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Analysis of the admissibility of establishing the circumstances of intentional deprivation of life of the testator by the heir in a civil case through the lens of the presumption of innocence, the practice of the European Court of Human Rights, and the social consequences of such a court decision

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Abstract. The relevance of the subject under study is conditioned by the fact that in Ukrainian judicial practice, both judges and experts who are members of the Scientific Advisory Council of the Supreme Court have differed in their

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opinions regarding the possibility of disqualifying an heir from inheritance based on the requirements of Article 1224, Part 1 of the Civil Code of Ukraine. The purpose of this study was to clarify such general legal issues as the applicability and extension of the presumption of innocence in civil proceedings, and protection against violation of this principle in the resolution of certain civil law disputes. The methods of analysis, synthesis, comparison, generalisation, and case study were employed to examine the decisions of national courts of general jurisdiction of various instances, the Constitutional Court of Ukraine, and the European Court of Human Rights. It was stated that the deceased heir – the accused, who inflicted serious bodily injuries to his father – the testator, as a result of which the latter died, cannot be considered as having no right to inheritance, based on the analysis of the content of Article 1224, Part 1 of the Civil Code of Ukraine. The study proved that a form of condemnation by public authorities and posthumous conviction outside the scope of due process of law would be establishment by a court in a civil case of the circumstances of intentional deprivation of the testator's life by an heir, where the former died at the time of the consideration of a civil dispute. It is unacceptable for a civil court to rely on the circumstances of the indictment and the grounds for closing criminal proceedings against a deceased defendant – an heir. Only a guilty verdict establishes a person's guilt. If it is referred to in other procedural decisions, it is probable that the person will be socially stigmatised. A civil court may not assume the powers of a court that are exercised only in criminal proceedings when resolving a dispute over inheritance. The practical value of the study lies in the development of arguments for the court and participants in the trial

Keywords: dispute over inheritance; court verdict of guilty; closure of criminal proceedings; Article 6 of the European Convention on Human Rights; right to a fair trial; social harmony; social stigma

Introduction

The relevance of the problem lies in the fact that different branches of law have developed their respective approaches to solving certain issues. Accordingly, the civil and criminal procedural laws and their codes mandate the procedure that is specific to them. In the case at hand, in resolving an inheritance dispute, the civil court was faced with the issue of finding legal mechanisms to answer questions relating to the presumption of innocence. It is not only the basis of criminal proceedings, but also a component of the right to a fair trial under the European Convention on Human Rights (1950). As of May 2024, there is no final decision of the cassation instance, nor is there a corresponding legal position of the Grand Chamber of the Supreme Court, which is necessary for the unity of judicial practice.

Researchers such as O. Kaluzhna and M. Shevchuk (2022) construct a theory, supported by facts from judicial practice, including the European Court of Human Rights (ECHR), on how to protect those who conduct trials from unfairness – judges. The recommendations of these researchers provide valuable insights into how the death of a person can generally affect the fairness of criminal and civil trials and how to prevent judicial bias and violations of the right to a fair trial, which includes the presumption of innocence. The presumption of innocence as a component of a fair trial is also mentioned by the authors of basic textbooks on criminal procedure in Ukraine, specifically, V. Kivalov and M.S. Tsutskiridze (2023). But admittedly, they consider this principle of criminal proceedings to be constitutional and without regard to civil aspects, including exclusion from the right to inheritance.

