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A RETROSPECTIVE LOOK AT THE LEGISLATION ON UNWORTHY HEIRS

Açar sözlər: *Mülki Məcəllə, hüquq, dövlət, maddə, mülkiyyət.*

Ключевые слова*: Гражданский кодекс, право, государство, статья, собственность.*

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The institution of unworthy heirs is a necessary attribute of the inheritance law of almost every state; the difference lies only in the grounds for disqualifying such persons from inheriting property after deceased relatives. When we take a historical tour regarding this issue, we see that Initially, the ancient legislator proceeded from the necessity of hereditary succession between blood relatives, therefore the owner could not arbitrarily deprive his heir of inheritance. Even ancient law (for example, the Code of Hammurabi) established the need for judicial review of such a matter. According to Article 165, a father could increase the share of one son by making a gift at the expense of the inheritance shares of his other sons. If there were sufficient grounds for doing so, a father could "reject" his son, i.e., completely disinherit him.

Thus, only if a serious crime (offense) had been committed could a person be disinherited, but only if this fact had been certified by the court. Moreover, the court was obliged to determine how many times such an action had been committed against the testator. If he has committed a grave sin against his father, sufficient to disinherit him, they must forgive him the first time; but if he has committed a grave sin a second time, the father may disinherit his son (Article 169 of the Code of Hammurabi) [6, p. 78].

The most comprehensive regulation of inheritance relations during the slave-owning era is contained in Roman law. Roman inheritance law underwent a long and complex development. This development was inextricably linked with the development of the Roman concept of property and family. The unworthiness of an heir constituted one form of incapacity to receive an inheritance. However, an unworthy heir possessed passive testamentary capacity, and therefore could inherit under a will and acquire property by virtue of a testamentary refusal. His hereditary legal status was conditional, since he was unable to "retain" the acquisition made, which therefore turned out to be an ereptum, snatched by the treasury. Unworthiness also had consequences for succession in the absence of a will, i.e., in inheritance by law.

The list of grounds for unworthiness is as extensive as it is contradictory. Moreover, in-

dividual cases within this category have undergone significant changes in different historical periods, driven by different fiscal motives [3, p. 491-492].

In his Institutes, Martianus outlined the following cases of unworthiness of an heir. First, a freedman was deprived of the legacy or fideicommissum left to him by his patron's will as an unworthy heir if, after his patron's death, he denounced his patron for trafficking in prohibited goods, even though he had earned a reward. Secondly, the inheritance is taken away entirely and transferred to the treasury if the emancipated son, contrary to the will, makes claims, as one who has been bypassed, to the ownership of the (inherited) property and accepts the inheritance as a substitute for a minor. Thirdly, if anyone, contrary to the imperial instructions, takes a wife from the province in which he holds any office, he has no right to retain what he has acquired by his wife's will, just as in the case where a guardian, contrary to the senatus consultum, marries his ward. Even if the inheritance was accepted by the heir appointed for the entire property, it went to the treasury. On the contrary, with regard to a woman who was married in defiance of the prohibition, either by those who held office in the province or by (her) guardian, there is more reason to believe that she receives according to the will and should not be removed (from inheritance) as unworthy. The same applies if someone donates all or part of a relative's property during their lifetime, but without their knowledge. Fourth, an unworthy person is one in whose case it is clearly proven that, due to their actions, negligence, or fault, the woman who designated them as their heir died.

Anyone who, having been appointed (in a will) as a guardian, renounced the guardianship was disinherited. Anyone who challenged the authenticity of the will was also disinherited. A pardon is given in view of age to the one who brought the charges, and especially if the guardian or trustee wanted to declare that (the will) is false or causes harm to the legal heirs. However, those who, with their testimony, helped the intention of the accuser, helped the accuser in court, or became a surety for him, were denied the right of inheritance [8, p. 127].

If a mortal feud arose between the legatee and the testator and it became quite probable that the testator (no longer) wished to leave the legacy or fideicommissum to the one to whom it was assigned or left, then the legatee was deprived of the right to request the legacy. A similar consequence also took place in those cases when the legatee openly and directly scolded the testator and spoke unflattering words towards him [8, p. 213-214].

If a man convicted of adultery with a woman who had not been convicted married her and, dying, left her as his heir, then, since the marriage of this kind was not preserved, the benefit of the inheritance did not belong to the woman, and everything left went to the treasury. But even if such a woman appoints her husband as her heir, his property is taken away from him as unworthy. A woman who was in a shameful cohabitation with a soldier is not allowed to make a will drawn up under the law of military service, even if the soldier died within a year after leaving service, and what is left belongs to the treasury [4].

The heir who deliberately neglected to avenge the deceased should be forced to return all income (from the inheritance) and that it is dishonest for him to demand the cancellation of the joint claim. But if he has been misled through ignorance of what has happened, he has (the right) to defend himself as a bona fide owner, of course, before the commencement of legal proceedings, if a statement of income is provided, and it will not be dishonest to apply for the cancellation of the consolidated action.

