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EVOLUTION OF CREDITORS' RIGHTS IN RELATIONS WITH SUCCESSORS WHO HAVE ACCEPTED SUCCESSION

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Introduction: *the article considers the unbalanced attitude towards different creditors of a testator that is present in legislation, the absence of rules governing relations with participation of several creditors, who get into the state of competition in case inheritance is insufficient, and the lack of doctrinal foundation for these questions.* ***Purpose:*** *to carry out a scientific theoretical comparative analysis of different creditors' rights aimed at the satisfaction of their claims at the expense of inheritance.* ***Methods:*** *the author uses general scientific methods of analysis, generalization, comparison, description, interpretation, as well as methods specific to legal science: formal legal method and legal comparison.* ***Results:*** *the legal analysis of regulations on liability for a testator's debts has allowed us to reveal terminological disagreements in regulation of the "debt relations" and lack of a visible legislative concept concerning these questions. Until recently, the legislator has been mainly guided by the generalized concept of successors' rights protection, while the question of creditors' rights having claims to inheritance has been mainly solved by default. A part of questions were withdrawn due to the legislative innovations introduced into the Civil Code of the Russian Federation with the adoption of the 5th section and recent changes in the bankruptcy legislation. However, the question of certain creditors' rights being unbalanced has not lost its edge. The absence of consistency and sufficiency in legal regulation of relations connected with questions of liability for a testator' s debts results in difficulty in realization of rights and legitimate interests of a testator' s creditors and their protection.* ***Conclusions:*** *in order to formulate the legislative concept concerning rights of a testator's creditors, it is necessary to per-*

form a theoretical analysis of the last legislative innovations connected with inheritance bankruptcy. The innovations should be first of all analyzed in terms of the ratio between this concept and the subject and content of legal regulation of both relations within the institute of bankruptcy and relations connected with a testator' s debts.

Keywords: hereditary succession; claims of creditors; inheritance, testator' s debts; responsibility of successors; bankruptcy of the deceased; personification of the inheritance

Information in Russian

ЭВОЛЮЦИЯ КРЕДИТОРСКИХ ПРАВ В ОТНОШЕНИЯХ С НАСЛЕДНИКАМИ, ПРИНЯВШИМИ НАСЛЕДСТВО

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Введение: *сохраняющееся в законодательстве разбалансированное отношение к разным кредиторам наследодателя, имеющим претензии к наследственной массе, пробельность норм, регулирующих отношения с участием нескольких кредиторов, попадающих в состояние конкуренции при недостаточности наследственной массы, и отсутствие сформированного доктринального обоснования по этим вопросам обусловили авторское внимание к теме статьи.* ***Цель:*** *проведение научно-теоретического сопоставительного анализа прав разных кредиторов на удовлетворение их притязаний за счет наследственной массы.* ***Методы:*** *общенаучные методы анализа, обобщения, сравнения, описания, интерпретации; частноправовые методы: формально-юридический и сравнительно-правовой.* ***Результаты:*** *правовой анализ положений об ответственности по долгам наследодателя позволил выявить как терминологические нестыковки в регулировании «долговых отношений», так и отсутствие реальной законодательной концепции в этих вопросах. До недавнего времени законодатель ориентировался преимущественно на обобщенную концепцию защиты прав наследников, вопрос же о правах кредиторов, имеющих претензии к наследственной массе, решался больше по умолчанию. Часть вопросов была снята благодаря законодательным новшествам, введенным в ГК РФ принятием раздела пятого и недавних изменений законодательства о банкротстве. Однако вопрос о разбалансированности прав отдельных кредиторов не утратил своей остроты. Отсутствие последовательности и достаточности правового регулирования отношений, связанных с вопросами ответственности по долгам наследодателя в общем порядке, затрудняет реализацию кредиторами наследодателя своих прав и законных интересов и их защиты.* ***Вывод:*** *для целей формирования законодательной концепции о правах кредиторов*

наследодателя необходим предметно-теоретический анализ последних законодательных новшеств, связанных с банкротством наследственной массы, главным образом с точки зрения соотношения этой конструкции с предметом и содержанием правового регулирования отношений в части как института банкротства в целом, так и отношений, возникающих по поводу долгов наследодателя.

