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UKRAINE IS MODERN. SCIENTIFIC STUDIES OF THE PAST AND PRESENT

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Boiko Y., Bogatchuk S., Levchuk K., Belkin I., Manhora V., Manhora T., Durach O., Makarov Z.

UKRAINE IS MODERN. SCIENTIFIC STUDIES OF THE PAST AND PRESENT

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ANNOTATION

The collective monograph is devoted to the study of trends in the development of modern Ukrainian society. The research uses an interdisciplinary approach, which allows analyzing various aspects of the development of social processes in Ukraine and obtaining socially significant scientific results.

The subject of **Yuri Boyko's** scientific interests are various manifestations of life activities of the population of Forest-Steppe Ukraine in the 19th century. - demographic, social, economic, cultural. In the proposed research, the author's attention is focused on the structure of the social organism, the dynamics of changes, regional features of the social organization of the population, for the first time in domestic historiography, the issues of social topology, the construction of the social landscapes of the Right-Bank and Left-Bank components of the Forest-Steppe Ukraine, the place of Ukrainian provinces in the social space of the European part of the Russian Empire are specifically considered 1850s - 1860s.

Svitlana Bogatchuk pays attention to the study of the life path of the founder of Ukrainian ethnographic science, the Ukrainian Pavlo Chubynskyi. It should be noted that in 1869-1872, under his leadership, ethnographic expeditions were conducted on the territory of Dnieper Ukraine, based on the materials of which seven volumes of the "Proceedings of the Ethnographic and Statistical Expedition" were published, which became a significant phenomenon in the cultural life of the Ukrainian people, convincingly showing the world their originality Ukrainian national spiritual culture.

In 1872, the South-Western Branch of the Imperial Russian Geographical Society was opened in Kyiv, in the formation of which Pavlo Chubynsky played a decisive role. The main task of the society was to collect, process and distribute geographical, ethnographic and statistical information.

Kostyantyn Levchuk's research is aimed at studying the process of activity of non-governmental organizations of commodity producers of Ukraine in the context of reforming economic relations. Trade union organizations, as the most representative

public organizations of workers, had to prove to the power structures their position, their vision regarding the ways out of the crisis and further social development.

Public organizations operating in the spheres of economy include associations of entrepreneurs, farmers, tenants, employers and private owners. They are the result of self-organization of commodity producers, which contributes to increased structuring and self-regulation of the economy. Unlike trade unions, public associations of entrepreneurs faced other tasks, which consisted in the formation of corporate interests and awareness of the need to develop their own consistent and comprehensive economic policy.

Ihor Belkin's chapter is devoted to trends in the development of educational services under today's conditions. The author pays attention to the dynamics of changes in the educational process under the influence of market relations. Attention is drawn to the key positions of each of the participants in the educational process. The legislative framework of education is analyzed. The content of the final result of the educational process is revealed. Comparative characteristics of the leading higher education institutions of Ukraine and their competitiveness are given. The key trends in the development of the provision of educational services abroad are characterized. In the context of the education market, the position of the main participants in this space is revealed in detail. At the end of his chapter, the author offers a set of analytical conclusions and proposals.

Volodymyr Manhora's scientific research is aimed at forming knowledge about the state when teaching the history of Ukraine. The historical-methodological aspect of the research has been developed, which shows the dynamics of changes in the content of knowledge about the state and the methods of their assimilation in the learning process. According to the author, this is related to the appropriate conditions for the existence of historical and legal education in a specific historical period of the development of society, the development of methodical science, and the accumulation of teaching experience. Only on the basis of the analysis of the historical and methodological aspect of this problem, modern achievements of methodical science

and teaching practice, it is possible to scientifically justify and experimentally verify the effective method of forming knowledge about the state.

Investigating the problem of the formation of the institution of inheritance in Ukraine and the peculiarities of the implementation of inheritance cases in the conditions of martial law, **Tamila Manhora** examines the controversial aspects of the legal regulation of the relevant legal relations.

The introduction of martial law in Ukraine undoubtedly affected all spheres of social relations, including inheritance. In this period, questions that previously had only theoretical importance become urgent. In particular, the war and the temporary occupation of certain territories of Ukraine by the enemy significantly affect the exercise of rights by individuals in the field of inheritance law. It is, first of all, about significant obstacles in the realization of the right to receive inheritance. Because of this, the state must effectively and timely respond to such challenges in order to protect the rights and interests of subjects, as well as ensure the stability of property turnover. There is no doubt that war is a significant destabilizing factor in the dynamics of property relations. Therefore, the task of legal doctrine in this extremely difficult period for the state is to develop effective mechanisms for subjects to exercise their inheritance rights for their further regulatory implementation.

Olga Durach's chapter examines the history of military courts in Ukraine. The main reasons that contributed to the liquidation of military courts have been revealed. The basic principles of the organization of the work of military courts in Ukraine have been determined. Peculiarities and problematic issues of the administration of justice during the period of martial law have been studied, and the reasons for the need to resume the work of military courts have been determined. Ways to resolve controversial issues regarding the resumption of military courts in Ukraine are proposed.

Zorislav Makarov explores traditional forms of philosophical determinism in his creative work. Significant attention is paid to the reception and transformation of such ancient and medieval philosophical concepts in the synthetic context of Renaissance determinism, such as the physics of Aristotle, the history of Titus Livius,

the mystical pantheism of the Neoplatonists and Nicholas of Cusa, the magic and astrology of Hermeticism, the theological ontology of Aurelius Augustine and Thomas Aquinas. The sequence of overcoming medieval dualism in nomology is established from the humanistic mastering of the potential of transcendent powers in legislation by the Renaissance man due to its limitation by the requirements of social and political expediency to the new substantialization of nature in the form of rational principles of its movement and transformations of natural things.

