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Determining The Legal Status Of Successors To Exclusive Rights According To The Legislation Of The Republic Of Kazakhstan

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Abstract

The article analyzes the inheritance of exclusive rights common to all legal systems. Although there are certain national and international laws in the field of exclusive rights, many disputes arise due to the imperfection of legislative provisions and the absence of legal wishes expressed by testators. If the transfer of exclusive rights from the testator (author) to their heirs or other copyright holders is properly planned, it will enable better control over selecting subjects of hereditary legal relations, namely who will own and manage the author's intellectual property after their death. This need is conditioned by the fact that the person who inherits exclusive rights to some copyrighted work after the author's death can further use it. However, it is necessary to clarify that inherited rights cannot be realized to the fullest extent as if the author could have done it. In this regard, law enforcers face a serious problem of determining the legal status of successors to exclusive rights. Based on the study conducted, the authors of the article have elaborated recommendations to improve the mechanism for limiting human rights and freedoms, as well as ensuring their effective protection.

Keywords: exclusive rights, author, authorship, inheritance, scope of rights, testator, successor, legal status, literary and artistic copyright.

Determinar el estatus legal de los sucesores de los derechos exclusivos de acuerdo con la legislación de la República de Kazajstán

Resumen

El artículo analiza la herencia de derechos exclusivos comunes a todos los sistemas legales. Aunque existen ciertas leyes nacionales e internacionales en el campo de los derechos exclusivos, muchas disputas surgen debido a la imperfección de las disposiciones legislativas y la ausencia de deseos legales expresados por los testadores. Si la transferencia de derechos exclusivos del testador (autor) a sus herederos u otros titulares de derechos de autor se planifica adecuadamente, permitirá un mejor control sobre la selección de sujetos de relaciones legales hereditarias, es decir, quién será el propietario y la propiedad intelectual del autor después de su muerte. Esta necesidad está condicionada por el hecho de que la persona que hereda los derechos exclusivos de alguna obra protegida por derechos de autor después de la muerte del autor puede usarla más. Sin embargo, es necesario aclarar que los derechos heredados no pueden realizarse en la mayor medida posible como si el autor pudiera haberlo hecho. A este respecto, los encargados de hacer cumplir la ley enfrentan un grave problema para determinar el estado legal de los sucesores de los derechos exclusivos. Según el estudio realizado, los autores del artículo han elaborado recomendaciones para mejorar el mecanismo para limitar los derechos humanos y las libertades, así como para garantizar su protección efectiva.

Palabras clave: derechos exclusivos, autor, autoría, herencia, alcance de los derechos, testador, sucesor, estado legal, derechos de autor literarios y artísticos.

1. Introduction

The main subject in the legal relations under study is the testator. Determining copyright holders can be quite complex and time-consuming since the related rights cannot be owned by the initial authors due to their death (Korn, 2005). According to the current legislation of the Republic of Kazakhstan, only an individual may be an inheritor of any rights. This provision is described in Article 1038 of the Civil Code of the Republic of

Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999), where the legislator focuses on the term “deceased citizen”.

While analyzing the issues connected with the legal status of successors to exclusive rights, we should emphasize that a person inheriting certain rights also acquires a number of duties that can be expressed in the form of a testament or a testamentary renunciation. In this case, we should pay attention to the fact that the current civil legislation of the Republic of Kazakhstan does not provide such obligations for the heir coming into their rights by law due to the absence of a will. In the first and second instance, the legal status of successors to exclusive rights is very controversial since heirs are not subjects of a creative nature unlike authors (testators), which indicates the impossibility of identifying the scope of rights and obligations of the testator and the heir of exclusive rights.

The inheritance of exclusive rights is hard to control since there are no specific rules in the existing legislation of the Republic of Kazakhstan aimed at resolving issues of inheriting intellectual property rights. Therefore, it is necessary to refer to the general and special provisions on inheritance and other ways of transferring intellectual property rights contained in various articles of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999; Grazhdanskii kodeks Respubliki Kazakhstan (Obshchaya chast) ot 27 dekabrya 1994 goda № 268-XIII, 1994) and the Law of the Republic of Kazakhstan “On copyright and related rights” of June 10, 1996 (Zakon RK “Ob avtorskikh i smezhnykh pravakh” ot 10 iyunya 1996 goda, 1996).

