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Features of methods to renewal of the term for acceptance of inheritance in the Republic of Kazakhstan

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Abstract

Relevance. The relevance of this subject lies in the fact that the current legislation of the Republic of Kazakhstan does not provide a list of valid reasons for missing the deadline for accepting the inheritance, which was the reason for the different application of special rules of law by courts in the relevant category of cases.

Purpose. The purpose of this study is to examine the legal grounds, the concept of “valid reasons” for missing deadlines, and mechanisms for restoring the deadlines for accepting an inheritance in the Republic of Kazakhstan.

Methodology. The methodological basis of the study was the dialectical method, the specific search of legal and logical analysis, and the comparative method, enabling the definition of the concept of “renewal of the term for acceptance of inheritance”.

Results. The main results of the study are the establishment of the legal content of the inheritance acceptance process and the issue of restoring the terms of inheritance acceptance; characteristics of the prerequisites, and the grounds for the inheritance acceptance, in case of missing the terms of it; analysis of the “validity” of the reasons for missing the terms of inheritance acceptance; consideration of the main types of valid reasons for missing the inheritance acceptance; clarification of the specific features of the procedure renewal of the deadline and prospects for the development of legal regulation of the renewal of deadlines for inheritance acceptance issues.

Conclusions. The importance of the results is in providing practical recommendations for improving the legal regulation of inheritance relations, regarding the renewal of missed deadlines for accepting inheritance by making changes to existing regulations in the relative field.

Keywords: heir; inheritance; missed deadlines; valid reasons; acceptance of inheritance.

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Introduction

Inheritance is a civil law institution that has existed for many years and has been almost comprehensively investigated. However, the legislation of the Republic of Kazakhstan does not keep pace with the development of modern inheritance relations and the emergence of new unresolved issues, in particular, the acceptance of inheritance. According to the generally recognised rule, to be able to accept an inheritance or refuse it, the legislation of the Republic of Kazakhstan establishes a pre-trial period. In the case when the heirs do not have time to come to the notary in due time, to accept the inheritance, it is important to understand the procedure for renewing such a period and the types of valid reasons that are the basis for it. Therefore, the purpose of the study is to conduct a comprehensive analysis of legislative acts and papers in the field of inheritance relations on the renewal of deadlines for accepting the inheritance and generalise ways to improve mechanisms for protecting the rights of potential heirs. V.I. Ignatyuk [1], investigating the issue of protecting the rights of heirs, noted that in situations where the location of heirs is unknown or, in the event of their appearance after the division of the inheritance, it is necessary to: specify on the legislative level the concept of “absent heirs” (as persons whose location is unknown at the time of the opening of the inheritance); set deadlines for determining the location of a potential heir; not to identify the absence of a potential heir with their refusal of inheritance; oblige notaries to establish the location of absent heirs.

In turn, N. Maxatov [2], examining the specific features of the renewal of the terms for accepting the inheritance, believes that the obviously invalid reasons for renewing the term for accepting the inheritance should include a short-term health disorder (excluding hospital treatment), living at a distance from the deceased, not knowing about the death of the testator, the timing, and procedure for acquiring the inheritance. Regarding the content of the acceptance of the inheritance and the timing of its acceptance, which were considered by S.K. Idrysheva [3], it is necessary to review the system of legal provisions regarding the acceptance of inheritance at the end of the designated six-month period and transform them into a hierarchical sequence, in a form close to legal validity, which will allow developing regulation of these issues and judicial practice at the same level, improving the effectiveness of civil rights protection in the field of inheritance. Analysing theoretical and practical approaches to the order of acceptance of inheritance A. Gaydash [4] noted that hereditary property should not remain without an owner, so it is necessary to introduce norms by which to determine that the inheritance that was not accepted by the heir within six months, should become the property of other heirs, in case of refusal of such heirs from the inheritance or renunciation of the inheritance in the established term.