Ключевые слова: наследственное правопреемство; претензии кредиторов; наследственная масса; долги наследодателя; ответственность наследников; банкротство умершего гражданина; персонификация наследственной массы

Introduction

Based on the own experience and the experience of the European countries having performed a lengthy work on the unification of the national law practices in the sphere of inheritance[1], the modern Russian legislator agreed that inheritance is "good and just". This acknowledgement resulted in Chapters 61–65 of Section Five of the Russian Federation Civil Code (hereinafter referred to as the RF CC), enriching their contents with numerous innovations but having not avoided law making drawbacks. The latter include terminological mismatches, associated with construction "liability for the testator's debts", whilst in reality not only the liability is meant in its juridical meaning but the actions that were not performed by the testator within his lifetime under ordinary obligation relation not connected with the civil offence. This inaccuracy could be treated as not meaningful if it were not one of the ways to deflect the doctrinal attention from the problems which are among those actual in respect of the testator's debts that are juridically valid even after his death.

The legislative archaism of the mentioned terminological aspect makes the doctrine to turn to a senseless phenomenological analysis of such a civil legal notion as "the debt", the juridical contents of which as applied to the sphere of property relations can be seen as predetermined without special definitions. Seemingly, the researches connected with the issues of the postmortem obligations of the testator, their personification, the order of the successors' exercising their rights in case of the creditors' claims, could be more efficient.

It should be borne in mind that both the legislator and the doctrine were for a long time focused on the primary protection of the successors' rights whilst the condition of the doctrinal component on such an important branch as the "testator's successors – testator's creditors" does not look satisfactory. The reasons for such state of affairs can be traced in a habitually unspoken "notary connotation" of the very problem of encumbering the mass of succession with the testator's obligations, while the science of the notarial law turns to be not so active in researching this problematics both before and after adopting section five of the RF CC. And this is one of the reasons why the steps taken by the legislator in regulating the relations associated with the debts included into the mass of succession are to a lesser extent based on the solid theoretical material which is expected to appear. The need for it is critical because the conceptual ideas, which are to comply with the norms aimed at the regulation of the relations between the successors who accepted the succession and the testator's creditors, are not yet "recognized". In particular, it is not clear which principle should be taken as the basis for regulating the relations – whether it should be the principle of the creditors' justice resting on the equality and the right proportionality of all the claiming creditors, or the principle of the creditors' priority when satisfying the lien (by analogy with the succession of the creditors in case of the legal entity liquidation). The concept theoretical analysis is also needed for the latest legislative innovations associated with the bankruptcy of the mass of succession. Reaching the optimality of this juridical construction meaning both the contents and the size, is a matter of time. However, even today it needs to be analysed to determine its interrelations with the subject and the contents of the legal regulation of relations of the bankruptcy institution as a whole and those resulting from the testator's debts.

[1] This work has finally resulted in adopting the Regulation about the Jurisdiction and Applicable Law on the Succession Issues. See: Regulation No. 650/2012 of the European Parliament and the Council of the European Union "On jurisdiction, applicable law, recognition and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession" dd July 4, 2012. In force since August 17, 2015. The text was not published officially. Published in English: Official Journal of the European Union. 2012. No. L 201. P. 107.

Main contents

The universality and the post-mortal character of the hereditary succession enacts the intra-vital assets (rights) of the testator and his liabilities. As G. V. Shershenevich noticed figuratively, "the successor is hit not only with the rights but also with the liabilities for debts of the deceased" [9]. When included into the mass of succession, this combination has one common juridical faith in the form of the simultaneous acceptance of all the rights and obligations.

This (economic) approach considerably simplifies the succession procedure and adds to the efficiency of the civil turnover that requires stability and consistency of not only the property relations but also of the obligation relations, what is reached through replacing the missing debtor with his successor – the inheritant.

It is a known fact that the debts as the legally bound duty can be repaid within the framework of the existing contractual obligation or be addressed in accordance with the civil legal liability rules. In Item 1 of Article 1175 of the RF CC, the legislator writes that the successor "is liable for the debts of the testator". In reality, the meaning of the norm contents is much wider, because the liability is meant not only in the legal sense of the "juridical liability" term but also in the sense of the "common" property obligations not associated with the disputes in relations with the testator's participation when alive. In this sense, term "liability" as applied to the hereditary succession, turned to be wider at the legislator's will, apart from its true legal meaning – to be responsible for, i.e. to bear the burden of additional obligations associated with the committed offence, for restoring the property sphere of the creditor/ the aggrieved. It can be assumed that the legislator acted by inertia using the generalizing terminology of the previous codes where the normative constructions rested to a great extent on the postulate that "a Soviet person does not have debts at all". But the modern market turnover with its classical tools including various debt obligations (loan, credit, factoring, suretyship and etc.) has been witnessing quite the opposite fact for a long period of time – the debts as the open commitments which are often do not reach the category of "liability", are typical for a Russian man, and there are many of them, what multiplies the frequency of the creditors' claims to the mass of succession.

