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Inheritance in the occupied territories and in the area of antiterrorism operation: the experience of Ukraine

СПАДКУВАННЯ НА ОКУПОВАНИХ ТЕРИТОРІЯХ В ЗОНІ АНТИТЕРОРИСТИЧНОЇ ОПЕРАЦІЇ: ДОСВІД УКРАЇНИ

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Abstract

The authors of this paper have covered the issues of the features of inheritance in the anti-terrorist operation zone and the occupied territories. The innovations that came into force in 2018 were taken into account. It is specified that the occupied territories in the Donetsk and Luhansk regions are recognized as parts of the territory of Ukraine, on which the armed formations of the Russian Federation and the occupation administration of the Russian Federation have established and exercise general control. Within the temporarily occupied territories, there is a special procedure for ensuring the rights and freedoms of the civilian population, determined by the legislation of Ukraine. Therefore, the procedure for registering inheritance is unchanged throughout Ukraine. The authors analyzed information on the procedure for obtaining inheritance under the law, by testament, and under an inheritance contract. Attention is focused on the fact that inheritance is a derivative way of the emergence of property

Анотація

Автори цієї роботи висвітлювали питання особливостей спадкування в зоні АТО та на окупованих територіях. Були враховані нововведення, які набули чинності у 2018 році. Уточнюється, що окуповані території в Донецькій та Луганській областях визнаються частинами території України, на якій створені та здійснюють загальний контроль збройні формування Російської Федерації та окупаційна адміністрація Російської Федерації. У межах тимчасово окупованих територій діє особливий порядок забезпечення прав і свобод цивільного населення, визначений законодавством України. Отже, порядок оформлення спадщини незмінний на всій території України. Проаналізовано інформацію про порядок отримання спадщини за законом, за заповітом та за спадковим договором. Акцентується увага на тому, що спадкування є похідним способом виникнення права власності, а універсальне правонаступництво

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rights, and universal legal succession – the transfer of the entire scope of rights, obligations, and items of property from the deceased to the heirs. Besides, timely and accurate fulfillment of their obligations allows formalizing the inheritance in time following the provisions of laws. Testamentary succession occurs if a deceased person drew up a testament before death, and the testament is valid. In its absence, inheritance occurs under the law. Hereditary succession takes place in the following cases: absence of the testament; invalidation of the testament; death of the heirs indicated in the testament before the opening of inheritance or their refusal to accept inheritance; the testator canceled a previously drawn up testament and did not leave a new one; the testament is judicially declared invalid; if the testament does not cover all the property belonging to the testator.

Key words: heir, testator, inheritance, inheritance legislation, certificate of inheritance, legal regime.

– це перехід всіх прав та обов'язків, речей, майна від померлого до спадкоємців. Крім того, своєчасне і точне виконання своїх зобов'язань дозволяє вчасно оформити спадщину відповідно до положень законодавства. Спадкування за заповітом настає, якщо померла особа перед смертю склала заповіт, і заповіт є дійсним. При його відсутності спадкування відбувається за законом. Спадкове правонаступництво має місце у випадках: відсутності заповіту; визнання заповіту недійсним; смерть зазначених у заповіті спадкоємців до відкриття спадщини або їх відмова від прийняття спадщини; заповідач скасував раніше складений заповіт і не залишив новий; заповіт в судовому порядку визнано недійсним; якщо заповіт не охоплює все майно, що належить заповідачеві.

Ключові слова: спадкоємець, спадкодавець, спадкування, спадкове законодавство, свідоцтво про право на спадщину, правовий режим.

Introduction

The basis of inheritance both by law and by cannot be the subject of an agreement. When inheriting by law, the procedure and conditions of transfer of rights and obligations of the testator are specified in the Civil Code of Ukraine: the property of the testator is divided into equal shares between persons listed by law and called to inherit, in accordance with the established order. In cases where the basis for inheritance is a will, the appointment of heirs, the distribution of rights and responsibilities between the heirs depends solely on the will of the testator in accordance with the principle of freedom of will in Ukrainian inheritance law.

The right to inherit arises on the day of the opening of the inheritance, ie on the day of death of the person or on the day on which he is declared dead. The content of the right to inherit is certain opportunities that can be used by the person who has this right. Among them is the right to accept an inheritance, to renounce it in general or in favor of another person, not to show any interest in it, ie not to take any legally significant actions to accept or renounce the inheritance.

Due to the aggravation of the political situation in the anti-terrorist operation zone, it is not that it is troublesome, but simply impossible to register a heritage in the territory not controlled by Ukraine. This is due to the fact that all documents issued by the authorities of unrecognized republics have no legal force in Ukraine or in the world. Notaries, who play a key role in the inheritance process, have mostly left the anti-terrorist operation zone, and those who continue to operate have not had access to state registers since June 2014. Therefore, of course, the situation required a settlement, which was done.

