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TOPICAL ISSUIES OF RESOLUTION OF DISPUTES REGARDING THE DEPRIVATION OF THE RIGHT TO INHERITANCE OF ONE OF THE SPOUSES, A MARRIAGE BETWEEN WHICH IS RECOGNIZED VOID BY THE COURT DECISION

Abstract. According to the current civil legislation, after the death of one of the spouses, his share in the right of joint ownership is inherited on a general basis. Modern judicial practice contradictoryly applies certain legislative provisions of the institution of inheritance by one of the spouses, the marriage between which is invalid or recognized as such by a court decision. The very procedure of such inheritance is characterized by a number of problematic issues faced by the second of the spouses who survived.

In the course of the study, it was found that in order to remove one of the spouses from the right to inherit by the court, a decision of the state registration authority to cancel the marriage record is necessary. If the marriage is recognized as invalid on the basis of a court decision, in order to be removed from the right to inherit, a decision of a court that has entered into legal force on recognizing the marriage as invalid is necessary. The decision to remove a person from the right to inherit concerns only a clearly defined circle of heirs and a specific testator, and does not deprive them of claiming inheritance after the death of other testators.

To conduct a detailed analysis of inheritance by one of the spouses, the marriage between which is invalid or recognized as such by a court decision, the article analyzes special sources of inheritance law.

Keywords: *inheritance by law, inheritance relationship, inheritance, obligations of heirs, deprivation of the right to inherit, spouses, judicial procedure, right of representation, invalid marriage, certificate of inheritance.*

Introduction. Questions of the inheritance of spouses of a part in the common property of the spouses, the inheritance of spouses by law, the will of the spouses have always been relevant and debatable among scientists. Married spouses accumulate certain property and other material benefits to meet the interests of the family, children and relatives. After the death of one of the spouses, there are many moments that the one of the spouses who remains alive faces.

To date, the legal doctrine has not yet formed a unified approach to understanding the essence of the inheritance rights of spouses. Therefore, the issue of inheritance by one of the spouses after the second spouse, the marriage between which is invalid or recognized as such by a court decision, remains relevant.

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Analysis of recent research and publications. The question of removal from the right to inheritance has never been ignored by scientists. The works of O. Bykova (2005), Yu. Zaika (2007), R. Stefanchuk (2007), E. Fursy (2004), A. Kukharev (2017), E. Michurin, and other scientists. However, the question of the peculiarities of the consideration and resolution of civil cases on the removal from the right to inherit one of the spouses, the marriage between which is invalid or recognized as such by a court decision, is currently understudied.

The purpose of the article is to clarify the problematic issues encountered by judicial practice when considering and solving civil cases to eliminate one of the spouses from the right to inherit, the marriage between which was declared invalid.

Formulation of the main material. In todays conditions, more and more attention is paid to the development of issues of inheritance law, and as a result, the expansion of the rights of the testator. As Yu. Zaika correctly points out, the right of inheritance is closely connected with the right of ownership, since inheritance allows the owner to exercise his right to dispose of property (Zayka, 2007, p. 7). In other words, in this case, it is not the person or his death that determines, but the property remaining after death, his post-anative fate (Stefanchuk, 2007, p.547). Ukrainian legislation in its development on inheritance law is becoming more perfect and efficient, but there are also a number of problematic issues when considering cases to protect the rights of the testator and bona fide heirs.

The basis of the legal regulation of inheritance relations is the Constitution of Ukraine (https://zakon.rada.gov.ua/laws), the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (https://www.echr.coe.int), the Civil Code of Ukraine, the Laws of Ukraine "On Notaries", "On International Private Law", Family Code of Ukraine (https://zakon.rada.gov.ua/laws). In judicial practice, the clarification of the decisions of the Plenum of the Supreme Court of Ukraine No. 7 of May 30, 2008 "On judicial practice in cases of inheritance" (https://zakon.rada.gov.ua/laws) and the letter of the High Specialized Court of Ukraine for the consideration of civil and criminal cases No. 24-753/0 /4 -13 7 of May 16, 2013 "On the judicial practice of considering civil cases on inheritance". Thus, according to the order of the Ministry of Justice of Ukraine No. 296/5 dated February 22, 2012 "On approval of the procedure for performing notarial acts by notaries of Ukraine", a certificate of ownership of a part in the common property of the spouses in the event of the death of one of them is issued by a notary at the place of opening of the inheritance (https://zakon.rada.gov.ua/laws).