The content of the collective monograph corresponds to the direction of scientific work of the Department of History of Ukraine and Philosophy of Vinnytsia National Agrarian University. The monograph is the result of the initiative topic "Research of trends in socio-economic development and consolidation of Ukrainian society in the modern history of Ukraine". State registration number 0122U001425. The head of the subject is Professor K. I. Levchuk). The monograph uses: historical-genetic method, statistical analysis, sociological, economic, legal and pedagogical methods.

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6. Formation of the institute of inheritance in Ukraine and peculiarities of realization of inheritance rights under martial law

Abstract

The problems of exercising inheritance rights under martial law are outlined. Controversial aspects of legal regulation of relevant legal relations are considered.

The introduction of martial law in Ukraine undoubtedly affected all spheres of social relations, including inheritance. In this period, questions that previously had only theoretical importance become urgent. In particular, the war and the temporary occupation of certain territories of Ukraine by the enemy have a significant impact on individuals exercising their rights in the field of inheritance law. It is, first of all, about significant obstacles in the realization of the right to receive inheritance. Because of this, the state must effectively and timely respond to such challenges in order to protect the rights and interests of subjects, as well as ensure the stability of property turnover. There is no doubt that war is a significant destabilizing factor in the dynamics of property relations. Therefore, the task of legal doctrine in this extremely difficult period for the state is to develop effective mechanisms for subjects to exercise their inheritance rights for their further regulatory implementation.

6.1 Concept of inheritance in civil law

Inheritance is an institution of law, which was and is relevant from the point of view of its research, development and improvement, as it concerns the personal interests of a person. Many works of famous Soviet and Ukrainian scientists are devoted to the study of inheritance. This interest of science in inheritance issues is natural, because in the course of his life, a person mostly accumulates a certain amount of material goods and values, with which he wants to satisfy not only his needs, but also the needs of his relatives and friends. It is the norms of inheritance that are designed to regulate the transfer of the rights and obligations due to a person in the event of his death. In addition, especially in our time, inheritance has become relevant

not only for individuals, but also for legal entities, as it significantly affects the formation and composition of their higher bodies, their activities.

The importance of researching legal issues of inheritance by law is due to the growing importance of the right to private property of citizens and the order of its inheritance in the conditions of a market economy, the need to develop a legal mechanism that could properly protect the rights and interests of citizens. The importance of inheritance also lies in the fact that each member of society is guaranteed that the fate of his property will be determined by him personally: it will either pass to his closest people, or will become the property of the entire society at his will. Also, the possibility of determining the fate of property and transferring it to inheritance is one of the most important guarantees of the stability of private property relations.

In connection with the development of market relations in Ukraine, inheritance has become relevant not only for individuals, but also for legal entities, as it significantly affects their activities, the formation and composition of their higher bodies, especially this applies to issues of inheritance of shares, shares in the statutory fund, in particular, agricultural formations. Inheritance law is an integral part of the civil law of Ukraine.

Inheritance is the transfer of rights and obligations (inheritance) from a natural person (testator). There are two parties to an inheritance: the testator and the heir. Inheritors can be not only natural persons: citizens of Ukraine, as well as stateless persons and foreigners. Legal entities cannot be legatees. Heirs can be both physical and legal entities, the state, territorial communities [1, p. 270].

Inheritance occurs as a result of certain legal facts, namely: the death of a natural person or his declaration as deceased in accordance with the procedure established by law. Only under these circumstances do the heirs have the right to accept the inheritance.

After accepting the inheritance, the heir becomes a participant in the same legal relations, the subject of which the testator was previously, i.e. the subject is replaced in the legal relations of which the testator was a participant.

The rights and obligations of the testator pass to the heirs as a single whole, that is, universal legal succession takes place.

However, in practice there is also a singular legal succession, in which only certain rights (or obligations) pass to the heirs. In particular, this happens in the event that the testator made a will, according to which the heir is obliged to transfer a part of the house for use to a certain person - this person will be the singulator and successor [2, p. 201]. The inheritance includes all rights and obligations that belonged to the testator at the time the inheritance was opened and did not cease as a result of his death, with the exception of those that cannot be inherited at all.

The heir cannot partially accept the inheritance or partially renounce it, or one cannot accept some rights and renounce others.

Among the property rights that pass to the heirs as part of the inheritance, first of all, the right of ownership of various property should be mentioned, for example, a house, apartment, land plot, car, securities, other things that are the object of the property rights of citizens. However, arbitrarily built buildings and structures are not included in the inheritance property, since the testator (developer) does not have the right to own these objects [3, p. 367].

Inherited property also includes property rights, in particular rights to other people's things - easements, emphyteusis, superficies. Land easements are inseparable from the land plot and are therefore the object of inheritance.

At the same time, personal servitudes regarding the right of residence of the testator in a certain house, which is owned by another person, are not part of the inheritance.

According to Art. 413 of the Civil Code superficies is the right to use someone else's land plot for development, which is inherited.

The object of inheritance is also some rights in the field of intellectual property, in particular:

- copyright, that is, the right to publish and distribute

works of science, literature, art and receiving a reward;

- the right to receive a diploma of a deceased author of a discovery, an author's certificate or a patent for an invention, a certificate for an innovative proposal, a certificate or a patent for an industrial design, the right to receive remuneration for the use of intellectual property objects;

- the right to an invention, an industrial design, which is based on a patent.