Methodological

The following scientific methods were used to solve certain tasks: historical and legal - the history of origin and development civil law relations in the anti-terrorist operation zone; formal-legal - an analysis of the legal nature and structural elements of hereditary relations; system-structural - the concept of heritage as an object is revealed legal relations on inheritance and generalized criteria for establishing the composition inheritance, the inheritance contract is considered and the order is considered inheritance by law and by will; comparative law - foreign experience has been studied features of legal regulation of inheritance abroad; system - the range of researched problems is defined and the offers on their decision are made.

Empirical methods were used at the collection stage required data. Like all collection methods they are fairly simple in implementation and can be used at the stage of analysis of legislation, case

law and opinions of scientists. The observation made it possible to obtain generalized data on modern notaries in the controlled territories. Deduction allowed us to draw a conclusion about a certain element of the set on the basis of knowledge of the general legal framework

Literature Review

Modern Ukrainian realities require clarification of the principles of inheritance registration in the controlled territories. In this regard, it is important to clarify the general principles of the inheritance procedure and the analysis of normative consolidation. Protection in inheritance is related to the general right to protection. Due to the peculiarities of inheritance law as a sub-branch of civil law, it has its own specifics, which is manifested primarily in the definition of special ways to protect violated unrecognized or challenged rights (Corten, Olivier (2011), Stuart Elden (2005), Gasztold, & Gasztold. (2011), Gusarov & Popov (2020), Gherghina & Silagadze (2018)). Focusing attention, that Modern forced-heirship regimes in the civil law nations share certain commonalities (Streisand & Streisand (2020)). Pursuant to the Spanish Civil Code, the legitima is two-thirds of the estate divided in two equal parts (Lapuente). French inheritance law also restricts a person's right to dispose of assets at death (Crabb, (1995)). In contrast to Spain and France, in Italy the surviving spouse has a greater advantage to a forced share (Vidi´c Trnini´ (2021)). Domestic scientists have not studied this issue to a significant extent. However, one should not assume that scientists completely ignore this issue. In particular, the issue of inheritance was considered by Fulei T.I. (Fulei (2015)), Fedorych I.Ya. (Fedorich (2018)). Without diminishing the research results made by these scientists, it should be noted that inheritance in controversial situations was mostly considered in general terms.

Results and Discussion

Peculiarities of the legal regime on the territory of the Autonomous Republic of Crimea and the city of Sevastopol are determined by the Law of Ukraine No. 1207-VII dated April 15, 2014, as amended on June 17, 2020, "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (Law of Ukraine, 2020). Peculiarities of state policy on ensuring the state sovereignty of Ukraine in the temporarily occupied territories in the Donetsk and Luhansk regions are determined by the Law of Ukraine No. 2268-VIII dated January 18, 2018 (as amended on November 26, 2020) "On the Specifics of State Policy on Ensuring the State Sovereignty of Ukraine in Temporarily Occupied Territories in Donetsk and Luhansk Regions" (Law of Ukraine, 2020).

Territorial integrity is the principle under international law that prohibits states from the use of force against the "territorial integrity or political independence" of another state. It is enshrined in Article 2(4) of the UN Charter (UN Charter (1945)) and has been recognized as customary international law (Corten Olivier (2011)). In recent years there has been tension between this principle and the concept of humanitarian intervention. Post-World War II strict application of territorial integrity has given rise to a number of problems and, when faced with reality "on the ground", can be seen as too artificial a construct (Stuart Elden (2007)). Article 1 of Law of Ukraine No. 1207-VII determines that the temporarily occupied territory of Ukraine is an integral part of the territory of Ukraine, which is subject to the Constitution and the laws of Ukraine.

According to Article 1 of Law of Ukraine No. 2268-VIII, the temporarily occupied territories in Donetsk and Luhansk regions are recognized as parts of the territory of Ukraine, within which the armed formations of the Russian Federation and the occupation administration of the Russian Federation have established and exercise general control. The temporary occupation of the territories of Ukraine by the Russian Federation, regardless of its duration, is illegal and does not create any territorial rights for the Russian Federation. In April 2018 PACE's emergency assembly recognized occupied regions of Ukraine as "territories under effective control by the Russian Federation" (UNIAN, 2016).

Polish researchers study antiterrorist operations, structure and role of the Polish counterterrorism system, which is then set against the rising threat posed by state and non-state actors employing hybrid warfare tools (Gasztold & Gasztold (2020)).

The provision of the events of the birth or death of a person in the temporarily occupied territories of Ukraine with the opportunity to obtain legitimate legal confirmation was reflected in the provisions of the Civil Procedural Code of Ukraine (Civil Procedural Code of Ukraine (2004), while the provisions of civil substantive law have not undergone additions in connection with the social relations of this branch, taking

into account the specifics of establishing and legal registration of facts of birth or death of individuals in the temporarily occupied territory of Ukraine (Gusarov & Popov (2020)). It is quite logical for the legislator to assign this category of civil cases to special civil proceedings (Gherghina & Silagadze (2018)). In this regard, V.V. Komarov fairly pointed out that in all periods of codification of civil procedural law the catalogue of cases of separate proceedings was different (Komarov, Svitlychna, & Udaltsova, (2011)). The legislator only determined their list. Such a technical and legal method of assigning certain cases to the sphere of civil jurisdiction has not found a proper scientific interpretation, and the analysis of the composition of cases of separate proceedings indicated their obvious heterogeneity (Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, 2005).