Meanwhile, in the study of the specific features of inheritance acceptance, A.G. Didenko [5] discovered that for the sufficient practical application of the provisions on inheritance acceptance, the very concept of “acceptance of inheritance” should be excluded, instead, the concept of absent heirs must be defined, a three-month period for refusal of inheritance by heirs must be set, a return to the format of inheritance acceptance by submitting an

application for acceptance of inheritance to notary offices and actual inheritance must be conducted, cancelling the obligation of heirs to search for missing heirs. Since there are certain disagreements between judicial practice and legislation regarding the acceptance of inheritance, a specific list of valid reasons and the procedure for the deadline renewal for accepting inheritance is not defined, the need to develop legislative provisions on the possibility of the deadline renewal for accepting inheritance and improving the mechanisms for protecting the rights of heirs in this area is absolute.

The purpose of this study is to examine the legal grounds, the concept of “valid reasons” for missing deadlines, and mechanisms for restoring the deadlines for accepting an inheritance in the Republic of Kazakhstan.

Materials and Methods

The techniques of formal legal and logical analysis were used to investigate the regulatory framework, deadlines and their renewal, and analyse the existing civil law methods of restoring the deadlines for accepting inheritance and protecting the rights of heirs. In addition, due to the dialectical method, it became possible to consider the existing ones and develop a new definition of the concept of “renewal of the deadline for accepting inheritance” as a legal phenomenon. Specific search and comparative methods were used to establish a list of reasons considered valid for missing the deadline for accepting inheritance and to compare the main provisions regarding the timing of acceptance of inheritance in the Republic of Kazakhstan and individual countries of the European Union (EU).

The theoretical basis of the study is the papers of researchers and practitioners of the Republic of Kazakhstan, France, Estonia, Germany, Latvia, Italy, Greece, the United States of America (USA), Spain, and Bulgaria in the field of various branches of law, in particular civil and housing, within the need to examine the essence and problems of the inheritance deadlines and their renewal. The provisions were translated into Russian to objectively understand the content of the issues. The normative basis of the study is the current and prospective legislation in the field of legal support of inheritance relations in relation to the acceptance of inheritance, in case of missing the deadlines, including the Constitution of the Republic of Kazakhstan [6], Civil Code of the Republic of Kazakhstan [7], Rules for the performance of notarial acts by notaries [8]. This study was conducted in three stages.

During the first stage, a theoretical basis was prepared. In particular, the grounds and deadlines for accepting the inheritance were established. A systematic analysis of the regulatory acts of the Republic of Kazakhstan concerning the procedure for accepting inheritance was conducted. The essence of the “validity” of the reason for missing the deadline for accepting the inheritance was determined. The types of possible reasons for missing the terms of inheritance acceptance were analysed. A comparative characteristic of the features of the terms and procedures for accepting inheritance in the Republic of Kazakhstan and the EU states was conducted.

In the second stage of the study, the algorithm of actions for the renewal of the inheritance acceptance period was clarified. Legislative gaps in the implementation of the

rights of heirs to restore the deadlines for accepting the inheritance were defined. The areas of improvement of existing and prospects for the application of new legal mechanisms for the protection of the rights of heirs regarding the possibility of the terms of inheritance acceptance renewal were considered. Therewith, an investigation was conducted on problematic issues of renewal of the deadlines for accepting the inheritance, including in the context of judicial practice.

In the final stage of the study, the conclusions were reflected, providing for the main ways of developing the legal regulation of the procedure for expanding the rights of actual heirs, terms of acceptance of inheritance renewal, fixing a clear list of valid reasons for it, and mechanisms for protecting the rights of persons who missed the deadline for accepting the inheritance. In turn, the results and the conclusions can be used in the future when considering problematic issues of legal regulation of inheritance relations regarding missing deadlines for accepting inheritance in the Republic of Kazakhstan.

Results

Prerequisites for the emergence of the right to inheritance

Inheritance should be understood as the transfer of property and rights for property from the testator (deceased person) to their relatives or third parties (heirs) by inheritance, occurring in accordance with the provisions of the law [9]. The features of inheritance are:

- the presence of grounds for obtaining property rights to inheritance;
- the presence of rights and obligations inherited;
- the ability to own the inheritance according to the law [10].

