Ministry of Education and Science of Ukraine
Lviv Polytechnic National University

Dolynska Mariia
Markovych Khrystyna
Pavliuk Nataliia

NOTARY'S URGENT ISSUES: FROM HISTORY TILL THESE DAYS

Monograph

Kyiv 2022

UDC 347.961'6
D 644

Recommended for publication
By Scientific Council of Educational and Scientific Institute of Jurisprudence, Psychology, and Innovative Education Lviv Polytechnic National University
(protocol № 3/22 from 24.10.2022)
By Scientific Council of Lviv Polytechnic National University
(protocol № 88 from 29.11.2022)

Reviewers:
O. I. Ostapenko, Doctor of Juridical Sciences, professor (Educational and Scientific Institute of Jurisprudence, Psychology, and Innovative Education of Lviv Polytechnic National University).
B. B. Melnychenko, Doctor of Juridical Sciences, professor (Educational and Scientific Institute of Jurisprudence, Psychology, and Innovative Education of Lviv Polytechnic National University)
D. H. Zabzaliuk, Doctor of Juridical Sciences, professor (Institute of Law of Lviv State University of Internal Affairs)

D 644 Dolynska Mariia, Markovych Khrystyna, Pavliuk Nataliia. Notary's urgent issues: from history till these days: Monograph. Kyiv: NULES of Ukraine Publishing house**,** 2022. 206 p.

Dolynska Mariia – Chapter 3
Markovych Khrystyna – Chapter 1
Pavliuk Nataliia – Chapter 2

ISBN 978-617-8102-79-1

The monograph is devoted to a comprehensive theoretical analysis of the functioning of notaries in Ukraine, taking into account new challenges and threats in the field of notaries. The monograph contains both theoretical and practical proposals for improving the quality of notarial legislation and forming a unified notarial practice.
The historical and legal aspects of the development of the notary of Ukraine, its current state and development prospects, current problems of the modern notary and theoretical and legal aspects of the notarial process regarding the formation of inheritance rights in Ukraine are defined.
The monograph is recommended for students, postgraduates, teachers, scientists, and practitioners dealing with notary issues.

CONTENTS

Chapter 3

THEORETICAL AND LEGAL ASPECTS OF THE NOTARY PROCESS REGARDING THE FORMATION OF INHERITANCE RIGHTS IN UKRAINE

3.1. Formation and development of the institution of inheritance on the territory of Ukraine

The Institute of Inheritance is designed to regulate the procedure for the transfer of rights and obligations belonging to a certain person to other persons in the event of his death.

Back in the days of the primary communal system (under the matriarchy), the inheritance was distributed among relatives on the maternal line, that is, it mainly passed to the closest blood relatives on the mother's side.

However, later, during the period of patriarchy, the inheritance was already distributed among the relatives of the owner of the house (they were connected by blood ties – the agnatic order of inheritance).

At the end of the patriarchy, the testator's children were already recognized as first-line heirs, but they were not in the same position in their rights. In particular, after the death of the father, the inheritance passed to the sons, who were entrusted with the duty of supporting their sisters, as well as providing them with a dowry. It is worth noting that the testator's daughters were called upon to inherit only if the testator had no sons. It is necessary to emphasize that only at the end of the family system, the institution of inheritance by will arose.

During the slave period, the right of inheritance existed in Egypt, Babylon, India, the Roman Empire, Assyria, etc. In the Roman Empire, the most complete regulation of inheritance legal relations took place, in particular, inheritance was allowed both by will and by law. Later, the right to a mandatory share in the inheritance arose, which the "mandatory" heir received regardless of the content of the will.

On the territory of Kyivan Rus, provisions on the order of inheritance (based on customary law) can be found in the Rus' treaty with Byzantium in 911. Analyzing the norms of the contract, it should be noted that the legislation at that time distinguished inheritance, both by will and by law, which were later included in the Spatial Edition of Russian Truth (Articles 90–106). At first, according to the law, only sons inherited – the father's estate passed to the youngest son without division, and another property was distributed equally (Article 100 of the Spatial Edition of Russian Truth), while the sons were obliged to marry their sisters with an appropriate dowry. At the same time, we note that according to the treaty between Russia and Byzantium in 911, in the absence of sons, the brothers of the deceased inherited [1, p. 18].

According to the norms of Russian Truth, two types of inheritance were established: for boyars and swords. The property of Smead, who left no sons behind, passed to the prince. Married daughters did not receive the stench of inheritance, and unmarried ones received only a part of the property, which fell to her dowry upon marriage. However, an exception was provided for boyars and soldiers – in the absence of sons, the share could also go to daughters (Article 91 of the Spatial Edition of Ruska Pravda). Later, these

provisions were extended both to the white clergy and artisans, and free commoners. Property could be inherited both by will and by law. According to Russian Truth, only children born in a legal marriage could inherit. The children of concubines, after the death of their father and master, did not have the right to receive the inheritance, but at the same time, they became free persons together with their mother [1, p. 18].

According to article 100 of the Spatial Edition of Ruska Pravda, the paternal estate passed to the younger son without division, although in Western European feudal law, in most cases, the eldest son was given preference. Daughters, if the testator had sons, were not considered the heirs of their parents, otherwise, when they got married, they would take the property beyond the boundaries of their family. Thus, in articles 93 and 95 of the Spatial Law, there are norms in which it was stated that neither mother nor daughter can claim inheritance. This corresponded to the general trend – in most peoples of the world, during the transition from the primitive communal system to civilization, there was a custom according to which only sons could inherit [1, p. 18–19].

Subsequently, inheritance was established on Ukrainian territory permanently, both by law and by will.

The nationalization carried out by the Soviet state at the beginning of the 20th century directly affected the development of Soviet Ukrainian inheritance law.

The former Ukrainian Soviet Socialist Republic (USSR) completely, and often blindly, copied and transferred Russian legislation.

In Ukraine, the Decree of March 11, 1919 "On the Cancellation of Inheritance" was in force, which in its content

corresponded to the Russian Decree of April 27, 1918. Article 1 of the decree stated that the right of inheritance by law and by the will to all property located on the territory of the republic is cancelled.

The normative act indicates only the granting of the preferential right to receive maintenance from the property of the deceased not higher than subsistence level to disabled relatives of the testator in direct descending and ascending lines, full and half-born brothers and sisters, as well as spouses only on the condition that these persons need help.

That is, the Ukrainian legislator, in the decree of March 11, 1919, unlike the Russian lawmaker, provided for the receipt of the specified heirs only if these "persons need help". Therefore, Russian relatives of the deceased received inherited property "regardless of their property status and ability to work", while Ukrainian relatives only received maintenance not higher than the subsistence level of the disabled person. It also follows from the analysis of Article 2 of the Decree that the legislator did not provide for the issuance of certificates of the right to inheritance, but only for obtaining the right to funds for the maintenance of the "needy" persons mentioned above [2, p. 120].

However, "in the note to the first article of the specified decree, it was assumed that the rule on inheritance "does not apply to those cases when the entire inherited property does not exceed 10,000 KRB." We draw attention to the following points: both in Russian legislation and in Ukrainian legislation, a list of relatives (of the heir) was provided, as well as his surviving wife, as an heir. This right is "the overriding right to receive maintenance from the property of the deceased not

higher than subsistence level, provided that these persons need help [3, p. 675].

The introduction of a new economic policy in the country contributed to the adoption of the Civil Code of the Ukrainian SSR in 1922. This code did not divide the property into labor and non-labor property, allowing inheritance of both types. The legislation permitted both statutory and testamentary inheritance. When inheriting by law, at the same time, all relatives were invited to accept the inheritance, and the inheritance was divided between them into equal shares. When inheriting by will, the legislator allowed the testator to divide the inheritance at his discretion, but only between persons who could be heirs by law, that is, the circle of heirs by law and by will always coincided. The law allowed only a written will.

As O. Nelin notes, Ukrainian inheritance law "was, in fact, a reformed inheritance system of Russian tsarism" [4, p. 32].

From the analysis of inheritance regulation by the Civil Code of 1922 (Articles 416–435), it follows that they were based on the norms of the decrees of the Ukrainian SSR of March 11 and 21, 1919 "On the Cancellation of Inheritance". Thus, inheritance was allowed within the limits of 10,000 rubles, but only after payment of the testator's debts.

That is, the Civil Codes of both the USSR and other union republics established the limit of the maximum share in the inheritance, which was abolished only on March 1, 1926, by the resolution of the Central Committee of the Russian Federation of the USSR dated January 29, 1926. From that time, inheritance of any size of inheritance was allowed.

Gradually, the circle of heirs begins to expand. Thus, with the introduction of the institution of adoption on March 1, 1926, the adopted and their offspring are equated with the relatives of the adopter. Unlike other union republics, the Ukrainian SSR did not adopt a law on a mandatory share in inheritance, but judicial practice, guided by Article 1 of the Central Committee of the Ukrainian SSR (1922), partially invalidated such wills in which minor heirs were deprived of their inheritance.

In Article 418 of the Civil Code of the USSR, 1922, the legislator provided for three stages of inheritance by law.

The following heirs belonged to the first tier: children (including adopted ones); surviving spouse (husband or wife); and disabled parents of the deceased. Grandchildren and great-grandchildren of the deceased were also heirs by right of representation.

The second line of heirs by law included the able-bodied parents of the deceased.

The third line of heirs included the sisters and brothers of the deceased testator.

Article 434 of the Civil Code of the USSR of 1922, it is indicated that the heirs of the deceased were responsible for his debts.

The heirs could exercise their right to receive the inheritance only by applying to the court at the place of residence of the deceased testator. The court took measures to protect the inheritance of the deceased. This lasted until the acceptance of the inheritance, but no more than 6 months. After this period (6 months, from the day of the testator's death), the

court, at the request of the heirs, issued a certificate of the right to inheritance [5, p. 321].

That is, the certificate of the right to inheritance was not issued by notaries, but by judges.

In the Notarial Charter of the USSR, which was adopted by the resolution of the VUCVK and the RNC on July 25, 1928, by Art. 91 was approved by the resolution of the People's Commissariat of Justice of the Ukrainian SSR on November 17, 1928.

On December 8, 1961, the Verkhovna Rada of the USSR approved the Fundamentals of Civil Legislation of the Union of the SSR and the Union Republics, which, in particular, laid down the main principles of inheritance law, which in turn were specified in the new civil codes of the Union Republics, in particular, in the Civil Code of the Ukrainian SSR adopted by July 18, 1963, and entered into force on January 1, 1964.

In this regulatory action, the issue of inheritance of the property of deceased citizens was regulated in detail, in particular in chapter seven. Inheritance norms have undergone significant changes.

In particular, as O. Nelin rightly observes, testators could only be "citizens, regardless of their age and state of health. The author emphasizes that "inheritance occurred both after the death of capable citizens and after the death of incapacitated citizens" [6, p. 335].

That is, only natural persons were testators, and legal persons did not have such a right.

At the same time, according to Articles 527, 529–532, the heirs were relatives (by law), and according to Article 534 of the Civil Code of the Ukrainian SSR – by will: they could be

both physical and legal entities (the state, public organizations or cooperatives, separate state organizations).

As under the previous Civil Code of the Ukrainian SSR of 1922, so according to the Civil Code of the Ukrainian SSR of 1963, the heirs were relatives – persons who were both alive at the time of the testator's death, and those children who were conceived during the life of the testator, but were born after his death.

The amendment to the code is the provisions of Article 528 of the Civil Code of the Ukrainian SSR of 1963, which regulate the issue of disinheritance.

For the first time in the code, separate articles define the order of inheritance by law (Articles 529–530 of the Central Committee of the Ukrainian SSR), as well as inheritance by dependents (Article 531 of the Central Committee of the Ukrainian SSR).

Professor O. Nelin emphasizes that "instead of the three rounds of legal heirs operating under the Central Committee of the Ukrainian SSR in 1922, two rounds were introduced in the new Central Committee of the Ukrainian SSR in 1963. However, according to the author, "this was not related to the reduction of the circle of legal heirs. He believes that this did not happen because "the parents (adoptive parents) of the testator were included by the legislator in the first line of heirs, despite their ability to work [6, p. 336–337].

Analyzing the Civil Code of the Ukrainian SSR (1963), O. Nelin draws attention to the fact that in Article 538 of the Civil Code of the Ukrainian SSR of 1963, the legislator gave the right to the heirs of the deceased not only to accept the inheritance, but also to refuse it both in favor of the heirs,

according to the law, and by will, as well as "refuse in favor of the state or legal entities" [7, p. 47].

The author also draws attention to the fact that the legislator narrowed the number of "heirs who had the right to a mandatory share in the inheritance. They included, firstly, incapacitated heirs of the first order and, secondly, incapacitated dependents of the deceased. Also, the size of the mandatory share in the inheritance of the above-mentioned heirs was reduced to two-thirds of the inheritance" [7, p. 47].

State and private notaries of modern Ukraine must be guided, first of all, by the inheritance legislation, which regulates the general grounds for calling for an inheritance, when registering inheritance rights.

3.2. Theoretical and legal principles of inheritance in modern Ukraine

The main source of inheritance law in Ukraine at the present stage is the Civil Code, in particular, its sixth book "Inheritance Law", which contains the general provisions of inheritance law.

However, about certain rights and obligations, which under certain conditions can be part of the inheritance, special rules of inheritance are established, which are contained in special normative acts.

Inheritance, according to the norms of the current legislation, is the transfer of rights and obligations (inheritance) from a natural person who died (the testator) to other persons (the heirs).

Following Article 1218 of the Civil Code of Ukraine (hereinafter the Civil Code), inheritance in Ukraine is carried out both by law and by will [8].

The main source of inheritance law in Ukraine at the present stage is the Civil Code, in particular, its sixth book "Inheritance Law", which contains the general provisions of inheritance law.

However, about certain rights and obligations, which under certain conditions can be part of the inheritance, special rules of inheritance are established, which are contained in special normative acts.

Inheritance, according to the norms of the current legislation, is the transfer of rights and obligations (inheritance) from a natural person who died (the testator) to other persons (the heirs).

By Article 1218 of the Civil Code of Ukraine (hereinafter the Civil Code), inheritance in Ukraine is carried out both by law and by will [8].

In the first case (according to the law), this happens regardless of the will of the testator (since he did not make a will) and is possible when the testator did not make a will or when the will is legally invalid. At the same time, it should be noted that the persons specified in the will still have the priority right to inherit, i.e. such persons who are determined by the will of the testator – the testator. However, the legislator has established a rule according to which in the absence of a will, its invalidation or refusal of the heir's inheritance under the will, the right to inheritance is given to the heirs by law.

We agree that the "advantage regarding inheritance by will" provided by the legislator serves as a confirmation of the

expansion of private law principles in the regulation of inheritance legal relations.

The inheritance is opened only after the person's death or declaration of death. At the same time, we draw your attention, not to the fact that the issuance of a certificate of the right to inheritance does not create new rights for the heirs to the property, but only confirms the existing right to the property since the right to such inherited property of the heirs arises from the moment of the opening of the inheritance.

The legislator established that the shares in the inheritance of each heir are equal by law.

The Civil Code adopted by the Verkhovna Rada of Ukraine on January 16, 2003 [8] established five stages of inheritance by law, namely:

The first line of heirs includes the testator's children, including those conceived during the testator's lifetime and born after his death, the surviving spouse, and parents. Therefore, the circle of heirs provided for in Article 1261 of the Civil Code is exhaustive. First-line heirs also include adopted children.