Seemingly, the required terminological compliance in the hereditary succession issues in the RF CC norms, could be provided by using such a notion as "obligations on the testator's debts" together with notion "liability" (in cases when it is juridically justified). In this part, the court practice, due to the versatility of the duties remaining after the testator's death, has started to act as the forced corrector of the normative terminology, which quite reasonably distinguishes between "relations due to liability" and "obligations on the testator's debts"[1].

Two articles of the RF CC norms cover the "debts relations" remaining after the testator's death: Article 1174 about repaying expenses caused by the testator's death and expenses for protecting and managing the mass of succession; and Article 1175 about the liability of the successors for the testator's debts. Both the norms are the result of the reception of the similar regulations from the RSFSR Civil Code of 1964[2] (Articles 549 and 553 correspondingly), and both prove the generally reasonable statement that the law of succession is a most conservative part of the of the civil law with the specific national rules prevailing in it [5, p. 400].

The general rule of the universal succession when the property of a man is passed over to his successors as a single whole and unchanged, states that the successor who accepted the succession is "liable for the debts of the testator within the limits of the received inheritance property" (Item 1 of Article 1175 RF CC). This statement can be developed into the presumption that if the inheritance property is totally missing, the successors are relieved from the liability. In case the property is available and was accepted by the successors, they became liable for the creditors' claims within the period of prescription. The rule is rather simple and understandable if the public relations under its regulation sphere are not aggravated with such circumstances as the

[1] About the Court Practice on the Cases of Inheritance: Regulation of the Plenum of the Russian Federation Supreme Court dd May 29, 2012 No. 9. R.60// Official Gazette of the RF Supreme Court. 2012. No. 7.

[2] Civil Code of the RSFSR: approved by the RSFSR Supreme Soviet on June 11, 1964 (revised on November 26, 2001) // Official Gazette of the RSFSR SS. 1964. No. 24, Art. 407 (repealed).

insufficiency of the succession mass for settling the claims of the creditors or when the creditors are huge in number. When the mass of succession is not enough or there are many of creditors laying claims to it, the question of the will volume of the testator/ successors becomes critical. So far, there are no vivid fundamental legislative ideas concerning this issue. This is why the practice faces the facts of the unbalanced legislative attitude in cases when a testator has more than one creditor and they are placed in the position of the competition with each other due to the insufficiency of the mass of succession.

Until recently, this issue was solved at the discretion of the successor: he could either not accept the succession or to declare the limit of liability for the debts of the testator. It is clear that such a regulator in this complicated issue as the successor's discretion, is exclusively of the subjective nature and does not fully comply with the idea of succession. Indeed, the successor (by force of the bequeathal or the law) replaces the testator in his rights and duties only juridically, and so – the limitation of the legislator's participation with setting the balance that the obligations remaining after the testator's death are effective only so far as they are covered by the remaining rights, – is obviously inadequate.

In case of a dispute, the law and the court practice acts state that in case the mass if succession is missing or insufficient, the creditors' claims for the testator's obligations are not subject to satisfaction at the expense of the successors' property, and the obligations of the testator are terminated due the impossibility to fulfil them fully or in the missing part of the succession property[1].

Such a universal outcome was typical before adopting Federal Law dd June, 2015, No. 154–FZ about introducing changes into Federal Law dd October 26, 2002, No. 127–FZ "About Bankruptcy (Insolvency)"[2] (hereinafter referred to as the Law of Insolvency). In accordance with the norms of Federal Law dd October 26. 2002. No. 127–FZ "About Insolvency (Bankruptcy)" (paragraph 4 of Chapter 4)[3] effective since October 1, 2015, the mass of succession remaining after the death of the citizen can be declared bankrupt.