Consequently, the testator’s legal capacity is questioned only when a will is drawn up. If inheritance takes place by law, the testator’s legal capacity is not relevant. Jeffrey Evans Stake (1998) supports this viewpoint and emphasizes that a legally incompetent or partially incapacitated individual can act as the testator by law without any restrictions.

In this case, the existence of property and/or exclusive rights of the prospective testator is fundamental.

One more challenging case of right transfer is the inheritance of exclusive rights to some copyrighted work/deliverable by such an heir as the state if some property is recognized as heirless. At first sight, this issue seems to be solved by Article 1083 of the Civil Code of the Republic of Kazakhstan but there are certain questions regarding the legality of making a profit and using deliverables by the state, as well as including a copyrighted work

into the public domain.

2. Methods

While writing this article, we used a set of methodological techniques, including both general and specific scientific methods of cognizing social processes. Materialist dialectics was selected as the basic method, which also comprised analysis and synthesis. The systemic and functional methods were also essential to the study. It is worth mentioning that we used not only the general scientific methods mentioned above but also specific legal methods (formal-legal, comparative-legal and the method of social and legal experiment) that contributed to the formation of valid conclusions and suggestions.

The article presents the results of an in-depth analysis of professional literature written by scientists from the Republic of Kazakhstan, as well as foreign scholars, who try determining the legal status of successors to exclusive rights. The acuteness of the above-mentioned problem is confirmed by a significant number of studies conducted by such scientists as N. Korn, J.E. Stake, J. Haskins, J.B. Nordemann, C. Czychowski, A.W. Gruter, R.E. Spoo, etc.

We also analyzed scientific works of Kazakh and post-Soviet authors, in particular, Yu.G. Basin, E.P. Gavrilov, B.A. Jandarbek, A.G. Didenko, T.E. Kaudyrova, O.P. Prokopenko, K.Yu. Rozhdestvenskaya, M.K. Suleimeno-va, O.Yu. Shilokhvost, etc.

We conducted a comprehensive analysis of the current legislation of the Republic of Kazakhstan and law enforcement related to the inheritance of exclusive rights.

3. Results

Based on the study results, we obtained the following results.

1. The legal status of heirs as special subjects of copyrights is determined by the conceptual difference in rights included in the succession mass (i.e. property or non-property rights) and depends on the scope of the testator's rights and obligations.

2. Being the heir of copyrights to some escheat property, the state cannot derive material benefits from the possession of such property rights. However, we analyzed the current legislation of the Republic of Kazakhstan and concluded that all the assets subject to hereditary relations, including exclusive rights, are reclassified into escheated property and inherited by the state in the absence of other heirs or in case such heirs renounce the succession.

3. Clause 1 of Article 22-1 of the Civil Code of the Republic of Kazakhstan should be presented as follows: “1. A minor who has reached the age of 16 may be declared emancipated if he (she) works under an employment contract, participates in creative activity as a performer and/or creator of some literary, scientific and artistic works, or with the consent of his (her) legal representatives is engaged in entrepreneurial activities and/or acts as a party under copyright and/or performance agreements”.

4. Article 983 of the Civil Code of the Republic of Kazakhstan should be supplemented with Clause 3 running as: “3. To the extent provided by Article 1083 of the Civil Code of the Republic of Kazakhstan, exclusive rights to some literary or artistic work included into the inheritance ceases to be effective and such a work is transferred to the public domain”.

5. Article 999 of the Civil Code of the Republic of Kazakhstan should be complemented with Clause 6 running as: “6. To the extent provided by Article 1083 of the Civil Code of the Republic of Kazakhstan and if the state or other municipal entities do not have the status of an entrepreneur, exclusive rights to some invention, utility model or industrial design that is a part of the inheritance shall be transferred to the public domain”.

6. Article 1029 of the Civil Code of the Republic of Kazakhstan should be complemented with the following footnote: “If exclusive rights to the trademark are transferred to several heirs, such rights shall become their joint shared property”.

