**H.Z. Pitsyk**
Senior Lecturer of the
Department of Civil and Economic
Law and Procedure of
Ivano-Frankivsk Faculty of the
National University
"Odessa Law Academy"

# MODERN PROBLEMS OF LEGAL REGULATION OF INHERITANCE BY HEIRS IN LAW OF FIRST LINE

The human right to a decent standard of living is one of the basic and defining constitutional rights. The Constitution of Ukraine states: "Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing" (Art. 48). [1]

The emergence of property rights and the development of marriage and family relations led to the need to answer questions about the fate of the property that remains after death. Of course, human heritage plays a significant role in providing and to maintaining of an adequate standard of living. Each new generation does not start life from scratch but continues started, strives to its increase, improvement.

Modern civil law is a striking example of the gradual transition from the dominance of state ownership of the means of production to the adoption of privacy principles in the law of property. Research of legal issues of inheritance is caused by the growing importance of private property of citizens and order of its succession, the need to develop a legal mechanism that would adequately protect the rights and interests of citizens of Ukraine.

In legal literature of the Soviet period hereditary succession in law was studied by experts such as M.V. Gordon, V.K. Dronikov, V.I. Serebrovsky, H.B. Eydinova. Certain works modern jurist have – E.A. Kharitonov, N.O. Saniahmetova, J.S. Fursa, J.M. Shevchenko and others.

Interest to scholars of succession is natural as in the process of his life a man mostly accumulates a certain amount of wealth and values that she wants to meet not only his own needs but also the needs of his loved ones. Inheritance law is intended to protect the property of individuals, stimulates their financial interest in the outcome of labor, strengthens relationships as the law relates to the heirs persons related to the testator by blood birth, marriage and adoption. Rules of succession provided for protection of minors and incapacitated persons. So one of the aims of legal rules governing inheritance is financial security of the heirs [2, p. 88].

You can completely agree with scientific findings by N.S. Korovyanskoyi and E. Ryabokon under which the rules of succession are designed to regulate the transition of rights and obligations belonging to a person in the event of his death. In addition, inheritance law, especially in our time, has become important not only for individuals but also for legal persons as it significantly affects the formation and composition of their senior bodies, their activity (especially it concerns matters of inheritance of shares, shares in authorized fund). [3]

Analyzing the development of succession since the work of the famous jurist G.F. Shershenevich, one can not ignore the fundamental changes in the concept of inheritance associated with a significant increase in its interim roles. While the state can not adequately provide people with adequate means of livelihood, the material security function of inheritance law is of great importance [4, p. 120].

The question as to what criteria should guide the legislator in determining the range of heirs in law is one of the most controversial in literature on Civil Law. Defining the scope of persons who are called to inherit by law in cases where testamentary succession on actual or legal reasons is not possible is the main content of rules on succession in law.

Lawmaker manes among legal heirs persons who by the nature of family and domestic relations were closest to the deceased. Thus, the main objective of this article is characteristic of problems of legal regulation of inheritance by heirs in law, included in the first place.

Despite the fact that the testator did not make a will, the legislator tries to predict who citizen could have left his property to, and he reasonably believes it to be persons the closest to the deceased.

Civil law provides for the following reasons of hereditary succession in law: family relations; relations of adoption of son (adoption of daughter), marriage, family relationships, stay on support.

A dominant feature that determines heirs in law is the presence of family relationships between people who aspire to obtain heritage and the deceased. However, legislator should limit their range by reasonable considerations [5, p. 14].

It should be noted that some civil law scholars expressed themselves on utility whether to reduce the number of heirs in succession by family characteristics. So, M.J. Pergament noted the need to establish certain limit beyond which relatives will no longer be considered and heritage will pass to the state, city, community, institution or fund that has an academic or social purpose [6, p.6].

In turn, A.A. Bugaevskyi argued that the expansion of the range of legal heirs can lead to the fact that the inheritance will go to those who

even had no idea about the existence of the testator [7, p.28].