The accepted novelty allows to distribute the property remaining after the testator's death among the creditors following their rights and legitimate interests in strict sequence established by law, that was defined by the legislator based on the social and other position of the creditors, and also their connections with the debtor (Article 213.27 of Law of Insolvency). The provisions of the Law of Insolvency are not applicable in any other situation. We mean situations when 1) the inherited property is not enough, but the mass of succession itself does not show the signs of bankruptcy defined in Part 2 of Article 213.3 of the Law of Insolvency (for example, the sum claimed by the creditors is less than 500 thousand roubles); 2) the citizen (before his death), the bankruptcy creditor, the authorized body did not exercise their right to apply to the court for declaration of bankruptcy (Part 1 of Article 213.3 of the Law of Insolvency); 3) at the moment of accepting the succession, the successors do not know the total size of the creditors' claims. All the described cases are covered by the norms of the RF CC that do not contain the rules about the order and the terms of laying the claims, about the person who is to manage the records of the corresponding claims and be liable for keeping the order of settling the claims.

The existing provisions covering the creditors' rights to announce their claims to the notary, contained in the Fundamentals of Notaryship Legislation of the Russian Federation[4] (Article 63), are actually a formally fixed attempt to at least somehow observe their

[1] *About the Court* Practice on the Cases of Succession (Item 60); Item 1 of Article 416 of the RF CC.

[2] *About Regulating* the Special Features of Insolvency (Bankruptcy) at the Territories of the Republic of Crimea and the Federal Status City of Sevastopol and about Introducing Changes into Certain Legislative Acts of the Russian Federation: Federal Law dd June 29, 2015, No. 154–FZ/ Official website of the legal information. Available at: http://www.pravo.gov.ru (accessed 1003.2016).

[3] About Insolvency (Bankruptcy): Federal Law dd October 26, 2002, No. 127–FZ// Collection of Laws of the Russian Federation. 2002. No. 43, Art. 4190.

[4] Fundamentals of Notaryship Legislation: Regulation of the RF Supreme Court dd February 11, 1993, No. 4463–I // Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation. 1993. No. 10, Art. 357.

rights[1]. The only consequence of receiving such claims by the notary is informing the successors about the debts of the testator. For obvious reasons, the fact of the successors' being informed about the unsettled claims to the mass of succession and the mechanism of the claims settling – are the two different things. When these acts are perceived in a different way, the state of things is supported when the successor's role is the "role of the chief decision–maker", and the claims of the creditors are satisfied if and when they are received, till the limit of the liability is reached [6]. It is clear that with this approach, the claims are satisfied of a more persevering creditor, or of the creditor who claimed earlier, or of the one whose claims are secured with the testator's property. The situation of satisfying the claims of the creditors at the successors' discretion is also entirely possible[2]. This results in the creditors' competition that could hardly be called just.

In case with the good faith successor (Item 3 of Article 1, Item 5 of Article 10 of the RF CC) he can not properly overcome the competition of the testator's creditors, because his liability is limited by the cost of the mass of succession what objectively prevents from satisfying the claims of all the creditors, and the successor does not have a legitimate interest in deciding who is the first to be satisfied.

The handling of this question has rather a technical than a juridical character. The notary can be appointed as a person authorized for maintaining the corresponding register of the creditors and for the observation of the claim satisfaction order, because in accordance with Article 63 of the RF Fundamentals of Notaryship Legislation, it is the notary who is authorized to accept the claims of the creditors, or the successor, or any other person, for example a finance manager by analogy with the Law of Insolvency. At the same time, charging the successor with a duty to go to the court for the purpose of establishing all the creditors is not practical, because such circumstances can be established by non-judicial authorities[3]. However, the introduction of such provisions should be done simultaneously with the fixation of the rules of the terms and the sequence of the creditors' claims satisfaction in the RFCC.

The absence of the unified legislative approach to the problem of the procedure and the sequence of the creditors' claims satisfaction results in the situation when the outcome of the similar claims of the creditors can be different depending on the presence or the absence of the insolvency features in the mass of succession. In particular, it affects the issue of personification of the rights and duties included into the mass of succession which are important for the testator's debt obligations. The personification is associated with their connection with a personality, and so we are talking about the satisfaction of the claims connected with the creditor's personality (payment of alimony, compensation of the damage caused to the health and life).

The generally established rule runs that personal rights and duties of the testator terminate with his death and are not transmitted to any other person. The existence of such rights and duties decreases the size of the mass of succession,

[1] It appears that such a condition descends from the Soviet legislation. In particular, Article 554 of the RSFSR CC of 1964 also provided for the creditors' right to forward their claims to the successors who accepted the succession, or to the testamentary executor, or to the notary office at the place of opening of the inheritance, or make a claim in the court for the inherited property, within six months after the inheritance was opened. However, the meaning of this requirement was different, as the mentioned term was preclusive, because the failure to follow it resulted in the loss of all the creditors' rights of claim.