4. Discussion

The author’s heirs are represented by a special group of subsequent owners, to whom the government provides the opportunity to protect their rights to the work created by the initial author (Nordemann et al., 1998). The circle of persons entitled to inherit something (possible heirs) is determined by Article 1044 of the Civil Code of the Republic of Kazakhstan. Although Clause 2 of Article 1044 of the Civil Code of the Republic of Kazakhstan does not specify legal entities or states eligible for inheritance, we can assume that not only Kazakh legal entities but also foreign legal entities and possibly even foreign states are allowed to inherit some property.

Referring to heirs, we should dwell on the provision contained in Clause 1 of Article 1044 of the Civil Code of the Republic of Kazakhstan on persons conceived when the testator is alive and those born alive after the inheritance opens. If a child is born alive but dies shortly after birth, the rules on transmission, shared accretion, etc. are applied. This conclusion is based on a joint analysis of the following norms of the Kazakh legislation:

Articles 1044, 1069, 1072-4 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999) and Clause 2 of Article 13 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Obschchaya chast) ot 27 dekabrya 1994 goda № 268-XIII, 1994). A child conceived when the testator is alive and born alive after the inheritance opens can be an heir both by testament and by law. If such a child is indicated in the testator's last will as an heir, their family ties are of no importance. In case a child is born dead, the existing will is not applicable. According to the current law, only individuals related by blood, adopted or dependent on the testator have the right to inherit. The Civil Code of the Republic of Kazakhstan contains a fixed number of succession lines (seven).

Without elaborating the general theory of inheritance, including exclusive rights, which are subject to the current legislation of Kazakhstan, we consider it necessary to dwell only on the problem under study. Although there is a specific norm governing issues of a testamentary renunciation (legato), it is advisable to consider it in depth since the subject of a testamentary renunciation (legate) is too extensive (Pilyaeva, 2002) and may contain different instructions. If the content of the last will can be reduced to legato, the following question arises: is the state obliged to fulfill a testamentary renunciation (legato) if it inherits by law or accepts property recognized as heirless?

Answering this question, we should refer to the provisions enshrined in Clauses 1-3 of Article 1057 of the Civil Code of the Republic of Kazakhstan and Article 1083 of the Civil Code of the Republic of Kazakhstan. According to these provisions, if the testator directly assigns such an obligation to the state, the latter shall fulfill a testamentary renunciation. If the testator violates Clauses 1-3 of Article 1057 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999) and does not indicate a person obligated to fulfill the above-mentioned testamentary renunciation (including the one fully revealing the content of the last will), this testamentary renunciation should be invalidated.

According to Clause 5 of Article 1057 of the Civil Code of the Republic of Kazakhstan, if an heir who was entrusted with a testamentary renunciation dies or fails to accept the inheritance, the execution of the above-mentioned testamentary renunciation is transferred to the other heirs who received their share of property or to the state if the property was considered

heirless. A testamentary renunciation is not executed if the legatee dies before the inheritance opens or after it opens but until the heir by will accepts it.

Proceeding with the research, we should mention that the author's exclusive right to use the work they created seems to be an inseparable right, which includes the entire set of powers determined by the methods that are supposed to be applied. At the same time, the generation of profit does not matter. The permission of a copyright holder is obligatory since exclusive copyrights may belong to another person in addition to the original authorship on the basis of a special agreement (agreement on the alienation of exclusive rights (Article 965 of the Civil Code of the Republic of Kazakhstan) and an agreement on granting rights to use intellectual deliverables or a means of individualization, i.e. a license agreement (Article 966 of the Civil Code of the Republic of Kazakhstan), sublicense agreement (Clause 3 of Article 966 of the Civil Code of the Republic of Kazakhstan), copyright contract (Article 33 of the Law No. 6-I ZRK of the Republic of Kazakhstan) and under procedure of inheritance) (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999).

The transfer of exclusive rights to some intellectual deliverables without concluding an agreement between heirs and copyright holders is allowed in cases and for reasons established by law, including in the manner of universal succession, in case of inheritance and reorganization of a legal entity (Article 965 of the Civil Code of the Republic of Kazakhstan) (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999).

The legal status of heirs of exclusive rights to a copyrighted work is determined and formed in conformity with provisions of the Special Part of the Civil Code of the Republic of Kazakhstan, as well as Article 965 of the Civil Code of the Republic of Kazakhstan, legislatively setting out the transfer of exclusive rights in the event of universal succession, and Clause 4 of Article 982 of the Civil Code of the Republic of Kazakhstan, providing the possible transfer of copyrights (exclusive rights) to some work in succession and subsequently into the public domain that is also enshrined in Article 983 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999).

