

ISCKMC 2020**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»****ESCHEATED PROPERTY PASSING UNDER THE LAW INTO
THE RUSSIAN FEDERATION'S PROPERTY**

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Abstract

The article presents an analysis of problems of legal regulation of escheated property; the necessity of adopting a special law on inheritance and accounting of unclaimed property passing as an inheritance according to the law the property of the Russian Federation; developed the main act provisions, in particular, proposed to establish all the cases and timing of the establishment of the unclaimed property; to define clearly which is the Federal body for the management of state property and its territorial agencies responsible for the identification, protection, management, inheritance, accounting, evaluation, and implementation (including based on the regulated mechanism for the payment of debts of the testator) unclaimed property rolling in the order of succession according to the law in Federal property, as well as the timely charge in a reasonable (3-year) the date of receipt of the inheritance certificate in respect of escheat property. It is important to establish in the law that the property interests of the Russian Federation as the heir of the escheated property are not subject to protection in the event of a violation of the rights of citizens who purchased housing for a fee (innocent purchasers). Finally, it is proposed that the Federal authority for public property management should establish the procedure for interaction between territorial authorities for taking into Federal ownership of the escheated property, including the receipt of the object of accounting to the public treasury of the Russian Federation.

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1. Introduction

The public goals pursued by the escheated property institute are aimed at the construction and functioning of the rule of law (Oglezneva & Sadrieva, 2019), which is achieved by solving the problems of preventing the ownerlessness of inheritance property and saving inherited property, as well as the rapid transition and use of property transferred to the state in the order of hereditary legal succession, in the public interest. Escheated property inheritance is a complex process; its occurrence is often accompanied by the appearance of problems that need careful legal resolution. The social orientation of the transfer of escheated property should be maintained at the legal level. The ambiguity of norms, their inconsistency within the framework of the Civil Code of the Russian Federation, and their dispersion in different branches and different levels of regulatory legal acts create difficulties in law enforcement. This leads to the fact that although there are quite a lot of situations when the property can become escheated, in practice the state rarely registers the transfer of it to its property.

All the more urgent is the need to adopt a special law that should contain and regulate all issues related to the inheritance of escheated property.

2. Problem Statement

In part III of the Civil code of the Russian Federation of November 26, 2001, No. 146-FL (further – the Civil code of Russian Federation) governing the inheritance law, provided for the adoption of the law on succession order, registration of rights of inheritance, accounting and disposition of escheated property, passing in inheritance according to the law the property of the Russian Federation. However, this law has not yet been adopted. In the Decision of the IC in a civil action of the Supreme Court of the Russian Federation dated February 27, 2018, No. 5-KG17-251, it is stated that in regulatory enforcement there are disputable situations related to escheated property and requiring legal regulation. Courts are forced to fill such gaps with their interpretation of inheritance law provisions. The scientific literature has repeatedly stated the need to adopt such a law, based on the study of the existing controversial and unresolved issues and problems.

3. Research Questions

Escheated is the property if there are no heirs about it on any grounds listed in paragraph 1 of article 1151 of the Civil Code of the Russian Federation. The property can be quite a large number of cases; certain types of escheated property as residential premises, a plot of land and located on its buildings, structures, other property units, and part interest of shared ownership of the above items of immovable property become the property of constituent entities of the Russian Federation and municipal formations. Other escheated property, for example, land plots other than agricultural land; stocks (units, shares) in the authorized capital of commercial organizations, which are inherited by law in the ownership of the Russian Federation. At the same time, the legal nature of the transfer of escheated property remains not fully clarified and debatable; based on the revealed contradictions of a formal and substantive nature,

arguments are put forward in favor of the non-hereditary nature of such a transition. Inheritance of residential premises raises many questions in the world practice (Dupuis, 2012).