We note that children inherit after the death of both their parents, both father, and mother. If the marriage between the parents was not registered, but in the child's birth certificate, these persons are indicated as father and mother, then the child has the right to inherit after the death of each of them. Children born from a marriage that is later recognized as invalid do not lose the right to inheritance either after the death of the mother or the death of the father. The fact that paternity has been established based on a court decision is the basis for a child to receive an inheritance after the death of his parents. In the case

of the birth of a child of the deceased who was born after his death, the legislator established a rule according to which such a child must be born within ten months from the date of the testator's death.

Inheritance by the surviving husband (wife) occurs if he was in a registered marriage with the testator at the time of death. At the same time, religious marriages in Ukraine are not grounds for inheritance. Also, the right to inherit from the surviving spouse does not arise in the event of a divorce before the inheritance is opened or the marriage is declared invalid in a court of law.

It is worth noting that parents are the heirs of their deceased children based on a birth certificate, as well as a court decision on the recognition of paternity.

The second line of heirs includes both the testator's own brothers and sisters, as well as his paternal and maternal grandparents.

The mentioned persons are invited to inherit in the following cases:

- in the absence of first-line heirs,
- in the event of removing them from the right to inheritance of the heirs of the first rank;
- in case of refusal to accept the inheritance of the heirs of the first rank.

Brothers and sisters of the deceased are invited to inherit, if family ties are established between them and the deceased, in particular, such family ties can be both full relatives and non-full relatives. However, half brothers and sisters are not heirs one after the other, if they do not have common parents (at least one of them).

Grandparents inherit after the death of their grandchildren only if they are related by blood, in particular, both on the mother's side and on the father's side.

The third line of heirs includes the testator's uncle and aunt. The specified heir inherits in the absence of the first two rounds or if all the heirs of the previous rounds refused to register the inheritance.

The fourth line of heirs includes persons who lived with the testator in the same family for at least five years before the opening of the inheritance. In our opinion, a family consists of persons who live together, are connected by common life, and have mutual rights and obligations.

Up to the fifth step, other relatives of the testator up to the sixth degree of kinship inclusively have the right to inherit, and relatives of a closer degree of kinship exclude from the right of inheritance relatives of a further degree of kinship, as well as dependents of the testator who were not members of his family. The degree of kinship is determined by the number of births separating the relative from the testator, and the testator's birth is not included in this number.

Dependents of the testator are minors or members of the testator's family who are unable to work due to age or health, and who received financial assistance from him, which was the only or main source of livelihood for them, for at least five years.

Civil legislation also provides for inheritance by right of representation, i.e. those persons who are heirs of the testator by law, if at the time of opening the inheritance, the relative who was the heir is not alive. We emphasize that grandchildren (great-grandchildren), great-grandmothers, great-grandfathers,

nephews of the testator, and cousins of the testator are not included in any of the lines of inheritance by law.

According to Article 1266 of the Civil Code of Ukraine [8], the following heirs of the testator have the right to inherit by right of representation:

a) grandchildren, great-grandchildren of the testator inherit the share of the inheritance that would have belonged by law to their mother, father, grandmother, or grandfather, if they had been alive at the time of the opening of the inheritance;

b) great-grandmother, and great-grandfather will inherit the share of the inheritance that belonged by law to their children (grandparents of the testator), if they were alive at the time of the opening of the inheritance;

c) the nephews of the testator inherit the share of the inheritance that would have belonged by law to their mother, father (sister, brother of the testator) if they were alive at the time of the opening of the inheritance;

d) cousins of the testator inherit the share of the inheritance that would have belonged by law to their mother, father (aunt, uncle of the testator) if they were alive at the time of the opening of the inheritance.

In the case of inheritance by right, representation is carried out by several persons, then the share of their deceased relative is divided equally between all of them. It should be noted that in the case of direct descent, the right of representtation applies without limitation on the degree of kinship.

In the case of inheritance by law, the adopted person and his descendants, on the one hand, and the adopter and his relatives, on the other hand, are equal to relatives by birth, but the adopted person and his descendants do not inherit by law

after the death of the parents of the adopted person, his other relatives by birth along the ascending line. The parents of the adopted person and his other relatives by descent in the ascending line do not inherit by law after the death of the adopted person and his descendants.

If, according to the decision of the court on adoption, the legal relationship between the adopted person and his grandmother, grandfather, brother, and sister by origin is preserved, then in the event of the death of his grandmother, grandfather, by origin, the adopted person has the right to inherit by right of representation, and in case death of his brother, sister by descent – has the right to inherit as an heir of the second line. However, in the case of the death of the adopted child, his grandmother, grandfather, brother, and sister by descent, with whom the legal relationship was preserved, inherit on general grounds.

We emphasize that the legislator established a rule according to which the following heirs do not have the right to inheritance by law:

First, persons who intentionally took the life of the testator or any of the possible heirs or made an attempt on their life.

Secondly, parents after a child in respect of whom they were deprived of parental rights and their rights were not renewed at the time of the opening of inheritance; parents (adoptive parents) and adult children (adopted), as well as other persons who evaded the obligation to maintain the testator, if this circumstance is established by the court.

Thirdly, one after another person, the marriage between whom is invalid or recognized by a court decision.

However, in the event of the death of a person who was deprived of the right to inherit before the death of the testator, the deprivation of his right to inherit becomes invalid. At the same time, the legislator granted the right to inheritance to the children (grandchildren) of this person on general grounds.

If a marriage is declared invalid after the death of one of the spouses, the court may recognize the right to inherit the share of the deceased spouse in the property of the second spouse who survived it and did not know and could not have known about the obstacles to the registration of the marriage. acquired by them during this marriage.

The legislator also provided that a person may be removed from the right to inherit by law by a court decision if it is established that he avoided assisting the testator, who was in a helpless state due to old age, serious illness, or disability.

Heirs by law receive the right to inherit alternately. Each subsequent line of heirs by law receives the right to inherit in the event of the absence of heirs of the previous line, their removal from the right to inherit, their non-acceptance of inheritance or refusal to accept it (except for changing the sequence of obtaining the right to inheritance by legal heirs based on a notarized contract of interested parties heirs concluded after the opening of the inheritance). However, this contract cannot violate the rights of the heir who does not participate in it, as well as the heir who has the right to a mandatory share in the inheritance.

A natural person who is an heir according to the law of the following ranks may, by a court decision, receive the right to inherit together with the heirs of that rank who have the right to inherit. For example, on the condition that she was engaged

for a long time, provided materially, and provided other assistance to the testator, who was in a helpless state due to old age, serious illness, or disability.

Each of the heirs has the right to allocate his share in kind. Heirs who have lived with the testator in the same family for at least one year before the opening of the inheritance have a preferential right over other heirs to allocate to them in kind items of ordinary household furnishings and use in the amount of the share in the inheritance. And the heirs who, together with the testator, were co-owners of the property, have a priority right over other heirs to allocate this property to them in kind, within the limits of their share in the inheritance, if this does not violate the interests of other heirs, which are of significant importance.

A certificate of the right to inheritance is issued by the notary at the place of opening of the inheritance for the property that passes to the heirs under the right of inheritance.

It is worth noting that when issuing a certificate of the right to inheritance by law, notaries of Ukraine are primarily guided by the civil legislation of Ukraine. In particular: the Civil, Family, and Tax Codes of Ukraine, the Law of Ukraine "On Notaries" dated September 2, 1993, the Procedure for Notarial Acts by Notaries of Ukraine, approved by the order of the Minister of Justice of Ukraine dated February 22, 2012, under № 296/5 and other legal acts.

If the inheritance, after the death of the testator, was opened before January 1, 2004, and was accepted by at least one heir before that date, then the circle of heirs is determined according to the rules of the Civil Code of the Ukrainian SSR of 1963. By the way, according to the norms of the Civil Code

of the Ukrainian SSR (1963), there were only two stages of inheritance by law, and according to the Civil Code of Ukraine (2003) – five.

The right to inheritance is exercised by the heirs by accepting the inheritance or rejecting it. For the acceptance of inheritance or refusal to accept the inheritance, a period of six months is established, which starts from the time of opening of the inheritance.

Applications for acceptance of inheritance or refusal to accept it are submitted by the heir personally to the notary at the place of opening of the inheritance in writing. If the application, on which the authenticity of the heir's signature is not notarized, was received by mail, it is accepted by the notary, and an inheritance case is initiated. The heir is notified by the notary about the establishment of the inheritance case and the need to send a duly executed statement (the authenticity of the signature on such statements must be notarized) or to personally come to the notary at the place of opening of the inheritance.

We emphasize that it is not allowed to accept applications for acceptance of inheritance, rejection of it, or applications for their revocation made on behalf of the heirs by their representatives acting based on powers of attorney.

The legislator gave the right to a minor to apply for inheritance without the consent of his parents or guardian.

An application on behalf of a minor or an incapacitated person is submitted by his/her parents (adoptive parents), or guardian. At the same time, a minor, a minor, an incapacitated person, as well as a person whose civil capacity is limited, are considered to have accepted the inheritance, if no application

was submitted to refuse to accept the inheritance in compliance with the requirements established by law.

We emphasize that acceptance and rejection of inheritance can take place in all inherited property. At the same time, the heir does not have the right to accept one part of the inheritance and refuse the other part. The heir who accepted part of the inheritance is considered to have accepted the entire inheritance.

If the heir has not submitted an application for acceptance of the inheritance to the notary's office within six months, he is considered not to have accepted the inheritance.

The court can determine the heir who missed the deadline for accepting the inheritance for a good reason, an additional period sufficient for him to apply to accepting the inheritance. The heir who, by the court's decision, has been given an additional term for applying for acceptance of inheritance, must accept the inheritance within the time limit established by the court by submitting the relevant application to a notary at the place where the inheritance is opened. In the case of missing an additional deadline for acceptance of inheritance by a court decision, the law of Ukraine does not provide for a repeated appeal to the court for an extension of the deadline for acceptance of inheritance.

At the same time, it is not necessary to apply to the court to determine an additional period sufficient for accepting the inheritance, if all the heirs who accepted the inheritance submit a written statement of consent to the acceptance of the inheritance by the heir who missed the deadline for accepting the inheritance. Such statements of the heirs must be presented to the notary before issuing a certificate of the right to

inheritance. In the presence of such consent, the heir who missed the deadline for accepting the inheritance must submit a statement of acceptance to the notary at the place of opening of the inheritance.

If a person's right to inheritance depends on the non-acceptance of the inheritance or refusal to accept it by other heirs, the term for such a person's acceptance of the inheritance is set three months from the moment the other heirs reject the inheritance or refuse to accept it. If the remaining term is less than three months, it is extended to three months. The heir, who lived permanently with the testator at the time of the opening of the inheritance, is considered to have accepted the inheritance if, within the period established by Article 1270 of the Civil Code, he has not declared his rejection of it. That is if the testator's mother lived with the testator for 80 years, if she does not apply to renounce the inheritance within six months from the day of her son's death, then she is considered to have accepted the inheritance.

In the absence of such an heir's passport with notes on the registration of his place of residence, proof of permanent residence with the testator can be: a certificate from the housing and operating organization, the board of the housing and construction cooperative, the relevant local self-government body that the heir lived with the testator on the day of his death the testator Also, a statement of a person, the authenticity of whose signature is notarized (or not notarized), sent by mail before the expiration of the six months for accepting the inheritance, and which was received by the notary after the expiration of this period, is also considered a timely accepted inheritance.

The legal heir has the right to refuse to accept the inheritance in favor of any of the legal heirs regardless of their order, including grandchildren, great-grandchildren, nephews, and others. The heir, in whose favor the right to a share in the inheritance was waived, has the right to refuse to accept it.

A minor can refuse acceptance inheritance with the consent of parents (adoptive parents), the guardian and guardianship authority. Individual, whose civil legal capacity is limited, may refuse to acceptance of inheritance with the consent of the guardian and the body custody and care.

Parents (adoptive parents), and guardians can refuse from accepting an inheritance belonging to a minor, to an incapacitated person, only with the permission of the guardianship authority and care.

In case of refusal to accept the inheritance by all heirs under the will, as well as if the will does not cover the entire inheritance, the right to inherit heirs according to law alternately.

We note that according to the order of the Ministry of Justice of Ukraine № 806/5 dated May 23, 2014, in this case establishment of the inheritance case and establishment of composition of inheritance, the notary is obliged to provide the heir a written certificate about the list of documents, necessary for the registration of inheritance and issuance of a certificate about the right to inheritance, indicating the amount of the fee for execution of relevant notarial actions. Such a reference has be signed by a notary and sealed with his seal.

A certificate of the right to inheritance is issued to the heirs who accepted the inheritance, i.e. those who permanently lived with the testator or filed the notary's statement on acceptance of inheritance.

Legal heirs who are deprived of the opportunity submit documents confirming the existence of grounds for calling for succession, maybe for with the written consent of all other heirs who accepted inheritance and submitted family, marital or other evidence relations with the testator included in the certificate of inheritance.

Heirs by law receive the right to inheritance in the absence of a will, its recognition void in whole or in part, in case of coverage by the will of the entire inheritance and in other cases.

Legal entities, the state, territorial communities can be heirs only by will.

We draw attention to the fact that an individual can become an heir regardless of age, gender, state of health, etc. We also emphasize that the heir can to accept inheritance by law or by will.

It is obvious that the certificate of the right to inheritance is confirmation of the heir's ownership on the inherited property of the testator.

We remind you that notarial activity is a variety legal and, accordingly, social activities and aimed at providing official force, credibility legal rights, facts, and documents. Activity the notary has a certain commonality with the activities of other bodies civil jurisdiction [9, p. 75].

Activities of notarial procedural subjects a legal relationship is a type of legally enforceable, jurisdictional activity touches on the most important and essential aspects of the exercise of rights by citizens and by legal entities and therefore should be carried out in the procedural form that ensures unity and adequacy legal content and legal form of the contract or

other legally significant action, expression of a valid manifesttation of the will parties, as well as the balance of public and private interests [10].

Relying on notarial bodies and bodies quasi-notariat the function of performing notarial acts, the state grants them authoritative powers. Powers of notarial and quasi-notarial bodies bodies regarding the performance of notarial acts are regulated depending on the entity that is authorized to act notarial acts or equivalent to notarial wills and power of attorney [10].

Legal relations regulated by norms of notarial procedural law, are diverse, as and their subjects.

Subjects of notarial procedural legal relations are participants in notarial social relations who act as bearers of notarial law subjective rights and obligations [10].

Bodies authorized to perform notarial acts (main subjects of the notarial process), the majority of scientists share to the notary and quasi-notary institutions. To the organs public and private notaries belong to the notary, and bodies of quasi-notariat – officials of local bodies self-government, other officials entrusted with execution of certain types of notarial acts by current legislation [10].

Meanwhile, we do not support the statement of the known Ukrainian researcher O. I. Nelin, that the time has come refuse to perform notarial acts by non-notaries. In our opinion, this is not only impossible but also impractical Since military operations are currently underway in Ukraine, defenders of the homeland have the right and must continue to have the right to draw up a power of attorney and to certify the latter the will. In particular, they are equated to notarized wills of servicemen, and in deployment points military units, units, institutions,

military educational institutions where there are no notaries or officials local self-government bodies that commit notarial acts, as well as wills of employees, their members families and family members of military personnel, certified commanders (chiefs) of these units, formations, institutions or military educational institutions [10].