At the international level, the norms of the Convention for the Protection of Human Rights and Fundamental Freedoms [11], which guarantee the right of individuals and legal entities to peacefully own their property, are protecting the heirs. In turn, Article 26 of the Constitution of the Republic of Kazakhstan [6] provides that citizens of the Republic of Kazakhstan have the right to own any property acquired or inherited within the limits of the law, the owners or heirs of which cannot be deprived of the right to such property, except by a court decision or in the case of seizure of property forcibly for the needs of society. The civil rights and freedoms enshrined in the Constitution relate to clear requirements of a legal nature. Meanwhile, the constitutional norms on the right to inheritance are specified in the civil legislation of the Republic of Kazakhstan, defining the grounds, conditions, and order of inheritance [12]. Hereditary relations include relations arising from the transfer of the material and related rights of the deceased person to third parties.

The subjects of such a legal relationship are heirs called to inherit. Therewith, testators are no longer subjects of relations, since their legal capacity has ceased due to death, despite the fact that the role of testators in inheritance law is substantial [13; 14]. Inheritance rights can be realised only if there is a will of a person, which manifests itself both in the will of the testator to give a testament, and in the will of the heir to accept or renounce the inheritance [15]. Such an expression of will can be defined as “freedom of inheritance” and is found along with the freedom to dispose of the property as an important element

of modern inheritance law [16]. In the science of civil law, it is customary to distinguish several ways of accepting the inheritance, namely: tacit acceptance (passive behaviour of the heir); submission of an application for acceptance of inheritance (active behaviour); acceptance of inheritance by children, incapacitated or disabled persons, regardless of the behaviour of the latter; recognition of inheritance as escheated with its subsequent transfer to the territorial community [9; 17]. The inheritance is opened on the day of the testator's death, except when the person is declared dead in court, or the day of the person's death is determined by the court. The place where the deceased lived before their death is considered to be the place of opening the inheritance [18; 19].

Notably, an inheritance case is a procedural form of exercising the right to inheritance and consists of a combination of actions of a notary and participants in hereditary legal relations (heirs, creditors, executor of a will, etc.) aimed at implementing hereditary succession by establishing and evaluating by a notary the legally substantial facts of the legal situation (the emergence of the right to inheritance from a person who applied to a notary, establishment of the circle of heirs, determination of the composition of the hereditary property, the legal regime of the property included in the hereditary estate). Acceptance of the inheritance is possible by permanent residence together with the testator (in the case of valid permanent residence in the same residential premises and the absence of refusal to accept the inheritance within the period prescribed by law). Acceptance of inheritance is conducted by law or by testament. The application of the heir submitted to a notary or other authorised body at the place of opening the inheritance is the basis for issuing a certificate of inheritance [20]. Inheritance located abroad is processed through consular offices.

According to French law, there are three models or options for choosing the decision to accept an inheritance: simple acceptance; acceptance with a reservation about the inventory of property; refusal of inheritance [21]. Arbitrarily high requirements are set for the acceptance of inheritance, both in deadlines and in terms of acceptance. The heir is given four months to accept the inheritance or refuse it. After this period, the heir is forced to choose one of these options, for which they are given another 2 months in court [22; 23]. Notably, the German model is considered the strictest, because, firstly, it assumes an automatic transfer of inheritance if the heir has not refused the inheritance in accordance with the procedure established by law, and secondly, it sets a short time for making a decision [21; 22]. Acceptance and renouncement of inheritance in Germany are conducted by submitting an application to an authorised person [24; 25]. According to the Islamic inheritance law, everything that belonged to the deceased or the property that was to become part of their inheritance is available for distribution among heirs. The right of inheritance here is based on four conditions: the death of the testator, the presence of legitimate heirs, the presence of the inheritance itself and the establishment of a connection between the deceased and the heirs [17; 26; 27].

In accordance with Italian law, despite the existence of a testament, the legitimate heirs are guaranteed a share of the inheritance. There are three ways to accept the inheritance: express acceptance, conducted through a

public act or a private document on the acceptance of the inheritance; tacit acceptance; acceptance with inventarisation, in this case, acceptance occurs with a statement from a notary or court secretary, in which the heir prevents confusion between their property and the property of the deceased [28]. The application for inheritance must be executed twelve months before the opening of the inheritance. The second important term is 10 years from the date of death of the owner of the property. However, this deadline can be changed at the request of other interested parties to the court [29; 30]. In Greece, for the heir, the acceptance of the inheritance takes place by signing the relevant notarial act with a public notary, who will then make up the ownership right. Acceptance of inheritance is crucial if there is an interest in selling or donating property. An heir wishing to renounce their inheritance right must do so within four months from the date of the death or publication of the testator's testament or from the day when they were informed about the inheritance [31].