In the Civil Code of the USSR 1963 the circle of heirs in law was limited to second-degree relatives. In the USSR, as in most former Soviet republics, there were two lines of heirs. The current legislation of Ukraine has established five lines of heirs in law.

Defining the range of heirs in law it should be noted that the heirs of the first line are: children (including adopted), spouse, parents (including adoptive parents) and children born after the death of the testator.

The legislator uses the term "child" not in the sense of a certain legal status of an individual under Art. 6 of the Civil Code of Ukraine, which states that the legal status of a child has a person before he attains his majority, but the fact of the origin of a person from certain parents and the presence of relationship the first degree between them. After all, the main duty as to life support and upbringing of a child, receiving physical, spiritual, intellectual, cultural, and social development is laid on put parents (or persons acting on their behalf).

Children of a testator who were conceived during his lifetime, but born after his death are referred to as heirs in law. These children are called "Postumy.

At inheritance in law to the heirs of the first line along with children and parents of the deceased the legislator considers a spouse that is alive (Article 1261 of the Civil Code of Ukraine). Y. Novokhatska believes that in family law lies the presumption of joint property acquired by spouses during marriage [8, p. 12]. But spouse is recognized to be a heir in law only in cases when he/she was in a registered marriage with the deceased person, and the legal significance here is the fact of being in a registered marriage, and not the existence of actual marriage. Every registered in the manner prescribed by law marriage is considered to be lawful and valid [9, p. 88].

According to I.V. Zhylinkova marriage is a multifaceted social phenomenon that has various aspects of its manifestation and can be viewed from different perspectives. It is no exaggeration to say that understanding the nature and definition of the main features of a marriage has been done for centuries. During this time there were various theories of marriage. In particular, the marriage was considered as a free union between a man and a woman, the holy sacrament, civil contract, a special status of persons. In the most summarizing understanding marriage is a union of a man and a woman living together by mutual consent. However, in the legal sense the following definition is unacceptable. The fact is, that marriage causes a series of legal consequences that are important for the participants of the marriage and for other individuals and society as a

whole [10, p.107].

In our country today marital cohabitation de facto has become widespread. If we look at history, this kind of relationship between men and women was always peculiar to people, but at various times it was either in so-called bloom, or in decline. Actual marriage relationships among young people tend to precede marriage and, of course, require a legal regulation. Therefore, we believe it would be appropriate to settle actual marriage relations called concubinage with the help of concubinage agreement as concubinage itself, from the point of view of both civil law and family law is an agreement, and any agreement must be necessarily regulated by law or contract.

Concubinage agreement is an agreement of persons who engage in de facto marital relationship, referred to as concubinage, which determines their property rights and obligations at the time of the existence of such a union and (or) in case of its dissolution, alimony rights and obligations of the actual husband and wife in relation to each other, and children born to this union, moral and property relations of parents and children with each other.

The objective factors which prevent persons from entering into a marriage are: financial inability of individuals to maintain the family; lack of civil maturity of those aged from 17 to 25; inability under certain circumstances, including the state of health to have children, various social contradictions and so on.

Attention is drawn to certain conflicts that arose between certain provisions of the Civil and Family Codes of Ukraine, which define the legal status of persons who are in actual marital relationship. These differences and inconsistencies occurred primarily due to long discontinuing discussion on the legal significance of the fact of registration of marriage and actual marriage relations arising without registration.

Family Code of Ukraine virtually equated the legal status of persons who are in actual marital relationship with a registered marriage. As a general rule, property acquired during cohabitation as a family by a man and a woman who are not married to each other or are not in any other marriage belongs to them on the right of joint matrimonial property (Art. 74 of the Civil Code of Ukraine). Art. 91 of the Civil Code of Ukraine entitled to the maintenance a man and a woman who are not married to each other, when they became disable during such actual marriage. Unfortunately, the signs of actual marital relations are not legally fixed, which makes the application of Art. 74 SC difficult[11, p.52].

Thus, despite the fact that the Civil Code of Ukraine having followed the example of Western legal systems, virtually equated the rights of

spouse and individuals living as one family without marriage, the latter often suffer property harassment in the legal sense.