However, some rights and obligations of a person are not part of the inheritance, in particular those that are inextricably linked to the person of the testator:

- personal non-property rights;

- the right to participate in societies and the right to membership in citizens' associations, unless otherwise established by law or their constituent documents;

- the right to compensation for damage caused by mutilation or other health damage;

- rights to alimony, pension, assistance or other payments established by law, since they provided the means of subsistence only for the testator and cease with his death;

- rights and obligations of a person as a creditor or debtor [4].

As for obligations, the obligation to compensate for property and moral damage passes to the heirs, which, according to the court's decision, must be compensated by the testator during his lifetime. Inheritance can only take place under certain conditions. Thus, the legal successor is a natural or legal person who, as a result of facts determined by law, is recognized as an heir. An heir is a person who, in the event of the death of a person, acquires the right to receive his property.

The subjective right to inheritance arises in the heir regardless of his will. However, the realization of this potential right depends only on his manifestation of will [5, p. 1023].

Inheritance in Ukraine is carried out by law and by will. Inheritance by law takes place regardless of the will of the testator and is possible when the testator did not make a will or when his will is legally invalid.

Heirs both by will and by law can be natural persons who are alive at the time of the opening of the inheritance, as well as persons who were conceived during the life of the testator and born alive after the opening of the inheritance. Citizens of Ukraine, foreigners, and stateless persons should be classified as natural person heirs.

Both individuals and legal entities and other participants in civil relations have the right to inherit under a will. They include: the state of Ukraine, territorial communities, foreign states and other subjects of public law [6, p. 78].

The death of inheritance can be conditionally attributed to the institution of inheritance. According to Art. 1277 of the Civil Code, the death of inheritance occurs in the event of:

- absence of heirs by will and by law;
- removal of heirs from the right to inheritance;
- their rejection of inheritance;
- refusal to accept it [4].

Only the court recognizes the inheritance as dead upon the application of the relevant local self-government body at the place of opening of the inheritance. An application for recognition of inheritance as dead is submitted after one year has passed since the inheritance was opened.

That is, the legislator gives sufficient time to the heirs of the deceased, if they did not have time to submit an application for acceptance of inheritance or missed the deadline for its acceptance, to exercise their rights to inheritance.

On the basis of a court decision, after the expiration of one year from the day of the testator's death, the inheritance is recognized as dead and becomes the property of the territorial community at the place of opening of the inheritance.

But property that the testator bequeathed to the state or territorial community is not defunct [7, p. 9].

The territorial community, which became the owner of the deceased property, is obliged to satisfy the demands of the testator's creditors, declared in accordance with the current legislation. According to Part 4 of Art. 1231 of the Civil Code, property and moral damage caused by the testator shall be compensated within the limits of the value of the movable or immovable property received as an inheritance [4].

If an inventory of the inheritance was made, but the testator has no heirs or they did not accept the inheritance or were removed from the inheritance, then in this case the inheritance is protected until it is recognized as deceased. All costs related to the protection of hereditary property are borne by the local self-government body. So, for example, if during the description of the inherited property, its guardian was appointed or there is a person with whom the contract for the management of the inherited

property was concluded, and if these persons demand payment for the performance of the duties assigned to them, the local body is obliged to satisfy their demands municipality.

Inheritance law issues remain in the center of attention of society and the state, legislators and researchers, every citizen, as inheritance issues affect everyone's interests to one degree or another.

6.2 Normative - legal basis of inheritance in Ukraine

A special place in the system of civil legislation is occupied by the Civil Code of Ukraine as a sectoral codified legislative act, designed, in principle, to regulate all social relations that are part of the subject of civil law and act as the basis for the development of all current civil legislation. The norms regulating the conditions and order of inheritance are contained in the Civil Code of Ukraine, which entered into force on January 1, 2004, the norms of which significantly affected the central institution of civil law - property rights and, accordingly, the institution of inheritance. Norms of the book of the sixth Central Committee of Ukraine, which is divided into 7 chapters: Chapter 84. General provisions on inheritance Chapter 85. Inheritance by will; Chapter 86. Inheritance by law; Chapter 87. Exercise of the right to inheritance; Chapter 88. Execution of a will; Chapter 89. Registration of the right to inheritance; Chapter 90. Inheritance contract [4].

Among the main laws, the Constitution of Ukraine of June 26, 1996 has the highest legal force. The Constitution of Ukraine provides for the right of citizens to own private property. Inheritance law provides the family of the deceased with the opportunity to preserve and use his property. Inheritance law enables every citizen to dispose of his property in the event of death, specifying its fate in a will. Therefore, it is directly aimed at protecting the interests of citizens. At the same time, inheritance law protects the interests of the deceased's family members in every possible way (especially minors and disabled family members) [8].

Legal guarantees for the exercise of inheritance rights are provided for by the norms governing inheritance, which are set forth in the Civil Code of Ukraine, the Law of Ukraine "On Notaries", the Family Code of Ukraine, and other laws and by-laws.

The Law of Ukraine "On Notary" dated September 2, 1993. It consists of 4 sections, 17 chapters and 103 articles. This law establishes the procedure for legal regulation of the activity of notary bodies and the procedure for their performance of notarial acts [9].

The norms governing the conditions and order of inheritance are contained in the Civil Code of Ukraine (Chapter VII, Articles 524-564). We find separate norms of inheritance law in other sections of the Civil Code of Ukraine (for example, Article 494), as well as in regulatory acts that regulate the activities of state notary offices. The law contains general provisions that regulate the organization of activities of notary bodies, powers to perform notarial acts, certification of agreements, application of the legislation of foreign countries to international agreements [4].