The activities of the armed formations of the Russian Federation and the occupation administration of the Russian Federation are illegal. Any act issued in connection with such activities is invalid and does not create any legal consequences, except for documents confirming the fact of the birth or death of a person in the temporarily occupied territories, attached to an application for state registration of a person's birth and an application for state registration of a person's death.

As a result of the occupation of a part of the territory of Ukraine, since March 2014, territories with a disputable status have appeared in Ukraine. The inclusion of the occupied territories of Ukraine in the Russian Federation has not received either international or foreign recognition. Accordingly, for other countries and their jurisdictions, including in the field of inheritance law, the application of the Russian legislation in these territories has no legal consequences, including in terms of property and inheritance relations.

There are about 70 territories with a similar status in the world, and the problem of protecting property and other property rights in these territories occasionally arises with varying degrees of severity and becomes the subject of consideration by various instances, primarily the European Court of Human Rights (ECHR) (Tabachnik (2020)).

For the sphere of private legal regulation and inheritance law, the provisions of Art. 9 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" are important, according to which any bodies, their officials and officials in the temporarily occupied territory are considered illegal if these bodies and officials were created, elected, appointed in a manner not provided for by law. Accordingly, any acts, decisions and documents of illegitimate bodies are considered invalid and do not entail legal consequences. Article 11 of the law regulates property issues and establishes the legal regime of property in the temporarily occupied territory. Acquisition and termination of ownership of immovable property located in the temporarily occupied territory are carried out under the legislation of Ukraine outside the occupied territory. Besides, in the disputed territory, any transaction made in violation of the requirements of this Law and other laws of Ukraine is considered invalid from the moment of conclusion (Fedorich (2018)).

Law of Ukraine No. 1207-VII was supplemented with Article 11-1 under the Law of Ukraine No. 189-VIII dated February 12, 2015 "Ensuring the Implementation of the Inheritance Right", which defines the specifics of the inheritance right. If the place of a testator's death is the temporarily occupied territory, the place of opening of the inheritance is the place where the heirs or other interested persons filed applications for the inheritance (on acceptance of an inheritance, refusal to accept, the presentation of claims by the testator's creditors to the heirs, etc.).

A similar situation regarding hereditary legal relations arises in connection with the opening of inheritance on the territory of certain areas of Donetsk and Luhansk regions, in the anti-terrorist operation zone (Article 9-1 of the Law of Ukraine No. 1669-VII dated September 2, 2014, as amended on December 27, 2019, "On Temporary Measures for the Period of the Anti-Terrorist Operation".

The law that introduced this rule entered into force on March 4, 2015. There is no instruction on its application to the heritage that was opened but was not accepted by anyone before the entry into force (Section 2 of the Law of Ukraine No. 189-VIII). The law applies to relations that have arisen after it entered into force. However, if the relationship arose before it entered into force, the relevant rules apply to those rights and obligations that arose and continue to exist after the entry into force of the law. Thus, the law can also be applied if the inheritance was opened before the entry into force but was not accepted by any of the heirs. Under the provisions of the Law of Ukraine "On Ensuring the Rights and

Freedoms of Citizens in the Temporarily Occupied Territory of Ukraine", the acquisition of property rights, other rights, and obligations by way of inheritance if the inheritance is opened on the territory of the Autonomous Republic of Crimea and Sevastopol can be carried out exclusively under the legislation of Ukraine. Accordingly, the inheritance formalized based on the legislation of the Russian Federation does not entail ownership of the inherited property for the heirs. Under the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993), the right to inherit property is determined by the legislation of the party that agrees, on the territory of which the testator had the last permanent residence. In this case, the right to inherit a real estate is determined by the legislation of the Party, which agrees, on the territory of which this property is located (Article 45 of the Convention (Zajda (2017)).

In fact, the procedure for registering an inheritance begins with applying for a notary. The main document for opening an inheritance case is the testator's death certificate. According to our data, such certificates on the Ukrainian form sheets are currently issued in uncontrolled territories. Still, they do not have legal force since they are not registered in Ukrainian registers. Therefore, it is necessary to obtain a certificate from a medical institution about the death of the testator on the territory of the ATO and draw up a death certificate already in the civil registration authorities on the territory of Ukraine. If the certificate has already been submitted, and the death certificate was received in an uncontrolled territory, then it is necessary to initiate a lawsuit to establish the fact of death, which will provide a legal basis for opening an inheritance case (Law 371-IX, 2019).