In turn, if the heirs reside in the United States for one year after the death of the testator, any of their actions on the hereditary property can be considered acceptance of the inheritance [32]. In Spain, direct acceptance can be explicit or tacit. Direct acceptance is the acceptance of an inheritance in a public or private document. Tacit acceptance is performing actions to dispose of the deceased's property by one of the heirs [33]. As for the acceptance of inheritance in Bulgaria, the deadline for submitting an application for acceptance of inheritance is set at 3 months from the moment when the circumstances regarding the death of the testator became known. A one-time extension of the period for accepting the inheritance is also possible – for another 3 months if the overdue occurred due to unforeseen circumstances or for other reasons beyond the control of the heir [34].

Valid reasons for missing the deadline for accepting the inheritance

Regardless of the method of acceptance of the inheritance, the current legislation of the Republic of Kazakhstan has established a basic deadline, which is determined six months from the day on which the inheritance was opened [7]. Chapter 11 of the Rules for the performance of notarial acts by notaries [8], expresses that a statement regarding the acceptance of an inheritance or the renouncement of an inheritance must be accepted by a notary within six months from the date of the opening of the inheritance. Therewith, in the case when the heir has not submitted an application for acceptance of the inheritance within 6 months, the notary must issue a certificate for the right of inheritance, if such acceptance is confirmed by the actual entry of the heirs into the management of the hereditary property (or part thereof) [35]. In addition, if the heir has not accepted the inheritance in time, then a notary may include it in the certificate of inheritance if the heir has a court decision on granting an additional period for the purpose of accepting the inheritance, which has entered into legal force or based on the consent of the remaining available heirs who have accepted the inheritance in accordance with the procedure established by law. The corresponding consent is provided in written form before issuing a certificate of inheritance [8].

In all other cases, the validity of the reason for missing the deadlines for accepting the inheritance and the possibility of determining the heir who accepted the inheritance is established by the court considering specific circumstances individually. The application for the renewal of the terms for the acceptance of inheritance is considered in court, where other heirs who have already accepted the inheritance must also be present [36]. If there are no such heirs, then the body that has the authority to manage municipal property where the inheritance was opened should take part in the case. Applications for the renewal by the court of the deadlines for the acceptance of inheritance submitted to the courts should be motivated since it is associated with the mandatory establishment of the validity of the reasons for the overdue of deadlines by the heir. This means that the requirements for the renewal of the deadlines for accepting the inheritance can be satisfied only when the heir proved the facts that, in particular, they did not and could not know about the opening of the inheritance or expired the specified period for comparable valid reasons [37; 38]. Therefore, to establish an additional period for accepting the inheritance, the applicant must necessarily confirm a valid reason for their admission.

The reasons that may be associated with insurmountable, serious difficulties for the heir, which prevented them from taking action to accept the inheritance, will be considered valid [39]. In most cases, in the statements of claim, the heirs indicate the valid reasons for missing the deadline for accepting the inheritance – their lack of legal knowledge. Judges do not accept that unfamiliarity with the law can be taken as a basis when making an application for the renewal of the terms for the acceptance of inheritance. This is due to the fact that all adopted normative regulations are published in the media, so all citizens have access to them. Meanwhile, individual plaintiffs-heirs, as a valid reason, indicate that they do not have separate documents for filing a notary (title documents, birth certificates etc.). Therewith, such a circumstance is also not recognised as a valid reason for missing the deadline for accepting the inheritance, since the provisions of the legislation establish the obligation for a notary to submit exclusively the application regarding the acceptance of the inheritance. In addition to valid reasons, the courts have repeatedly explained the reasons that cannot be considered valid for the renewal of the inheritance acceptance period, in particular:

- legal illiteracy of the heir regarding the order and timing of acceptance of the inheritance;
- age;
- lack of information about the hereditary estate;
- inconsistency of weather conditions;
- lack of funds for travel to the notary office;
- inability to work;
- establishment of a legal fact in court;
- uncertainty of the circle of heirs;
- ignorance about the existence of a will [39].