The most striking example of this is unfair inheritance. In the scientific literature an optimistic view was expressed that the actual wife (husband) provided an extended stay as a family with a testator, can claim to possess in the first line under the law. However, this position does not coincide with the official interpretation of the provisions of the Civil Code. According to the Provision of Plenum of the Supreme Court of Ukraine of May 30, 2008, living as a family of men and women without marriage is not a ground for the emergence of their right to inheritance in law in the first line on the ground of Article 1261 of the Civil Code of Ukraine. Such persons are the heirs of the fourth line of succession in law [12, p. 153]

In view of the above, we propose to include the actual marriage to the heirs of the first line on condition of fixation of such relations between a man and a woman by making concubinage agreement.

According to Art. 119 of the Civil Code of Ukraine at the request of either spouse or a claim from one of them a court may set a so-called "single mode of residence" legal consequences of which is suspension of two presumptions: the presumption of joint matrimonial property for property acquired during marriage, and presumption of paternity.

Inheritance rights of spouses terminate on the date appropriate divorce. The moment of termination of marriage depends on the order of its termination. In case of dissolution by the state body of civil registration marriage registration shall be terminated on the day a divorce, when divorce is made by court – the day of coming into force of the court decision of divorce (Article 114 of the Civil Code of Ukraine).

If the spouse is called to the inheritance along with the other heirs of the first line it is necessary to first determine the size of its interest in the property that was jointly acquired in marriage. Then share of property that belonged to the deceased spouse is allocated. The property is divided among the heirs of first line to which belongs to the living spouse.

If of marriage is recognized in court as invalid, a person who was in marriage with the deceased does not acquire the right to inherit.

Marriage is considered invalid by court regardless of the time of recognition (before the death of the testator or after) does not generate legal effects and does not give persons who registered it the right of inheritance as spouses.

However, if at the time of the resolution of the claim for considering marriage to be invalid circumstances that were under the law an obstacle to its conclusion (the person has reached the age of marriage and was updated in capacity; deceased a person being married with whom a person entered

a new marriage, etc.) disappeared, the court denies the claim and at the same time recognizes that marriage is valid from the date when the obstacle is eliminated [13, p. 302].

In legal literature spouse who did not know and could not know about the obstacles that exist to marriage are called spouses bona fide [14, p. 126].

There is no reason to deny marriage rights to fair inheritance in the event that the marriage is declared invalid after the death of a spouse. Death of a spouse is a severe mental trauma and while annulment of marriage a spouse bona fide will be forced to participate in a trial and prove his participation in the buying of property. In some cases, it is impossible to defend interests of a bona fide spouse under current law.

Thus, the Civil Code of Ukraine in determining the grounds for inheritance gave the priority to inheritance by will, however notarial practice shows that the most common type of inheritance in Ukraine remains a hereditary succession. The circumstances that promote the dominance of inheritance by law are different. These are the lack of legal culture of the majority of population, sometimes untimely death of the testator and psychological circumstances as making a will an average person considers as a precondition of death. Therefore, the citizens of Ukraine leave regulation of problems of one of the most important areas of their lives – the sphere of property relations – to the state. At inheritance under law of the legislator assumes a function of the testator, which implements the hypothetical will of the testator to switch its rights and obligations to a circle of heirs.

Regulations on the order of succession of heirs in law is based on the presumption that in case of the expression of his will the testator would leave the property to the closest people who are defined by law in certain lines depending on the closeness of family ties by birth, marriage, adoption, maintenance of a testator and stay on hold of a testator. The legislator constructs an abstract model of sequence without taking into consideration specific features of a certain family, which in some cases may be contrary to the true will of the deceased. Therefore, it is possible that the heirs of the deceased may be persons with whom the testator despite even close family ties could have been in hostile relationships. The main problems of inheritance in law by heirs of the first line are due to the inability of inheritance in the first line of the actual spouse that does not correspond to the present state of the development of society, and therefore require further study and improvement of the current legislation.

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