The exercise of the right to inheritance characterizes the attitude of the subject who has obtained this right arose to the right and the legal consequences of its implementation. The inheritance right consists of powers that have arisen in connection with the opening of inheritance and the decision of a person to inherit based on a will (testament) or the law. The will of a person forms a set of its future powers, which the legislator also refers to the category of exercising the right to inheritance. Thus, the viewpoints of scientists regarding the definition of the concept of the exercise of the right are mainly based on two basic concepts of understanding subjective law as a measure of possible behavior or as the use of the possibilities inherent in the right (Gongalo Yu.B. (2010)).

Current civil law provides that inheritance is conducted by will or by law. If an individual has made a will, thus disposing of his property in the event of death, and has not revoked it, then in the event of his death the inheritance is carried out by will, which is the last will of the testator. Inheritance by will is placed, among the types of inheritance, in the first place in accordance with the dominant priority of the will of the person. This is confirmed by Article 1223 of the Civil Code of Ukraine, which leaves the right to inherit to heirs at law only in the absence of a will or full or partial invalidation, non-acceptance (refusal) of inheritance by testamentary heir, removal from the right to inherit by testamentary heir. Thus, inheritance by law occurs when and because it is not changed by will Gasztold A., Gasztold P. (2011).

As noted above, the right to inherit arises primarily from the testamentary heirs. In some cases, it may occur simultaneously with the heirs at law. This may be the case when a will is made only regarding part of the inheritance or when one of the heirs of the will is deprived of the right to inherit or renounces the inheritance or does not accept it, if he was assigned a certain part of the inheritance. The right to inherit from the heirs at law may arise only in the absence of this right from the testamentary heirs.

However, the legislator provides an opportunity to change the order of obtaining the right to inherit by concluding and notarizing the contract between the interested heirs. Such an agreement must be concluded after the opening of the inheritance and must not infringe the rights of the heir who does not participate in it and the heirs who are entitled to a mandatory share of the inheritance. Such heirs include minors, minors or adult incapacitated children of the testator, incapacitated parents of the testator, incapacitated husband (wife) who survived the deceased.

Such actions are not required if the heir permanently resides with the testator at the time of the opening of the inheritance and within six months set for the acceptance of the inheritance, did not declare the waiver. A minor, a minor, an incapacitated person, as well as a person whose civil capacity is limited, shall be deemed to have accepted the inheritance, unless they have filed an application for refusal to accept the inheritance, which has not been revoked within the period established for its acceptance.

Acceptance of inheritance must be much unconditional. No heir may accept only a part of

the inheritance and renounce another or impose other conditions on which he accepts the inheritance.

As mentioned above, the heir by law or by will have the right not only to accept the inheritance or not to accept it, but also has the right to refuse to accept the inheritance. Thus, such refusal can be both in favor of other heirs, and unaddressed. However, in both cases, the refusal to accept the inheritance must be much unconditional, filed at the place of opening the inheritance within the time limits set for the acceptance of the inheritance. During these terms, the heir who filed an application for renunciation of inheritance, retains the right to revoke such refusal.

It should be borne in mind that the refusal of the testamentary heir to accept the inheritance is possible only in favor of another testamentary heir. In the case of an unaddressed refusal of such an heir, the share in the inheritance, which he had the right to accept, passes to other heirs by will and is distributed equally among them.

The legal heir has the right to refuse to accept the inheritance in favor of one or more legal heirs, regardless of the turn. In the case of an unaddressed refusal to accept the inheritance by one of the heirs at law from the line called for inheritance, the share in the inheritance that he was to accept passes to other heirs of the same line equally.

The legislator determines that regardless of the time of acceptance of the inheritance, it belongs to the heirs from the time of its opening. Legal registration of the right to inheritance is the issuance of a notary at the place of opening the inheritance to the heirs who accepted the inheritance, a certificate of inheritance rights.

When issuing such a certificate, the notary must establish the fact of death of the testator, time and place of opening the inheritance, the grounds for calling for inheritance by will or by law of persons who applied for a certificate, the composition of the hereditary property for which this certificate is issued, and check the fact that such property belongs to the testator, the presence of creditors' claims. Relevant documents must be submitted to the notary to confirm these circumstances by the heirs.

The issuance of a certificate of the right to inherit to heirs, as well as accepted inheritance, is not limited in time. Obtaining such a certificate is the right of the heir, which he can exercise at any time after the expiration of the period established for acceptance of the inheritance.

Inheritance occurs by will or by law. If the deceased (testator) left a will, then the heirs mentioned in it have the right to apply for acceptance of the inheritance. If there is no will, inheritance occurs in order of priority:

Table 1.
Intestacy order of succession.

the First	the children of the testator (in particular, who were conceived during life and born after his death), husband/wife, parents
the second stage	siblings, grandfather, grandmother (maternal and paternal)
third stage	the testator's uncle and aunt
the fourth stage	persons who lived together with the testator by one family for at least five years before the opening of the inheritance
the fifth order	other relatives of the testator (up to and including the sixth degree of kinship)

The testator can only be a natural person (citizen of Ukraine, foreign citizen or stateless person). The transfer of rights and obligations of a legal entity in the event of termination of its activities is governed by other rules of law, which are not the rules of inheritance law.