It is worth noting that equated to notarized certified wills were drawn up even in Roman times empire For example, according to A. Nagorno, which was still in the old days Testaments of the Roman Empire were divided into certified ones notarized and wills equated to notarized certified [11].

A. Nelin assures that there is a new in independent Ukraine Civil Code of Ukraine dated January 16, 2003, and Law of Ukraine "About notary" dated September 2, 1993, as well confirmed the concept of quasi-notariat [12, p. 20].

In our opinion, it is appropriate for quasi-notarial bodies attribute four types of subjects.

Officials belonging to the first group consular institutions and diplomatic missions of Ukraine.

Officials of local self-government bodies form the second group of quasi-notarial bodies.

The third group includes officials who provided by Art. 40 of the Law "On Notaries", which certify wills and powers of attorney equated to notarial.

Heads of institutions for the execution of punishments that certify the authenticity of the signature of the person who is in such an institution, following Art. 78 of the Law "On Notaries", constitute the fourth group of quasi-notarial bodies.

Entities authorized for registration Inheritance rights of citizens in Ukraine are performed by notaries bodies and separate quasi-notarial bodies.

Namely:

- notaries working in state notaries offices (state notaries);
- notaries engaged in the private notary activities (private notaries);
- officials of consular institutions and diplomatic missions of Ukraine;
- individual officials of local bodies self-government in settlements where there are no notaries.

Article 9 of the Law of Ukraine "About notary"[13], a notary public and an official of a local authority self-governments that perform notarial acts are not eligible perform notarial acts in one's name and on one's behalf, on name and on behalf of your husband or wife, his (her) and their relatives (parents, children, grandchildren, grandfather, grandmother, brothers, sisters), as well as in the name and on behalf of the employees of the given notary office, employees staying in labor relations with a private notary, or employees of this executive committee. Officials the local self-government body is not entitled to act notarial acts also in the name and on behalf of this executor committee In the specified cases, notarial actions are made in any other state notary office office, at a private notary, or the executive committee another local self-government body. Notarial and actions equated to them, committed in violation of the established by this article, the rules, are invalid [13].

3.3. The procedure for notarial proceedings the process of issuing certificates of right to heritage

The inheritance is opened as a result of the death of a person or declaring her dead. Inheritance in Ukraine is carried out according to the law only when the testator did not make a will or when his the will is legally invalid. Only in case of absence of the will, its invalidation, or in case of refusal inheritance of the heir under the will right to inheritance are received by the heirs by law.

At the request of the heir in connection with the discovery inheritance notary, by clause 1.2 of chapter 10 The procedure for performing notarial acts by notaries of Ukraine, approved by the Order of the Ministry of Justice of Ukraine 22 of February 2012 under № 296/5, clarifies information regarding: the fact of the testator's death; time and place of opening heritage; circles of heirs; existence of a will; availability inherited property, its composition, and location; the need to take measures to protect the inheritance property [14].

The fact of the death of an individual and the time of the opening of the inheritance the notary verifies by demanding from the heir death certificate issued by a state body registration of acts of civil status or by direct access to the civil status register. If impossibility of presentation by the heirs of a certificate of death of the testator or lack of information in the register the notary must demand from the state body registration of civil status acts, a copy of the active record on the death of the testator or a full extract from the State register of acts of civil status of citizens regarding the act death record.

If the death of a citizen was registered on the territory of another state, the notary is served with a corresponding one a document issued by the competent authorities of a foreign country of the state, which is valid on the territory of Ukraine under the conditions its legalization, unless otherwise provided by law, international treaties of Ukraine.

If the testator's death certificate sometimes only the month and year or only the year of death are indicated the opening of the inheritance should be considered the last day accordingly of the specified month or December 31 of the current year.

The time of opening of the inheritance is the day of the person's death or the day she is declared dead. Judgment about declaring a natural person dead or about establishing the fact of a person's death at a certain time cannot be accepted by a notary to confirm the fact death [14].

If persons could die within one day to inherit one after the other, the inheritance opens simultaneously and separately for each of them.

If several persons could inherit one after another one died during a common danger for them (natural disaster, accident, disaster, etc.), it is assumed that they died at the same time. In this case, inheritance is opened simultaneously and separately for each of these persons.

An heir who died even a few hours after the testator, but on the next day, is not considered deceased with him at the same time and he has the right to heritage.

Sometimes the opening of inheritance after death citizens rehabilitated in the prescribed manner is a day deciding by the relevant Commission on issues renewal of the rights of

rehabilitated persons to return to the first-tier heirs of the rehabilitated property [14].

The last location is where the legacy is discovered residence of the testator, following Article 29 Civil Code of Ukraine.

If the testator had several places of residence, the last place is considered the place of opening of the inheritance registration of the testator.

After the death of conscripts, as well as persons who studied in educational institutions that located outside their place of residence, place the discovery of heritage is recognized where they are lived before being called up for military service or before entering the relevant educational institution.

After the death of a citizen who lived in the house-boarding schools for people with disabilities, veterans, lonely people and elderly people, another social institution destination, the place of opening of inheritance is considered the location of the relevant institution.

Place of opening of inheritance after persons who died in penal institutions, the last place is recognized residence until arrest (detention).

After the death of a citizen who lived on the territory of a monastery, temple, other religious building, the place of opening of the inheritance is considered to be the location the corresponding building.

If the testator, who owned the property on the territory of Ukraine, had the last place of residence at the territory of a foreign state, the place of discovery of heritage determined based on the Law of Ukraine "On International private law".

If the place of residence of the testator is unknown, the place of discovery of the inheritance is the location real estate. If real estate objects several and their location is different, the place of opening heritage is the location of one of its objects property at the choice of the heir (s).

In the absence of immovable property as a place of opening inheritance is the location of the main part of the movable property, which can be confirmed by a certificate of state registration of the vehicle, extract from register of ownership rights to securities, savings book etc.

The place of opening of the heritage is confirmed: certificate of registration or last place of residence the executive body of the village, settlement, or city council, of the village head (if according to the law the executive body of the village council has not been formed), that performs registration, deregistration of the place of residence persons on the territory of the relevant administrative of the territorial unit to which they apply authority of the relevant village, settlement, or city council, or another document that can confirm relevant fact (a copy of the death certificate, home book, etc.).

The place of discovery of heritage cannot be confirmed by a death certificate. If the latter the place of residence of the testator was on the territory of Ukraine, where the state authorities of Ukraine are temporarily not exercise their powers, the notary is served relevant statement of the heir [14].

If the heirs do not have documents that confirm the place of opening of inheritance, notary public explains to the heirs their right to appeal to the court with application for establishing the place of inheritance opening. In in such a case, the

place of opening of the inheritance is confirmed by a copy of the court's decision of legal force.

Inheritance proceedings are initiated by a local notary public opening of the inheritance based on the submitted (or such that received by mail) the first application (message, telegrams) about acceptance of inheritance, about the refusal of acceptance of inheritance, refusal of inheritance, statements about issuance of a certificate of the right to inheritance, applications the heir to receive part of the testator's contribution in bank (financial institution), application for issuing a certificate to the executor of the will, statements of the executor of the will about the refusal from the exercise of his powers, statements of the second with spouses on the issuance of a certificate of ownership for a share in the joint property of the spouses in the event of the death of one of the spouses, statements about taking measures for protection inheritance, claims of creditors. In military conditions or a state of emergency, the inheritance case is established for application of the applicant by any notary public of Ukraine, regardless of the place of opening of the inheritance.

When starting an inheritance case, a notary public according to the data The Inheritance Register checks the presence of the established inheritance case, inheritance contract, will, except cases provided for in sub-clause 2.6 of the second clause chapter 10 of the section of the Second Procedure for making notarial acts actions by notaries of Ukraine.

In case of initiation of an inheritance case, the notary according to the data The Inheritance Register checks the presence of the established inheritance case, inheritance contract, will.

If there is a will, it is submitted to the notary original or duplicate. Full details of the will which were certified by another notary public is required by a notary by sending a request.

In the case of confirmation of the fact of establishing an inheritance cases by another notary, the notary refuses the applicant to acceptance of the application (other documents) and explains its right submissions at the location of this case, and if necessary (incorrectly defined place of inheritance opening) demands this case for further proceedings [14].

The number of the inheritance case is assigned once and consists of the serial number by which it registered in the book of accounting and registration of inheritance cases, and the year in which it is indicated by a fraction (hyphen).

Inheritance is subject to mandatory registration in book of accounting and registration of inheritance cases, Alphabetical book accounting of inheritance cases and in the Inheritance Register.

By subsection 2.6 of clause 2 of chapter 10 section of the Second Procedure for the performance of notarial acts by notaries of Ukraine, under conditions of war or state of emergency in the absence of access to the Hereditary register, the notary starts an inheritance case without using this registry and checking for availability of the established inheritance case, the inheritance contract will be within five working days from the day of its restoration access. If according to the results of the information check The presence of the hereditary register was established earlier of the initiated inheritance case, initiated without the use The inheritance register is transferred to of a notary who previously initiated an inheritance case, according

to the procedure provided for in subsection 2.7 of clause 2 of chapter 10 section of the Second Notarial Procedure [14].

If the existence of such a case is not established, registration of the inheritance case is carried out in Spadkovy registry.

The normative act emphasizes the prohibition issuance of a certificate of the right to inheritance in the inheritance to a case initiated without using the Inheritance Register, to its registration in the Inheritance Register.

When establishing the fact of simultaneous opening several inheritance cases (for example, by place residence of the testator and by location of inheritance) inheritance cases opened with a violation requirements of Art. 1221 of the Civil Code of Ukraine, must be transferred to the notary under whose competence includes management of this inheritance case.

When simultaneously opening inheritance cases are different by notaries at the place of opening of the inheritance the case is transferred to the notary who, according to an inheritance case was opened earlier with paper carriers.

In case of termination, suspension of the notary activities of a private notary, temporary blocking or cancellation of the notary's access to the State Register rights at the request of all the heirs who accepted the inheritance, inheritance can be transferred to another of a private notary (state notary office) in within the boundaries of one notarial district after the completion the deadline established by law for acceptance heritage. Private notary (state notary office), to whom (to which) the inheritance case is transferred, is obliged to accept it in the proceedings.

If a private notary cannot personally carry out the transfer of the inheritance case before the transfer all documents of

notarial records and archives private notary public to the corresponding state notarial archive, transfer of inheritance case is carried out by order of the relevant chief territorial administration of justice by the commission created for the reception and transmission of paperwork documents.

In case of liquidation of the state notary office to the transfer of all notarial records and archive of the state notary office to the appropriate state notarial archive transfer of inheritance cases are carried out by the state liquidation commission notary office.

A notary public who conducts an unfinished inheritance case or keeps the completed inheritance case, in cases, provided for in this paragraph, must be transferred the specified inheritance case.

An application for the transfer of the inheritance case is submitted by the heirs of the notary public, who manages the unfinished inheritance the case or keeps the finished inheritance case (in the case liquidation of the state notary office – commission on liquidation; if a private notary cannot personally carry out the transfer of the inheritance case, – the corresponding main territorial administration justice).

The authenticity of the signature on the statement of the heirs about transfer of inheritance case, which is sent by mail to a notary who conducts an unfinished inheritance case or preserves the completed inheritance case (in case of liquidation of the state notary office – liquidation commission; if a private notary cannot personally perform transfer of the inheritance case to the relevant head to the territorial administration of justice), or submitted from on behalf of the heirs by their representatives, must be notarized.

In notary districts where it is not registered activities of private notaries and do not function state notary offices, inheritance transferred to the state notary office for maintenance or to a private notary of another notary district at based on the order of the relevant territorial chief Department of Justice.

In the case of transferring the inheritance case from management to another to a private notary (state notary office) a notary public who conducts an unfinished inheritance case or keeps the finished inheritance case, and a private notary (state notary office), to whom (which) this case is transferred, constitutes an act of acceptance and transfer in two copies with a description of the documents available in the estate case (during the transfer of the inheritance case by the commission of liquidation of the state notary's office or the commission of acceptance-handover of paperwork act acceptance handover is signed by the members of the respective commission) [14].

In the book of accounting and registration of inheritance cases and to the alphabetical book of inheritance cases by a private notary (state notary office), which (which) transfers inheritance case (in case of liquidation of the state notary offices – chairman of the liquidation commission; if a private notary cannot personally carry out the transfer inheritance case, – the head of the relevant commission of the head of the territorial administration of justice), establishes relevant notes on the transfer of inheritance from indication of the act of acceptance and transfer. Hereditary the case is submitted together with a cover letter.

Private notary (state notary office), to whom (to whom) an unfinished inheritance case has been transferred, conducts it until the end and saves it in its archive.

Transfer of completed inheritance case for issuance additional certificates on the right to inheritance are issued for a period not exceeding one month. In place transferred completed inheritance case in the archive of a private person a notary public, state notary office remains a copy of the act of acceptance and transfer and a copy of the inheritance affairs. After issuing additional certificates of the right to inheritance, the inheritance case is returned to the archive of the state notary office/private notary, which it was issued. At the same time, the notary who issued the certificate of the right to inheritance affixes the relevant ones notes in accounting and reference documents (book of accounts and registration of inheritance cases, the alphabetical book of inheritance affairs). After the inheritance case is returned, each copy of the act of acceptance-transfer is carried out corresponding entry.

In the case of a private notary (state notary office), which transfers the inheritance case, a copy of the inheritance file remains in custody, a copy of the act of acceptance and transfer, accompanying letters and messages from the postal operator, and in the case of transfer of the inheritance case by courier – a mark notary public on receiving the inheritance case in Roznosnaya books for local correspondence.

Private notary (state notary office), who received the inheritance registers it by with the Notarial Procedure, and also sends messages to the heirs regarding the change of the place of storage of the inheritance affairs.

If one of the heirs who applied for acceptance of inheritance died before receiving a certificate of the right to inheritance, a copy of the inheritance file is sent only at the

written request of the notary by whom it was established inheritance case after such a deceased.

If the inheritance was opened on the territory of the Autonomous Republic of Crimea and the city of Sevastopol to beginning of the temporary occupation and in respect of which the inheritance case was registered in the Inheritance Register, but was not graduated, private notary (state notary office), to which (which) the heir applied for completion of inheritance continues the proceedings of such inheritance inheritance case based on the relevant application of the heir [14].

When accepting the application, the notary public according to the data of the Heir the registry checks the presence of registered inheritance case, inheritance contract, will.

The right to inheritance is exercised by the heirs by accepting the inheritance or not accepting it. For to prevent the lapse of the six months for acceptance of inheritance, the notary explains to the heirs the right to submit an application for acceptance of inheritance or about refusal to accept it.

Applications for acceptance of inheritance or rejection of it acceptance is submitted by the heir personally to the notary public in writing.

If the heir personally came to the notary, notarization of the authenticity of his signature on such statements are not required. In this case, the notary public establishes the identity of the applicant, which is stated in the application the corresponding official mark, which is affixed with a signature of a notary [10, p. 542; 15, p. 266].

If the statement on which the authenticity of the signature of the heir not certified, received by mail, it is accepted a notary public, an inheritance case is initiated, and the heir the

initiation of a succession case is reported and the need to send a duly completed application (the authenticity of the signature on such statements must be notarized certified), or personally come to the notary [14].

It is not allowed to accept applications for acceptance of inheritance, about the refusal of it, or statements about them revocations made on behalf of their heirs representatives acting based on powers of attorney.