If we consider the legal nature of hereditary legal relations during inheritance by law, we can see that they are closely related to family legal relations, and, being material relations, they are in an indisputable state. Accordingly, in order to implement inheritance legal relations, it is necessary to go through a notarial procedure, for example, certification of an agreement on changing the order of inheritance, certification of an agreement on the division of property of the spouses by issuing a certificate of the right to a part in the common property of the spouses both during life and in the event of the death of one of them (Art. .34 of the Law of Ukraine "On Notaries"), etc. If, during the performance of notarial proceedings, a dispute arises about

substantive law, then such family, inheritance relations are the subject of consideration by the court.

Disputes arising from inheritance legal relations are considered exclusively in civil proceedings.Inheritance disputes traditionally belong to complex categories of civil cases, since the court should establish the presence of all heirs, the fact of their acceptance or non-acceptance of the inheritance, renunciation of the inheritance, determine the proper defendants in the case, the presence of hereditary property and its location, the legal grounds for applying to the court and recognition of the right ownership of hereditary property in court, the time of opening the inheritance and accepting it by the heirs in order to resolve the issue: the norms of which code should be applied: the Civil Code of the Ukrainian SSR 1963 or the Civil Code of Ukraine; the presence of a preliminary appeal of the heir to the notary and receipt of a justified refusal to perform a notarial act, etc.; the validity of the claims and the availability of appropriate evidence to support them (I. Chernytska, 2017, p.142). In addition to other jurisdictional bodies, the notary is obliged to explain the relevant rights and obligations to citizens, enterprises and organizations (Article 5 of the Law of Ukraine "On Notaries") (https://zakon.rada.gov.ua/laws). Accordingly, the notary helps the heirs and explains to the heirs their rights and obligations when performing notarial acts. Upon receiving the appropriate explanations from the notary, the heirs have the right to familiarize themselves with the inheritance case and the composition of the inheritance.

Analyzing judicial practice in the consideration and resolution of civil cases on removal from the right to inheritance, problematic issues arise, when considered by courts of this category, requiring their theoretical and legislative solutions. According to the norms of civil law, it is possible to single out the main grounds according to which a person can be removed from the right to inherit: firstly, by the will of the testator (part 2 of article 1235 of the Civil Code of Ukraine); secondly, imperative grounds, clearly regulated by the legislation of Ukraine (Article 1224 of the Civil Code of Ukraine).

According to Part 2 of Art. 1235 of the Civil Code of Ukraine (hereinafter referred to as the Civil Code of Ukraine), the testator may, without giving reasons, deprive any person from among the legal heirs of the right to inherit. In this case, this person cannot obtain the right to inherit (https://zakon.rada.gov.ua/laws). In this case, the deprivation of the right by the will of the testator can occur either directly or indirectly. Direct deprivation of the right to inherit is the right of a person to deprive any legal heir of the right to inherit, regardless of the motives for such deprivation. An heir deprived of the right to inherit by the will of the testator will not receive the testator's property even when part of the property is not covered by the will. Such part of the property passes to other heirs under the law, not deprived of the right to inherit. In another case, with a side method, the testator, by silence (not mentioning) about the heir, deprives him of the inheritance, but only in that part of the property covered by the will.If there is property left that is not specified in the will, then the legal heir may inherit it in equal shares with other legal heirs. In addition, if the heirs under the will refuse to accept the inheritance, then the indirectly eliminated heir under the law will be called to inherit under the law.