The dowry of the man who did not avenge the death of his wife is taken away from him as

unworthy (Hermogenianus in the 3rd book of "Extracts from the Laws") [5, p. 279-280]. The shares of those who did not avenge the death of freedmen who died suspiciously are also subject to confiscation in favor of the treasury: for all heirs, as well as those who are in their place, are obliged to fulfill (their) duty in relation to avenging the deceased (Paul in the 5th book of the "Sentences").

Some sources, among the grounds for unworthiness, mention the most serious offenses committed by the unworthy person against the heir, such as murder (or attempted murder) of the person leaving the inheritance, failure to initiate legal proceedings against those responsible for his death, creating obstacles to the use of torture on slaves, which was prescribed in order to find murderers among them, serious accusations brought against the heir or with the aim of defamation of his memory, the use of coercion against him that violated his testamentary freedom, etc. [1, p. 359].

Over time, the doctrine of Roman law established a general definition for persons unworthy of inheritance - indignus, from the time of the principate – indignitas [9, p. 151].

One of the important institutions of Muslim inheritance law is the category of persons who are deprived of the right to inherit due to certain unlawful or religious-legal circumstances. Such persons are often referred to in legal literature as "unworthy heirs". Although classical Muslim law does not use this term in the modern civilistic sense, in Islamic jurisprudence there are clear grounds that prevent inheritance. The main obstacles include: the murder of the testator; differences in religion; slavery; and, in some schools, apostasy from Islam. In Islamic law, inheritance is considered a divine institution, and therefore a person cannot arbitrarily change the order of distribution of inherited property. The most important reason for recognizing an heir as unworthy is the murder of the testator. This rule is based on the hadith of the Prophet Muhammad: "The murderer does not inherit". This principle is recognized by all madhhabs, but there are differences among schools regarding the types of murder that entail disinheritance. Hanafis held that any unlawful killing that entails legal liability is a bar to inheritance. Accidental murder could also preclude inheritance, since the heir indirectly caused the death of the testator.

The Maliki school primarily considered intentional murder as grounds for eliminating an heir. Unintentional killing was assessed less strictly.

The Shafi'is and Hanbalis took a stricter position, holding that virtually any murder precludes inheritance, regardless of the crime. The primary purpose of this restriction was to prevent crimes committed for selfish motives. Islamic law is based on the principle that a person cannot profit from his own unlawful conduct. This approach has subsequently been adopted by modern legal systems. One of the most specific institutions of Muslim inheritance law is the prohibition of inheritance between persons of different religions. A Muslim cannot inherit from an infidel, and an infidel cannot inherit from a Muslim. This rule was explained by the fact that the Islamic legal system was based not only on family ties but also on religious community.

Most jurists believed that a murtad (apostate) does not inherit from Muslims; the property of the apostate himself can go to the treasury of the Muslim community.

In the 19th century in the Russian Empire, which included Azerbaijan, the commission by the heir of such crimes as murder or attempted murder, as well as other criminal acts against honor, physical well-being and property, in itself, regardless of the identity of the victim, entailed the deprivation of all rights of the estate, including excluding the possibility of calling

to inheritance (Code of Laws – Volume X, Part One, Article 1107). Also, children who married against their will were excluded from inheriting from their parents, if only their parents did not later forgive them in the will.

The draft Civil Code of Russia, submitted for consideration to the State Duma, the fourth book of which, consisting of 143 articles, was entirely devoted to inheritance law and based the regulation of inheritance legal relations on other principles. The draft Civil Code was never destined to become law, and only some provisions of the fourth book were adopted as separate laws. Thus, by the Law of June 3, 1912, the rights of males and females in the inheritance of movable and immovable property, with the exception of land (non-urban) property, were equalized.

In ancestral and acquired landed property, the share of females became equal to 1/7 of the inheritance. However, females, i.e., daughters and their descendants, received an equal share in the landed property in the absence of sons and their descendants (clause 3 of Article 1128), or even if they were present, but in the case where, family had a significantly large number of daughters, the sons' shares would be smaller than the daughters' shares.

A significant achievement of the Civil Code Project was the streamlining of the rules regarding the exclusion of individuals from inheritance and the legal establishment of the category of unworthy heir. The following individuals were intended to be excluded from inheritance: 1) heirs who committed criminal acts against the testator that prevented him from freely expressing his last will, but for which, however, no criminal punishment involving deprivation of the right of inheritance was imposed; 2) heirs who intentionally took the life of the testator or caused him harm to health, as a result of which he was unable to make or revoke a will until his death.

The rights of inheritance were primarily lost to persons who intentionally took the life of the testator or caused him harm to health, as a result of which he did not have the opportunity to make or revoke a will. This rule was drawn up taking into account the current legislation, according to which the imposition of a penalty in the form of deprivation of all rights of estate deprived the person sentenced to it of the right of inheritance, but in this case it was expressly established that the intentional actions concerned the testator. The advantage of this formulation and the main difference from the previously existing provision was that, even if the criminal act committed by him did not entail a punishment associated with the deprivation of all rights of the estate, the testator acquired the right to bequeath the inheritance to any person, thereby eliminating such an heir [7, p. 420-423]. Thus, in order to exclude from inheritance due to unworthiness, it was necessary to reflect only cases of the heir committing criminal acts against the testator, which deprived him of the opportunity to make or revoke a will (murder, mental illness, loss of language, hearing, hand, etc.) [2, p. 5-6].