In contrast to author-testators, heirs are subjects of an uncreative nature, i.e. a person who obtains the right to use some intellectual deliverable not

because they participated in its creation but only due to the transfer of the corresponding right by inheritance. However, the current Civil Code of the Republic of Kazakhstan (Special Part) provides no gradation between the legal statuses of a person who receives the right to use some deliverable by inheritance and a person (copyright holder) who obtains a similar right based on an agreement on the alienation of rights to some copyrighted work or by law. Thus, we can assume that the statuses of heirs and right holders differ from the status of author-testators due to the degree of a creative nature. Considering the provisions enshrined in Subclause 3, Clause 1 of Article 977 of the Civil Code of the Republic of Kazakhstan, heirs shall protect the integrity of the work inherited after the death of its author and do not have the right to make changes to the work.

This state of affairs was criticized by a number of scholars emphasizing the heir's lack of specialized experience in the field of the author-testator's activity (Spoo, 2009) and the necessary cultural level determining the unhindered use of copyrighted materials (Mullally, 2013). For these and other reasons, some scientists deny the existence of any posthumous period of copyright protection (Subotnik, 2015).

While analyzing this problem, A.P. Sergeev (2004) points out that authors exercising their personal rights to protect their copyrighted works from distortion or encroachment that could harm their honor and dignity have the right to make or allow any changes, including serious amendments. The heir entrusted with the task of protecting the inviolability and integrity of some work cannot do this.

However, V.I. Eremenko (2010) does not agree with the scientists who support the idea of forbidding heirs and right holders to make changes, reductions or additions to the copyrighted work they inherited.

After analyzing the existing approaches to this issue, we believe that the status of heirs, other copyright holders and authors should not be mixed since the scopes of these concepts do not coincide.

Like the Law of the Republic of Kazakhstan "On copyright and related rights", the current civil law contains provisions on the transfer of copyrights by inheritance (this also applies to property rights) and confirms the following wording: "the copyright belongs to the author's heirs and is inherited" (Clause 4 of Article 982 of the Civil Code of the Republic of Kazakhstan) (*Grazhdanskiy kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999*). Thus, the author's heirs have the right to execute and authorize the translation and editing of the work, its real-life performance, cable or radio broadcasting, public performance,

rental, distribution of copies or originals, etc. These rights can be transferred to persons who acquired exclusive rights to some work under an agreement on the alienation of such a right in accordance with Article 966 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999) and received the status of a licensee, i.e. a copyright holder. However, we believe that the scope of rights enjoyed by heirs and other copyright holders may not always be the same.

Consequently, we can assume that the author who transferred their work for the use of another person under a contract is considered a priori agreed to the publication of this work.

According to Article 982 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999), personal non-property rights are protected indefinitely; therefore, the author has the right to appoint the executor of their last will who will be required to take measures to protect the authorship, the author's name and the inviolability of the work after their death. In the absence of such an indication from the author-testator, this function is assigned to the author's heir, successor or other parties concerned.

It should be noted that the Law of the Republic of Kazakhstan "On copyright and related rights" does not clearly define the body authorized for the protection of the author's personal non-property rights after their death (Zakon RK "Ob avtorskikh i smezhnykh pravakh" ot 10 iyunya 1996 goda, 1996). In this regard, it is worth mentioning E.P. Gavrilov's opinion. This scholar believes that the above-mentioned personal copyrights should be protected by the relevant ministries and departments under such conditions (Gavrilov, 2005).

There is still a question regarding the procedural status of testamentary executors, heirs and other interested parties, the answer to which can be found in Article 977 of the Civil Code of the Republic of Kazakhstan. It states that the authorities of these persons to protect the author's personal non-property rights are equivalent but their grounds are different. At the same time, the doctrine does not have a unified understanding of the legal nature of a testamentary executor (Makovskii and Sukhanov, 2003). While analyzing Clause 3 of Article 1059 of the Civil Code of the Republic of Kazakhstan, we have assumed that a testamentary executor cannot be considered the author's representative (Clause 4 of Article 163 of the Civil Code of the Republic of Kazakhstan). Their powers are reduced to the sole (judicial) protection of these rights and are not related to their implemen-

tation.

