the means to satisfy them were more than minimal. The need for inheritance rules arose only after an individual accumulated material wealth of more or less significant value. Of course, even in that period, hunting and fishing tools were passed from father to son; the clan and tribe, and later the family, retained the means of maintaining the hearth and home, the skins of wild animals, fuel and food supplies, jewelry, and symbols of belonging to the clan (tribe), except for those that were subject to burial with the deceased. But the relations that developed in this way, of course, could not, for obvious reasons, be regulated by legal norms (law as such did not yet exist); they were regulated by moral norms, customs, and traditions; their observance was sanctified and ensured not by measures of state coercion, but by public opinion, primarily by the authority of the most influential members of the family.

In the Republic of Azerbaijan and the Republic of Moldova, as in the post-Soviet countries,

this institution has its own national characteristics based on codified legislation and constitutional guarantees.

According to Part 7 of Article 29 of the Constitution of the Republic of Azerbaijan dated November 12, 1995, the state guarantees the right of inheritance [4].

The first Constitution of the independent Republic of Azerbaijan, consisting of a preamble, 5 sections, 12 chapters, 158 articles and transitional provisions, was adopted by a nationwide referendum on November 12, 1995 and entered into force on November 27, 1995.

The opening clause of Article 29 of the Constitution of Azerbaijan declares that every individual is entitled to own property. As noted by Z. Mammadov and E. Dadashov, property law is an engaging area of study that attracts the interest of legal scholars, philosophers, and researchers, because it mirrors the structure of society and the social relationships formed within it [13, p. 428].

So, the Constitution of the Republic of Azerbaijan also enshrines the inviolability of property and protects the right to private property, which creates a fundamental basis for the transfer of the property of the deceased to the heirs.

Inheritance legal relations are a type of absolute property relations regulated by civil law, arising from the moment of opening of the inheritance and ending at the moment of division of the inheritance and the emergence of rights of the heirs similar to the rights of the testator.

The right of inheritance is a polysemic concept. It has four meanings: the right of inheritance in the objective sense; the right of inheritance in the subjective sense; in the sense of inheritance law; in the sense of an academic subject.

In its objective meaning, the right of inheritance is understood as a set of property rights and obligations that can be transferred after the death of an individual to other persons, social relations arising from the transfer of certain non-property

rights to other persons, as well as legal norms governing other relations related to inheritance.

The right of inheritance, in its subjective sense, refers to the measure of a specific person's behavior as an heir. This refers to the right of a specific person to be an heir, to be called to inherit, in short, to receive the property of a deceased person.

The right of inheritance in the subjective sense is the subjective right of inheritance. And the subjective right of inheritance is considered a type of subjective civil right.

The right of inheritance in the third sense is used in the context of inheritance law. Inheritance law, or inheritance law, refers to the set of legal acts governing inheritance relations, as well as other relations related to inheritance.

Inheritance law, as an academic discipline (course), teaches the law of inheritance, which is a sub-branch of civil law, concepts, theories, doctrinal (scientific) thoughts, and teachings about this law [1, pp. 515-517].

Closely related to property relations, the right of inheritance in Muslim law is divided into two branches: inheritance by will and *Fara'id*, i.e. inheritance by law. Muslims have the right to bequeath only one third of their property, a bequest exceeding this limit is considered invalid. In case more than a third of the property is specified in the will made by the person, the heir must refuse to accept it in favor of the heir according to the law. The will is drawn up in the presence of two witnesses.

According to Muslim law, one or another person can bequeath his property to any other person, regardless of religious affiliation. In the event that the testator made several conflicting wills at different times, only the last will is considered to have legal force.

Together with the inherited property, the property rights and obligations of the testator are also transferred by inheritance. A certified will,

as evidence, plays a certain role in the court process [10, p. 125].

When inheriting according to the law, the number of shares of the heirs found its reflection in the 11th and 12th verses of Surah An-Nisa (Women) in the Koran: Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two or more females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfilment of bequests and debts. ‘Be fair to’ your parents and children, as you do not fully know who is more beneficial to you. ‘This is’ an obligation from Allah. Surely Allah is All-Knowing, All-Wise (Ayat 11).