We note that a minor has the right submit an application for acceptance of inheritance without the consent of one's parents or guardians.

Application on behalf of a minor or an incapacitated person the person is submitted by his/her parents (adoptive parents), and guardian.

The legislator emphasizes that a minor, a minor, an incapacitated person, as well as a civil person the legal capacity of which is limited are considered to be such that accepted the inheritance, if no application was submitted refusal to accept the inheritance in compliance with the requirements, provided by legislation [10, p. 542; 15, p. 266].

Accepting a statement of acceptance from the heirs inheritance or refusal to accept it, notary public obliged to explain to the heirs their right to withdrawal of such application within the period established Article 1270 of the Civil Code of Ukraine.

Application for acceptance of inheritance or rejection of it acceptance is subject to registration in the Accounting and Registration Book inheritance cases on the day of receipt. In case of receipt of such a document by mail, it is also subject to registration in Journal of registration of incoming documents.

All subsequent statements (additional, from other heirs, creditors) as well are registered in the Book of Accounting and Registration of Inheritance Cases under independent numbers and in chronological order. The date and time of their receipt and succession file number. To the application for withdrawal submitted applications for acceptance of inheritance or rejection of its acceptance, the same registration rules apply.

For the acceptance of inheritance or refusal of acceptance, inheritance is established for six months, which begins with the opening of the inheritance. Acceptance and refusal to accept the inheritance may take place regarding all inherited property. The heir is not qualified to accept one part of the inheritance and refuse the other part. The heir who accepted part of the inheritance is considered such he received the whole inheritance.

If the heir has not filed within six months application for acceptance of inheritance to the notary office, he is considered to have not accepted the inheritance.

In the presence of such consent to the heir, who missed the deadline for accepting the inheritance, it is necessary submit an application to the notary at the place of inheritance opening about its acceptance.

The heir who permanently resided with the testator at the time of the opening of the inheritance is considered those who accepted the inheritance, if within the term, established by Art. 1270 of the Civil Code of Ukraine, it is not announced his rejection of it [8].

In the case of a husband in the passport of such an heir proof of registration of his place of residence of permanent residence with the owner of the inheritance can be: a certificate

from the registration authority of the place of residence that place of residence of the heir on the day of the death of the heir was registered at the same address as the testator.

An application is considered to be sent on time, authenticity signature of the person on whom it is certified (or not certified) notarized, sent by mail to expiration of the six months for acceptance inheritance and which was received by the notary after the end of this term The notary accepts such statements, establishes the inheritance the case and in case of receipt of the application, authenticity whose signature is not notarized, sends a letter to the heir, in which it is suggested to send a statement, properly executed, or personally come to the notary at the place of inheritance opening. In such cases, the envelope is sewn into the inheritance case [10, p. 544; 15, p. 267].

If the heir sent the notary for the place of opening of the inheritance by mail is properly executed application for acceptance of inheritance, and then appeared in person to the notary and applied disinheritance, the notary takes into account the statement that was registered first in the Journal of registration of incoming documents.

If the heir by will or by law has died after opening the inheritance and did not have time to accept it, the right to acceptance of his share of the inheritance, except for the right to acceptance of a mandatory share in the inheritance passes to his heirs (hereditary transmission).

In this case, the right to inherit is carried out by the heirs on a general basis during the period remaining for accepting the inheritance. If the remaining term is less than three months, it continues up to three months. Certificate of the right to

inheritance in the order of hereditary transmission issued at the place of opening of inheritance after death the first testator.

The heir under the will has the right to refuse acceptance of inheritance in favor of another heir for by will If the testator sub-appointed an heir, the person in whose name the will is drawn up can refuse acceptance of inheritance only in favor of the person who is designated heir.

The heir by law has the right to refuse acceptance of inheritance in favor of any of the heirs by law regardless of the order, including grandchildren, great-grandchildren, nephews and others.

The heir in whose favor the waiver was made from the right to a share in the inheritance, has the right to refuse its acceptance.

A minor can refuse acceptance inheritance with the consent of the parents (adoptive parents), the guardian, and the body of guardianship and guardianship.

A natural person whose civil capacity is limited, may refuse to accept inheritance by consent the guardian and guardianship authority.

Parents (adoptive parents), and guardian can refuse from accepting an inheritance belonging to a minor, to an incapacitated person, only with the permission of the guardianship authority and care.

Accepting a statement of refusal to accept inheritance, the notary explains the legal rights to the heir consequences of such refusal.

In case of refusal to accept the inheritance by all heirs under the will, as well as in case of non-coverage the right to

inheritance is obtained by the will of the entire inheritance heirs according to law alternately.

In case of initiation of an inheritance case and establishment the composition of the inherited property is provided by the notary to the heir a written reference regarding the list of required documents for registration of inheritance and issuance of a certificate of right for an inheritance, indicating the amount of the commission fee relevant notarial actions, which are determined by the state by a notary or on which an agreement was reached between a private notary and an heir before establishment inheritance case. Such certificate must be signed by a notary and sealed with his seal [10, p. 546; 15, p. 268].

Protection of inherited property is carried out in the interests heirs, receivers, and creditors the testator in order to preserve it until acceptance inheritance by heirs

Protection of inherited property continues until the end the term established for acceptance of inheritance.

Notary public at the place of inheritance opening upon application interested persons or on his initiative uses measures to protect inherited property. Measures regarding protection of the inherited property is used by the specified by a notary public or a notary public at the location of the property, to whom the notary, who conducts the inheritance case, sent authorization.

Statement on taking measures to protect the inheritance of property is registered in the Accounting Book of statements about taking measures regarding the protection of inherited property and establishment of guardianship over the property of a natural person who is recognized as missing, or over the

property of a natural person whose place of residence unknown.

Before taking measures to protect the inheritance property, the notary performs a series of actions that ensure full protection of this property, namely:

- determines the place of opening of inheritance, availability inheritance, its composition, and location;

- checks the existence of an inheritance case according to the data Inheritance register. If the inheritance case is not initiated, the notary registers a statement on taking protection measures inheritance also in the Accounting and Registration Book of inheritance cases, initiates an inheritance case, and registers it in Inheritance register;

- finds out whether preliminary measures have been taken to preservation of inherited property. If there were such measures used – by whom, when, and how (was the room sealed, where are the keys to this room, etc.);

- notifies those heirs, place whose residence or work is known to him. A notary can also, make a challenge to the heirs by public announcements or notices in the press;

- on conducting an inventory of the testator's property by a notary public informs the housing and operating authorities, and in the case necessary – bodies of internal affairs and others interested parties (the creditor);

- if there is reason to believe that the inheritance may be recognized as deceased, the notary must notify the relevant local self-government body;

- takes measures to attract participation in the implementation property description of witnesses (at least two).

They can be witnesses be any disinterested persons with full civil functional capacity [14].

Taking measures to protect inherited property carried out by a notary public after receiving documents that confirm the fact of the testator's death, time and place opening of inheritance, but no later than the next day from the date receipt of such documents.

The description of inherited property is carried out with the participation interested persons (optional) and not less than two witnesses The presence of the executor of the will during the execution description of inherited property is mandatory. In the act of description the following must be indicated: the date and time of drawing up the act of description, a also the surname, first name, and patronymic of the notary, which conducts a description; the name of the state notary office or notary district in which it is registered private notary; date of receipt of the application for application measures for the protection of inherited property (message about the approximate composition of the inherited property) or a mandate of the notary, who initiated the inheritance case, about the adoption measures to protect inherited property; full name, patronymic, address, if necessary – the place of work and position persons participating in the description; full name of the testator, the date of his death, the place of opening of the inheritance and location of the inherited property; information about heirs; information about whether it was sealed premises before the arrival of the notary and by whom, the condition of the seals and seal, if the premises are sealed; description of the hereditary property with a detailed description of each item separately (color, weight, denomination, size, variety, brand,

year of manufacture, for foreign currency – bill, its denomination, value for rate of the National Bank of Ukraine, etc.) and the definition their value, taking into account the percentage of wear [14].

We note that in case of disagreement with the assessment, the heirs has the right to invite an expert specialist or appraiser. Remuneration of specialists (experts, evaluators) carried out by the heirs.

A summary is given on each page of the act of descriptiton of the number of things (subjects) and their value, and after the end of the description is a general summary of the number of things (items) and their value.

The deed of description includes all the property that is in house (apartment) of the deceased.

Statements of neighbors and other persons about belonging to them individual things are entered in the act of description, and interested parties the procedure for applying to the court with a claim is explained to persons on the exclusion of this property from the act of description.

If the description is interrupted or continues for several days, premises each time sealed by a notary public. In the deed of description, an entry is made about the reasons and time of termination of the description and its resumption, and also about the state of seals and seals at the next unsealing of the premises.

At the end of the act of description, the last name, first name, and last name are indicated to the father, the year of birth of the guardian to whom it was transferred to storage of property, name of the document which certifies his identity,

number, date of issue, name the institution that issued the document, its place of residence persons.

The act of description consists of at least three copies All copies are signed by a notary public, by interested persons, witnesses, and security guards, to whom inherited property is transferred for safekeeping. One copy the act of description is issued to the guardian of the inherited property.

A guardian of inherited property can be appointed persons from among the heirs, guardians of the property of persons, recognized as missing or whose whereabouts are unknown unknown, or other persons identified by the heirs. By if there is an executor of the will, he is appointed a guardian all inherited property, both bequeathed and not bequeathed At the will of the heirs by law in the case if there is an executor of the will, the notary can appoint one guardian of the property inherited by law, from among other persons. The notary warns the guard and other persons, to which inherited property was transferred for safekeeping, about criminal liability in case of embezzlement or his concealment, as well as financial responsibility for the damage caused [14].

Explosives and explosives were discovered during the description means, ammunition, weapons (cold, firearms, pneumatic), special means of self-defense, charged lachrymatory and irritating substances are transmitted by a notary according to a separate description to the internal affairs body affairs If while taking protective measures monetary sums (valuable papers) left after the deceased, they are entered to the relevant accounts for recording the notary's deposit amounts or to the banking institution, which is issued in question receipt. The receipt is sewn to the heirloom cases [14].

If during the description gold, platinum, silver, metals of the iridium-platinum group in any form, foreign currency and expressed in foreign currency or monetary metals, payment documents, silver products, monetary metals, precious stones, and also precious stones and pearls, they are surrendered to the bank institutions for storage according to a separate descriptt-ion.

Before transferring the specified values to storage at a bank institution, the notary registers them in the Book accountting of values when taking measures for protection inherited property.

Orders, medals, badges, as well as documents about awards in the presence of heirs remain in the testator's family. With the consent of the heirs, state awards may be transferred on a temporary or permanent basis storage for museums. State awards are handed out to museums based on the decision of the Commission of State Awards and heraldry under the President of Ukraine, if available the relevant request of the museum institution. Transferred to museums for permanent storage of state awards they are not returned to the heirs of the deceased. If in the absence of heirs, state awards and documents about awards are transferred to the state for safekeeping (Article 18 of the Law of Ukraine "On State Awards").

Valuable manuscripts, literary works, letters, etc., which have historical and scientific significance, are included in deed of inventory and are transferred to the heirs for safekeeping. If there are no heirs, the notary transfers the documents to storage according to a separate description from the relevant organizations (institute, museum, etc.) under the applicable procedure legislation When discovered as part of the inherited property

objects that are on the state register as monuments of history and culture, the notary informs about it relevant authorities for the protection of historical monuments and cultures [14].

Savings books mortgaged on things of the testator, that are in a pawnshop, etc., are transferred to storage to the heirs, and if there are no heirs, they are stored in notary public.

If during the description of the inherited property, things that have no value due to wear and tear, a notary with the consent of the heirs or a financial body, if the description is carried out without the participation of the heirs, it does not include to the act of description of such things, and according to a separate description transfers them for destruction or to the procurement base of waste raw materials.

If products are found among the inherited property food, the notary transfers them to the heirs. If the description is carried out without the participation of heirs, food products long-term storage is transferred relevant organizations for implementation. Transmission is carried out according to a separate act, which signs, except notary public and witnesses, heir or representative organizations to which food products are transferred.

If measures are taken to protect inherited property impossible (heirs or other persons who lived with by the testator, they object to the description, they do not present it property for inventory, property exported, etc.), the notary makes act and informs interested persons about it, and if necessary – financial authority or prosecutor.

If while taking protective measures of inherited property, it turns out that there is a part of the inheritance property that requires the maintenance, care, and care of others actual and legal actions to maintain it in in good standing, a notary in the

absence of heirs or the executor of the will be based on the statement of the interested party person concludes an inheritance management contract with this person a person An inheritance management contract is concluded by a notary in compliance with the requirements of the second part of Article 212 Civil Code of Ukraine.

The text of the contract is presented without application special forms of notarial documents following by the act of description of inherited property, which is inalienable part of the contract (the list of this property can to be set out in the text of the contract).

The inheritance management contract is not registered in register for the registration of notarial acts. Information about the conclusion of the contract on inheritance management is entered to the Accounting Book of contracts for inheritance management. At conclusion of the contract, the notary must verify in that this property was the property of the testator on the moment of the opening of the inheritance, which is mentioned in the text contract concerning the details of the relevant party document (if available).

In case of submission to the notary at the place of opening of the inheritance of the application for the acceptance of the inheritance by a notary public informs the person with whom the management contract is concluded inheritance, on the termination of the contract. If in the absence of heirs by law and by will, removing them from the right to inheritance, rejection inheritance by none of the heirs, as well as renunciation of it acceptance of the concluded contract on inheritance management valid until the court adopts a decision on the recognition of inheritance dead.

If the notary receives a court decision on exclusion of property from the act of description of the inherited property on a special inscription is made to this act, in which details of this decision, based on which are indicated the property was removed from the act of description, the list of those removed subjects The inscription is sealed with a signature and seal notary public A copy of the court decision is attached to the materials inheritance case.

Protection of inherited property continues until acceptance inheritance by the heirs, and if it is not accepted – to expiration of the period established by the civil legislation of Ukraine for acceptance of inheritance. Protection of inherited property can continue after the escape six months from the day of the opening of inheritance, if before the notary will receive an application for consent to the acceptance of the inheritance from persons for whom the right of inheritance arises in the case non-acceptance of inheritance by other heirs, based on part three of Article 1270 of the Civil Code of Ukraine [8] and if before the expiration of the prescribed by law six-month period for accepting the inheritance less than three months left.

Measures for the protection of inherited property shall be terminated the notary who used them. If the place of opening of inheritance and the place of taking measures to protect inherited property is different, on termination of protection of inherited property in advance the notary at the place of opening of inheritance is notified. On the termination of protection of inherited property, a notary for the place of opening of inheritance is notified in advance heirs and executors of the will [14].

With the cessation of measures to protect inherited property the powers of the executor of the will continue until

the complete implementation of the will of the testator, which is expressed in the will.

3.3.1. Theoretical and legal principles of certification wills

According to Article 1218 of the Civil Code of Ukraine (hereinafter Central Committee) inheritance in Ukraine is carried out as by law as well as by will [8].

Before considering the issue of issuing a certificate for inheritance by will, we consider it expedient to stop on the procedure of certification of wills.

The concept of a will as a personal arrangement made by a natural person in case of his/her death is given in Article 1233 of the Civil Code of Ukraine.