Notably, in the case when the heir, who missed the deadline for accepting the inheritance, refuses to apply to a notary, is not going to accept the inheritance, has not filed an application to the court for the renewal of the deadline for accepting the inheritance, therefore, the notary according to the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 5 “On Some

Issues of Application by Courts of Legislation on Inheritance” [19] has every reason to consider the heir absent and has the right to issue certificates of inheritance, without considering the share of that heir. However, the practice of law enforcement in the Republic of Kazakhstan is quite different. Most notaries are engaged in issuing certificates of inheritance rights only considering the share of the absent heir, thinking that:

- no changes have been made to the share of the absent heir, which is the reason to consider such a share valid;
- the possibility of actual possession and use of the inheritance by absent heirs.

Nevertheless, today there is no unambiguous legislative approach regarding the powers of a notary to independently exclude from the circle of heirs a person who did not accept an inheritance within the prescribed time or the possibility of recognising a person as an heir in court. Thus, often in practice, the court can make decisions that allow the heir to renew the terms for the purpose of further acceptance of the inheritance, disregarding the validity of the reasons, as a result of which some certificates of inheritance rights may be invalidated in the future [7].

Mechanisms for renewal of the term of inheritance acceptance

According to Article. 1072-2 Civil Code of the Republic of Kazakhstan [7] if the inheritance was opened at the time of the person's death, the inheritance can be taken by the potential heir six months after the death of the testator, and in case the person is declared deceased – from the next day after the entry into force of the court decision. In the case when the right to inheritance appears for third parties in connection with the renouncement of existing heirs from the inheritance, non-acquisition of inheritance by other heirs or removal from the right to inheritance of heirs, such inheritance can be accepted six months from the moment of occurrence of the above circumstances, which is the basis for the right of inheritance. First of all, it should be understood that the six months itself is intended for filing an application to the court for the renewal of the terms to accept the inheritance is not subject to renewal. Since the establishment of the moment when the deadline for accepting the inheritance began is associated with the moment of termination of the events that caused the overdue deadlines for accepting the inheritance property, therefore, the application to the court of a potential heir and recognition of their acceptance of the inheritance must be accepted in court proceedings, being tied to the moment of ending of the six months period [9; 40].

According to Article 1072-3 Civil Code of the Republic of Kazakhstan [7] according to the statements of heirs who missed the deadlines provided for the acceptance of inheritance, the judicial body has the authority to restore this period and recognise heirs as having accepted the inheritance, if such heirs missed the specified deadlines for valid reasons and under the circumstances, they were able to go to court six months after the existence of the reasons for the overdue ended [41]. Therewith, the application for the renewal of the deadlines for the acceptance of the inheritance is a mediocre link between the acceptance of the inheritance in a pre-trial order and the final opportunity to establish this fact, but in the judicial process. However, the judicial process is considered rational only if one of the

heirs did not enter into the actual disposal of the hereditary estate, that is, for the specified circumstances, they did not accept the inheritance. Meanwhile, applications for the renewal of the terms of acceptance of the inheritance should be considered in a special court proceeding, which leads to a simplified form of consideration. Therewith, most often the consideration of such a category of cases turns into a lawsuit. This is due to the heir, despite the validity of the reason, missing the time to accept the inheritance, losing their share in the inheritance, in most cases, which has already been accepted by other heirs. As a result, if there are other heirs, then this directly entails the appearance of property disputes, that is, there is a transition to claim proceedings.