The heirs can be both individuals and legal entities, as well as the state and other public law entities. Individuals have an advantage over other subjects: they can inherit both by law and by will. Legal entities, the state, and other subjects of public law can inherit only if there is a direct indication of this in the will.

The possibility of being called upon to inherit does not depend on the nationality of the individual and on the state of his/her legal capacity: persons declared incapable by a court due to mental illness or dementia, persons with limited civil capacity and persons in prisons also have the right to inherit. However, a necessary condition for inheritance for an individual is that

he must be alive at the time of the opening of the inheritance.

Persons who intentionally took the life of the testator or any possible heir or attempted to take their lives, persons who intentionally prevented the testator from making, amending or revoking the will and thus contributed to the right to inherit are not entitled to inherit. Themselves or others or contributed to the increase in their share in the inheritance. Parents are not entitled to inherit by law after a child regarding whom they have been deprived of paternity and their rights have not been restored at the time of the opening of the inheritance, as well as parents (adoptive) and adult children (adopted), other persons who evaded obligations.

The right to inheritance consists of a set of powers of heirs arising in connection with gaining of rights and obligations (inheritance) from an individual who died (testator) in the order of universal succession. If we take this position as a basis, then the right to inherit does not arise on the day of opening the inheritance but after the heir accepts the inheritance. Thus, the right to accept inheritance itself is removed from the right to inheritance, since legal powers arise already as a result of its implementation, as well as the right to refuse to accept the inheritance, the right to take measures to protect inherited property, which may not be accompanied by the will of a person to accept the inheritance. In this case, in our opinion, the author reduces the concept of the right to inheritance to the goal or result of hereditary legal relations – inheritance (legal succession), while excluding hereditary legal relations from the concept of the right to inheritance. The right to inheritance is a combination of the following rights that the heir gains in connection with the opening of the inheritance: 1) the right to accept the inheritance; 2) the right to divide the inherited property; 3) the right to confirm the legality of the acquisition of inherited property by notary, judicial or other competent authorities. Yu. B. Honhalo notes that the right to inheritance presents the main content of hereditary legal relations and consists of the heir's ability to receive the inheritance (the object of the hereditary legal relationship). The right to inheritance can be applied in several meanings. First, in its most general form, the right to inheritance is an element of civil legal capacity. In this sense, it belongs to all subjects of civil law. However, the right to inheritance as an existing subjective right of a person, the emergence of which is due to a set of legal facts, does not need to be identified with the ability to be an heir, which is an element of a person's civil legal capacity, a theoretical possibility that may never be implemented. Second, the right to inheritance can be used in the meaning of "the right (opportunity) to receive inheritance by will". In this sense, the right to inheritance is an element of civil legal capacity (sometimes called "passive testament capacity"). The right to inherit, referred to in Art. 1223 of the Civil Code of Ukraine, can also be characterized as an element of legal capacity, i.e., the ability of a certain person to acquire the subjective right to inheritance. Third, the right to inheritance can be considered as a subjective right arising in the presence of certain legal facts: death of a person or declaring him or her dead (Article 1220 of the Civil Code of Ukraine) (Inheritance under the legislation of Ukraine, 2008). Considering the above, we can conclude that the lack of a unified definition of the concept of the right to inheritance is due to the lack of a unified understanding of its legal nature. Analyzing the positions of scientists regarding the understanding of the right to inheritance, we observe the reduction of the right to inherit only to the right to accept the inheritance or also the right to refuse to accept the inheritance, the identification of the right to inheritance with an element of civil legal capacity through understanding the right to inheritance as the right to be called upon to inherit, etc. The answer to the question of whether we can consider the right to inheritance as a subjective civil right will largely depend on what we mean by subjective civil right. If the subjective civil right is determined only as an element of legal relations, which must always correspond to the obligation of the other party, if the existence of a subjective civil right is impossible without its opposite – a legal obligation, the "right to inheritance" cannot be attributed to subjective civil rights. This is only one of the manifestations of civil legal capacity, including the right to make contracts, wills, and other transactions. At the same time, some authors explain the peculiarities of the legal nature of the right to inherit, its belonging to the secondary rights.

In this context, it is also advisable to consider the concept of "secondary right", which has been studied in the science of civil law for a long time. Discussions about its legal nature and the place it occupies in the civil rights system continue to this day, depending on what is meant by the secondary right: the legal possibility of unilateral expression of the will to lead to the emergence, change or termination of civil relations; subjective civil right; immature subjective right; competence.