Thus, a will is a personal arrangement made by a natural person in case of his/her death, which is executed in writing with indication of the place and time of its construction and is certified by a notary or specially authorized officials. Natural persons in full civil capacity have the right to make a will, and making a will through a representative is not permitted. That is, the testator implements the right to dispose of property in case of death.

The list of subjects who have the power to certify a will is established in part three of Article 1247 of the Civil Code. In particular, a will is certified by a notary or other officials specified in Articles 1251–1252 of this Code.

Having analyzed the norms of Articles 1251–1252 of the Civil Code of Ukraine, Articles 1, 37, 38, 40 of the Law of Ukraine "On Notariate", we came to the conclusion that Article 1247 of the Civil Code does not include to the circle of persons who have the right to certify wills – officials of consular

institutions of Ukraine, and in cases stipulated by the current legislation, diplomatic missions.

Bodies of notariate and quasi-notariate have the right to make and certify wills. Bodies of notariate include public and private notaries, and bodies of quasi-notariate include officials of local governments, other officials authorized to carry out certain types of notarial acts in accordance with the current legislation [3, p. 797].

The peculiarity of the will lies in the fact that it contains the wish of the person during his/her lifetime, but the direct implementation of this wish is possible under an indispensable condition – the death of this person. This circumstance causes special requirements to the form and content of the will, because after the death of the testator, nobody has the ability to specify or clarify his/her intentions [16, p. 73].

As O. Kalinichenko affirms, "form" and "kind" of the will are not the same categories. We consider the form of the will as a way of expression of will, which is the procedure of certification of a specified transaction by the authorized public individuals, official persons. The specified procedure is determined by the subject of certification of the will and certain order of committing such actions. A kind of the will describes the content of this transaction (a will with condition, a will with substitution of heir, a will with institution of executor, etc.) or subject composition (a personal will; a marital will), and it does not concern the procedure of certification. We support the opinion of the scientist that we can classify wills according to two criteria: depending on the subject of certification and the procedure of certification. Depending on the subject of certification, wills can be classified into the following groups:

notarial and non-notarial that equal to notarial form [17, p. 112]. At the same time, it is advisable to consider "non-notarial wills" as quasi-notarial because this concept is much wider than wills that equal to notarial.

Depending on the procedure of certification, wills are divided into three groups: an ordinary will; a will in the presence of witnesses; a secret will.

An ordinary will is certificated according to the rules of Article 1247 of the Civil Code of Ukraine. It is executed in writing with indication of the place and time of its construction. The testator has the right to include either the entire inheritance, or a part thereof in the will and to institute one or several natural persons or other participants of civil relations, the territorial community or the state as his/her heirs.

A will in the presence of witnesses is certificated in accordance with Article 1253 of the Civil Code of Ukraine.

The legislator establishes two types of certification of wills in the presence of witnesses. The first type – it takes place at the request of the testator, and the second – at the obligatory presence of witnesses. A will in the presence of witnesses is regulated by Articles 1248, 1252 of the Civil Code of Ukraine.

A secret will is certificated only by public and private notaries. In accordance with Article 1249 of the Civil Code of Ukraine, a secret will is the will certified by the notary without reading its contents. The person who constructed the secret will should submit it in a closed envelope to the notary. The envelope must have the testator's signature. The notary makes a notarial record, attaches a seal on the envelope, and puts it in another envelope and seals in the testator's presence.

We agree with the opinion of O. Kalinichenko that the main goal of the institution of the secret will is to protect the secrecy of the will [17, p. 112].

Ukrainian scientists S. Fursa and Ye. Fursa rightly draw the analogy between certification of a secret will and such a notarial act as acceptance of the document for storage, according to which the document can be taken by the notary without getting acquainted with its contents [18, p. 66].

In article 1243 of the Civil Code the legislator provides that a married couple may make a joint will with regard to the property jointly owned thereby.

We support the position of N. Shama, as a joint will is a variety of a will, and hence the unilateral transaction in which one side is represented by several persons, namely a married couple, then the possibility of making it is caused by the presence of two conditions simultaneously:

1) the marriage status of persons who wish to make a joint will; and

2) the presence of full legal capacity required for making a will in each of the spouses [19, p. 179].

In our opinion, the specificity of this will is that:

- to devise only the property jointly owned,

- the person that determined by agreement between the spouses should get the hereditary property,

- the spouse who survived continues to live in a normal property environment [20, p. 13].

It is worth to emphasize, that in case of death of one of the spouses, a share in joint ownership belonging to a deceased spouse passes to the survivor. The legislator established that the spouse who survived does not have the right to alienate the

property that was the joint property of the spouses and the object of the joint will.

Heirs of the marital will are persons instituted in the will; however, they can take possession of the property only after the death of both spouses.

In accordance with part three of Article 1243 of the Civil Code, in the lifetime of both spouses, either of them has the right to refuse from the joint will. The refusal from the joint will should be notarized. However, the application cannot cancel a joint marital will. In our opinion, in this case it is necessary to use a mutual cancellation of previously joint will made by both members of the couple. In practice, a marital will is not wide spread. In case of death of one of the spouses, the latter (who remained alive and is not a person of advanced age), mainly, changes his/her mind of the future heir. Therefore, most of notaries offer each of the spouses to make a separate will for a part of the property earned during the time of the registered marriage.

We agree with N. Vasylyna that after dissolution of marriage the former spouses do not lose the opportunity to leave the right to preserve their will for the property jointly owned [21, p. 111].

Certification of wills by notaries and authorized public individuals and official persons takes place in accordance with the current legislation, including the civil and notarial legislation.

In our opinion, the Ukrainian modern legislation on notariate is a set of normative and legal acts that are accepted by the authorized public bodies, in which there are rules regulating the organization and competence of notarial bodies

of the state, procedural order of making notarial acts, as well as committing other actions, different from notarial, with the aim of providing them with a legal reliability [22, p. 363, 376].

The acts of other branches of law governing the separate questions of organization of notariate and exercise of notarial activities include, for example, the Civil Code of Ukraine, the Family Code of Ukraine, the Land Code of Ukraine, the Tax Code of Ukraine and others [23, p. 315].

Having made the analysis of notarial activities of independent Ukraine, we came to a conclusion "about the need for separation of its three parts, namely:

the legislation regulating the general principles for the creation and activities of notariate and quasi-notariate;

the legislation regulating the procedure of notarial acts;

the legislation regulating the commitment of other actions, different from notarial, with the aim of providing them with a legal reliability [22, p. 367].

While certificating wills notaries, public individuals, official persons, consular officials must comply with the Constitution of Ukraine, the Civil, Family, Land Code of Ukraine, the Law of Ukraine "On Notariate", the Consular Statute of Ukraine, the Procedure of certifying wills and powers of attorney that are equal to notarial, as well as other normative and legal acts.

It should be emphasized that the legislation has determined certain public individuals, official persons who have the right to do it in the process of certifying wills that are equal to notarial.

Analyzing the norms of Article 1252 of the Civil Code of Ukraine, as well as Article 40 of the Law of Ukraine "On

Notariate", we define subjects of certifying wills and powers of attorney that are equal to notarial.

In accordance with Articles 1251–1252 of the Civil Code of Ukraine, Articles 1, 37, 38, 40 of the Law of Ukraine "On Notariate" the subjects who have the right to certify wills are:

- public and private notaries (Article 1248 of the Civil Code of Ukraine "Certification of Wills by Notary", Article 36 of the Law of Ukraine "On Notariate");

- authorized officials of the relevant local government (Article 1251 of the Civil Code of Ukraine "Certification of Wills by Local Government Officials", Article 37 of the Law of Ukraine "On Notariate");

- other public individuals and official persons (Article 1252 of the Civil Code of Ukraine "Certification of Wills by Other Officials", Article 40 of the Law of Ukraine "On Notariate"), namely:

1) a chief medical officer, or a deputy thereof, or a doctor on duty of the hospital, or other in-patient health care institution, or the director or chief medical officer of the old people's home or invalids' asylum;

2) a person on board a sea or river vessel under the flag of Ukraine;

3) a person participating in a search party or expedition;

4) the commander (head) of the unit, detachment, institution, military training institution;

5) a prison governor;

6) the head of the trial center.

- officials of the consular institutions of Ukraine, and in cases stipulated by law, diplomatic representatives (Article 38 of the Law of Ukraine "On Notariate").

Only public notaries who work at state notary's offices have the right to certify wills. State notaries of public notary archives are deprived of such rights. They issue only duplicates of wills that are in their possession.

In accordance with Article 9 of the Law of Ukraine "On Notariate" "Restrictions of notarial acts", a notary and an official of local self-government, who commit notarial acts, have no right to perform notarial acts in their name and on behalf of their name, in the name of and on behalf of their husband or their wife, his (her) and their relatives (parents, children, grandchildren, grandfather, grandmother, brothers, sisters), and also in the name of and on behalf of the employees of the notary's office, workers who are in labor relations with a notary public, or staff members of the executive committee. Officials of local government are also not entitled to perform notarial acts in the name of and on behalf of this executive committee. In these cases, notarial acts are committed at any other public notary's office, at the private notary or at the executive committee of another village, township, and city Council of people's deputies.

You should pay attention to the fact that in the norms the legislator has "forgotten" about notarial acts committed by authorized consular officials. Restrictions of notarial acts for specified persons are regulated by Article 49 of the Consular Statute of Ukraine, approved by the Decree of the President of Ukraine dated April 2, 1994, № 127/94. The consul cannot perform notarial acts, including wills, in his name and on behalf of his name, in the name and on behalf of her (his) wife (husband), her (his) and their lineal relatives. That is, the

consul can certify a will on behalf of the employees of the consulate, which is not valid as for us.

Public individuals, official persons listed in Article 40 of the Law of Ukraine "On Notariate" that certify the wills equal to notarial, are not entitled to certify wills in their name and on behalf of their name, as well as in the name of and on behalf of his wife or her husband. Specified public individuals, official persons have also no right to perform wills on behalf of their sons and daughters, mother, father, grandchildren, grandfather, grandmother, including their brothers or sisters.

The law states that in this case wills and power of attorney are not valid.

The legislator refers to the duties of a notary (in accordance with Article 5 of the Law of Ukraine "On Notariate") to keep confidential information obtained by him/her in connection with making notarial acts. Swearing the oath a person who first is engaged in notarial activities takes his oath to keep professional secrets.

The question of keeping the notary's secrecy has its historical experience. For example, the question of the secrecy of notarial acts was settled by Austrian Notarial Regulations dated July 25, 1871. In accordance with paragraph 37 of the Regulations, the duties of a notary public included not only his keeping the secrecy of notarial acts before the parties, but also supervising over the observance of secrecy by his assistants. In particular, the notary guaranteed that all information of the notarial act that took place in his presence, actually took place in his presence in that way; the notary was responsible for all inexactitudes, even if they had been committed due to an error.

The indemnification did not abolish a penalty of dignity for non-performing notary's duties.

At the time of independence of Ukraine, the question of keeping the secrecy of notarial acts has been attracting the attention of legislators. Article 8 of the Law of Ukraine "On Notariate" dated September 2, 1993 in the original edition was called "The observance of secrecy of committed notarial acts" and it did not contain the concept of notary's secrecy. The article has undergone numerous changes, additions and redactions of individual parts and as a whole. Only the Law of Ukraine "On amendments to the Law of Ukraine "On Notariate" dated October 1, 2008, № 614-VI issued the new wording of Article 8 of the Law, which changed the title of the article and at the legislative level the definition of notarial secrecy was given. Notarial secrecy is the totality of the information obtained during committing the notarial act or addressing the interested party to a notary, including the information about property, personal property and non-property rights and obligations, etc.

Notarial secrecy needs to be treated with the two sides. On the one hand, it is the secrecy of a person addressing to making the notarial act (the motive and the fact of addressing to the notary; providing with documents; achieving the result after addressing to the notary; information about the private life of a person, etc.), on the other hand – it is the secrecy of the notary as a specialist (information about advice, consultations, etc.). These two characteristics of the concept of the secrecy of notarial acts are important. We support the opinion of S. Fursa and Ya. Panteliienko that both concepts of the secrecy of notarial acts must be legislatively fixed [23, p. 87].

Notarial secrecy must be kept by:

- notaries who work at state notary's offices, state notarial archives or are engaged in private practice as a notary;
- officials of the local authorities who are authorized to perform notarial acts;
- officials of consular institutions who commit notarial acts;
- officials who in accordance with Articles 40 and 40-1 of the Law of Ukraine "On Notariate" commit notarial acts;
- persons who got to know about committing notarial acts in connection with performance of their official duties or work; persons involved in notarial acts as witnesses and other persons who got to know information that was the subject of notarial secrecy. Such persons also include: assistant, consultant, secretary, clerk of a notary, even if their activity is limited to providing legal assistance or familiarization with documents and the notarial act was not committed.

We agree with M. Diakovych that "actually the secrecy of notarial activities, including notarial acts, must ensure inviolability of private life of citizens who apply to a notary. Sometimes a notary is compared with the priest, to whom a person can confess and trust him with all his/her cherished sides of life, which should not be spread, because it is a seal of confession. Similarly, the notary is responsible for divulging of secrets of notarial acts. The person who trusts the notary with his/her secrets, respectively, should have certainty that all information discussed with the notary will never become the subject of public discussion" [24, p. 73].

Persons that are guilty of violating the notarial secrecy will bear responsibility in order established by law.

There is the reason in views of S. Leskiv and A. Chubenko that the secrecy of the will consists in the following: before opening of inheritance persons signing the will for the testator are deprived of the right to divulge secret information about 1) the fact of making the will; 2) the contents of the will; 3) the cancellation or modification of the will [25, p. 158].

In accordance with the judicial practice, during certification of the will the fact of violation of the secrecy of the will does not entail declaring it invalid, but only in the presence of other violations of law. This is also confirmed by the explanations of the Plenum of the Supreme Court indicated in paragraph 8 of resolution № 2 (v0002700-92) dated January 31, 1992 "On judicial practice in cases involving complaints about notarial acts or refusal of their committing" where a notarial act cannot be cancelled only for reasons of underexposed secrets of its committing because the legislation on notariate does not provide such consequences.

We agree with D. Zhuravlov, O. Korotiuk and K. Chyzhmar that the subject of the notarial secret is protected by law as information with restricted access, namely – secret information. The secret information includes information not only about the person who applied for taking notarial acts, but also information about the provided advice, etc. [26, p. 52].

Notaries`, public individuals, official persons who certificated wills, can give information or papers about their certification to individuals who concluded those documents or to others by their power of attorney. If persons, on behalf of whom the documents had been concluded, died, then the information or papers are issued to their heirs. However, under the law, public individuals, official persons who certificated

wills, can give papers about their certification within ten working days upon reasonable written request to the Court, the Prosecutor's Office, the bodies of the pre-trial investigation, operative units in connection with criminal proceedings, civil, economic, administrative cases, administrative offences that are under the proceedings of specified bodies, with the obligatory indication of the numbers (criminal proceedings) and affixing the stamp seal of the authorized body.

Although the principle of freedom of the will gives a wide scope of legal authorities for post-mortuary disposition to the testator, but at the same time it limits his/her right to deprive the rights of inheritance of the compulsory heirs [27, p. 10].

The testator has no right to deprive the rights to inheritance of those heirs who are legally entitled to a hereditary portion of the right to succession. According to Yu. Zaika, such persons should be called forced heirs [28, p. 136].