According to Kravchenko (2009), this point of view with a proper and thorough analysis of the legal nature of escheated property in the Russian legislation cannot be accepted unequivocally, that is not with full confidence to speak about the inheritance of escheated property, and that "the transition of escheated property is not inheriting..it is necessary to speak about a special case of acquisition of ownerless property by public legal entities" (p. 54), and a special law should be used as the basis for delineating the transfer of extortionate property from inheritance. In the law, in particular, according to Kravchenko (2009), it should be settled that the acquisition of escheated property does not require acceptance of inheritance, and, on the other hand, the state should be able to refuse the escheated inheritance, especially if this property has no value or is accompanied by debts. This is due to sufficient rarity today of the inheritance of escheated property by the state. But in this case, it is necessary to understand that levelled the social component of the transfer of escheated property to the state. So, there is a court practice when the creditors of the heir were not able to get on his debts because the state was in no hurry to formalize the transfer of property and make its assessment for debt payments. This case violates the rights and legitimate interests of creditors (Shvedkova, 2012). In case of refusal, it will also be difficult to determine the fate of such property. In the case of inheritance, the state is also obliged to maintain, protect, and manage the inheritance in order to transfer it to the state treasury.

The hereditary status of the state, indeed, can create difficulties in the implementation of the rights of creditors to repay the debts of the testator, since consent to the acceptance of escheated property is not required, but it is impossible to force the state to obtain a certificate of inheritance. According to Demichev (2014), "in this case, the obligation of the government body to obtain a certificate of inheritance rights and the responsibility of the state body for its non-receipt or late receipt should be regulated" (p. 90).

The complexity of the application of the rule on the inheritance of escheated state property is also explained by the situation when the heirs of the third and subsequent stages do not always know or may know about the death of the testator and the beginning of calculation of time limits for acceptance of inheritance. The escheated property becomes when there are no heirs of all seven queues. But the notary cannot always clearly establish this fact, which creates obstacles in the registration of inheritance rights to this property by the state and the issuance of an inheritance law certificate. Methodical recommendations on registration of inheritance rights, approved by Board decision of Federal Notarial Chamber from 25 March 2019 (the Protocol № 03/19), there are no explanations on the questions connected with the inheritance of escheated property, with the exception of the reference to article 1151 and section 1 of article 1152 of the Civil Code of Russian Federation, to purchase escheated property act, the inheritance is not required and refusal of the inheritance, the inheritance of escheated property is not allowed. Therefore, to avoid legal conflicts in the legislation on notaries, it is proposed that the notary be obliged to notify about the opening of inheritance not only those heirs whose place of residence and work he knows, but also to inform them publicly in the media (Jatieva & Yuzefovich, 2016). We believe that in the future, to search for heirs, it is necessary to use the information of the all-Russian system of civil registry offices, which is currently in the process of formation. Also, great opportunities open up with the

creation of a unified genetic map of the Russian population. However, when using these databases, there will be a problem of preserving the privacy of the testator and heirs. This issue will require special attention and extremely careful regulation with absolute priority to the interests of the individual, human rights, and freedoms.

The grounds that lead to the recognition of the property is escheated do not always become indisputable at the moment of opening the inheritance. Time is needed to search for the entire range of possible heirs, establish the fact of their absence, or the facts of non-acceptance of the inheritance by the heirs, rejection of it, or confirmation of the heirs unworthy. These issues are also relevant to foreign legal systems (Amankwah-Amoah, 2014). But to date, in Russia, "the legislator has not provided for a period after which (or during which) the inheritance is recognized as escheated" (Shvedkova, 2012, p. 86). As a rule, quite a long time after the opening of the inheritance, and that inheritance property is retroactive, that is, the legal succession point is the date of opening of the inheritance. Summing up, we believe that the registration of inherited rights of the state to the escheated property should be carried out in the legal process.

To date, there is no legal mechanism for transferring escheated property to the ownership of the Russian Federation. Until recently, law enforcement was guided by the adopted during the Soviet times the Instruction about accounting treatment, estimates and sale of the confiscated, ownerless property, the property passed by inheritance to the state, and treasures, approved by the Ministry of Finance of the USSR on 19 December 1984, No. 185 (this document was cancelled by the Ministry of Finance of Russia from April 30 2020 year № 184 "On the invalidation on the territory of the Russian Federation and void acts of the Ministry of Finance of the USSR and the Ministry of Finance of the Russian Federation, as well as letters and instructions, issued by the Central bodies of public administration of the Ministry of Finance of the USSR and the Ministry of Finance of the Russian Federation") and the regulations on the procedure of accounting, evaluation and implementation of escheated property approved by the ministerial order of the USSR from June 29, 1984, No. 683, repealed by government regulation of RF February 3, 2020. No. 80 "on recognition of acts of the USSR and their separate provisions as invalid on the territory of the Russian Federation".