The main problematic issue about the missed deadlines renewal is the need to prove in court that the circumstances, causing the overdue were valid. The law does not contain a list of valid and invalid reasons. Consequently, the court must individually consider applications for the renewal of the terms for accepting the inheritance every time [2; 42]. Another fact to be confirmed in court is the absence of evidence regarding the acceptance of the inheritance. The court decision, satisfying the application for the renewal of the term for accepting the inheritance, gives the heir virtually exclusively a prospect to appeal to a notary for the non-judicial acquisition of hereditary property, but such a decision does not resolve the issues of determining the immediate fact of accepting the inheritance, the division of shares in the inheritance, and other likely disputes. It follows from this that if the deadline for accepting the inheritance is missed, the heirs can file an application to the court for establishing the facts regarding the acceptance of the inheritance. The application for the renewal of the terms can be satisfied if the following conditions exist simultaneously:

- it was not established that the inheritance was accepted by any of the legal methods;
- there is a valid reason, why the deadlines for accepting the inheritance were missed;
- applications were submitted no later than 6 months after the removal of obstacles to the acceptance of the inheritance [13].

If the other heirs have agreed to accept the inheritance for the heir who missed the deadline, then the validity of the reasons, in this case, is not considered, unlike the judicial procedure for resuming the deadlines intended for accepting the inheritance [37; 43]. Inheritance disputes are accompanied by difficulties in applying the norms of substantive and procedural law. In most cases, as judicial practice shows, it is accepted to establish the legal facts of accepting the inheritance without any grounds for this. In such cases, the court must investigate: what actions regarding the acceptance of the inheritance were committed by the plaintiff for a period of six months from the date of the testator's death, and the heir's messages about the testator's death are not in accordance with the deadlines and the secrecy of information about other heirs from the notary have no legal weight for the consideration of such disputes [44; 45].

In many court decisions, possible heirs had previously an appeal to notary offices with an application for the issuance of a certificate of inheritance as a result of the acceptance of the inheritance or with an application for the

renewal of the acceptance period, for which they receive resolutions from notaries on refusal to issue the inheritance, after what they go to court. Therefore, in the Republic of Kazakhstan, these cases are considered in a separate proceeding, while in other countries, cases of appeal against the actions or inaction of notaries are [3]. Consequently, judicial practice presents that applications or claims for recognition of the acceptance of the inheritance and the renewal of the terms of acceptance of the inheritance are considered individually in separate judicial proceedings.

A comprehensive analysis of the system of legal provisions governing inheritance relations allows concluding that if the heirs have evidence regarding the factual acceptance of the inheritance in the first six months from the moment when the inheritance was opened, an application for the issuance of certificates of inheritance rights can be submitted after the termination of the terms defined by law because the inheritance is considered accepted. Therewith, notaries are not permitted to refuse heirs to issue certificates of inheritance rights based on the latter's overdue. The determination of the heir as one who factually accepted the inheritance entails the need for notaries or courts to establish the fate of the shares of all other heirs, and if the certificates were previously issued to the heirs, those must be invalidated, in particular, when the shares of the heirs for which the certificates were not issued were already divided among other heirs. In turn, the renewal of the terms for accepting the inheritance does not entail the specified legal consequences.

Discussion

The study of legal literature allows asserting a limited number of special studies devoted to the problem of legal regulation of the renewal of deadlines for inheritance acceptance, the validity of such deadlines, and mechanisms for protecting the rights of heirs who did not have time to accept the inheritance in time. To date, the provisions regarding the partial regulation of the issue of the timing of inheritance acceptance and ways to update them are fixed in the provisions of the Civil Code of the Republic of Kazakhstan [7] and Rules for the performance of notarial acts by notaries [8]. Inheritance law is an independent institution of civil law, which consists of a set of legal provisions that determine the order of inheritance of the rights and obligations of a deceased person. In turn, as noted by N.A. Fedina and S.I. Rybakov [44], the right of inheritance is recognised as a set of property rights and obligations, the owner of which was the testator during their lifetime. Nevertheless, the researchers have not fully disclosed the concept of inheritance. Since inheritance no longer affects the legal capacity of the deceased person. During the inheritance, the rights and obligations regarding the property are transferred to the heir from the testator. This is confirmed by A. Gaydash [4], who also established that the moment of the emergence of hereditary relations is associated with the death of a person, after which their individual rights and obligations do not disappear, including property rights and personal non-property rights derived from them). The researchers analysed only the general provisions on the acceptance of inheritance, disregarding the acceptance procedure and the circle of persons who may be heirs.