You will inherit half of what your wives leave if they are childless. But if they have children, then ‘your share is’ one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister from their mother’s side, they will each inherit one-sixth, but if they are more than one, they all will share one-third of the estate—after the fulfilment of bequests and debts without harm to the heirs. This is a commandment from Allah. And Allah is All-Knowing, Most Forbearing (Ayat 12) [11, pp. 66-67].

In countries where Muslim law is in force, the 180th verse of Surah al-Baqarah, as well as the 11th and 12th verses of Surah an-Nisa, are used as a basis for deciding inheritance issues. Verse 180 of Surah al-Baqarah states: “It has been prescribed for you that when death approaches one

of you and he is leaving some property behind him, he should bequeath it equitably for his parents and relatives: it is an obligation on those who fear Allah”.

Inheritance law is one of the most complex and multifaceted areas of civil legislation of the Republic of Azerbaijan. That is why an entire section of the Civil Code of the Republic of Azerbaijan, adopted on December 28, 1999 and entered into force on September 1, 2000 - Section 10 (Articles 1133-1325) is devoted to inheritance issues [2]. This section contains 13 (thirteen) chapters (chapters 62-74). Chapter 62 - General provisions of inheritance law (Articles 1133-1158), Chapter 63 - Inheritance by law (Articles 1159-1165), Chapter 64 - Inheritance by will (Articles 1166-1178), Chapter 65 - Form of will (Articles 1179-1192), Chapter 66 - Mandatory share in inheritance (Articles 1193-1203), Chapter 67 - Testamentary assignment (legacy) (Articles 1205-1219), Chapter 68 - Amendment or Cancellation of a Will (Articles 1220-1231), Chapter 69 - Execution of a Will (Articles 1232-1242), Chapter 70 - Acceptance of an Inheritance and Refusal of its Acceptance (Articles 1243-1273), Chapter 71 - Distribution of the Inheritance (Articles 1274-1305), Chapter 72 - Securing Creditors by Heirs (Articles 1306-1315), - Chapter 73 - Preservation of the Inheritance (Articles 1317-1320), Chapter 74 - Certificate of Inheritance (Articles 1321-1325).

Articles 1204 and 1316 have been removed from the Civil Code.

Under Article 1133 of the Civil Code of the Republic of Azerbaijan, entitled “The Concept of Inheritance”, the property of a deceased person (testator) passes to other persons (heirs) by operation of law, will, or both.

Inheritance by law (the transfer of the deceased’s property to persons specified by law) occurs if the testator leaves no will, or the will is invalidated in whole or in part.

Chapter 8 of the Law of the Republic of Azerbaijan on Notary Public dated November 26, 1999 (to date, this Law has been supplemented and amended 56 times) is entitled “Issuance of Certificates of Inheritance Rights” [12].

This chapter contains 4 (four) articles (Articles 57-60). Article 57 is entitled “Certificate of the right of inheritance and terms for its issuance”, Article 58 is entitled “Procedure for issuing a certificate of the right of inheritance”, Article 59 is entitled “Issuance of a certificate of the right of inheritance by law”, and Article 60 is entitled “Issue of a certificate of the right of inheritance by will”.

According to Article 57 of the Law of the Republic of Azerbaijan on Notary, the notary of the place where the inheritance is opened issues a certificate of inheritance rights to the heirs and the state for the property transferred by inheritance. The certificate must be issued within the time limits established by civil legislation.

Chapter 6 of the “Instructions on the Rules for Conducting Notarial Actions”, which consists of 210 (two hundred and ten) paragraphs and was approved by the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan dated September 11, 2000 (to date, this Instruction has been supplemented and amended 91 times), is also dedicated to the issuance of certificates of inheritance rights (paragraphs 92-110) [14].