The Government regulation of Russian Federation of June 5, 2008, No. 432 (as amended on April 12, 2020) "On the Federal Agency for State Property Management" to the enactment of the law defining the including the order of succession and accounting of escheated property passing as an inheritance according to the law the property of the Russian Federation, transferred the powers of the owner of Federal property and function for the adoption and management of the escheated property to the Federal Agency for State Property Management (further - FASPM). The same legal position is explained in paragraph 5 of the Decision of the Plenum of Supreme Court of the Russian Federation dated May 29, 2012 No. 9 "On litigation practice in cases of inheritance". Paragraph 60 of the Decision refers to the liability for the debts of the testator, including public-law entities that have received ownership of the escheated property.

The escheated property acquires the state status and is transferred to state enterprises and institutions based on operational management or economic management. Funds received from the sale of unsecured property are transferred to the treasury of the Russian Federation. The state is responsible for

the debts of the testator within the value of the property, as well as reimburses the costs associated with the testator's death, the inheritance protection costs, etc. Exceptions are cases when these powers are exercised by other Federal authorities by the law. This clause provides for the possibility to establish in the regulations of other government bodies the competence to manage the individual property. This clause is implemented in this situation: for example, when the courts considered cases of inheritance on behalf of the Russian Federation, FASPM represented by its territorial authorities, as well as taxation authorities at the same time. This created a clash of their powers. The existing conflict related to the absence of a Federal law was pointed out in a letter from the Federal Tax Service of the Russian Federation dated February 19, 2007, No. 02-04 / 3@ "On escheated property". On the one hand, the tax authorities were responsible for recording, evaluating, and selling the escheated property that was inherited under the law of the Russian Federation. And, on the other hand, the Federal Agency for Federal Property Management was empowered to accept the escheated property.

In this regard, there are only explanations in the Letter of the Federal Tax Service of the Russian Federation from November 7, 2013, No. ED-4-3/199942 "On transfer to the property of the Russian Federation escheated property", for example, that the testimony of the state's right to inheritance in the form of escheated property must obtain FASPM. There are no other, more detailed explanations. In other words, the tax authorities no longer have the right to participate in inheritance relations on behalf of Russia. This position has already been expressed in the decision of the Moscow Arbitration Court of October 1, 2008, no. A40-22135/08-97-114; in the decision of the thirteenth Arbitration Court of Appeal of March 3, 2010, no. a 26-2765 / 2009; in the decision of the Federal Arbitration Court of the Moscow district of March 11, 2009, no. KG-A40/1361-09 (Bespalov, 2010). It is necessary to make final clarity in the actions of FASPM and the Federal Tax Service of the Russian Federation regarding the escheated property.

The literature contains the following suggestions for the wording of article 1151 of the Civil Code of the Russian Federation. Kravchenko (2009) proposes to move rules on the passing of escheated property of Chapter 63 of the Civil Code to the end of Chapter 64 of the Civil Code "Acquisition of the inheritance" as a governing hereditary-like relationship; exclude from the article title the term "inheritance"; include all standards contained in article 1152, 1157 and 1162 of the civil code in a separate regulatory legal act or article 1151 of the Civil Code; also to amend the article text 1151 of the Civil Code rules on succession to the testator debts, and exclude from the article text design "in the order of succession according to the law". In General, this position does not receive support. Two legal systems in the world consider the acquisition of escheated property by the state either as the exercise of territorial supremacy or as an inheritance. According to the established opinion, the Russian Federation belongs to the continental law countries (Germany, Italy, Spain, Hungary, etc.), where the state's acquisition of escheated property is considered as inheritance, that is, a derivative procedure for acquiring property rights in the order of universal succession (Lebedeva & Lukashev, 2015).