It should be noted that the right to hereditary portion of inheritance was existed in the Roman law, which was a quarter of a legal portion, i. e., the portion that the heir would have received in case of legal succession (compulsory portion).

According to Ye. Fursa, the right to hereditary portion – it is a redistribution of inheritance by the state taking into account the interests of the most vulnerable sections of citizens in case of no stating them in the will or violation of their rights within the contents of the will. This position is understandable, and this right of the state is no doubt today, because some people need extra protection of their interests. The author also hopes that in future our country will provide such persons with aid at its expense [29, p. 75].

Only persons determined in part 1 of Article 1241 of the Civil Code of Ukraine have the right to hereditary portion of inheritance. Such persons include:

1) the testator's juvenile children, grown-up incapable children (including the adopted),

2) incapable widow (widower),

3) irrespective of the will, incapable parents inherit half of the shares that would belong to each of them in case of legal succession (compulsory portion).

The specified list is not subject to the extended interpretation, i.e. it is exhaustive.

In this case the right to hereditary portion of inheritance does not depend on the consent of the other heirs, the volition of the testator; and it is not connected with joint residence of the testator and persons who have the right to the compulsory portion. The right to hereditary portion of inheritance has personal nature and may not move in the order of hereditary transmission [30, p. 240].

Thus, a will is a unilateral transaction made by a natural person in case of his/her death, which is executed in writing with indication of the place and time of its construction, personally signed by the testator and certified by a notary or specially authorized officials.

Notarization of wills takes a special place among the notarial acts, especially in state notary's offices and in the bodies of local self-government.

The advantages of the notarial form of the transaction are that it provides a greater degree of legitimacy and credibility of its contents, clarity and certainty regarding the fact of committing the agreement. To make sure that the transaction

complies with the law, the notary defines the essence of the respective relations, explains their legal qualifications, checks the capability of the natural person, as well as its actual will. In addition, the notary has appropriate education and work experience, which greatly reduces the possibility of declaring the will null and void in accordance with the court decision after opening of the inheritance [3, p. 110].

Before certification of the will, the notary, the authorized public individuals, official persons are obliged to explain the testator's rights:

- irrespective of any family relations, the testator may institute one or several natural persons or other participants of civil relations as his/her heirs;

- in case of making the will in favor of several persons, the testator institutes the hereditary portion of his/her property to each of the heirs;

- the testator may leave all his/her property or a share of it, in particular, the usual household and private items, as well as leave the property which would become his/her property in future and which would be at the testator's disposal at the day of his/her death;

- without specifying the reasons, the testator may divest any of the legal heirs of the right to succession;

- the testator has the right to make testamentary renunciation in the will, or legate;

- the testator has the right to modify or cancel the will at any time and to make a new will. A later will cancels the previous will fully or in the part where it contradicts the latter;

- the testator has the right to appoint a testamentary executor (only by his/her consent), who acts as the guarantor of the implementation of the testator's will.

According to the Regulations on Hereditary Register, the notary, an official of local self-government, other public individuals, official persons must specify the date and place of birth of the testator in the text of the will.

Persons that cannot make a will are:

- adult persons recognized incapable in accordance with the court decision (for example, persons who are not capable to realize the significance of their actions and (or) control them due to chronic, stable psychological disorder);

- adult persons in limited civil capacity, in accordance with the court decision as a result of the abuse of alcohol, narcotic, toxic substances, etc. [20, p. 10].

First of all, the testator must be legally capable at the moment of making the will. The further loss of capacity by the testator after making the will is not the basis of declaring the will null and void. However, in the case of making the will by the incapable person, it (the will) will be always null and void.

Irrespective of any family relations, the testator may institute one or several natural persons or other participants of civil relations as his/her heirs. Without specifying the reasons, the testator may divest any of the legal heirs of the right to succession.

We agree with the opinion of M. Matsehora that while giving the right to certify the wills to public individuals, official persons – the legislator follows the humane principle: to give a chance to express a will of the person [31, p. 148].

S. Sibilova states that the essence of the freedom of the will consists in the right of the testator to act freely, but it is necessary to point out two circumstances. The essence of the first circumstance is the testator, making the will, determines the fate of his/her property in case of death, i. e. carries out the powers that belong to him/her as the owner of the property. In accordance with part 1 of Article 319 of the Civil Code of Ukraine, the owner possesses, uses and disposes of his/her property at his/her own discretion. The essence of the second circumstance is the hereditary relationship is one of the kinds of civil relations. Not only the participants of hereditary relationships have the right to act freely, but the participants of all other civil relations have it too and it is based on the principle of autonomy of the will of each of them. Since unilateral transactions may be regulated not only by the general norms, but also the special norms that apply to certain unilateral transactions, Article 3 of the Civil Code of Ukraine should be provided with the warning that freedom of the unilateral transaction exists only in cases if other is not established by law governing a specific kind of the unilateral transaction [32, p. 135–140].

We consider it is necessary to pay a special attention to a notarial procedure of certification of wills in the presence of witnesses.

Only persons in full civil capacity may be witnesses. The following persons cannot be witnesses: notaries or other officials certifying the will; testamentary heirs; family members and close relatives of testamentary heirs; and persons incapable of reading and signing the will due to illness or physical disability.

O. Kukhariev made a properly confirmed conclusion that witnesses involved in the procedure of certification of wills should testify:

a) at the moment of testamentation and certification of the will, the testator understood the significance of his/her actions and could control them (this fact can be established only by witnesses visually);

b) the testator expressed his/her true will, and mental or physical influence was not applied to him/her;

c) the testator personally signed the will, or by the testator's request the will was signed by another person in his/her presence [33, p. 109].

Wills in the presence of witnesses should contain the witnesses' personal data: surname, name and patronymic name of the witness, the date of his/her birth, the place of residence, and requisites of the passport or other document based on which the identity of the witness was established.

The witnesses in whose presence the will is certified should read it aloud and put their signatures thereon.

The witness is responsible for harm caused by him/her because of divulging of information, which became known in connection with his/her participation in committing the statutory notarial act.

We share the thought of S. Fursa about expediency of the creation of the State Register of Persons, limited in capacity and incapable, herewith notaries and other public individuals, official persons who use the specified information in their activities should have free access to the specified register [34, p. 320].

A similar mechanism is to greatly simplify the procedure of checking the capacity of natural persons, and therefore the certification of wills, reduce the number of refusal to commit the notarial acts [35, p. 64].

Natural persons in full civil capacity have the right to make a will. The will is constructed by one natural person (excepting the marital will). Making the will through a representative is not permitted. The will is executed in writing with indication of the place and time of its construction, the date and place of birth of the testator. The will must be personally signed by the testator.

The testator may write the will manually or using the common technical devices.

By the testator's request, public individuals, official persons may construct the will at the testator's dictation manually or using the common technical devices. In this case, the will shall be read aloud and signed by the testator.

If a testator cannot read or sign the will because of physical incapability, the will is certified in presence of two witnesses and another natural person can sign the will.

To certify the will, the testator is not required to submit documents confirming his/her right to hereditary property. Property may be testate only for ownership. The testator may impose on a heir inheriting a house, apartment or other movable or immovable property an obligation to convey the right to use the said pecuniary right or property (some part of it) to a third person. The right to use a house, apartment or other movable or immovable property shall remain valid in case of consequent change of the owner thereof. The text of the will is constructed so that the disposal of the testator would not

excite misunderstanding or doubts at the time of executing the inheritance.

The notary, authorized public individuals, official persons have the right to testify the will with condition. For the creation of the right to succession, the testator may envisage a certain condition for the person specified in the will either related or not related to this person's behavior (existence of other heirs, residence at a certain place, birth of a child, education, etc.) The condition established in the will should exist at the moment of opening of the inheritance. A condition established in the will shall be void if it contradicts law or moral principles of the society.

If there is a situation when the person-testator envisages the condition of observing the moral principles of the society, therefore it is necessary to apply to the provisions of the Law of Ukraine "On Protection of Public Morality", in which public morality is revealed as a set of rules of behavior and ethical standards based on the human ideas of kindness, honor, dignity, as well as on the cultural and spiritual values. We agree with N. Fomichova that the will with condition has already existed for a long time, but there is the problem of its legislative regulation now [36, p. 259].

The testator may oblige the heir to take certain actions of non-pecuniary nature, particularly with regard to disposal of personal documents and to take certain actions aimed at the achievement of socially beneficial goals etc.

During certification of the will the notary, authorized public individuals, official persons should explain the contents of Article 1241 of the Civil Code of Ukraine concerning the right to hereditary portion to the testator and the contents of

Article 1307 of the Civil Code of Ukraine concerning the void will made by the alienator with regard to the property specified in the succession agreement.

In case of certification of the will on deposit, which is stored in the Bank (financial institution), the text of the will specifies the number of the account, the full name and location of the Bank (financial institution), which kept the deposit.

The will is constructed and certified in duplicate. It is not allowed the presence of the natural person in favor of whom the property is instituted; the natural person cannot be present during the signing of the will, as well as sign it instead of the testator.

The notary, authorized public individuals, official persons certifying the will cannot sign the will instead of the testator.

The captain of the sea or river vessel under the flag of Ukraine should transmit one copy of the will certified by him to the chief of the Ukrainian port or the consul of Ukraine in a foreign port for transferring it to the state notarial archive at the permanent place of residence of the testator.

If the testator had no permanent place of residence in Ukraine or the place of his/her residence is unknown, the will is transmitted to the Kiev State Notarial Archive.

It is worth noting, the information that certified wills are liable entering in the Succession register was introduced by the order of the Ministry of Justice of Ukraine dated October 17, 2000, № 51/5 "On Succession Register". According to the fifth provision of the order, all wills, constructed and certified, modified or cancelled per the procedure established by the law, started succession cases and issued certificates of inheritance

from December 01, 2000 are subject to mandatory registration in the Succession register [37, p. 78].

As of 2018, wills are subject to mandatory state registration in the Succession register per the procedure established by Regulations on Succession register approved by the order of Ministry of Justice of Ukraine dated July 07, 2011 № 1810/5, registered in the Ministry of Justice of Ukraine on July 11, 2011 № 831/19569.

In particular, in accordance with paragraph 2.1.1. of the Regulations, the registrar enters the following information about the testator (testators, in case of certification of a joint will of a married couple) in the Succession register: surnames and names, patronymic names (if there are) of the testator (testators); the registration number of the discount card of the taxpayer in accordance with the State register of natural persons – taxpayers or the reason of its absence; the place of residence or location; the date and place (if it is unknown-the name of the country) of birth. Therefore, the listed information should be necessarily mentioned in the text of the will.

Entering the information about wills in the Succession register, which are certified by the authorized public individuals, official persons, indicated in Article 1252 of the Civil Code of Ukraine and part 1 of Article 40 of the Law of Ukraine "On Notariate", is carried out by state notarial archives in case of accepting a copy of the will in storage.

It is appropriate to note that the secret wills are not widely spread in Ukraine. In particular, there is a problem with the announcement of the secret will. Notaries-practical workers offer to solve the problem in the following way. While bearing the testator's signature on the secret wills the notary offers to

make a list of the persons whom the notary would invite during the announcement of the will.

Information about the presence of the constructed will, with the exception of the testator, is issued only after the death of the testator according to a submission of a certificate (notarized copy) of his/her death.

Analyzing the question of the certification of wills by a captain of the ship A. Nahorna draws attention to the fact that the captain has no legal education and has a little practice of certifying the wills, it can lead to issues unregulated by the legislator [38, p. 180].

Examining the wills certified by heads of a search party or expedition A. Nahorna offers "a simplified procedure of the certification of wills during expeditions" [39, p. 180].

When developing the idea of the certification of wills by bodies of quasi-notariate it is necessary to emphasize that notarial acts in local governments are committed only by persons who can perform notarial acts based on the decision of the Executive Committee. Deciding the question of the authority for committing notarial acts and acts that equal to notarial, the body of local government takes into account the presence of legal education, practical skills for notarial acts, etc. As a rule, in the decisions you should provide for another person who will perform notarial acts in the absence of a primary worker (vacation, illness, business trip, etc.).

This practice should be applied to public individuals, official persons listed in Articles 40, 40-1 of the Law of Ukraine "On Notariate". Thus, it is necessary to make the appropriate changes to the Law of Ukraine "On Notariate" and the Civil Code of Ukraine.

We agree with the opinion of most researchers, including M. Matsehora, that the lack of legal qualification of public individuals, official persons entitled to certify causes insufficient explanation of the testator's rights and obligations, even breaking the form of the will [31, p. 148].

As public individuals, official persons certifying the wills that equal to notarial do not possess the necessary knowledge of current legislation regarding the certification of wills, in particular in the field of civil, family, land law, it causes insufficient explanation of the testator's rights and obligations, i.e. restricts the right of the latter to objective declaration of intention during construction of wills or powers of attorney.

S. Leskiv and A. Chubenko prove that at present there is no effective mechanism for the protection of the testator's rights from different violations and therefore there is an objective need for amending current legislative acts [25, p. 159].

The procedure of declaring the will null and void is established in Article 1257 of the Civil Code of Ukraine.

According to S. Sibilova, the will can be neither void nor feigned [40, p. 210]. The legislator proves that only the court may declare a will null and void if it establishes that the testator's will was not free or did not conform to his/her intention.

Consequences of invalidity of a separate arrangement in the will and the will in general are provided by norms fixed, respectively, in parts 3 and 4 of Article 1257 of the Civil Code of Ukraine. These norms are special. There is a textual discrepancy between the general rule fixed in Article 217 of the Civil Code of Ukraine concerning legal consequences of invalidity of separate parts of transaction and rules fixed in Article 1257 of the Civil Code of Ukraine concerning invalidity of a sepa-

rate arrangement in the will. In accordance with the general norm, invalidity of a separate part of a transaction shall not entail invalidity of its other parts or of the transaction as a whole, where it might be assumed that the transaction could ave also been concluded without inclusion of the invalid part therein. In accordance with the special norm, declaring null and void of a separate arrangement in the will shall not entail declaring its other parts null and void without any assumptions [41, p. 279].

In our opinion, one of the most important reasons of declaring the will null and void is certification of the will that equal to notarial by public individuals and official persons without the presence of two witnesses.

Declaring the will null and void or declaring it invalid in accordance with the court decision is one of the types of protection of hereditary rights and interests. There are a number of discursive and unsolved issues of financial and procedural nature that complicate the implementation of the hereditary rights and interests of heirs. The most common grounds for declaring the will null and void are the presence of a defect of will (desire), which is checked by conducting the death forensic psychiatric examination. The grounds for declaring the will invalid are not limited only by Article 1287 of the Civil Code of Ukraine, but other norms of the civil legislation concerning the invalidity of the transaction are also subject to the application. In order to provide hereditary rights and interests by the notary and to avoid errors during construction of the will, which can lead to the possibility of recourse to the court for the purpose of declaring the will invalid, we agree with the authoritative opinion of Ukrainian scientists A. Chubenko and

S. Leskiv to exclude Article 1245 of the Civil Code of Ukraine concerning the secret will [42, p. 167].

3.3.2. Procedure for issuing certificates of inheritance under a will

When registering an inheritance under a Will, the notary must provide a legal assessment of the will, check its registration in the inheritance register and its validity at the time of the testator's death. If the will provided by the heir does not meet the requirements of the law, the notary refuses to accept it.

If several testator's wills are provided for registration of inheritance, the notary must provide them with a legal assessment, guided by the provisions of Article 1254 of the Civil Code of Ukraine [8].