The Law "On Copyright and Related Rights" as amended on July 11, 2001. which consists of 6 sections. The Law "On Copyright and Related Rights" contains a general rule that property rights of authors and other persons who have exclusive copyright are inherited, and personal (non-property) rights are not part of it [10].

Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of inheritance" dated May 30, 2008 No. 7 contains guiding clarifications regarding the practice of applying certain norms of inheritance law [11].

The Land Code of Ukraine, adopted on October 25, 2001, regulates land relations in the state. The Code defines the powers of authorities and local self-government bodies regarding the disposal of land plots belonging to them, the purpose of land use, the right to own land, the right to use land, the limitation of land rights, the acquisition and realization of land rights, the sale of land plots or rights to them on the basis of civil law contracts, etc. [12].

The Family Code of Ukraine was adopted on February 10, 2002. The Code defines the rights and obligations of spouses, including the right to personal private property of the wife and husband, regulates the right to joint ownership of spouses, the rights

and obligations of spouses regarding maintenance, the procedure for concluding and certifying a marriage certificate. contract, rights of parents and children to property, adoption, custody and care of children [13].

Methodical recommendations for the performance of notarial actions related to taking measures to protect inherited property, issuing certificates of the right to inheritance and certificates of ownership of a share in joint property of the spouses, approved by the decision of the Scientific Expert Council on Notarial Affairs under the Ministry of Justice of Ukraine dated 29 January 2009, as well as other by-laws.

6.3 Historical stages of inheritance development

The history of the formation of inheritance law spans many centuries, and inheritance law itself is characterized by certain features at each historical stage of its development, which gradually changed, were supplemented, disappeared or were preserved and reached our days. Thanks to significant changes and features that accompanied the institution of inheritance, both the range of heirs and the range of objects of legal succession expanded. That is why the explanation of certain inheritance legal relations should be sought in the material relations that existed at each social and historical stage of the development of Ukrainian society and contributed to the development of the institution of real estate inheritance [14, p. 378].

Issues related to the stages of formation of the institution of inheritance of immovable property in Ukraine were considered by such scientists as S. G. Blagovisny, O. A. Zaitsev, S. G. Trifonov, as well as E. O. Kharitonov, in whose writings the historical periods of the development of inheritance law of Ukraine are covered. But it should be noted that scientific works directly devoted to the comparative analysis of the norms of inheritance law at different social stages of its development have not been published recently. Therefore, the question of analyzing the constituent elements of hereditary legal succession, which have survived and are currently used in our legislation, as well as those that have already disappeared, in their connection with socio-economic transformations, is still relevant. It should be noted that the current inheritance law of Ukraine owes its traditions to Roman law, within which the concept

and content of inheritance law was defined for the first time, the idea of the universal nature of inheritance was formulated, and the procedure of inheritance according to by law and will. According to the norms of Roman law, the inheritance of immovable property is a type of legal relationship in which the primary owner of immovable property (the testator) participates and which, in turn, is not directly related to the owner, the content of these relationships has objective character, that is, they do not cease with the death of a natural person, as they can be used by other persons (heirs) without changing their essence. Such a transfer of posthumous legal relations (rights and obligations regarding immovable property) of a deceased person to another is the highest internal necessity, the essence of which is that a person appears and disappears, and legal relations as an objective force, as a right to demand something, as a duty to satisfy the demands of others, and, in the end, as a vital necessity to remain and "survive" their master. It is this idea that Roman law interprets in the following way: "Life is continuous and requires the replacement of the dead by the living, one generation by another" [15, p. 3].

Analyzing the institution of inheritance law in ancient Rome, it is appropriate to note that it was not only strictly national in nature, since its norms applied only to Roman citizens, but also natural and naturally arose from the social order. As a result, the order of inheritance was determined by the very fact of kinship, and the property passed after the death of a citizen to those who were closest to him in the order of patriarchal kinship [16, p. 29]. In addition, in Roman law at all stages of its development there was a division of people into free and slaves, due to which it acquired a class character [17, p. 35]. Being the right of a slave-owning state, it reflected and ensured the interests of the slave owner (homeowner) first of all, and was aimed at strengthening and developing slave-owning private property. "It leaves to the heir the right that the deceased possessed during his lifetime, namely the right to appropriate the products of someone else's labor with the help of his property" [16, p. 30]. Thus, classism gave rise to the institution of restrictions on the inheritance of real estate, as a result of which only certain persons had the right to bequeath or inherit real estate: Roman citizens and free people. As we can see, in our time, the universal legal

succession regarding the rights and obligations of the testator has been preserved and has an imperative character, therefore the person who inherits rights to immovable property also receives a number of obligations regarding its maintenance, which also applies to restrictions on sub object composition, then in the modern inheritance law of Ukraine they apply only to foreign citizens who inherited a plot of land [18, p. 198].