We consider it necessary to note that a number of decisions of the Plenum of the Constitutional Court of the Republic of Azerbaijan are devoted to inheritance issues. For example, the decisions of the said Court dated February 19, 2021, April 19, 2023, December 26, 2023, and June 21, 2024.

According to the Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated February 19, 2021, the provision of “children, parents of the testator” in Article 1193 of the Civil Code, which provides for the con-

cept of a mandatory share in inheritance, also includes adopted children and adoptive parents [6].

The Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated April 19, 2023 states that, in accordance with Article 1306 of the Civil Code, the heirs who accepted the inheritance after the death of the debtor are jointly liable to the creditors of the testator in the amount of the share of the inheritance received by them from the date of opening the inheritance [7].

In case of death of a person, the heirs must apply to one of the relevant notary offices at the place of last registration of the deceased person to obtain the certificate. According to the previous rule, a specific period of 6 (six) months was stipulated for approaching the notary office to accept the inheritance. However, after the adoption of the Decision of the Plenum of the Constitutional Court dated December 26, 2023, there is no longer a time limit requirement for inheritance relations arising as a result of the death of the testator on any day. This means that if the testator died on or after December 26, 2023, a notary office can be contacted for a certificate at any time after the date of the person’s death. This rule also applies to inheritance relations arising before December 26, 2023 and currently being considered in court [8].

To open an inheritance case, the heirs of the deceased person must apply to the notary’s office. At this time, the inheritance case is opened and the circle of heirs is determined. If the deceased has any obligations, the persons who have accepted the inheritance also take on those obligations.

According to the Decision of the Plenum of the Constitutional Court dated December 26, 2023, if the heir does not renounce the inheritance through a notary within 3 (three) months, he will be considered to have accepted the inher-

itance. The Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated June 21, 2024 states that the compulsory share in the inheritance is the compulsory share of the children, parents and wife (husband) of the testator, constituting an inviolable part of the inheritance by law, regardless of the content of the will. The acceptance of the compulsory share from the inheritance does not depend on any special acceptance period and the right to claim the compulsory share is not subject to the limitation period [9].

Disputes regarding inheritance rights are resolved in court.

Following the decision of the Constitutional Court of the Republic of Azerbaijan, relevant amendments were made to the "Instructions on the Rules for Conducting Notarial Actions" approved by the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan dated September 11, 2000. At present, in the Republic of Azerbaijan, when issuing a certificate of right of inheritance to one of the heirs, a notary is obliged to determine and indicate in the certificate the shares of other heirs who also have the right of inheritance but have not applied for a certificate of right of inheritance. This rule is aimed at ensuring legal certainty and protecting the rights of all heirs, regardless of their activity in the preparation of documents.

Furthermore, the amendments establish the possibility of disposing of shares of the inheritance before receiving a certificate of inheritance. Heirs (co-heirs) may enter into notarized agreements regarding the disposition of their shares. If such an agreement is concluded, the share of the heir who has acquired a portion of the inheritance increases proportionally to the share acquired, and the final share is indicated in the certificate.

In the Constitution of the Republic of Moldova dated July 29, 1994, as in the Constitution

of the Republic of Azerbaijan, each article has its own name. According to Part 6 of Article 46 of the Constitution of the Republic of Moldova, the right to inherit private property is guaranteed [5].

Issues related to inheritance law are reflected in Book 4 of the Civil Code of the Republic of Moldova dated June 6, 2022 [3]. The first section of the mentioned book is called "General provisions" (Articles 2162-2176), the second section is "Inheritance by law" (articles 2177-2190), the third section "Inheritance by will" (articles 2191-2388), the fourth section "Legal status of the heir" (articles 2389-2529), the fifth section "Obligatory share" (articles 2530-2540), the sixth section "Confirmation of rights granted by inheritance" (articles 2541-2560), seventh section is called "Purchase and sale of inherited share" (articles 2561-2575).

