

FEATURES OF INHERITANCE BY LAW

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Annotation: this article provides views on the opening of inheritance in legal sources and the views of scientists on the division of inheritance by law, and also contains information on the concept of inheritance in a broad and narrow sense.

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The positions on the definition of succession that exist in legal literature can be divided into two groups. Supporters of one position consider succession as the transfer of only rights (but not obligations) from one person to another. They do not include the transfer of obligations in the concept of succession. Thus, V.I. Serebrovsky, studying hereditary succession, understood it as the transfer of property rights from the testator to the heirs. He did not consider liability for debts encumbering the inheritance to be an indispensable property of hereditary succession [1].

The point of view of other authors is that succession is the transfer of not only rights, but also obligations. At the same time, in a number of cases, the transfer of only rights (without obligations) to the successor is allowed, but at the same time, obligations are not completely excluded from the concept of succession. I.A. Pokrovsky considered hereditary transfer as a universal succession, when the inheritance mass is thought of not as a sum of disparate property objects, but as a certain unity in which cash and debts merge into one legal whole, passing to pre-determined persons, the heirs.

The understanding of legal succession as the transfer to the successor of not only rights, but also obligations is found in the works of a number of other authors [2].

Separately, it is necessary to note the definition of legal succession formulated by V.S. Em. By legal succession he understands the transfer of rights and obligations from one person - the predecessor to another person - the successor, replacing him in the legal relationship [3]. The peculiarity of this definition is that it indicates not only the transfer of rights and obligations, but also the replacement of subjects in the legal relationship, which, as will be shown below, is of great importance.

B.B. Cherepakhin understood legal succession as the transfer of a subjective right (in the broad sense also a legal obligation) from one person (the grantor) to another (the successor) in the order of derivative acquisition of rights (in appropriate cases - derivative acquisition of a legal obligation). As can be seen from the given definition, the author allowed for the distinction between legal succession in broad and narrow meanings. In the broad sense, there is a transfer of rights and obligations, in the narrow sense - only rights. The latter meaning of succession is based, as it seems, on the literal interpretation of the term succession, i.e. succession in law. B.B. Cherepakhin attributed the following to the signs accompanying succession:

- 1) replacement of the subject (active or passive) in the changing legal relationship;
- 2) immutability of the main legal characteristic of the transferred right or transferred obligation;

3) derivative nature of the acquisition by the successor of a subjective right or civil-law obligation, the characteristic feature of which is the connection between the acquired right or obligation and the original legal relationship.

The generally accepted definition of succession in legal literature as the transfer of the rights and obligations of the predecessor to the successor requires some clarification. In our opinion, the issue of succession is inseparable from the issue of changing the subject composition of a legal relationship. The process of existence of any civil legal relationship is characterized by the presence of at least two stages associated with the emergence and termination of the legal relationship. However, in a number of cases, changes may occur in the legal relationship that affect any of its elements. Succession reflects a change in the subject composition of a legal relationship, which occurs on the basis of a certain legal fact or a set of legal facts (legal composition). And since the subject of the legal relationship changes, both rights and obligations may pass to the successor. In this case, a change in the subject composition is possible in property (in rem and obligatory) and non-property civil legal relationships. B.B. Cherepakhin noted that "in an obligatory legal relationship, a change in the subject composition may consist of a change in the creditor (subject of law), in the replacement of the debtor (subject of civil-law obligation), as well as in a change of the participant in a bilateral obligation, which is simultaneously a creditor and a debtor (subject of law and obligation). In a property legal relationship, as in any other absolute legal relationship, a change in the subject composition may concern only a change in the active subject (subject of law)."

The disadvantage of most of the above definitions of succession is that they do not contain an indication of such an important feature of succession as a change in the subject composition of a legal relationship. In part, this position allowed us to question the issue of the transfer of obligations to the successor in the order of succession. Indeed, the literal understanding of the term "succession", as already indicated, means succession in law. And in order to reflect obligations as a possible object of succession, the authors had to talk either about the broad meaning of this term, or use the term "succession". It seems possible to eliminate this inaccuracy by defining succession as a change in the subject composition of a legal relationship, entailing the transfer of the rights and (or) obligations of the predecessor to the successor. Such a definition indicates, first of all, that succession takes place within the legal relationship, in the rights and obligations of the predecessor. The change of the subject composition in a legal relationship and the transfer of rights and obligations to the successor are two inextricably linked stages of one process - legal succession. Each of these stages cannot exist without the other. Moreover, the appearance of a successor in a legal relationship (change of the subject) and the transfer of rights and obligations to him coincide in time. But despite this, the proposed definition primarily indicates a change in the subject composition, since in order for the transfer of rights and obligations to occur, there must be a person to whom they can be transferred.

A change in the subject composition of a legal relationship may be expressed in two forms. First of all, through a complete replacement (change) of a party in a legal relationship. Such succession occurs, for example, in inheritance and in most cases of reorganization. This form of change in the subject composition is the most common in legal succession, but not the only one. The other form is characterized by the fact that the predecessor does not completely leave the legal relationship, but transfers only part of its rights and (or) obligations to the successor. The specified change in the subject composition may occur, for example, in a

continuing obligatory legal relationship. Therefore, it seems more accurate when defining succession to speak not about the replacement of a party in a legal relationship, but about a change in the subject composition. Such a change may consist of either a complete replacement (change) of a party, or the appearance in the legal relationship of a new subject - the successor, along with the predecessor remaining in the legal relationship.

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