In the history of the development of the institution of inheritance of immovable property, the period of formation of the Russian-Ukrainian inheritance law (XV-XVI centuries), when most of the Ukrainian lands were part of the Grand Duchy of Lithuania, played an important role in the state life of which land relations played a significant role. As in other states of the Middle Ages, land was an attribute of power, therefore, legislation on land ownership was well developed. A specific feature of the land law of the Lithuanian-Russian state was that land ownership was not the prerogative of magnates and nobility. As stated by M. Yasynskyi, before the Union of Lublin, together with the nobility, the burghers and all free people could own land, enjoying the same rights as the nobility and performing the same obligations related to land ownership. However, the largest land holdings in the state were still concentrated in the hands of the magnate-noble elite. There were ancestral, hired, earned and purchased lands; according to the legislation of that time, the legal regime of these lands was established on the basis of the method of acquiring such land into ownership and was almost the same, but there were some differences in the order of bequeathing ancestral, earned and purchased land of magnates and nobility. The specified noble land property was considered inviolable, therefore it was not subject to alienation. The legal status of various land holdings was also fixed depending on the subjects of land ownership, so that royal, grand ducal, magnate, noble and church lands were distinguished [19, p. 192].

In addition, land ownership could be conditional, temporary and related to military service. Each land holding had to correspond to what was written about it in the owner's deed. This was closely monitored by the government of the Grand Duchy of Lithuania. Thus, during the agrarian reform of Sigismund - Augustus, a widespread verification of land ownership rights was carried out, if it turned out that the owner of the land did

not have the proper documents for the right to own it, then this land was written off "to the owner". However, the fact that during the period from the beginning of the agrarian reform to the adoption of the First Lithuanian Statute (1529) there was a sufficiently large number of landowners whose right to own land was based only on the antiquity of acquisition was quite obvious. That is why the Statute of 1529 defined the limitation period of 10 years, thereby guaranteeing the nobility the inviolability of possessions, the term of open undisputed possession of which exceeded this period, and the invalidity of any subsequent lawsuits against these possessions [20, p. 89].

During this period, girls who got married without the consent of their father and mother or married foreigners at all lost their right to inherit their father's land (in such cases, the property of the disinherited young woman passed "to her relatives").

As we can see, during the period of operation of the Russian-Lithuanian inheritance law on Ukrainian lands, types of legal regime of land plots were introduced, which are based on the following criteria: depending on the grounds for acquiring ownership of the land plot, depending on the subject of the ownership right and on the term of land ownership. These same grounds, with only some changes and additions, are included in the modern legal regime of the land. Summarizing the review of the mentioned period, it should be noted that at this time, the institution of inheritance law was generally developing in relation to the land plot, which could already freely pass into the inheritance, but with certain restrictions and conditions regarding the types of land and subject composition. There were also additional obligations, the role of which in our time is played by taxes and land payments [16, p.18].

The functioning of the institution of inheritance of immovable property in Ukraine after the entry of most of the Ukrainian lands into the Russian Empire remained for a long time based on the traditions of previous centuries and is summarized in the collection "Laws by which the Little Russian people are judged" [19, p. 14].

During the reign of Peter I, the traditional inheritance law of the Moscow kingdom underwent significant changes related to sole inheritance. For a long time, the majority was preserved - a system of inheritance, when immovable property passed indivisible to the eldest in the family or to the eldest of the sons of the deceased. This transfer of

the inheritance to the only son was established by the decree of 1714. Majority estates were removed from civil circulation, as they could not be bequeathed, donated, sold or divided between descendants. This decree significantly limited the circulation of land - it prohibited the pledge of land, the right to alienate land through sale, except for "need", i.e. under extraordinary circumstances. Thus, inheritance continued to be the main basis for the transfer and acquisition of land ownership. However, this decree put an end to the inheritance of real estate by will, which was already quite common, so this act was opposed by society and was canceled in 1737 [16, p. 32].

Later, the main source of pre-revolutionary inheritance law was the "Code of Laws of the Russian Empire", published in 1832-1833. Russian pre-revolutionary inheritance law did not consider inherited immovable property as a single whole, but divided it into two independent inheritance masses: parental property, which passed only to the heirs according to the law, that common property for which there was a general order of inheritance.

Immovable property was distributed among the testator's children in equal parts, as for illegitimate children, they could not inherit at all. In addition, the inheritance law of this period also did not recognize parents and other relatives in the ascending line as heirs, instead, parents received the right of lifetime ownership of the immovable property of their deceased children, but only if the testator himself had no children of his own. The one of the spouses who remained alive was not included in the circle of heirs, but only received the right to the part defined by law [19, p. 16].

At this time, the norms that were formulated back in the period of Roman inheritance law and related to restrictions for subjects in the field of inheritance of real estate continue to apply. In particular, women's right to inherited property was limited - during inheritance, daughters received only a quarter of their father's property, the rest was distributed among sons. Mother's property was inherited equally by sons and daughters. This is due to the fact that only the father was the owner of real estate or a plot of land, the mother owned only certain movable objects, and the right to land could be obtained only as the legal successor of her minor children [21, p. 192].

There continued to be certain restrictions on the inheritance of land based on nationality. Adopted on December 9, 1804 and revised on April 13, 1835. The "Regulations on Jews" established the legal status of Jewish farmers and their legal title to land: they were allowed to engage in agriculture on state-owned and land purchased from landowners within the "limits of settlement." It was believed that in terms of privileges, Jewish farmers were equated with foreign colonists, that is, legal capacity was limited to the location of the land plot, and not hereditary legal capacity [19, p. 18].

Also, in 1825, foreign nationals were prohibited from acquiring real estate by any means, that is, there was a ban on acquiring the right to own real estate, which is why there were restrictions derived from this ban for foreigners, which did not at all relate to the essence of the right of inheritance of foreign nationals persons. The foreign heir was not deprived of the right to inherit, he only undertook to sell the inherited real estate within a three-year period to a Russian subject, which should be recognized as a limitation of the right of ownership, and not as a deprivation of the foreigner's right to inherit. Analyzing the historical sources of inheritance law, one cannot but note that this rule, which has its continuation in the modern inheritance law of Ukraine, cannot be perceived as a deprivation of inheritance rights for foreign persons. At the same time, in some areas of tsarist Russia (in the Caucasus, in Asia), the inheritance of immovable property by foreigners was categorically not allowed [22, p. 58].