With respect to the legal status of successors to exclusive rights, some Kazakh experts believe that the person recognized as the heir obtains the author's powers within copyright relations that arose during the creation of the work and did not cease after the author's death. However, the heir's powers are far fewer than those of the author since heirs lack a creative connection with the work (Baimoldina and Kaudyrov, 2013).

The social institution of inheritance is not any different in recognizing exclusive rights as heirless. Consequently, it applies provisions of Article 1083 of the Civil Code of the Republic of Kazakhstan (Grazhdanskiy kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999) since there are no special rules in the Kazakh legislation aimed at regulating the inheritance of exclusive rights in the absence of heirs.

Therefore, one more controversial aspect of this issue is the inheritance of exclusive rights to a work or performance by the state, if the above-mentioned inheritance is recognized as heirless. This issue seems to be resolved in Article 1083 of the Civil Code of the Republic of Kazakhstan but the legality of making a profit and using intellectual deliverables by the state is questioned when some work is recognized as heirless or transferred to the public domain (Sukhanova, 2000, Haskins, n.d.).

However, we can state that the absence of a unified approach to resolving inheritance issues with no heirs appointed when exclusive rights to some copyrighted work are transferred to the public domain raises a number of questions and causes different interpretations of the legislation governing the inheritance of exclusive rights. This assumption is based on the presence of an intermediary step between heirless property and the transfer of such a work to the public domain, namely the state as an heir.

In this context, it is worth noting that the Civil Code of the Republic of Kazakhstan does not contain any provisions aimed at regulating exclusive rights to a copyrighted work. There is also an opinion that an heirless exclusive right is transferred to the public domain, i.e. this work can be freely used by any person without consent, permission or payment of royalties but the authorship, the author's name and the inviolability of the work are guaranteed by law (Didenko, 2007b).

An unpublished work that has been transferred to the public domain can be disclosed by any person only if the publication of this work does not contradict the author's will, which they expressed in written form. Other civilians, including K.Yu. Rozhdestvenskaya, support a similar viewpoint (Sukhanova, 2000, Rozhdestvenskaya, 2013).

According to Subclause 4, Clause 1 of Article 977 of the Civil Code of the Republic of Kazakhstan, only the author has “the right to access to the work to the general public (right of disclosure)” (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999). In this regard, we cannot agree with the opinion set forth in scientific literature that “the legal regime of the heir’s exclusive rights is identical to the regime of the author’s rights” (Blinkov, 2009).

If some work has not been published in the author’s lifetime and its publication is expressly prohibited, the heir who receives exclusive rights to such a work cannot use it and carry out the actions described in Article 964 of the Civil Code of the Republic of Kazakhstan or give permission to carry out such actions. The only exception is the right to transfer since heirs can independently translate and edit the work inherited for their personal use without publishing it.

Coming into an inheritance, heirs acquire not only exclusive rights to some work but also obligations that can be expressed in the form of a testament or a testamentary renunciation. In this case, we should emphasize that the current civil legislation of the Republic of Kazakhstan does not establish such obligations for persons inheriting exclusive rights to work by law (Prokopenko, 2006; Beisenova, 2011).

Modern literature states that only property rights are transferred to heirs since personal non-property rights are not included in the succession mass. From the perspective of legal customs, “heirs have certain powers to protect certain personal non-property rights of the author” (Alimbekov et al., 2010). This state of affairs is confirmed by Article 17 of the Law of the Republic of Kazakhstan “On copyright and related rights” (Zakon RK “Ob avtorskikh i smezhnykh pravakh” ot 10 iyunya 1996 goda, 1996).

The prevailing copyright doctrine (Gavrilov, 2011) and the legislation of the Republic of Kazakhstan in this legal field are also based on this approach (Clause 3 of Article 963 of the Civil Code of the Republic of Kazakhstan, Part 2 of Article 1040 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999) and Article 30 of the Law of the Republic of Kazakhstan “On copyright and related rights” (Zakon RK “Ob avtorskikh i smezhnykh pravakh” ot 10 iyunya 1996 goda, 1996)).