If the Will is declared invalid by the court, the validity of the previous Will is not restored, except in cases provided for in articles 225 and 231 of the Civil Code of Ukraine [8].

If the Will is declared invalid, inheritance takes place according to the law.

When issuing a certificate of inheritance under a Will, the notary must find out whether there are heirs who are entitled to a mandatory share in the inheritance, the list of which is given in Article 1241 of the Civil Code of Ukraine [8].

The circle of heirs entitled to a mandatory share in the inheritance is determined on the day of opening the inheritance.

The testator may not deprive persons who are entitled to a mandatory share in the inheritance of the right to inherit. Such persons, according to Yu. Oh. Stutters should be called mandatory heirs [28, p. 136].

It is worth noting that the right to a mandatory share in the inheritance existed in Roman law, and was determined by a quarter of the legal share, that is, the share that the heir would receive in the case of inheritance by law.

As it claims to be. And. Fursa, the right to a mandatory share – this is the redistribution of inheritance by the state, taking into account the interests of the most vulnerable segments of citizens in case of failure to indicate them in the will or violation of their rights within the content of the will. This provision is understandable, and such a right of the state is not in doubt today, since some segments of the population need additional protection of their interests. Also, the specified author hopes that in the future our state will provide such persons with assistance at its own expense account [29, p. 75].

Only persons defined in part one of Article 1241 of the Civil Code of Ukraine [8] (as of 2003) have the right to a mandatory share in the inheritance.

These persons include:

1) minors, minors, and adult disabled children of the testator (including adopted children);

2) disabled widow (widower);

3) disabled parents who inherit, regardless of the content of the Will, half of the share that would belong to each of them in the case of inheritance by law.

This list is not subject to extended interpretation, i.e. it is exhaustive.

At the same time, the right to a mandatory share in the inheritance does not depend on the consent of other heirs, the will of the testator and is not related to the cohabitation of the testator and persons entitled to a mandatory share. The right to

a mandatory share in the inheritance is of a personal nature and cannot be transferred in the order of hereditary transmission [43, p. 240].

The notary must explain to the heir who has the right to a mandatory share in the inheritance, his right to receive the proper share of the inheritance.

The Civil Code of Ukraine provides for cases when a person does not have the right to inherit or may be removed from the right to inherit by law by a court decision. Deprivation of the right to inherit also applies to heirs of a mandatory share in the inheritance.

The right to a mandatory share in the inheritance arises from the heir provided for in part one of Article 1241 of the Civil Code of Ukraine [8], in cases where the will contains provisions on removing him from inheritance or this Heir is bequeathed a share of the inheritance that is less than the mandatory share due to him.

The heir may waive the right to a mandatory share in the inheritance by submitting to the notary an application that he is familiar with the content of the will, the content of Article 1241 of the Civil Code of Ukraine has been explained to him, but he does not claim to receive a mandatory share in the inheritance.

When determining the size of the mandatory share, the notary must take into account the first part of Article 1241 of the Civil Code of Ukraine [8], which establishes that the mandatory share in the inheritance is determined regardless of the content of the will in the amount of half of the share that would belong to each of the heirs in the case of inheritance by law. When determining the amount of the mandatory share in the inheritance, the notary takes into account all heirs under the

law who could have been called to inherit if the inheritance procedure had not been changed by the testator. The notary suggests that both the heir under the Will and the heir who has the right to a mandatory share in the inheritance indicate in their applications for acceptance of the inheritance all heirs according to the law [10, p. 552; 15, p. 272].

When determining the size of the mandatory share, all inherited property, both bequeathed and not covered by the will, as well as things of ordinary home environment and everyday life, are taken into account. The inheritance property also includes the right to deposit in a bank (financial institution), regardless of whether the order was made in the will or directly in the bank (financial institution).

If only a part of the inherited property is bequeathed, the mandatory share is determined based on the value of the entire inherited property, but is allocated to the mandatory heir from the share of the inherited property that remained outside the will. If the share of the property that remained undelivered is less than the size of the mandatory share in the inheritance, the mandatory heir receives the missing share from the bequeathed part of the inherited property [10, p. 552; 15, p. 272].

If the heir under the Will is also an heir under the law, the part of the inherited property that remained outside the Will is divided equally between all heirs under the law, as well as the heir specified in the will.

The amount of the mandatory share in the inheritance may be reduced by the court, taking into account the relationship between these heirs and the testator, as well as other circumstances that are of significant importance.

Having determined the amount of the mandatory share, the notary issues to the heir who has the right to a mandatory share in the inheritance, a certificate of the right to inheritance under the law, and to the heir under the Will – a certificate of the right to inheritance under the will.

If the Will indicates the relationship of the heir with the testator, the notary checks the documents confirming the fact of kinship, and at the request of the heirs indicates the relationship in the certificate of inheritance under the will.

After issuing a certificate of inheritance under a Will, the original or duplicate of the will submitted by the heirs (the protocol on declaring a secret will) remains in the inheritance case.

When registering an inheritance under a secret will, the opening of an inheritance case is preceded by the procedure for declaring a secret will [10, p. 553; 15, p. 273].

The testator, in accordance with article 1286 of the Civil Code of Ukraine, may entrust the execution of a will to an individual with full civil legal capacity or to a legal entity that executes the will, regardless of whether this person is the heir.

Execution of a Will is carried out by heirs under a will, except in cases when its execution in full or in a certain part is carried out by the executor of the will.

The executor of a will may be appointed by the testator on the initiative of the heirs, by a notary, or on the basis of a court decision.

Please note that a person can be appointed executor of a will only with his written consent.

The will of the executor of the will to impose on him the obligation to fulfill the will may be indicated in the text of the will itself, which must be evidenced by the personal signature

of the executor of the will, the authenticity of which is certified by a notary, as indicated in the certification inscription made on the will.

Heirs who have accepted the inheritance have the right to choose the executor of the Will from among the heirs or appoint another person as the executor of the will in the following cases:

- non-appointment of the executor of a will by the testator;

- refusal of a person appointed by the testator to fulfill a will;

- removal of the appointed person from the execution of the will.

In the case of appointment of the executor of a will by heirs, the latter must submit appropriate applications, the authenticity of the signature under which is subject to notarization, or a corresponding contract concluded between the heirs and the potential executor, which is notarized and should provide for the scope of actions performed by the executor aimed at fulfilling the will of the testator and his remuneration.

The court appoints the executor of a will if the heirs cannot independently agree on who will fulfill the will of the testator. In this case, the powers of the executor of the Will will be confirmed by a court decision, which must be submitted to the notary for the participation of the executor of the will in performing the relevant notarial actions.

If a Will is drawn up in favor of several persons, the execution of the will may be entrusted to any of them. In this case, the notary is provided with the written consent of these persons to appoint one of them as the executor of the will. If a

Will is made in favor of one person, the execution of the will may be assigned to a person who is not the heir under the will.

The appointment of the executor of a will by a notary is carried out provided that the interests of the heirs require it, in the following cases:

- non-appointment of the executor of a will by the testator;
- refusal of a person appointed by the testator to fulfill a will;
- removal of the appointed person from the execution of the Will [14].

Of particular importance is the appointment of the executor of a will by a notary, in particular in cases where:

- property is bequeathed to minors who do not have parents;
- property is bequeathed to the state or legal entities;
- the property is bequeathed with the condition;
- the will contains a testamentary refusal or assignment of other duties to the heir (s);
- the subject of a Will is property in respect of which, after the death of the testator, it is necessarily necessary to manage it (a share in the authorized capital of companies, shares, private enterprises, etc.) [14].

The law does not establish requirements for a person whom a notary can independently appoint as the executor of a will. The notary must proceed from the general provisions that the executor can be either a person from among the heirs, or any other person.

Only a person who expresses a desire to be a performer can be appointed. In this case, such a person submits an appli-

cation to the notary, which must simultaneously contain consent to perform certain actions. This application specifies the obligations of the person that it assumes by expressing its desire to become the executor of the will.

We remind you that the consent of the executor of the will to perform the duties assigned to him can also be set out in a separate application, the authenticity of the signature under which is subject to notarization. This statement is an integral part of the will.

The executor of a will may be appointed by a notary at the place of opening the inheritance, if the testator did not appoint the executor of the will or if the executor of the Will refused to fulfill the will or was suspended from its execution and if the interests of the heirs require it (Article 1288 of the Civil Code of the Russian Federation) [8].

The notary issues a certificate to the executor of the will at the request of the person who was appointed executor of the will by the testator or heirs of the testator, as well as in the case of appointment of the executor of the will by a notary.

This notarial action is performed at the place of opening the inheritance. When performing this notarial action, notaries check:

- grounds for appointing the executor of a Will (articles 1286–1288 of the Civil Code of the Russian Federation);

- availability of written consent to the appointment of the executor of the will of all heirs;

- written consent of the executor of the will to his appointment. Such consent may be set out on the text of the will itself or attached to it;

- legal capacity of the executor of the will.

Also, after the request of the executor of the will for the issuance of a certificate, the notary establishes his identity, performs an appropriate check on the inheritance register, establishes the fact of establishment of the inheritance case and, if the inheritance case after the death of the testator has not yet been opened, requires the person appointed by the executor of the will, the death certificate of the testator or his notarized copy and starts the inheritance case, to which he attaches all documents or their copies.

If the inheritance case has already been opened, then all documents that are the basis for issuing a certificate to the executor of a Will (Will, application, etc.) must be attached to the inheritance case.

We note that the certificate is issued to the executor of the will by the notary who opened the inheritance case and who keeps it. According to the inheritance register, the notary checks the validity, immutability and validity of the will.

In the text of the will executor's certificate, the notary must indicate all the powers of the will executor provided for by civil legislation. According to Article 1290 of the Civil Code, the executor of a Will must:

1) take measures to protect inherited property;
2) take measures to notify heirs, recipients, and creditors of the opening of an inheritance;
3) demand that the testator's debtors fulfill their obligations;
4) manage your inheritance;
5) ensure that each of the heirs receives a share of the inheritance specified in the will;

6) ensure that a share in the inheritance is received by persons who are entitled to a mandatory share in the inheritance [14].

That is, the certificate of the executor of the will confirms that the executor of the Will has the right on his own behalf to conduct cases related to the execution of the will, in judicial bodies, state authorities and local self-government, in enterprises, institutions and organizations, regardless of the form of ownership, industry affiliation and subordination.

The executor of a Will is obliged to ensure that the heirs perform the actions to which they were obliged by the will.

If the heirs are minors, minors, incapacitated persons or persons whose civil legal capacity is limited, the notary informs the relevant guardianship and guardianship authorities about the issuance of a certificate of the executor of the will. The powers of the executor of a will continue until the testator's will, which is expressed in the Will, is fully fulfilled.

The validity of the powers of the executor of the Will is terminated by a notary at the place of opening the inheritance with the written consent of the heirs, renouncers, as well as persons (bodies) who have the right to monitor the execution of the will. If the heirs are minors, minors, incapacitated persons or persons whose civil legal capacity is limited, control over the execution of the Will is carried out by parents (adoptive parents), guardians, trustees, as well as the guardianship and guardianship authority.

Upon the return by the executor of the will of the certificate issued to him, the notary makes a note on the termination of the powers of the executor on a copy of the certificate stored in the notary's files, in the state notary archive,

on a copy of the certificate returned by the executor, and a note in the register for registration of Notarial actions, in the book of inheritance cases.

The term of force of the executor of a Will is established by a notary on the basis of Article 1294 of the Civil Code of Ukraine, as indicated in the certificate.

If the heirs are minors, minors, incapacitated persons or persons whose civil legal capacity is limited, the notary notifies the relevant guardianship and guardianship authorities about issuing a certificate to the executor of the will.

The term of office of the executor of a Will is determined by the full fulfillment of the testator's will expressed in the will.

The powers of the executor of a will may be terminated prematurely:

- if the Will is declared invalid in court;
- in the event of the death of a person appointed as the executor of a will;
- if the executor of the will refuses to perform the duties assigned to him;
- in case of non-acceptance of the inheritance by the heirs under the will;
- based on a court decision.

The legislation provides for cases when heirs have the right to change the will of the testator regarding the appointment of the executor of the will.

If the executor is not able to ensure the fulfillment of the testator's will for any reason, the heirs are granted the right to suspend such executor from execution in court.

The powers of the executor of a will may be terminated by a notary on the basis of a written application of heirs,

renouncers, as well as persons who have the right to monitor the execution of a Will, the signatures on which are notarized. The notary issues a decision to terminate the performance of powers by the executor of the will.

After submitting to the heirs (their legal representatives) a report on the performance of their powers, the executor of the Will returns the certificate to the notary, who in turn makes a note on the termination of the powers of the executor of the will on a copy of the certificate stored in the notary's files, the state notary archive, on a copy of the certificate returned by the executor, and a mark in the register for registration of Notarial actions, in the book of inheritance cases. All applications indicate the time of their receipt and the number of the inheritance case. Applications and copies of the certificate are filed in the inheritance file [14].

The executor has the right to demand compensation for expenses that he made for the protection of the inheritance, its management and execution of the will at the expense of the inherited property.

The executor has the right to pay for the performance of his powers, determined by the testator or heirs, on the basis of a preliminary agreement between them or in the event of a dispute – in court.

3.3.3. Procedure for issuing certificates of inheritance rights under the law

When issuing a certificate of inheritance rights under the law, the notary checks whether there are grounds for calling for inheritance under the law of persons who have submitted applications for issuing a certificate. Proof of kinship and other

relations of heirs with the testator are: certificates of civil registration authorities, a complete extract from the Register of Civil Status Acts of citizens regarding the act record, copies of Act records, copies of court decisions that have entered into legal force, on establishing the fact of kinship and other relations.

The fact of being dependent is confirmed by a court decision that has entered into legal force, establishing the fact of being a disabled or minor dependent.

Disability of a dependent by age can be confirmed by a passport, birth certificate; disability for health reasons – by a pension book or a certificate issued by the relevant medical and social expertise body. The fact that the heirs live in the same family with the testator is confirmed by a court decision that has entered into legal force.

If one or more heirs are legally deprived of the opportunity to submit documents confirming the existence of grounds for calling them to inherit under the law, they may be included in the certificate of inheritance by written consent of all other heirs who have accepted the inheritance and submitted evidence of kinship, marriage or other relations with the testator [10, p. 547; 15, p. 268–269].

Heirs are called to inherit according to the law in the order of priority. According to the law, each subsequent queue of heirs receives the right to inherit in the following cases: absence of heirs of the previous queue; elimination of heirs of the previous queue from the right to inherit; non-acceptance of the inheritance by the heirs of the previous queue or refusal to accept it.

The order in which heirs receive the right to inherit under the law may be changed by a notarized contract of interested

heirs concluded after the opening of the inheritance. Such a contract may not violate the rights of an heir who does not participate in it, as well as an heir who is entitled to a mandatory share in the inheritance.

The shares in the inheritance of each of the heirs are equal. Heirs can change the size of the share in the inheritance of one of them by oral agreement among themselves, if it concerns movable property, or by a notarized contract, if it concerns immovable property or vehicles.

The certificate of inheritance rights is issued on the basis of the application of the heirs who accepted the inheritance, after six months from the date of opening the inheritance, and in cases stipulated by Part Two of Article 1270, article 1276 of the Civil Code of Ukraine – not earlier than the time limits specified in these articles.