The modern inheritance law of our country not only refers the above-mentioned persons to one line of heirs (inheritance by law), but also gives them the same rights and opportunities to be heirs under a will. In addition, the current Family and Civil Codes of Ukraine equalize the inheritance rights of all children of the testator, even those not yet born. The only restrictions established by the national legislation of Ukraine in the field of inheritance of real estate concern foreigners who inherited a plot of land.

A great role in the history of the development of domestic inheritance law belongs to the period when Ukraine was a member of the Soviet Union, because in a socialist society the main object of inheritance was the right of personal property of citizens.

Thus, the property that belonged to a person under the right of private ownership had a consumer purpose and was not a means of exploiting someone else's labor, as it happened in the inheritance law of Ancient Rome, but was one of the ways to satisfy the material needs of citizens. Establishing the possibility of the transfer of such property through inheritance to close relatives, dependents and to persons who were specified by the person in the will, the Soviet law of inheritance thereby aroused great interest among citizens in the results of their work and contributed to the strengthening of private property.

The emergence and development of Soviet inheritance law at the initial stage is associated with the liquidation of the old capitalist system of inheritance, which was in effect in 1917 in pre-revolutionary Russia and did not correspond to the declared new communist social relations, in connection with which it was completely canceled by the decree of the Central Committee of the Central Committee of April 27, 1918 "On cancellation of inheritance" [23, p. 46]. Instead, it was noted here that "in the future, until the issuance of the decree that will regulate the sphere of universal social security, persons who do not have a subsistence minimum, disabled relatives in the direct descending and ascending line, full and half-born brothers and sisters, as well as one spouses receive maintenance from the property of the deceased, which remained after his death." It was also provided that when the value of the property of the deceased does not exceed 10,000 gold rubles, and the property consists of a manor house, household furnishings, economic means of production for cultivating the garden or means used in the village, then it passes into direct management and disposal one of the spouses and relatives. Such a transition to "direct management and disposal" in judicial practice was considered as a transition in the order of inheritance [20, p. 268].

The formation of the National Institute of Land Inheritance in the Ukrainian People's Republic in 1918 was connected with the special legal regime of the land plot, which at that time, unlike houses, could only be used by citizens. Thus, on January 18, 1918, the Ukrainian Central Rada approved the so-called "Land Law", according to which citizens received land only for use, that is, for conducting "general economic, "private labor use" of land and "for housing and building". But the note to Art. 13 of

the specified regulatory act was of great importance, as it provided for the transfer of the right to use land to inheritance.

Later, the right to inherit private property of citizens received its constitutional confirmation. Protection of the right of inheritance has become one of the constitutional principles: "The right of inheritance of private property of citizens is protected by law." This provision laid the legal basis for the further development of Ukrainian inheritance law. In addition, the institution of inheritance law allowed every Soviet citizen to freely, but within the limits established by law, dispose of his property in the event of death.

According to Art. 102 of the Civil Code of the Ukrainian SSR (1963 p.), the right to a residential building was recognized as the most important object of private property law. Thus, each citizen could have one residential building with the right of private ownership, the living area of which should not exceed 60 square meters. If the living spaces exceeded the specified sizes, their transfer by inheritance was prohibited in accordance with the provisions of the Decree of the Supreme Soviet of the USSR dated August 26, 1948 [15, p. 5]. In Soviet times, the right of the owner of the building, which belonged to him as a private property, was separated from the right to the land, which belonged exclusively to the state. Therefore, de facto there was a provision according to which the land divided the legal fate of the property located on it, but de jure it was never and could not be the property of citizens. The land plot and the immovable property located on it had a different legal regime, due to which the person who privately owned the residential building was not the owner of the land plot under it.

Summing up, we note that during the functioning of the Soviet inheritance law, land as an object of inheritance was excluded from market circulation, but it continued to be in civil circulation in the form of building plots. That is why, despite the ban on the land plot being owned by citizens, it continued to be the object of civil law agreements and inheritance until the changes and additions to the Land Code of Ukraine were made by Law No. 2196-XI of March 13, 1992, by which the ownership of citizens the land was guaranteed [12].

As evidenced by the analysis of the historical development of inheritance legislation and civilist thought, inheritance law has always occupied one of the dominant places in the civil law system. The presence of a wide range of historical sources on the outlined issues indicates that our predecessors paid a lot of attention to the issue of determining the fate of immovable property after death, the solution of which they considered vital for themselves. This is directly related to the fact that at each stage of its development, inheritance law was enriched with new and important at certain stages components, elements of hereditary legal succession, the research and analysis of which formed the basis and became the basis for future scientific research, concepts and development in the field of inheritance law. Thanks to rich historical experience in the field of inheritance law, the establishment and further development of the institute of real estate inheritance in Ukraine took place.