The doctrine of secondary rights was initiated by E. Zekkel. Based on the fact that there are special rights along with legal capacity and subjective rights, the author concluded that from a legal point of view, these are subjective rights, the content of which is the ability of an authorized person to generate subjective rights by making a unilateral transaction. Secondary rights must comply with the general requirements for subjective right, be carried out through the direct expression of the will of the person – the transaction, their content should not be direct domination over the object, but the ability to unilaterally create, change or terminate, i.e., transform one or the other according to rights domination Zekkel E. (2007). A secondary right a legal category, broader in a legal capacity, but less than a subjective right. Justifying his theory of "dynamic legal capacity", the author considered legal capacity in its dynamic state, i.e., the ability of a person to exercise (show) its specific components, subjective right arising from the implementation of legal capacity and is characterized by the fact that it is opposed by the obligation of another person and a secondary right, which cannot be considered a subjective right since it does not give rise to the obligation of a third party to take the appropriate action. V.I. Serebrovskyi, investigating hereditary legal relations, drew attention to the fact that, by its nature, acceptance of an inheritance is a unilateral transaction, i.e., an expression of the will of only one person – the heir, which is not addressed directly to any person and does not require the consent of others. However, this transaction entails some legal consequences concerning the heir and other persons, for example, the testator's creditors. Hence, from the moment of opening the inheritance, the heirs have the right to inheritance, which is implemented either in the right to accept the inheritance or in the right to refuse it. Based on this, the scientist concluded that the right to accept an inheritance is a special secondary right of the heir. Considering the fact that V.I. Serebrovskyi admitted the existence of subjective civil rights, which are not provided with obligations, the author attributed secondary rights to subjective rights (Serebrovsky (2003)).The main difference between secondary and subjective rights is that two powers are distinguished in the structure of subjective rights: the power to take one's own actions and the power to demand that the obligated person performs certain actions or refrains from performing them. The validity of demanding someone else's behavior depends entirely on the obligation that opposes it. It is the presence of such an obligation that makes it possible to attribute the capabilities of a person to a subjective right (Horak, Daduova, & Osina (2019)). However, if the secondary right is not ensured by the obligation of third parties, then it is logical to assume that its content consists of a single authority, namely the possibility of performing one's own actions. The secondary right to inheritance consists of one type of right to own actions, namely the right to accept the inheritance and the right to refuse to accept inheritance. That in some cases it is necessary to define the subjective civil law of a person as a secondary right, and in others – such a legal possibility, which is part of the subjective civil right of a person and consists in the implementation of unilateral actions, the consequence of which is the change or termination of the subjective civil right, in order to satisfy the legitimate interests of a person. We believe that the right to inheritance is implemented through the powers arising from the right itself. However, not all such powers are transactions, i.e., actions that are aimed at establishing, changing or terminating civil rights and obligations. We consider the secondary rights in the context of the right to inheritance as powers that are part of the subjective civil right of an individual and consist in the implementation of unilateral actions, the consequence of which is the emergence, change or termination of civil rights and obligations, i.e., transactions, to satisfy the rights protected by law and interests of the person. Analysis of Articles 1269-1285 of the Civil Code of Ukraine allows defining three main (primary) powers within the right to inheritance, which determine the onset of specific legal consequences – legal facts that give rise to, change or terminate the legal relationship of an individual heir in an inheritance relationship: to accept an inheritance; not to accept the inheritance (part 1 of Article 1268 of the Civil Code of Ukraine) and refuse to accept the inheritance (Article 1273 of the Civil Code of Ukraine). Each of these powers is an individual transaction and act, i.e., one performed by the heir personally. Respectively, we refer them to the category of secondary rights (Katchanovski (2014)).

Thus, although it seems logical to attribute the rejection of inheritance by its nature to the non-exercise of a right, we consider it a separate right for our research. This will allow distinguishing more clearly between two legal situations: refusal to accept inheritance and non-acceptance of inheritance, which involve different legal consequences. Thus, in the case of accepting the inheritance, heirs can, by mutual agreement, change the size of their shares in the inheritance,

declare the need to take measures to protect the inherited property, appoint or replace the executor of the will, and are also obliged to fulfill the testamentary disposition, notify creditors about the opening of the inheritance and satisfy the claims of creditors, etc. In case of refusal to accept the inheritance, a person, for example, has the right to withdraw such an application and accept the inheritance within the time period established for accepting the inheritance, or to refuse following the procedure established by law in favor of a third party, to take measures to protect the inherited property, etc. If the heir has not submitted an application for acceptance of the inheritance within the period established by the Civil Code of Ukraine, he or she is considered not to have accepted it (part 1 of Art. 1272 of the Civil Code of Ukraine). If the deadline for accepting the inheritance is missed, a person has the right to submit an application for accepting the inheritance with the written consent of other heirs who have accepted the inheritance (Part 2 of Article 1272 of the Civil Code of Ukraine) or apply to the court to determine an additional period sufficient for submitting an application for accepting the inheritance (part 3 of Article 1272 of the Civil Code of Ukraine). Therefore, we can define the right to inheritance as the right of the heir to accept the inheritance, refuse to accept the inheritance within the time period established by law, or not accept the inheritance, and exercise the powers that are due to the emergence of the right to inherit and provided for by law. Thus, through the secondary rights of the heir, the unity of the content of the right to inheritance is ensured, the vector of development of hereditary legal relations is determined and a set of future powers of the heir is formed, which may change during the period established by law due to the same secondary rights (for example, in the case of withdrawal from the acceptance of the inheritance). Defining the category of secondary rights in the sense of the right to inheritance will not help avoid the identification of the right to inherit with the right to accept the inheritance, or the right to accept or refuse to accept inheritance but also reveal imperfections in legislative techniques.