Therewith, acceptance of the inheritance is considered consent to the transfer of hereditary property to the heir. By acquiring ownership of the inheritance estate, the heirs accept the legal consequences that occur after inheritance: distribution of hereditary property; liability for the testator's debt obligations; registration of inheritance rights, etc [46; 47]. Moreover, as A.G. Didenko [5] observes the acceptance of the inheritance has nothing to do with the availability of information from the heir regarding the composition of the estate, and the rights and obligations that the testator owned. However, the researcher did not investigate the methods and timing of the acceptance of the inheritance. It is important that the Civil Code of the Republic of Kazakhstan [7] regulates the terms for the possibility of accepting the inheritance, which should not exceed six months, calculated from the date of the opening of the inheritance. V.I. Ignatyuk [1] states that there are clearly established ways of accepting inheritance: by submitting an application to the notary for acceptance of the inheritance; acceptance of inheritance *de facto*.

N. Maxatov [2] defines inheritance acceptance as a personal right, not an obligation. However, to be able to exercise this subjective right, it is necessary to comply with the deadlines provided by law. Hence, in case of failure to submit an application for acceptance of the inheritance within the time limits stipulated by law to the notary due to valid reasons, the heirs have the right to apply to the court with an application for renewal of the deadline. Since the absence of an application submitted by the heir in a timely manner determines that the heir has not expressed their will, in this regard, notaries are not authorised to perform any notarial actions. In practice, this causes difficulties for citizens, since heirs often believe that if inheritance certificates are issued after the expiration of the six-month period, therefore they should apply after six months to accept the inheritance. Based on the results of the generalisation of judicial practice, cases, when heirs come to notaries when the six-month period defined by law has already been missed were identified, in turn, notaries often do not clarify essential questions regarding the likely acceptance of hereditary property or disposal of it and provide heirs with answers about the need to apply to the court with an application for renewal of the deadlines for inheritance acceptance. In this regard, the number of cases in this area is increasing annually [48; 49].

An interesting opinion is expressed by R.Ye. Zhakupov [12], expressing that the unsolved problem is that the Constitution of the Republic of Kazakhstan does not provide for the distribution of restrictions on rights to ordinary and those that should be used in certain situations, which is assumed by international treaties. That is why judges have difficulties in determining when exactly heirs should apply to the court with applications for the renewal of the terms for the acquisition of inheritance and their acceptance of the legal status of heirs, and in which cases – with an application to establish the fact of accepting the inheritance. In many cases of a certain category, the judicial authorities exclusively renew the terms of inheritance acceptance, while they do not solve other issues defined by civil legislation [11; 7]. It is necessary to pay attention to the importance of validity of the reasons for the terms renewal of acceptance of inheritance, the scope of which is not provided by the legislation of the Republic of Kazakhstan. Therewith, the validity of missing

the deadline reasons may be different and should be clearly expressed in the statement of claim and confirmed by appropriate evidence. The question of whether the reason for the admission is valid is decided only by the court. The courts need to consider the circumstances that preceded the reason for missing the deadline.

Valid reasons for the renewal of the deadline can be considered: a business trip, the absence of a representative of the child as a legitimate heir, and long-term illnesses [2; 50]. According to the author, valid reasons in this context may also be: lack of identity documents; difficult working conditions; military service by the heir; serving criminal sentences, etc. Meanwhile, the provisions on the invalidity of the reasons for the renewal of deadlines are generally recognised. These include a short-term illness, legal ignorance, unawareness about the presence of hereditary property or the death of the testator, etc. In addition, as S.K. Idrysheva [3] rightly notes, to satisfy the claim for the renewal of the inheritance acceptance period, it is necessary to establish the fact of the expiration of the six-month period, to consolidate the official concept of “renewal of the inheritance acceptance period”), the rules for notarial actions by notaries (to grant powers to notaries to search for absent heirs, to determine the specific stages of the procedure for the term renewal of inheritance acceptance), coordination of existing positions of judicial practice (to determine a unified practice of considering cases on the term renewal for inheritance acceptance, provide clarification on the differentiation of the procedure for considering cases on recognising the heir as accepting and establishing an additional period for accepting inheritance).