Judicial practice determines that there are frequent cases of contesting

wills and recognizing them as invalid not only by heirs of the first stage of inheritance, but also by heirs by right of representation, if they were indicated in the will as heirs. For example, the testator canceled their inheritance rights with a new will. Accordingly, the court needs to establish the facts whether there are grounds to consider the second will invalid. According to Article 57 of the Civil Procedure Code of Ukraine, evidence is any factual data, on the basis of which the court establishes the presence or absence of circumstances substantiating the claims and objections of the parties, and other circumstances relevant to the decision of the case. These data are established on the basis of explanations of the parties, third parties, their representatives interrogated as witnesses, testimonies, written evidence, physical evidence, including sound and video recordings, expert conclusions. Thus, the Kramatorsk City Court of the Donetsk Region, in accordance with the conclusion of an absentee forensic psychiatric examination, found that at the time of drawing up the second will, the testator suffered from dementia, and could not understand the meaning of his actions and manage them. Due to the fact that the fact of the insolvency of the testator to be aware of his actions at the time of signing the second will was proved by the collected evidence, the court satisfied the claims of the plaintiff and declared the second will invalid (decision of the Kramatorsk city court of the Donetsk region of May 17, 2017 in case / 5194/16-c), (https://reyestr.court.gov.ua).

According to Article 1224 of the Civil Code of Ukraine, persons who intentionally took the life of the testator or any of the possible heirs or attempted on their lives do not have the right to inherit. Persons who deliberately prevented the testator from making a will, amending it or canceling the will and thereby contributed to the emergence of the right to inherit from themselves or from other persons or contributed to an increase in their share in the inheritance are not entitled to inherit. Parents do not have the right to inherit by law after a child in respect of which they were deprived of parental rights and their rights were not restored at the time of opening the inheritance. Parents (adoptive parents) and adult children (adopted), as well as other persons who evaded the obligation to maintain the testator, do not have the right to inherit under the law, if this circumstance is established by the court. Persons whose marriage is invalid or recognized as such by a court decision do not have the right to inherit by law after each other (https://zakon.rada.gov.ua/laws). By a court decision, a person may be removed from the right to inherit by law if it is established that he evaded helping the testator, who, due to advanced age, serious illness or injury, was in a helpless state. E. Fursa proposes to amend Art. 1241 of the Civil Code of Ukraine by establishing the possibility of depriving the right to a mandatory share by inheritance of persons receiving a significant pension or income from entrepreneurial activity, as well as when they are financially secure. In addition, according to the author, it should be possible to replace the right to an obligatory inheritance share by a life maintenance agreement between a person endowed with this right and a testamentary heir (Fursa, 2004, c.9).

The legislation of Ukraine provides for the possibility of recognizing potential heirs as unworthy in case of their dishonest behavior towards the testator and, accordingly, deprivation of the right to receive an inheritance. As a result of the recognition of one of the heirs as unworthy, his part is proportionally divided among the other heirs.

Today, of scientific interest is the deprivation of the right to inherit by law

after each other of a person whose marriage is invalid or recognized as such by a court decision (part 4 of article 1224 of the Civil Code of Ukraine). The grounds for the invalidity of a marriage may be violations of the legal conditions for marriage, the presence of negative conditions, the presence of obstacles to registering a marriage (Yavor, 2014). According to family law, the spouse or spouse, other persons whose rights have been violated in connection with the registration of this marriage, parents, guardian, custodian of a child, guardian of an incapacitated person, prosecutor, body of guardianship and guardianship, if the protection requires the rights and interests of a child, a person recognized as incapacitated, or a person whose legal capacity is limited (Family Code of Ukraine, 2002). As you can see, the plaintiffs can be heirs who are not included in the circle of relatives, but they are given the right to apply to the court to declare the marriage invalid, as persons whose rights have been violated in connection with the registration of the invalid marriage.

Legislative regulation of family relations identifies three categories of grounds for declaring a marriage invalid:

1. Circumstances that do not require judicial establishment. If they exist, the marriage may be declared invalid in an administrative order. These are circumstances such as:

– simultaneous stay of a person in another registered marriage (part 1 of article 39 of the Family Code of Ukraine);

– registration of marriage between persons who are relatives of the direct line of kinship, as well as between siblings (part 2 of article 39 of the Family Code of Ukraine);

– registration of marriage with a person recognized as legally incompetent (part 3 of article 39 of the Family Code of Ukraine).