Article 2177 of the Code, titled "The case in which inheritance by law applies", provides that, first, inheritance is transferred according to the rules of this book whenever there is no valid will, and second, if the will covers only a portion of the estate, the remainder is distributed following the legal order of succession. Article 2178, named "Heirs by law of the first order", states that the deceased's descendants constitute the first-order heirs; that any living descendant at the moment the inheritance opens prevents those related to the deceased through him from inheriting; that the descendants of a child who died before the inheritance opens take that child's place; that the children of the deceased receive equal shares; and that children who replace a deceased parent under part (3) divide equally the share that parent would have received. Article 2179 of the Civil Code of the Republic of Moldova explains that second-order heirs by law are the deceased's parents and their descendants. If both parents are alive when the inheritance opens, they inherit the estate in equal parts. If one parent is deceased, that parent's descendants inherit

in accordance with the rules for first-order heirs; and if the deceased parent has no descendants, the surviving parent becomes the only heir. Under Article 2180, heirs of the third order are the testator's grandfathers and grandmothers, along with their descending relatives. If both grandparents are alive at the opening of the inheritance, only they inherit in equal shares. If either has died, that person's descendants inherit in their place. If the deceased grandparent has no descendants, his or her portion goes to the surviving spouse, and if there is no spouse, then to the surviving grandparent's descendants. If neither grandparent is alive and neither has descendants, the grandparents on the other side inherit, and if they are also deceased, then their descendants inherit. Whenever descendants take the position of their parents or more distant ascendants, the rules for first-order heirs apply correspondingly. Article 2181 states that heirs of the fourth order include the testator's great-grandfathers and great-grandmothers and their descendants. If any great-grandparents are alive at the time of the inheritance, they alone inherit; if there are several, they take equal shares regardless of line. If all great-grandparents are deceased, their descendants inherit, and relatives equally close divide the inheritance equally.

The first paragraph of Article 2182 establishes that fifth-order heirs by law consist of the deceased's more remote ancestors and their descendants. Article 2183, titled "Simultaneous kinship along different lines", provides that a person who qualifies as an heir of the first, second or third order in different lines at the same time receives the share due in each separate line of kinship, each of those shares being treated as an independent inheritance portion.

Article 2185, called "Inheritance rights of the surviving spouse", declares that the surviving spouse is a legal heir and inherits one quarter of the estate together with first-order heirs, regardless of their number; that with second-order heirs or grandparents, the spouse is entitled to one half of the inheritance; that if both grandparents and their descendants are alive, the spouse receives the part of the second half that would fall to the descendants under Article 2180; that the spouse's share takes precedence over the shares of heirs with whom he competes; and that if no first- or second-order heirs or grandparents exist, or if they are excluded, the spouse receives the entire estate.

Article 2187, titled "Loss of the right of inheritance by the surviving spouse", states that the surviving spouse loses the right to inherit if, at the time the inheritance opens, the testator has filed for divorce, acknowledged a divorce claim filed by the other spouse, or submitted a divorce application, or if the marriage has been declared invalid by a court or grounds exist for such invalidation and a relevant claim has been filed. Nevertheless, the spouse keeps the right to maintenance.

According to the civil legislation of the Republic of Moldova, if the spouse is one of the relatives called to inherit, he/she simultaneously inherits in this capacity. The inheritance share acquired on the basis of kinship is considered a separate inheritance share. If the deceased has no relatives or a surviving spouse, or if for certain reasons they cannot inherit, the state is the legal heir.

List of used literature:

1. Allahverdiyev S.S. Civil law of the Republic of Azerbaijan: Volume III, Book IV. Textbook. Baku: Digesta, 2008, 700 p. (pp. 515-517) (in the Azerbaijani language)
2. Civil Code of the Republic of Azerbaijan // Adopted on December 28, 1999 (amendments and additions until October 10, 2025): [Electronic resource] / <https://e-qanun.az/framework/46944> (in the Azerbaijani language)
3. Civil Code of the Republic of Moldova. (2002, June 6): [Electronic resource] / <https://animus.md/trad/ccivmden/>
4. Constitution of the Republic of Azerbaijan // Adopted on November 12, 1995 (amendments and additions dated August 24, 2002, March 18, 2009 and September 26, 2016): [Electronic resource] / <https://ref.az/25BTYu>
5. Constitution of the Republic of Moldova dated July 29, 1994: [Electronic resource] / [https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/41173/MDA-41173%20\(EN\).pdf](https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/41173/MDA-41173%20(EN).pdf)
6. Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated February 19, 2021: [Electronic resource] / <https://e-qanun.az/framework/47173> (in the Azerbaijani language)
7. Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated April 19, 2023: [Electronic resource] / <https://e-qanun.az/framework/54230> (in the Azerbaijani language)
8. Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated December 26, 2023: [Electronic resource] / <https://e-qanun.az/framework/55943> (in the Azerbaijani language)
9. Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated June 21, 2024: [Electronic resource] / <https://e-qanun.az/framework/57646> (in the Azerbaijani language)
10. Ismayilov Kh.C. History of state and law of Azerbaijan. Baku: Nurlan, 2006, 720 p. (p. 125) (in the Azerbaijani language)
11. Quran-Karim / Translated from Arabic by Z.M. Bunyadov, V.M. Mammadaliyev. Baku: Chirag, 2010, 640 p. (pp. 66-67) (in the Azerbaijani language)
12. Law of the Republic of Azerbaijan on Notary Public dated November 26, 1999 // Adopted on November 26, 1999 (amendments and additions until July 14, 2025): [Electronic resource] / <https://e-qanun.az/framework/107> (in the Azerbaijani language)
13. Mammadov, Z., & Dadashov, E. (2022). Features of approval of the real estate gifting agreement in Azerbaijan. Revista Universidad y Sociedad, 14(4), pp. 428-433: [Electronic resource] / <https://rus.ucf.edu/cu/index.php/rus/article/view/3064>
14. Resolution of the Cabinet of Ministers of the Republic of Azerbaijan on approval of the "Instructions on the Rules for Conducting Notarial Actions" // adopted on September 11, 2000 (amendments and additions until March 17, 2026): [Electronic resource] / <https://e-qanun.az/framework/488> (in the Azerbaijani language)

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**AZƏRBAYCAN RESPUBLİKASI VƏ MOLDOVA RESPUBLİKASININ
QANUNVERİCİLİYİNDƏ QANUN ÜZRƏ VƏRƏSƏLİK**

XÜLASƏ

Həm Azərbaycan Respublikasında, həm də Moldova Respublikasında vərəsəlik hüququ konstitusiya səviyyəsində təminat altına alınmışdır. Qanun üzrə və vəsiyyət üzrə vərəsəliklə bağlı münasibətlər həmin dövlətlərin Mülki Məcəllələri ilə tənzimlənir və müəyyən şəxslər vəsiyyətnamənin məzmunundan asılı olmayaraq mirasdan məcburi pay almaq hüququna malikdirlər. Moldova Respublikasının Mülki Məcəlləsi beş kitabdan ibarətdir. Bu kitablardan biri bütövlükdə vərəsəlik hüququna dair münasibətlərin hüquqi tənzimlənməsinə həsr edilmişdir.

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**НАСЛЕДОВАНИЕ ПО ЗАКОНУ В ЗАКОНОДАТЕЛЬСТВЕ
АЗЕРБАЙДЖАНСКОЙ РЕСПУБЛИКИ И РЕСПУБЛИКИ МОЛДОВА**

РЕЗЮМЕ

Как в Азербайджанской Республике, так и в Республике Молдова право наследования гарантируется на конституционном уровне. Правовое регулирование отношений, связанных с наследованием по закону и по завещанию, осуществляется гражданскими кодексами указанных государств. При этом законодательство обеих стран предусматривает право отдельных категорий наследников на обязательную долю в наследстве независимо от содержания завещания. Гражданский кодекс Республики Молдова состоит из пяти книг, одна из которых полностью посвящена правовому регулированию наследственных отношений.

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