In the process of research, new questions and problems have arisen that need to be addressed. It is necessary to continue the examination of the essence and features of the procedure for updating the terms of inheritance acceptance; the norms governing inheritance relations on the issue of missing the terms of inheritance acceptance; problems in the regulatory support of the methods of inheritance acceptance, the rights and obligations of heirs and possible heirs, mechanisms for their protection, and ways to solve these problems.

Conclusions

According to the results of the conducted analysis, it was proved that in the Republic of Kazakhstan legally unresolved problems on the issues of determining the range of valid reasons for resuming the deadline for accepting an inheritance, judicial proceedings on the deadlines renewal for accepting an inheritance, delineating the grounds for the factual acceptance of inheritance and the deadline

renewal for its acceptance are present. The need to modernise the existing regulatory framework, and the adoption of new norms in accordance with the emergence of modern elements of hereditary relations is the goal of resolution of the above.

It was established that the acceptance of the inheritance is the transfer of all the rights and obligations of the deceased testator in the property area to the heir based on the latter's own will. It was determined that the legislation of the Republic of Kazakhstan defines a period of six months from the date of the opening of the inheritance (the time of the testator's death) to acquire the inheritance. The renewal of the term for the acceptance of inheritance is considered to be the establishment of an additional term in court, based on the validity of the circumstances regarding the overdue of such a period, for further acquisition into personal ownership of the hereditary property or its part after the death of the testator. In addition, the procedure for restoring the deadline for accepting an inheritance was generalised, consisting of several stages: filing an application to a notary for accepting an inheritance; receiving a refusal to perform a notarial action by skipping the deadline for submitting an application; filing an application to the court for a renewal of the deadline for accepting an inheritance with determining the validity of the circumstances of missing such a period.

Based on the analysis of the results of judicial practice, it was established that valid reasons for missing deadlines for accepting an inheritance may be: long-term illnesses, business trips; living abroad; lack of identity documents; difficult working conditions; military service by the heir; serving criminal sentences, etc. The materials of this study may be useful in the development of draft laws on improving the provisions of the Civil Code, the Rules for Notarial actions by notaries, and harmonising existing positions of judicial practice. In the process of research, new questions and problems have arisen that need to be addressed. It is necessary to continue the examination of the essence and features of the procedure for updating the terms of inheritance acceptance; the norms governing inheritance relations on the issue of missing the terms of inheritance acceptance; problems in the regulatory support of the methods of inheritance acceptance, the rights and obligations of heirs and possible heirs, mechanisms for their protection, and ways to solve these problems.

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Conflict of Interest

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Особливості способів поновлення строку для прийняття спадщини в Республіці Казахстан

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Анотація

Актуальність. Актуальність даної теми полягає в тому, що чинним законодавством Республіки Казахстан не передбачено переліку поважних причин пропуску строку для прийняття спадщини, що стало причиною неоднакового застосування судами спеціальних норм права у відповідній категорії справ.

Мета. Метою дослідження є вивчення правових підстав, поняття “поважних причин” пропуску строків та механізмів відновлення строків для прийняття спадщини в Республіці Казахстан.

Методологія. Методологічною основою дослідження стали діалектичний метод, специфічний пошук правового та логічного аналізу та порівняльний метод, що дає змогу визначити поняття “поновлення строку для прийняття спадщини”.

Результати. Основними результатами дослідження є встановлення правового змісту процесу прийняття спадщини та питання відновлення строків прийняття спадщини; характеристика передумов та підстав прийняття спадщини у разі пропуску її умов; аналіз “обґрунтованості” причин пропуску строків прийняття спадщини; розгляд основних видів поважних причин неприйняття спадщини; уточнення особливостей процедури поновлення строку та перспективи розвитку правового регулювання поновлення строків з питань прийняття спадщини.

Висновки. Важливість результатів полягає у наданні практичних рекомендацій щодо вдосконалення правового регулювання спадкових відносин, щодо поновлення пропущених строків для прийняття спадщини шляхом внесення змін до чинних нормативно-правових актів у відповідній сфері.

Ключові слова: спадкоємець; успадкування; пропущені терміни; поважні причини; прийняття спадщини.