[2] The secured creditor turns to be naturally suspended from the situation, because his priority right for the claim satisfaction at the expense of the secured property of the testator does not allow the successor to ignore his claims (Item 1 of Article 334 of the RFCC).

[3] The procedure of establishing the creditors could be settled through adopting the positive experience of France and Germany. In Germany, for example, the creditors can be proposed to submit their claims in summons proceedings (§ 1970 of the German Civil Code). The mentioned rule however does not cover the secured creditors and the creditors having the same rights as the secured creditors in case of the bankruptcy proceedings, and also – the creditors who, in case of the forced bankruptcy procedures for the property, have the right for their claim satisfaction at the expense of that property, if we speak about the satisfaction at the expense of the things with imposed liability for obligations associated with them. The same rule is applied regarding the creditors whose claims were secured through the preliminary registration, or those having the right to release the subject of their right from the total mass of succession (§1971 of the German Civil Code). With this, the French Civil Code separately defines the term for claims not secured with the inherited property – fifteen months since the date of publishing the application of accepting the succession within the limits of the clean property (Articles 788, 792 of the French Civil Code).

because they terminate with the death of these rights bearer (Article 418 of the RF CC). While in accordance with the Law of Insolvency, vice versa, the claims of the creditor for the obligations associated with the personality of the debtor are subject to satisfaction as the first priority of the register of the creditors' claims (Part 3 of Article 213.27 of the Law of Insolvency).

Such a disbalance in the statuses of the testator's creditors depending on the applied procedure originates from different legislative approaches to defining the limits of liability for the testator's debts. As per the general rule, the limitation of the successors' liability is reached through applying the cost criteria to the mass of succession. The successors are liable within the limits of the inherited property, but the satisfaction of the creditors' claims can be done not only at the expense of the testator's property but also at the expense of the successors' property. In case of the mass of succession bankruptcy, the satisfaction of the creditors' claims is performed exceptionally at the expense of the testator's property (Part 7 of Article 223.1 of the Law of Insolvency)[1], i.e. both the cost criteria and the subject criteria are taken as the basis.

The property linking of the creditors' claims exceptionally with the property in the mass of succession (the personification of the mass of succession) within the bankruptcy framework leads to a juridically justified opportunity to satisfy the claims of the creditors–citizens in respect of whom the testator has alimony obligations or obligations for the health and life damage compensation. By implication of the bankruptcy legislation, only those first priority creditors are meant, for whom the testator had an outstanding debt at the moment of his death, i.e. the incurring of the debt preceded the death. Such an approach results in eliminating the habitually accepted inequality of the creditors with "personal" circumstances who had not received the debt by the moment of the testator's death, and other creditors, but so far – only within the bankruptcy procedure.

Establishing the dependence of satisfying the claims associated with the testator's personality, on the solvency or the insolvency of the mass of succession (testator) does not lead to the equality of the normative regulation and does not mean its consistency. It is not possible to limit the right efficacy only with the sphere of relations in bankruptcy and deprive all the other bearers of the right of all the advantages that is gives. If the creditors for "personal" debts of the creditor have the right to get their claims satisfied at the expense of the mass of succession (within the framework of the bankruptcy case – Item 1 of Article 213.25 of the Law of Insolvency), such a right should be granted to the "personal" creditors in accordance with the standard procedure. Overcoming of the created difference in the legal regulation will allow to equate the legal opportunities of the testator's creditors independently of the presence of absence of the solvency or insolvency features in the mass of succession.

[1] The satisfaction of the creditors' claims exceptionally at the expense of the testator's property was allowed by the Roman legislation. For this, the creditors had the right to address the praetor, the province governor or the court for the purpose of releasing the mass of succession from the personal property of the successor and using it exceptionally for satisfying the claims of the testator's creditors [4, p. 56, 58].

Conclusion

The progressive development of any relation affecting a citizen is impossible without providing for an efficient and understandable mechanism of transmitting the rights and duties in case of the citizen's death. The existence of such mechanism is a necessary condition for giving equal legal opportunities to all the participants of the civil relations, in compliance with the civil law ideas and values.

Creating of the well–knit system of norms in the civil legislation, properly coordinated with the bankruptcy legislation is capable of providing for a real equality of all the civil process participants, for the continuity and stability of their relations. The consequence of that will be the strengthening of the creditor's confidence in getting the things they fairly rely on when entering into the relations with the testator during his lifetime.

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