These are so-called completely invalid marriages. As you can see, this category includes marriages that violate the three principles of marriage: monogamy (marriage registered with a person who is simultaneously in another registered marriage), legal capacity of persons wishing to enter into marriage (marriage registered with a person recognized as legally incompetent), and the absence between they are closely related (marriage registered between persons who are relatives of the direct line of kinship, as well as between siblings).

In the presence of the above circumstances, the body of state registration of acts of civil status, at the request of the interested person, cancels the corresponding marriage record.

2. Circumstances, the establishment of which is the exclusive competence of the court, but subject to their establishment, the court is obliged to recognize the marriage as invalid. These are the following circumstances:

– registration of marriage without the free consent of a woman or a man (part 1 of article 40 of the Family Code of Ukraine). The consent of a person is not considered free, in particular, when at the time of registration of the marriage he suffered from a severe mental disorder, was in a state of alcoholic, narcotic, toxic intoxication, as a result of which he did not realize the full significance of his actions and (or) could not control them, or if the marriage was registered as a result of physical or mental abuse. It should be noted that the legal presumption as a legal fact also plays an important role here: the courts proceed from the availability of free consent to marriage, until otherwise established (http://www.reyestr.court.gov.ua);

– fictitious marriage, its conclusion by a woman and a man or one of them without the intention of creating a family and acquiring the rights and obligations of spouses (part 2 of article 40 of the Family Code of Ukraine).

3. Circumstances under which the court may, at its discretion, declare the marriage invalid. So, according to Article 41 of the Family Code of Ukraine, a marriage can be declared invalid by a court decision if it was registered:

– between the adopter and the child adopted by him, if this was not preceded by the cancellation of the adoption;

– between cousins and sisters between aunt, uncle and nephew, niece;

– with a person who hid his serious illness or illness dangerous for the second spouse and (or) their descendants;

– with a person who has not reached marriageable age and who has not been granted the right to marry.

When deciding a case on recognizing a marriage as invalid, the court takes into account the extent to which this marriage violated the rights and interests of the individual, the duration of the joint residence of the spouses, the nature of their relationship, as well as other circumstances of significant importance.

An analysis of the above groups of circumstances indicates that the emergence of marital relations is based on a legal presumption: if the participants in the marriage procedure do not declare the presence of obstacles to marriage, such obstacles are considered absent. State bodies only certify a legal fact and, within the powers granted by law, should not interfere in the sphere of personal relations of spouses (Tonievich, 2013, p. 159).

It should be noted that the legal literature quite often criticizes the model chosen by the legislator for resolving the issue of the consequences of violation of the conditions of marriage. Particularly sharp criticism is heard against the possibility of declaring a marriage invalid in an out-of-court procedure, provided for by the Family Code of Ukraine, by the bodies of state registration of acts of civil status. The main argument of lawyers regarding the out-of-court procedure for recognizing the invalidity of a marriage is that the relevant facts, which are the basis for the invalidity of a marriage, require proof, and for this the judicial procedure is optimal (Bykova, 2005, p. 10).

It is hardly possible to agree with their legal position. The above distribution of the circumstances with which the law relates the invalidity of a marriage is not arbitrary. It was made by the legislator according to the criterion of the significance and materiality of the violation committed during the marriage – from the most serious ones that cannot be eliminated to those that are not absolute and can be subordinated to more significant social values.

The invalidity of a marriage is traditionally defined as the termination of legal relations between persons whose marriage was registered in violation of the requirements established by law from the moment the marriage was registered. The general legal consequence of declaring a marriage null and void is that the marriage is considered to have never existed, and the persons who entered into it are considered to have been previously unmarried. The spouses do not have any personal and property rights arising from marriage, and hence the right to inherit from each other. By law, the legislator refers only a person who is in a registered marriage to the heirs. Persons whose marriage is declared invalid do not have the right to have a common surname; there is no right of joint joint ownership; if a person received alimony from someone with whom he was

in an invalid marriage, the amount of alimony paid is considered received without sufficient legal grounds and is subject to return; a person who settled in the living quarters of another person in connection with the registration of an invalid marriage with him did not receive the right to reside in it and may be evicted (Family Code of Ukraine, 2002). At the same time, the court decision on recognizing the marriage as invalid may enter into force both before and after the opening of the inheritance. A notary may refuse to perform a notarial act to issue a certificate of inheritance to a conscientious spouse, to a share in common joint property, after the death of one of the spouses, until a decision is made to recognize the marriage as invalid.