R.V. Avdonin (2005) also adheres to a reasonable opinion and notes that “the biggest challenge is to determine the scope of rights passing from the author to the heir”. Some literary sources present a viewpoint that the heir has the right to allow the publication of the work and can amend it if

the author has not expressly forbidden it but these rights are non-property personal rights in their content. As for property rights, resale royalty rights can be inherited and rights to implementation (for example, some architectural object) belong only to the initial author (Suleimenov and Basin, 2000).

This legislative provision means that a person who has received exclusive rights to an unpublished work may not have the right to make it public if the author's will was recorded and it is clear that the author objected to the publication of the work in question. Thus, we have concluded that the legal statuses of heirs and author-testators cannot be regarded as equal.

Considering the specific legal status of copyright heirs, it is worth emphasizing that the author's personal non-property rights provided for in Article 15 of the Law of the Republic of Kazakhstan "On copyright and related rights" cannot be inherited. The author's heirs are entitled to protect personal non-property rights. At the same time, their powers are not limited by any term. We should dwell on transfer within the succession of other rights not related to exclusive rights since Clause 1 of Article 965 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999) specifies that only exclusive rights can be transferred by inheritance. Some scholars also support this position (Shilokhvost, 2008). However, it is not confirmed by the current legislation of the Republic of Kazakhstan since Article 1038 of the Civil Code of the Republic of Kazakhstan allows the transfer of any property rights and not just exclusive rights.

In this regard, we can state that the current legislation provides an opportunity to inherit all those rights whose inheritance is not restricted.

This statement is partially confirmed by the Decree of the Supreme Court of the Republic of Kazakhstan which states that "according to Article 1040 of the Civil Code, the property subject to division includes property belonging to the testator, as well as their rights and obligations, the existence of which does not cease with the death of the latter". Moreover, it also focuses on the fact that "heirs may exercise and defend the personal non-property rights and other intangible benefits belonging to the testator (the testator's dignity and honor, good name, authorship, the inviolability of the work, etc.)" (Normativnoe postanovlenie Verkhovnogo Suda Respubliki Kazakhstan ot 29 iyunya 2009 goda № 5 "O nekotorykh voprosakh primeneniya sudami zakonodatelstva o nasledovanii", 2009).

In this context, we cannot but agree with A.G. Didenko (2007a) indicating that the testator's property in the event of their death passes to other per-

sons in succession. Consequently, the subject of the legal relations where the testator was a member is replaced, while the successor's (heir's) rights and obligations are legally dependent on the rights and obligations of the predecessor (testator).

Local executive bodies from cities of national and regional significance, the capital and districts at the place of opening the inheritance can act as heirs on behalf of the state (Clause 3 of Article 1083 of the Civil Code of the Republic of Kazakhstan) (*Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999*). As the doctrine says, the current legislation has fully regulated the order of persons who can act as heirs, where their kinship with the testator plays a crucial role (Dzhandarbek, 2010).

Personal non-property rights, including the right to authorship, the right to one's name and the right to protect the author's reputation cannot be inherited. However, heirs are entitled to protect these rights and these powers are not limited to any period of time (Nevskaya et al., 2008), which is also provided for in Subclause 3, Clause 1 of Article 977 Civil Code of the Republic of Kazakhstan (*Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999*).

Although the civil legislation of the Republic of Kazakhstan indicates the person who holds some patent as the person authorized to file the corresponding application, the rights of the patent holder can be transferred to heirs as they are property rights. In the absence of heirs and in the presence of the consignee, Article 1083 of the Civil Code of the Republic of Kazakhstan (*Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999*) states that the right of inheritance (fully or partially) shall pass to the latter. It is related to the fact that the testator expressed their intention to transfer a part of their property rights to the indicated person. Nevertheless, the statuses of the consignee and the heir are completely different since the consignee can require from the heir either the transfer of ownership or regular payments.

When it comes to the inheritance of exclusive rights to an invention, industrial design or utility model, we should focus on the need to expand the current legislation of the Republic of Kazakhstan with a new provision. According to this provision, if the state or municipality does not have the status of an entrepreneur and does not act as subjects of entrepreneurial activity upon inheriting heirless property or some property by testament containing exclusive rights to the above-mentioned invention, industrial design or utility model, this right should be terminated before expiry and

these objects can be transferred to the public domain. The inheritance by testament, which includes objects of patent law and is conducted by a public entity should be considered in a similar manner.