What are the main provisions to include in the law on the procedure for inheritance and registration of escheated property that passes in the inheritance order by law into the ownership of the Russian Federation?

4. Purpose of the Study

To analyze the existing proposals and develop the main provisions of the law on the procedure for inheritance and accounting of escheated property that passes into the ownership of the Russian Federation in the inheritance order by law (The law "On the escheated property).

5. Research Methods

Analysis, comparison, formal and logical.

6. Findings

We propose the following provisions of this law.

1. Give the concept and determine the essence of the transfer of escheated property to the state.
2. Establish all cases and terms of establishing the property as escheated. To do this, you need to regulate the searching process for their presumptive of all queues. Determine and regulate the conditions and procedure for the return of such property to the heirs, resolve questions about the impossibility of such a return in kind with the payment of compensation to them, or to those persons to whom this property has already been transferred.
3. Determine that the Federal Property Management Agency and its territorial authorities are responsible for identifying, protecting, managing, inheriting, accounting, evaluating and implementing (including through a regulated mechanism for paying the testator's debts) escheated property that passes into Federal ownership in the order of inheritance by law. A certificate of inheritance in respect of the escheated property is issued to the Federal Property Management Agency (make appropriate additions to paragraph 1 of article 1162 of the Civil Code of the Russian Federation). For the Russian Federation, it is not allowed to refuse inheritance of escheated property (make appropriate additions to the second paragraph of paragraph 1 of article 1157 of the Civil Code).
4. Information about the absence of heirs is not easily accessible and well-known, so for the acquisition of the Russian Federation through the Federal Property Management Agency escheated property does not require acceptance of the inheritance (make appropriate additions to paragraph 1 of article 1152 of the civil code). Further, the escheated property shall be owned by the Russian Federation from the date of opening the inheritance, if the circumstances referred to in paragraph 1 of article 1151 of the Civil Code. This happens regardless of whether the Russian Federation is aware of this and takes actions through the Federal Property Management Agency aimed at accounting for such property and right registration.
5. However, the inaction of the Federal Property Management Agency, do not take actions on registration within a reasonable period (suggested 3 years by analogy with the limitation prescription) the property right, creates the possibility of loss, including through disposal of the relevant property from the possession of the Russian Federation as a result of illegal actions of third parties. This is contrary to the public law purposes of the Institute of escheated property and its social orientation.

6. Due to the lack of complete information about the heirs of the Federal Property Management Agency, the consequences of the expiration of the inheritance acceptance period do not apply to the Russian Federation (make appropriate additions to article 1154 of the civil code of the Russian Federation). Further, to establish that the Russian Federation is not subject to the rules providing for the acceptance of inheritance after the expiration of the established period (make appropriate additions to paragraphs 1 and 3 of article 1155 of the Civil Code).

7. It is important to establish in the law that the property interests of the Russian Federation as the heir of the escheated property are not subject to protection in the event of a violation of the rights of citizens who purchased housing for a fee (innocent purchasers).

8. Regarding the powers of the Federal Tax Service of Russia to establish that the relevant territorial authorities FTS taking into account paragraph 6 of the regulation approved by Government Regulation of the Russian Federation from 16.07.2007 № 447 (ed. by 16.03.2018) "On improving accounting of Federal property" send documents containing information about the property inherited by the Russian Federation in the force of law in Federal Property Management Agency or its territorial authorities for inclusion in the accounting system.

The procedure for the interaction of territorial authorities for taking into Federal ownership of the escheated property, including receipt of the object of accounting to the state treasury of the Russian Federation, is established by the Federal authority for state property management.

7. Conclusion

It is necessary to adopt a Federal law on the procedure for inheritance and registration of escheated property that passes into the ownership of the Russian Federation in the order of inheritance by law, taking into account the proposals made. The adoption of this law will bring clarity to the powers of the Federal Property Management Agency and significantly facilitate the work of law enforcement agencies.

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