6.4 Implementation of inheritance rights under martial law

Despite the introduction of martial law in Ukraine, in order to acquire the right to inheritance, a person must accept it in the manner specified by legislation. From the moment the inheritance is opened, the heirs only acquire the right to accept the inheritance or refuse to accept it. And only after accepting the inheritance, the person becomes the universal legal successor of the rights and obligations of the deceased. As G. F. Shershenevich pointed out at the time, a person who has the right to inherit cannot be considered the subject of the relationship in which the testator was from the moment the inheritance was opened. She still has neither the right of ownership, nor the right of claim, nor the right of lien, nor any other of those rights that belonged to the testator. In order to become the subject of rights and obligations, the heir must accept the inheritance [24, p. 405]. It is not by chance that the legal doctrine focused on the double meaning of the term "heir": the heir called to inherit is a possible legal successor of the testator, and the heir who accepted the inheritance is a valid legal successor of the testator [25, p. 191]. However, changes were made in part of the period of exercise of the investigated right. Thus, according to Clause 3 of the Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Notary Publicity in the Conditions of Martial

Law" No. 164 dated 28.02.2022, the time limit for accepting inheritance or refusing to accept it is suspended for the duration of martial law, but no more than for four months. The certificate of the right to inheritance is issued to the heirs after the expiration of the term for accepting the inheritance. Since the beginning of the military aggression, a number of normative legal acts have been adopted, which define the specifics of the exercise of inheritance rights. This is, in particular, the resolution of the Cabinet of Ministers of Ukraine "Some issues of notary public service under martial law" dated 28.02.2022 No. 164, the order of the Ministry of Justice of Ukraine "On approval of changes to some regulatory legal acts in the field of notary public service" dated 11.03.2022 No. 1118/5. The analysis of these acts allows us to formulate the key aspects of the exercise of inheritance rights under martial law.

1. The terms for acceptance of inheritance and refusal to accept it have been changed.

Clause 3 of the Resolution of the Cabinet of Ministers of Ukraine "Some Notary Issues in the Conditions of Martial Law" dated February 28, 2022 No. 164 establishes that the time limit for accepting inheritance or refusing to accept it is suspended for the duration of martial law, but no more than Four months. The certificate of the right to inheritance is issued to the heirs after the expiration of the term for accepting the inheritance.

Moreover, in the original version of the specified resolution of the Cabinet of Ministers of Ukraine, there was no provision at all regarding the terms of acceptance of inheritance or refusal to accept it. Later, namely on 06.03.2022, changes were made to the resolution, according to which the time limit for accepting the inheritance is suspended during the martial law. And only on June 24, 2022, paragraph 3 of the resolution was presented in its current version.

Separate attention should be paid to the effect in time of clause 3 of the resolution of the Cabinet of Ministers of Ukraine "Some issues of notary in conditions of martial law" in the edition of 03.06.2022. Considering the date of its entry into force, it applies only to the inheritance that opened from 06.03. 2022. That is, in the period from the beginning of military aggression until the entry into force of the analyzed norm, the

terms for accepting inheritance and refusing to accept it, provided for in the Central Committee of Ukraine, apply. And this leads to a situation of legal uncertainty in inheritance relations.

The same state of legal uncertainty and instability is created by the latest version of paragraph 3 of the resolution, which entered into force on June 29, 2022.and established that the period for accepting inheritance or refusing to accept it is suspended for the duration of martial law, but for no more than four months. That is, the four-month period should be calculated from June 29, 2022, and this contradicts the content of the outlined norm. In addition, the question of calculating the term for accepting the inheritance or refusing to accept it, if the inheritance was opened from 03/06/2022 to 06/28/2022, remains unclear, taking into account the provisions of Art. 58 of the Constitution of Ukraine, according to which laws and other regulatory acts do not have retroactive effect in time, except when they mitigate or cancel the responsibility of a person.

Regarding the inheritance, which was opened from 06/29/2022, it can be assumed that the term for its acceptance (refusal of acceptance) has been extended by four months and is ten months from the date of the person's death. However, the analyzed rule is stated inconsistently and does not clearly fix the procedure for calculating the terms.

The establishment by the Cabinet of Ministers of Ukraine's resolution "Some notary issues under martial law" of other terms for acceptance of inheritance and refusal to accept it significantly changes the corresponding procedure provided for in Book 6 of the Civil Code of Ukraine. At the same time, in Part 4 of Art. 4 of the Civil Code of Ukraine contains a special clause according to which if the resolution of the Cabinet of Ministers of Ukraine contradicts the provisions of this Code or another law, the corresponding provisions of this Code or another law shall be applied. The fact that, as the name implies, the Cabinet of Ministers of Ukraine has extended its resolution only to the field of notary is also worth noting. And this, in turn, calls into question its application by courts during the consideration of cases in disputes arising from inheritance legal relations.

2. Simplified procedure for starting an inheritance case.

The order of the Ministry of Justice of Ukraine "On approval of changes to certain normative legal acts in the field of notary" dated 11.03.2022 No. 1118/5 (entered into force on 19.03.2022) determines that in conditions of martial law or a state of emergency, an inheritance case is initiated by the application of the applicant by any notary of Ukraine, regardless of the place of opening of inheritance. In the absence of access to the Inheritance Register, the notary shall open an inheritance case without using this register and check the existence of an established inheritance case, inheritance contract, will within five working days from the day such access is restored. At the same time, notaries are prohibited from issuing a certificate of the right to inheritance in an inheritance case initiated without using the Inheritance Register before its registration in the Inheritance Register.

In the Information Letter of the Notary Chamber of Ukraine "Regarding the proceedings on inheritance cases instituted outside the place of opening of inheritance under martial law" dated August 29, 2022 (posted on the website of the Notarial Chamber of Ukraine) it is explained that in the case of inheritance instituted outside the place of opening of the inheritance, the notary who opened it, is deprived of the opportunity to issue the certificate of the right to inheritance to the heir. Inheritance proceedings instituted under conditions of war or state of emergency outside the place of opening of the inheritance shall be transferred to the notary at the place of opening of the inheritance in accordance with paragraphs 2.7 clause 2 of chapter 10 of section II of the Procedure for performance of notarial acts by notaries of Ukraine and section IV of the Rules of notarial record keeping. At the same time, it does not matter whether the deadline for issuing the certificate of the right to inheritance, established by Art. 1298 of the Civil Code of Ukraine, whether this period is still running.