The demand for removal from the right to inherit may be presented only after the opening of the inheritance. In the vast majority of cases, the relevant claim is filed within the period established for the acceptance of the inheritance. However, it is impossible to exclude the filing of such a claim even after the expiration of a six-month period, when all heirs have been issued certificates of the right to inheritance and the inheritance property is actually in their possession. In this case, the plaintiff must raise the question not only of removal from the right to inherit, but also the recognition of certificates of the right to inheritance as invalid and the recovery of property. Since the legitimate grounds for acquiring inherited property are removed from the right to inherit, the rules governing the return of unjustifiably acquired property (Chapter 87 of the Civil Code) are subject to application (Kukharev, 2017, p.16).

As explained by the High Specialized Court of Ukraine for Civil and Criminal Cases in paragraph 4 of the letter "On Judicial Practice in Considering Civil Cases on Inheritance" dated 16.05.13 No. 24-753 / 0 / 4-13, the removal of heirs from the right to inherit law and testament is possible only on the basis of a court decision. The validity of the claims and the availability of appropriate evidence to support them are important, since the practice of considering cases on removal from the right to inherit indicates that claims are usually unfounded, therefore, the courts refuse to satisfy them (https://zakon.rada.gov.ua).

To remove one of the spouses from the right to inherit, a decision of the state registration authority to cancel the marriage record is required. If a marriage is recognized as invalid on the basis of a court decision, in order to be removed from the right to inherit, a decision of a court that has entered into legal force to recognize such a marriage as invalid is necessary.

An invalid marriage under certain circumstances can be recognized as valid (part 5 of article 39, part 3 of article 40, part 3 of article 41 of the IC of Ukraine). Also, an invalid marriage can become the basis for the emergence of legal consequences, for example, the rights and obligations of parents and children (Article 47 of the IC of Ukraine), the emergence of the rights of a "conscientious" spouse (Article 46 of the IC of Ukraine), etc. Taking into account the principles of justice, good faith and reasonableness, the legislator wishes to protect the rights of a conscientious spouse whose marriage has been declared invalid. So, if a person did not know and could not know about the obstacles before registering the marriage, he has the right to divide the property acquired in an invalid marriage as common joint property of the spouses (Family Code of Ukraine, 2002); if the marriage is declared invalid after the death of one of the spouses, then for the other of the spouses who survived it and did not know about the obstacles before registering the marriage, the court may recognize the

right to inherit the part of the spouse who died in the property that was acquired by them during the time this marriage. Conceptual provisions on the protection of the rights of conscientious spouses have not been developed by the domestic family law doctrine, and there are also no effective models of mechanisms for exercising and protecting the rights of conscientious spouses. We believe that the protection of the rights of conscientious spouses can be facilitated by preventive measures aimed at encouraging spouses to properly perform their duties (Kolisnychenko, 2020).

So, as an exception to the general rule, it provides for the possibility of the right to inherit by law on the basis of a court decision by one of the spouses, the share of the deceased spouse, if he did not know and could not know about the obstacles to registering a marriage, and the marriage was declared invalid after the death of one of the spouses. spouses (Spasibo-Fateeva et ail., 2016, p. 490). The court can make an appropriate court decision only if the following conditions are met: 1) the marriage was declared invalid by a court decision (Article 41 of the UK); 2) the marriage is declared invalid after the death of one of the spouses; 3) one of the spouses who survived the other did not know and could not know about the obstacles to registering the marriage (good faith of one of the spouses), (Spasibo-Fateeva et al., 2016, p. 597).