It is necessary to comply with the deadlines established by the Civil Code of Ukraine. The general term for accepting inheritance is set at six months. Its calculation begins according to Part 1 of Article 1220 of the Civil Code of Ukraine from the date of opening an inheritance. The six-month period for the heirs to exercise their right to inheritance (acceptance, rejection, refusal, cancellation of acts of acceptance, or renunciation of inheritance) applies primarily to testamentary heirs and heirs entitled to a compulsory share in the inheritance. In accordance with Article 1241 of the Civil Code of Ukraine, they can be minors, adult disabled children of the testator, disabled widow (widower), and disabled parents. Specified persons inherit, regardless of the content of the testament, half of the share that would be due to each of them upon inheritance by law (compulsory share).

The order of the Ministry of Justice of Ukraine "On Urgent Measures to Protect the Rights of Citizens in the Territory of the Anti-Terrorist Operation" (Ministry of Justice of Ukraine, 2014). established that notarial actions and state registration of rights and their encumbrances to real estate located in the occupied territories are carried out, respectively, by state registrars of rights to real estate from those bodies of state registration of rights and private and state notaries of unoccupied districts of Luhansk and Donetsk regions in accordance with the legislation.

The Law of Ukraine "On Temporary Measures for the Period of the Anti-Terrorist Operation" established that if the last place of residence of the testator is a settlement on the territory of which the state authorities temporarily do not exercise or fully exercise their powers, the place of opening of the inheritance is the place of submission of the first application, which indicates the expression of will on the inherited property, heirs, executors of the testament, persons interested in the protection of inherited property, or creditors' claims. Thus, heirs can apply to any notary on the territory of Ukraine, controlled by the Ukrainian government, with a statement on the acceptance of inheritance.

To apply to a notary with an application for the acceptance of inheritance, it is at least necessary to obtain a certificate of the testator's death. However, state registration of civil status acts, including the issuance of a death certificate, has been suspended on the territory of the anti-terrorist operation. Civil registration is carried out by any department of state registration of civil status acts located outside the occupied territory. Cause-of-death certificates or other "documents" issued by the occupation authorities do not create any legal consequences and are not recorded in the relevant registers. In this situation, the heirs need to initiate legal proceedings to obtain a court decision on establishing the testator's death. The decision of the court based on the results of the consideration

of the case does not replace the death certificate, and it is only the basis for obtaining it.

The legislative process for the adoption of the Law of Ukraine 'On the peculiarities of state policy to ensure the state sovereignty of Ukraine in the temporarily occupied territories in the Donetsk and Lugansk regions' was completed in January –February 2018. On January 18, 2018, it was adopted by the Verkhovna Rada. On February 20, 2018, it was signed by President Petro Poroshenko, and on February 23, 2018, the law was published in the official newspaper of the Verkhovna Rada of Ukraine, Golos Ukrainy, and the following day it came into force (Gilchenco, Konstantinova & Pashina, 2019).

The war in the southeast of Ukraine continues to be one of the key factors that affects all spheres of life in the country today and dictates the adoption of certain political decisions that are often more populist than objective.

Conclusions

It should be noted that scientists and the legislator have carried out inefficient analytical work on the materials of judicial and notarial practice, there are no guiding explanations of the highest judicial authorities on problematic issues of inheritance law in the occupied and controlled territories, which creates additional opportunities for abuse, an increase in the number of legal disputes arising about testaments. Moreover, the opportunities provided to the testator remain unfulfilled due to insufficient awareness of citizens about their rights and the procedure for protecting inheritance rights. It is recommended to amend the legislation on the possibility of extending the terms for accepting inheritance from the testator, whose last place of residence or immovable property is located in the ATO zone.

Bibliographic references

Civil Procedural Code of Ukraine (2004). Retrieved from https://zakon.rada.gov.ua/laws/show/1618-15#Text

Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993). Official Gazette of Ukraine, 2005, №44, Art. 2824.

Corten, O. (2011). "Territorial Integrity Narrowly Interpreted: Reasserting the Classical Inter-State Paradigm of International Law". Leiden Journal of International Law. 87: 88.