Also excluded from inheritance were persons who, through coercion or deception, induced the testator to make or revoke a will, or prevented the testator from making or revoking a will, or concealed or destroyed the testator's will, drawn up in favor of other persons, as well as forged or altered the will. This allows us to assert that the basis for unworthiness was proposed to be considered not only the deprivation of the testator's physical ability to exercise the freedom of testament, but also the inducement or obstruction through coercion or deception to make or revoke a will, as well as the obstruction of the discovery of the testator's true will after his death.

The right to file a claim to disqualify unworthy heirs from inheritance was granted by the draft only to those who, as a result of the dis-

qualification, would have inherited the estate had the disqualified heir not existed. Such heirs could file a claim to disqualify them from inheritance within one year of the plaintiff receiving information about the circumstances that entitled them to demand the disqualification of the persons listed in Article 1347 from inheritance, but in any case no later than ten years from the date of the opening of the inheritance, and only during the lifetime of the disqualified heir. The establishment of a shortened limitation period was determined by the need to avoid excessive aggravation of family relations by limiting the possibility of filing the demands that gave rise to this aggravation to the shortest possible time, as well as by practical considerations of the inexpediency of initiating such issues after many years have passed, when the memory of the act committed has already subsided. Since the basis for the removal of the heir due to unworthiness was the criminal act committed by him, certified by a court decision that had entered into legal force, the court decision on the claim for the removal of the heir did not establish a new legal position, but only recognized the already existing fact of the heir's unworthiness. Therefore, a decision recognizing this fact could be made even after the death of the unworthy heir, but it would be unfair to allow a claim for removal to be brought after the death of the unworthy heir, since otherwise the heirs of the latter would be burdened with responsibility for a crime that they did not commit [7, p. 6-7].

It should be noted that the Project equated unworthy heirs with persons who died before the opening of the inheritance, which made it possible for further descendants of the unworthy heir to inherit by right of representation on a general basis, since it was believed that the consequences of the parents' guilt should under no circumstances fall on their children [2, p. 491-492].

In order to prevent possible abuses by persons who fraudulently induced the testator to make a will in their favor, bearing in mind that his children would in any case receive the bequeathed property, even if he himself was excluded from inheritance, the draft made an exception to the rule of Article 1350, prohibiting the transfer of inheritance to descendants of an heir who was excluded from inheritance due to unworthiness. A necessary heir, in accordance with the project, could be deprived by the testator of his obligatory share only if he attempted the life or intentionally harmed the health of the testator himself or his spouse, descendants or ascendants, or if he brought a false accusation of a crime against any of the said persons, or if he left the testator in a helpless state, or, finally, if he led a wasteful or vicious lifestyle. Parents could disqualify their children from their compulsory share if the children married without their parents' consent or gravely insulted them. A testator could also disqualify a spouse from their compulsory share if the spouse committed adultery. Disqualification from inheritance could not occur if the testator pardoned the guilty party in the will.

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LƏYAQƏTSİZ VƏRƏSƏLƏRLƏ BAĞLI QANUNVERİCİLİYƏ RETROSPEKTİV BAXIŞ

XÜLASƏ

Qədim hüquq abidələrində “ləyaqətsiz vərəsələr” termininin əks olunmamasına baxmayaraq, müəyyən şəxslərin vərəsəlikdən məhrum edilməsi ilə bağlı müddəalar mövcud idi. Azərbaycan SSR-in 1923-cü il Mülki Məcəlləsində də “ləyaqətsiz vərəsələr” termini öz əksini tapmamışdı. Qeyd edilən Məcəllə qəbul edildikdən sonra məhkəmə təcrübəsində və mülki hüquq elmində miras qoyana qarşı hüquqa zidd hərəkət etmiş şəxslərin vərəsəlikdən kənarlaşdırılması məsələsinin həll edilməsi xüsusi aktuallıq kəsb edirdi. Məhkəmələr yalnız miras qoyanı qəsdən öldürmə cinayətinə görə məhkum edilmiş şəxslərin vərəsəlik hüququndan məhrum edilməsi ilə bağlı qərar qəbul edirdi.

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РЕТРОСПЕКТИВНЫЙ ВЗГЛЯД НА ЗАКОНОДАТЕЛЬСТВО О НЕДОСТОЙНЫХ НАСЛЕДНИКАХ

РЕЗЮМЕ

Хотя термин “недостойные наследники” не был отражен в древних правовых памятниках, существовали положения, касающиеся лишения наследства отдельных лиц. Термин “недостойные наследники” также не был отражен в Гражданском кодексе Азербайджанской ССР 1923 года. После принятия вышеупомянутого Кодекса вопрос о лишении наследства лиц, совершивших противоправные действия против наследодателя, стал особенно актуальным в судебной практике и гражданском праве. Суды принимали решения только о лишении права наследования лиц, осужденных за умышленное убийство наследодателя.

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