The legal consequences of the removal from the right to inheritance under Article 1224 of the Civil Code of Ukraine are different. Elimination of the right to inherit by law, under part 5 of article 1224 of the Civil Code of Ukraine, makes inheritance impossible, the heir loses the right to inherit after the testator. The law provides for cases when, by a court decision, a person may be removed from the right to inherit, namely: if it is established that a person evaded assistance to the testator, who, due to advanced age, serious illness or injury, was in a helpless state (Decree of the Supreme Court dated June 30, 2020 in case No. 521/19609/16-c), (https://reyestr.court.gov.ua). According to Part 4 of Article 1224 of the Civil Code of Ukraine, the legislator emphasizes that even when the physical death of a person occurs, this is not an obstacle to recognizing the marriage as invalid after his death, and as a result, one of the spouses, the marriage between which is invalid or recognized as such, does not have the right to inherit By the tribunal's decision.

Recognition of the right of ownership to hereditary property in court is an exclusive way to protect one of the spouses, which should be applied if there are obstacles to registration of inheritance rights in a notarial order, despite the fact that a notary may be refused to perform a notarial action to issue a bona fide one of spouses. spouses of a certificate of the right to inheritance, to a part in joint joint ownership, after the death of one of the spouses, until a decision is made to recognize the marriage as invalid.

Conclusions. Elimination of the right to inherit heirs by law and by will is possible only on the basis of a court decision. If the marriage is declared invalid after the death of one of the spouses, then for the other of the spouses who survived it and is not aware of the obstacles to marriage before registering the marriage, the court may recognize the right to inherit the part of the deceased spouse in the property that was acquired by them during an invalid marriage. In this case, a conscientious one of the spouses does not lose hereditary rights, but only acquires as the heir of the first stage of inheritance under the law. Consequently, one of the spouses who is alive, exercising his rights as an heir,

has the right to apply for the acceptance of the inheritance (or refusal to accept it), as well as an application for the issuance of a certificate of the right to a part in the common property of the spouses.

Given the above, there is ambiguity in the inheritance of a part in the common property of the spouses by a conscientious one of the spouses. Issues that arise in practice regarding the procedure for the inheritance of a part of a deceased spouse by a bona fide one of the spouses and other heirs must be resolved in compliance with the requirements of the current legislation and taking into account judicial practice. Of course, the formation and observance of a clear chronology of actions in the inheritance procedure will only contribute to its implementation, taking into account the interests of all its participants, reducing and preventing litigation when resolving the issue of issuing certificates of ownership of a part in the common property of the spouses and certificates of the right to inheritance (Garo et al., 2022, p.24).

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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Ольга ЯВОР

АКТУАЛЬНІ ПИТАННЯ ВИРІШЕННЯ СПОРІВ ЩОДО ПОЗБАВЛЕННЯ ПРАВА НА СПАДКУВАННЯ ОДНОГО З ПОДРУЖЖЯ, ШЛЮБ МІЖ ЯКИМИ Є НЕДІЙСНИМ АБО ВИЗНАНИЙ ТАКИМ ЗА РІШЕННЯМ СУДУ

Анотація. Відповідно до діючого цивільного законодавства після смерті одного з подружжя його частка в праві спільної сумісної власності спадкується на загальних підставах. Сучасна судова практика суперечливо застосовує окремі законодавчі положення інституту спадкування одним з подружжя, шлюб між якими є недійсним або визнаний таким за рішенням суду. Сама процедура такого спадкування характеризується низкою проблемних питань з якими стикається другий з подружжя, який залишився живим.

В ході дослідження встановлено, що для усунення від права на спадкування одного з подружжя судом необхідне рішення органу державної реєстрації щодо анулювання запису про шлюб. У разі визнання шлюбу недійсним на підставі рішення суду, для усунення від права на спадкування необхідне рішення суду, яке набрало законної сили, про визнання шлюбу недійсним. Прийняття рішення про усунення особи від права на спадкування стосується лише чітко визначеного кола спадкоємців та конкретного спадкодавця, та не позбавляє цю особу права претендтаувати на спадщину після смерті інших спадкодавців.

Для проведення детального аналізу спадкування одним з подружжя, шлюб між якими є недійсним або визнаний таким за рішенням суду, у статті аналізуються спеціальні джерела спадкового права.

Ключові слова: *спадкування за законом, спадкові правовідносини, спадщина, обов'язки спадкоємців, позбавлення права на спадкування, подружжя, судовий порядок, право представлення, недійсний шлюб, свідоцтво про право на спадщину.*