In addition, the literal interpretation of Article 119 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Obshchaya chast) ot 27 dekabrya 1994 goda № 268-XIII, 1994) suggests that the exclusive right to the trademark or service mark owned by an entrepreneur (mainly sole proprietorship) should be included in the enterprise unless otherwise provided by law or the corresponding contract. In this regard, we believe this norm should be rephrased in the following way: the aforementioned rights are included in the enterprise if this is expressly provided for by the contract.

Inheritance rules do not contain any specific standards for the transfer of exclusive rights to some trademark and service mark in the order of succession since there are general provisions of the Civil Code of the Republic of Kazakhstan, general rules on inheritance and intellectual property.

We should pay special attention to the provision enshrined in Article 1028 of the Civil Code of the Republic of Kazakhstan. It states that “when non-using of a trademark without a good reason, continuously for three years, its registration may be canceled at the request of any interested person” (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999), i.e. if an entrepreneur ceases their entrepreneurial activity (in case of their death), the rights of the copyright holder to the above-mentioned trademark and service mark terminates as well. When a person dies their property is transferred from the deceased to heirs, which implies the possibility of transferring the right to a trademark. The transfer of some work to the public domain after the expiration of the copyright term is regulated by Article 983 of the Civil Code of the Republic of Kazakhstan (Grazhdanskii kodeks Respubliki Kazakhstan (Osobennaya chast) ot 1 iyulya 1999 goda № 409, 1999) and Article 29 of the Law of the Republic of Kazakhstan “On copyright and related rights” (Zakon RK “Ob avtorskikh i smezhnykh pravakh” ot 10 iyunya 1996 goda, 1996). At the international level, these legal relations are governed by Article 18 of the Berne Convention for the Protection of Literary and Artistic Works adopted on September 9, 1886 (Berne Convention for the Protection of Literary and Artistic Works, 1979). According to the current legislation of the Republic of Kazakhstan, the state acts as the same heir by law as other persons established by the Civil Code of the Republic of Kazakhstan; therefore, it has the right to derive material benefits from the possession of

such property rights for the time specified for all heirs.

5. Conclusion

Summing up the study results, we have concluded that the legal status of heirs of exclusive rights is determined by the conceptual difference in rights included in the succession mass (i.e. property or non-property rights) and depends on the scope of the testator's rights and obligations. However, this research has revealed some controversies and gaps that hinder the understanding of the scope of rights and obligations of successors to exclusive rights, as well as law enforcement practice despite a number of legislative provisions regulating the legal status of heirs of exclusive rights in the Republic of Kazakhstan.

The lack of comprehensive regulation over the inheritance of exclusive rights causes situations that contribute to the violation of the rights of author-testators and their heirs. The level of legal awareness and legal culture of the population remains low, both in terms of compliance with laws, respect for the rights and freedoms of others and in terms of knowledge of their own rights and having skills to protect them.

One more challenging case in law enforcement regulating the inheritance of exclusive rights is the possibility of publishing an unpublished work in the absence of a will and any other written evidence of the author's or testator's desire to publish this intellectual deliverable or its direct prohibition. Therefore, there is a conceptual difference between the heir's status as a special subject of copyrights and the scope of rights and obligations of the testator.

Being the heir of copyrights to some escheat property, the state cannot derive material benefits from the possession of such property rights. However, we have analyzed the current legislation of the Republic of Kazakhstan and concluded that all the assets subject to hereditary relations, including exclusive rights, are reclassified into escheated property and inherited by the state in the absence of other heirs or in case such heirs renounce the succession. When it comes to an industrial design or utility model and the state or municipalities do not have the status of an entrepreneur, the exclusive right to the aforementioned invention, utility model or industrial design and product is transferred to the public domain.

When exclusive rights to some trademark are transferred to several heirs, such rights shall become their joint shared property.

We believe that the issues, conclusions and suggestions considered in the article, formulated and justified through the conducted analysis can answer

the questions of interested parties, improve the current legislation of the Republic of Kazakhstan, be useful in further scientific research, teaching and law enforcement of public notaries, state and municipal authorities, as well as in determining the legal status of heirs of exclusive rights.

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