3. The list of persons entitled to certify wills has been expanded.

In particular, the wills of servicemen of the Armed Forces, other military formations formed in accordance with the laws, as well as employees of law enforcement (special) bodies, civil defense bodies, who are involved in the implementation of measures to ensure national security and defense, repulse and deter

armed aggression of a foreign state, can be certified by the commander (chief) of these formations (bodies) or another person authorized by such a commander (chief) with subsequent sending of these wills through the General Staff of the Armed Forces, the Ministry of Defense, the relevant law enforcement (special) or other body to the Ministry of Justice or its territorial body to ensure their registration by notaries in the Inheritance Register. The head of the camp (institution where the precinct was established) for prisoners of war can certify the will of the prisoner of war.

Such an innovation seems controversial in view of the exhaustive list of officials and officials (Articles 1251, 1252 of the Civil Code of Ukraine) empowered to certify wills. Expanding the circle of such persons is possible only by making changes to the Central Committee of Ukraine. Moreover, even in the Procedure for certification of wills and powers of attorney, which are equivalent to notarized ones, approved by Resolution No. 419 of the Cabinet of Ministers of Ukraine dated 15.06.1994 (as amended by Resolution No. 940 dated 07.06.2006), the relevant changes regarding the certification of wills by the commander are not taken into account (chief) of formations (bodies) or another person authorized by such a commander (chief).Attention should be paid to the vagueness of the provision that gives the right to certify a will to "another person authorized by the commander (chief)". It is not clear how such an authority would be exercised, and the probate of wills by these persons would no doubt lead to numerous litigations.

The Law of Ukraine "On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Validity of Rules for the Period of Martial Law" dated March 15, 2022 amended the Final and Transitional Provisions of the Central Committee regarding the release of the borrower from liability for default (non-performance, partial performance) of obligations, as well as extension of the statute of limitations. Because of this, it seems illogical that changes to Book 6 of the CC "Inheritance Law" are actually made by a resolution of the Cabinet of Ministers of Ukraine and an order of the Ministry of Justice of Ukraine. In our opinion, this approach will lead to difficulties in the practice of application of inheritance legislation.

Issues related to the determination of the place of opening of inheritance in the conditions of martial law require additional legal regulation. Yes, according to the general rule, the place of inheritance opening is the testator's last place of residence. If the place of residence of the testator is unknown, the place of opening of the inheritance is the location of the immovable property or its main part, and in the absence of immovable property - the location of the main part of the movable property.

According to Part 3 of Art. 1221 of the Civil Code of Ukraine, in special cases, the place of opening of inheritance is established by law. In particular, in accordance with Art. 11-1 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" dated 15.04.2014 No. 1207-VII in the event that the last place of residence of the testator is the temporarily occupied territory, the place of opening of the inheritance is the place of submission the first statement, which testifies to the declaration of will regarding the inherited property, heirs, executors of the will, persons interested in the protection of the inherited property, or the demands of creditors.

The effect of this Law of Ukraine extends to the temporarily occupied territories of Ukraine - part 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 actual control or within which the armed formations of the Russian Federation have established and exercise general control with the aim of establishing the occupation administration of the Russian Federation (Article 1).

Therefore, the Law does not apply to the territory of hostilities, as well as settlements in which notaries do not exercise their powers due to military aggression. And this makes it impossible to apply Art. 11-1 if the testator's last place of residence (location of immovable property or its main part) is precisely such territories. This problem can be solved only at the legislative level by making appropriate changes to Art. 1221 of the Civil Code of Ukraine or to the Law of Ukraine "On the Legal Regime of Martial Law" dated May 12, 2015 No. 389-VIII.

Conclusion

The introduction of martial law in Ukraine had a significant impact on the heirs' exercise of the right to inherit. In particular, the Cabinet of Ministers of Ukraine Resolution No. 164 of February 28, 2022, "Some Issues of Notary Public Service under Martial Law", changed the deadline for accepting inheritance by extending it. However, such an approach seems controversial, given the prescription of part 4 of Art. 4 of the Civil Code and the scope of this resolution. Because of this, improvement of the procedure for individuals to exercise their rights in the field of inheritance law is possible only by making appropriate changes to the Central Committee. In addition, the order of the Ministry of Justice of Ukraine simplified the procedure for starting an inheritance case - in conditions of war or a state of emergency, it is started at the request of the applicant by any notary of Ukraine, regardless of the place of opening of the inheritance. The term for acceptance of inheritance is calculated in accordance with the procedure specified in Art. 1270 of the Civil Code, taking into account the special nature of the outlined norm in relation to Art. 253 of the Civil Code, as well as the specifics of inheritance legal relations and the importance of the time of the opening of inheritance for their dynamics. Therefore, the day of the testator's death (declaration of his death) will be considered the first day of the term for accepting the inheritance. Issues related to the determination of the place of opening of inheritance in the conditions of martial law require additional legal regulation. For this purpose, it is advisable to make changes to Art. 1221 of the Civil Code or to the Law of Ukraine "On the Legal Regime of Martial Law" regarding the spread during the martial law of a special procedure for determining the place of opening of inheritance based on the principle of submitting the first application to any notary of Ukraine.

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