Crabb, J.H. (1995). The French Civil Code, revised ed. (as amended to 1 July 1994). Littleton, Colo.: Fred B. Rothman & Co.; Deventer, The Netherlands: Kluwer Law and Taxation, Retrieved from https://heinonline.org/HOL/LandingPage?handle=hein.journals/shlr28&div=17&id=&page=

Fedorich, I.Ya. (2018). Exercise of the right to inheritance under the civil legislation of Ukraine: (dissertation. jurid. Sciences) Educational and Scientific Law Institute of Vasyl Stefanyk Precarpathian National University. Ivano-Frankivsk, 236 p.

Fulei, TI. (2015). Application of the case law of the European Court of Human Rights in the administration of justice: Scientific and methodological guide for judges. - 2nd type. corrected, supplemented. K.: Atika. 208.

Gasztold, A., & Gasztold, P. (2020). "The Polish Counterterrorism System and Hybrid Warfare Threats". Terrorism and Political Violence.

Gherghina, S., & Silagadze, N. (2018). "Policy Agenda and Legitimation: Referendums on Interethnic Relations Central and Eastern Europe" Nationalism and Ethnic Politics, 24 (4), 389-410.

Gilchenco, O., Konstantinova, Y, & Pashina, N. (2019). "Public Influence on Legislative Process in the Problem of De-occupation of Donbas" Baltic Journal of European Studies, 9, 224-244.

Gongalo, Yu.B. (2010). Legal facts in inheritance law of Russia and France: A Comparative Legal Study. Moscow: Statut, 310-68.

Gusarov, K.V., & Popov, O.I. (2020). "Recognition of the fact of birth or death in the temporarily occupied territory under the rules of special proceedings" Journal of the National Academy of Legal Sciences of Ukraine, 4, 161-171.

Horak, O., Daduova, M., & Osina, P. (2019). "Czech inheritance law and the significance of tradition". Lawyer Quarterly, 333-348.

Inheritance under the legislation of Ukraine (2008). Comment. Judicial practice. Bulletin of Legislation and Legal Practice of Ukraine.

Katchanovski, I. (2014). The Politics of World War II in Contemporary Ukraine. Journal of Slavic Military Studies, 27(2), 210–233. https://doi.org/10.1080/13518046.2013.844493

Komarov, V.V, & Svitlychna, G.O., & Udaltsova, I.V. (2011). Separate proceedings. Kharkiv: Pravo. [In Ukrainan]

Law 371-IX (2019). On temporary measures for the period of the anti-terrorist operation

(2019): Law of Ukraine of 27.12.2019 № 371-IX. https://zakon.rada.gov.ua/laws/show/1669-18#Text

Law of Ukraine (2020). On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine. № 720-IX-VVR. 2014. No 26. Art. 892.

Ministry of Justice of Ukraine (2014). On urgent measures to protect the rights of citizens on the territory of the anti-terrorist operation. June 17, 2014 for № 640/25417. Retrieved from https://zakon.rada.gov.ua/laws/show/z0640-14#Text

Serebrovsky, V.I. (2003). Essays on Soviet inheritance law. Moscow: Selected works on inheritance and insurance law, 74-75. Retrieved from http://lawlibrary.ru/izdanie47473.html

Streisand, A. F., Streisand, L. G. (2020) Conflicts of International Inheritance Laws in the Age of Multinational Lives. Cornell International Law Journal, 52, 675-716. Retrieved from https://ww3.lawschool.cornell.edu/research/ILJ/upload/Streisand-Streisand-final.pdf

Stuart Elden (2005). Boundaries-in-the-making (Part 1): Critical perspectives on national borders Archived 2006-08-23 at the Wayback Machine paper presented on 4 June 2005 to the Association of American Geographers Archived 2007-02-06 at the Wayback Machine Retrieved from https://edinburghuniversitypress.com/stuart-elden

Tabachnik, A. (2020) "Russian Intervention in Ukraine: History, Identity Politics, and National Consolidation" Nationalism and Ethnic Politics, 26(3), 299-318.

UN Charter (1945). Charter of the United Nations and statute of the International court of justice. https://treaties.un.org/doc/publication/ctc/uncharter.pdf

UNIAN (14 April 2016) New Cabinet formed in Ukraine. Retrieved from https://www.unian.info/economics/1322801-weeks-balance-pm-groysman-radas-sabotage-and-disappointing-imf-forecast.html

Vidi´c Trnini´c, J. (2021). "Position of Forced Heirs in the Countries of Roman Legal Tradition", Acta unaversitatis, l., Pol 141, 50-149.

Zajda, J. (2017). Globalization and National Identity in History Textbooks: The Russian Federation. Springer Science.

Zekkel, E. (2007) Secondary rights in civil law. Bulletin Civil Law, 2, 211. Retrieved from https://www.estatut.ru/news/glossa-zekkel-e/