The issuance of a certificate of inheritance rights to heirs who have accepted the inheritance is not limited by any period [10, p. 548; 15, p. 269].

For an heir who permanently resided with the testator at the time of opening the inheritance, the application for issuing a certificate of inheritance rights is the primary document on the basis of which the inheritance case is initiated. At the same time, the notary must perform all the actions provided for in this procedure. A certificate of inheritance rights is issued if the inheritance file contains all the necessary documents.

The issuance of a certificate of inheritance rights may be postponed if: a notary requests information or documents from individuals or legal entities, while the period for which the issuance of a certificate of inheritance rights may be postponed may not exceed one month; the need for a notary to obtain

consent from interested parties to file an application for inheritance acceptance by an heir who has missed the deadline for accepting the inheritance in accordance with the requirements of part two of Article 1272 of the Civil Code of Ukraine. On a well-founded written application of the interested person who applied to the court, and on the basis of a notification received from the court about the receipt of the statement of claim of the interested person challenging the right or fact, the certification of which is requested by another interested person, the notarial action is suspended until the court decides the case.

When issuing a certificate of inheritance rights, the notary must check: the fact of the testator's death, the time and place of opening the inheritance, the existence of grounds for calling for inheritance, if there is inheritance by law, the acceptance of the inheritance by the heir in the manner established by law, the composition of the inherited property for which the certificate of inheritance rights is issued. In support of these circumstances, documents confirming these facts are requested from the heirs [10, p. 548; 15, p. 269–270].

In the case of an heir applying for a certificate of inheritance rights to complete inheritance in relation to an inheritance that was opened on the territory of the Autonomous Republic of Crimea and the city of Sevastopol before the beginning of the temporary occupation and in respect of which the inheritance case was registered in the inheritance register, but was not completed, a private notary (state notary office), to whom the heir applied, must verify the facts provided for by law and request the necessary documents. If the heir does not have the necessary documents for issuing a certificate of

inheritance rights, the notary explains to him the procedure for resolving this issue in court.

The issuance of a certificate of inheritance rights to property, the ownership of which is subject to state registration, is carried out by a notary after the submission of documents certifying the testator's ownership of such property, except for the cases provided for in paragraph 3 of Chapter 7 of section I of the procedure for performing notarial actions by notaries of Ukraine [14], and checking the absence of a ban or seizure of this property.

If there is a ban, the notary notifies the creditor in writing that the debtor's heirs have been issued a certificate of inheritance rights.

If the inherited property is seized by judicial or investigative authorities, the issuance of a certificate of inheritance rights is delayed until the arrest is lifted.

If the inherited property includes immovable property, the notary receives information from the state register of real rights to immovable property by direct access to it. If the heir does not have the necessary documents for issuing a certificate of inheritance rights, the notary explains to him the procedure for resolving this issue in court.

If the document certifying ownership of the property to be registered is returned to the heir (certificate of registration or technical passport for a motor vehicle, other self-propelled machine or mechanism, ship's ticket or commercial concession agreement, etc.), the notary checks the document, which makes a note on the application for issuing a certificate of inheritance or on a copy of the certificate that remains in the notary's Files [10, p. 549; 15, p. 270].

It is allowed to attach to the materials of the inheritance case, certified in accordance with the procedure provided for by the rules of notarial records management, approved by the Order of the Ministry of Justice of Ukraine dated 22.12.2010 № 3253/5 (as amended), photocopies of documents certifying ownership of property, which are returned to the heirs. A notary also issues a certificate of inheritance rights to a land plot, provided that an extract from the state land cadastre is obtained, also by direct access to it.

When registering an inheritance both by law and by Will, a notary in cases where it is seen from the document certifying the right of ownership that the property can be common joint property of the spouses, must find out whether the testator has one of the spouses who survived it and who is entitled to a 1/2 share in the common property of the spouses. If there is a second spouse, the notary issues him a certificate of ownership of a share in the common property of the spouses. The issue of a certificate of inheritance rights to heirs who have accepted the inheritance is not limited in time. If there are several heirs, then each of them is issued a separate certificate of inheritance rights indicating its share. The certificate of inheritance rights is issued in two copies, one of which remains in the materials of the inheritance case.

REFERENCES

1. Долинська М. С. «Руська Правда» як джерело зародження нотаріату в Україні. *Електронне наукове фахове видання «Порівняльно-аналітичне право».* 2014. № 1. С. 17–20.
2. Долинська М. С. Початки правового регулювання спадкування на українських землях на початку XX століття. Particularitățile adaptării legislației republicii Moldova și Ucrainei la legislația Uniunii Europene», Conferința internațională științifico-practică. Chișinău, Republica Moldova 22–23 martie 2019. pp. 119–122.
3. Долинська М. С. Становлення та розвиток правового регулювання нотаріальної діяльності в Україні: монографія. Львів: ЛьвДУВС. 2015. 988 с.
4. Нелін О. Спадкове право УРСР за цивільним кодексом 1922 р. Підприємництво, господарство і право. 2008. № 7. С. 32–34.
5. Половинкіна Р. Ю. Перша кодифікація положень спадкового права за Цивільним кодексом 1922 року: історико-правовий аспект. *Актуальні проблеми держави і права.* 2012. Випуск 65. С. 318–325.
6. Нелін О. І. Еволюція спадкового права в Україні (історико-правовий аспект): дис. … д-ра юрид. наук: 12.00.01 / Київ. нац. ун-т ім. Т. Шевченка, 2010. 415 с.
7. Нелін Олександр. Спадкове право УРСР за Цивільним кодексом 1963 р. *Підприємництво, господарство і право*. 2008. № 6. С. 44–47.
8. Цивільний кодекс України: Закон України від 16.01.2003 р. № 435-IV. URL: http://zakon3.rada.gov.ua/laws/show/435-15

9. Долинська М. С Особливості реалізації нотаріальної діяльності в незалежній Україні. *Науковий вісник Львівського державного університету внутрішніх справ.* 2015. Вип. 3. С. 75–84.
10. *Долинська* М. С. Нотаріальний процес: підручник. Львів: Львівський державний університет внутрішніх справ 2019. С. 166.
11. Нагорна А. О. Ґенеза посвідчення заповітів посадовими особами в історичній ретроспективі. *Вісник Запорізького юридичного інституту Дніпропетровського державного університету внутрішніх справ*. 2009. № 4. С. 36–43.
12. Нелін О. Нотаріат і квазінотаріат в Україні: окремі дискусійні питання. *Юридична Україна*. 2012. № 8. С. 19–22.
13. Про нотаріат: Закон України від 02.09.1993 р. № 3425-ХП. *Відомості Верховної Ради України.* 1993. № 39. Ст. 383. URL: http://zakon3.rada.gov.ua/laws/show/3425-12
14. Порядок вчинення нотаріальних дій нотаріусами України: затв. Наказом Міністерства юстиції України від 22.02.2012 р. № 296/5. URL: http://zakon5.rada.gov.ua/laws/show/z0282-12
15. Долинська М. С. Нотаріат: підручник. Львів. Ліга-Прес. 2018. 398 с.
16. Заїка Ю. А. Форма заповіту як умова його дійсності. *Вісник Хмельницького інституту регіонального управління та права*. 2004. № 1–2. С. 73–76.
17. Калініченко О. Форми заповіту за Цивільним кодексом України. *Вісник Київського національного університету імені Тараса Шевченка*. Юридичні науки. 2011.Вип. 88. С. 110–112.

18. Спадкове право: Нотаріат. Адвокатура. Суд : наук.-практ. посіб. / за заг. ред. С. Я. Фурси. К. : Видавець Фурса С. Я. : КНТ, 2007. 1216 с.
19. Шама Н. Право на спільний заповіт. *Проблеми державотворення і захисту прав людини в Україні:* матеріали XIX звітної науково-практичної конференції (7–8 лютого 2013 р.). Львів: Юридичний фа культет Львівського національного університету імені Івана Франка, 2013. С. 179–181.
20. Долинська М. С. Спадкування в Україні. *Довідник нотаріуса*. К.: Істина. 2007. № 5. 96 с.
21. Василина Н. В. Право на заповіт та окремі питання його реалізації. *Науковий вісник Ужгородського національного університету*. 2014. Серія право. Випуск 28. Том 1. С. 107–111.
22. Долинська М. С. Становлення та розвиток законодавства про нотаріальну діяльність в Україні. Дисертація на здобуття наукового ступеня доктора юридичних наук за спеціальністю 12.00.01. Львів: Львівський національний університет імені Івана Франка. 2017. 465 с.
23. Теорія нотаріального процесу: науково-практичний посібник / За заг. ред. С. Я. Фурси. К.: Алерата, Центр учбової літератури, 2012. 920 с.
24. Дякович М. М. Хрестоматія нотаріального права України. Істина, 2018. 480 с.
25. Леськів С. Р., Чубенко А. Г. Свобода заповіту і таємниця заповіту як юридичні гарантії реалізації права на спадкування за заповітом. *Науковий вісник Ужгородського національного університету*. 2014. Серія право. Випуск 29. Том 1. С. 156–159.

26. Журавльов Д. В., Коротюк О. В., Чижмарь К. І. Правова охорона нотаріальної таємниці: монографія. К.: ОВК, 2017. 190 с.
27. Заїка Ю. О., Рябоконь Є. О. Спадкове право: навч. Посіб. К.: Юрінком Інтер, 2009. 352 с.
28. Заїка Ю. О., Співак В. М.. Право власності. Спадкове право. Навчальний посібник. К.: Наукова думка, 2000. 151 с.
29. Фурса С. Я., Фурса Є. І. Спадкове право. Теорія та практика: навчальний посібник. К.: Атіка, 2002. 496 с.
30. Долинська М. С. Особливості видачі нотаріусами свідоцтв про право на спадщину за заповітом. *Вісник Львівського університету. Серія юридична*. 2012. Випуск 56. С. 237–243.
31. Мацегора М. В. Форма заповіту: становлення, розвиток, сучасні вимоги. *Форум права*. 2007. № 2. С. 146–150.
32. Сібільова С. Свобода заповіту за чинним цивільним законодавством України. *Вісник академії правових наук України*. 2012. № 2. С. 131–140.
33. Кухарєв О. Є. Спадкове право України: Навч.-практ. посіб. К.: Алерта ; ЦУЛ, 2011. 222 с.
34. Фурса С. Я. Нотаріальний процес: Теоретичні основи. К., Істина, 2002. 360 с.
35. Калініченко О. Щодо посвідчення заповітів начальником слідчого ізолятора. *Бюлетень Міністерства юстиції України*. 2013. № 6. С. 60–66.
36. Фомічова Н. В. Складання заповіту з умовою та дійсність визначених умов у межах їх виконання за законодавством України. *Молодий вчений*. 2016. № 9. № (36). С. 257–260.

37. Dolynska Mariia.Theoretical-legal and applied aspects of the notarial procedure concerning the certification of wills *Development trends in legal science and practice: the experience of countries of Eastern Europe and prospects of Ukraine: monograph* / edited by authors. Riga, Latvia : «Baltija Publishing», 2018. p. 62–84.
38. Нагорна Г. О. Реалізація права на заповіт особи, яка перебуває під час плавання на судні. *Форум права*. 2009. № 2. С. 284–288.
39. Нагорна А. О. Посвідчення заповітів начальниками пошукових або інших експедицій. *Вісник Харківського національного університету внутрішніх справ*. 2010. № 2. С. 251–255.
40. Сібільова С. Умови дійсності заповітів за чинним цивільним законодавством України. *Університетські наукові записки*. 2012. № 3. С. 202–211.
41. Сібільова С. Поняття, види й наслідки недійсних заповітів за чинним цивільним законодавством України. *Проблеми законності.* 2013. Вип. 123. С. 271–281.
42. Чубенко А. Г., Леськів С. Р. Нікчемність заповіту та визнання заповіту недійсним: цивільно-правові аспекти. *Молодий вчений*. 2014. № 11(14). С. 165–168.
43. Долинська М. С. Особливості видачі нотаріусами свідоцтв про право на спадщину за заповітом. *Вісник Львівського університету. Серія юридична*. 2012. Випуск 56. С. 237–243.

CONCLUSIONS

At all historical stages of its development, the main task of notarial bodies was to provide legal certainty to acts. However, the scope of their functions changed in one or another period. In particular, this is characteristic of the history of this institute in Ukraine.

The Latin-type notary was formed as a result of the long-term evolution of legal ideas in the countries of the Romano-Germanic legal system. One of the main tasks of the Latin notary is to prevent violations of the rights of subjects of civil circulation and to avoid possible legal disputes.

The current stage of functioning of the notary institution in Ukraine is characterized by rapid European integration and globalization processes. An essential step on the way to the adaptation of the Ukrainian notary to the Latin type is to take into account and borrow the experience of countries with similar legal traditions and socio-economic and political relations – the countries of the post-Soviet space and the notaries of the countries – members of the International Union of Notaries.

The effectiveness of the notary's work largely depends on the selection of personnel who are not only professionally but also ideologically prepared for professional, competent, and creative work. The professional competence of a notary must be checked not only at the stage of access to the profession of a notary but also at the stage of his performance of notarial actions.

The effectiveness of the notary is based on the unique nature of notarial functions, as well as on the unique

mechanism of the notary's legal responsibility for the exercise of his professional powers. The civil liability of a notary public is only one of the types of harm to which he may be held in the course of his professional activity. The administrative responsibility of the notary is also a guarantee and a means of ensuring the rights and legal interests of citizens and legal entities during the performance of notarial and registration actions. The responsibility of a notary public is complex and includes not only a legal obligation but also moral responsibility for violating the rules and principles of notary ethics.

The role of the notary institute, which considers mediation as one of the additional functions of notaries, allows notaries to solve tasks related to the implementation of the concept of complex provision of legal assistance aimed at ensuring and protecting human rights.

The history of inheritance law's development on Ukraine's territory goes back to the ancient Slavs. Its development is primarily related to the emergence of property rights. Notary has also been around for many centuries, but its effect on the territory of Ukraine began in the 14th century. In ancient Roman law, provisions on inheritance were developed. These provisions were reflected in the first legal acts of Kyivan Rus and Lithuanian statutes, legislation of the Russian Empire, legislative acts of the Soviet era, and the new Ukrainian legislation, which testifies to the stability of this institution of civil law and its essential importance for the regulation of social relations of a civil-law nature. One of the most significant events for the inheritance law was the adoption of the new Civil Code of Ukraine in 2003, which contained many amendments.

When registering inheritance rights, state and private notaries of modern Ukraine must first be guided by the inheritance legislation, which regulates the general grounds for calling for inheritance.

Generally, the grounds for inheritance are the law and the will. Inheritance by will and by law are independent and equal institutions of inheritance law. Even inheritance by will is determinative of inheritance by law because, in the presence of a will, the inheritance will take place by will.

We believe that the new level of functioning of the notary will make it possible to use the full potential of this powerful regulator of social relations as effectively as possible, which will have a beneficial impact on the development of the legal system of Ukraine.

Scientific publication

Dolynska Mariia
Markovych Khrystyna
Pavliuk Nataliia

NOTARY'S URGENT ISSUES: FROM HISTORY TILL THESE DAYS

Monograph

Signed for publication Desember 13, 2022
Format 84x60 1/16. Conventional printed sheets 12
Circulation of 50 copies. #220502

NULES of Ukraine Publishing house
St. Heroiv Oborony, 15, Kyiv, 03041
Phone: 527-81-55