More specialised studies by researchers such as O. Drozdov *et al.* (2021) shed light on how the proper quality of investigation can ensure that there is no doubt that a person has or has not committed a crime, and therefore, that they are guilty or acquitted, and how to interpret the doubts that remain. In unison with these approaches, V.V. Vapniarchuk *et al.* (2020) developed an entire concept of the purpose of proof in criminal proceedings. Such a procedural "beacon" for each subject should be the truth, and without properly conducted criminal proceedings, its establishment is impossible, including by "transferring" these powers to a court in a civil case. V.I. Borysova *et al.* (2019) argue that any reform of the judicial process should be based on the need to improve human rights and strengthen the effectiveness of the components of the presumption of innocence. Without such measures, the justice function cannot be more effective. D.L. Abbasova (2024) examined the presumption of innocence from the standpoint of ethical principles. This researcher draws a solid conclusion that the institution of preventive measures and the institution of punishment are not properly placed on the same scale. Considering this, it is inadmissible to refer to a person as "guilty" in court decisions on the application of preventive measures. Such decisions should refer to a "state of suspicion". Only a court verdict establishes a person's guilt; otherwise, when it comes to guilt in other procedural decisions, social stigma is highly probable. That is, the public perception of a person as having committed a criminal offence. While this problem is only being discussed at the national level, albeit for a long time, in American and other academic schools there are results of comprehensive psychological, sociological, and criminological studies based on multiple empirical findings on the depth of damage caused by criminal justice policies due to stigmatising attitudes towards those who have been prosecuted. J.R. Silver *et al.* (2024) summarise proven ways to move away from "punitive justice" and thus reduce the prevalence of social stigma. K.E. Moore *et al.* (2024) conclude that stigma does not end with criminal prosecution, and in fact, it can undermine a person's mental health. E.R. McWilliams and B.A. Hunter (2021), analysing the forms of stigma, sharpen the perception that each of them destroys the quality of human life.

Civil rights researchers also spoke out on the declared issues. There are two scientific conclusions, specifically, by O. Pechenyi (2022) and Yu. Zaika (2022), where in the former case, the researcher believes that the presumption of innocence does not apply to civil proceedings. Another well-known researcher, Yu. Zaika (2022) argues that only a guilty verdict, which confirms the guilt of a person in committing a crime, can be the starting point for further disinheritance by a civil court.

None of the above-mentioned researchers has formulated an answer to the question whether it is permissible to establish in a civil case the circumstances of intentional

deprivation of life of the testator by the heir through the lens of the presumption of innocence. Therefore, the purpose of this study was to clarify such general issues as the applicability and extension of the presumption of innocence in civil proceedings; protection against violation of this constitutional principle in criminal proceedings when deciding on the issue of disinheritance of an heir based on the requirements of Article 1224, Part 1 of the Civil Code of Ukraine (2003); and court decisions in unison with the public perception of fair justice.

This study aimed to establish what course of action a court should take when, in resolving a civil dispute, it is also required to answer questions relating to compliance with the principles of criminal proceedings. How, without violating the right to a fair trial under the ECHR and using criminal and criminal procedural arguments, can a civil court decide, within the framework of the already formed condemnatory public opinion, on the situation of the probable (but not stated by the court verdict that has entered into force) deprivation of life of the testator by his heir.

Literature review

The list of studied aspects of the presumption of innocence given in the introduction is not complete, since a considerable body of research was also carried out under the previous Criminal Procedural Code of Ukraine (1960). Thus, H.I. Yudkivska (2008) defended her thesis, wherein she studied in depth not only the effect of the principle of criminal proceedings under consideration at the national level, but also the presumption of innocence in the practice of the European Court of Human Rights. The researcher provided recommendations on how to avoid the identified violations in practice, such as the statement of a person's guilt during a pre-trial investigation and without a court verdict. A series of scientific studies by V.T. Nor (2011a; 2011b) are devoted to the practice of the ECHR in relation to violations of this component of the right to a fair trial. Violations analogous to the above-mentioned ones were also noted. In continuation of his scientific research and following the beliefs and arguments to substantiate the scrupulous observance of the presumption of innocence, the aforementioned O. Kaluzhna and M. Shevchuk (2022) are already conducting their scientific research. These researchers justifiably criticise judges for violating the presumption of innocence. O. Kaluzhna and M. Shevchuk (2022) build an algorithm for judges to ensure the fairness of the trial and its impact on public perceptions of justice and fairness. Another representative of the Lviv Law School, Kh.R. Sliusarchuk (2017), argues that among the standards of proof, such as "reasonable suspicion" or "reasonable suspicion" do not yet establish the guilt of a person. This refers only to "standards of persuasion". Only a court verdict in which a person has been found guilty and the time limits for appealing against it have expired is the legal and factual basis for such a statement. In the same spirit, A.S. Stepanenko (2017) discussed the connection between the presumption of innocence and the standard of proof "beyond reasonable doubt". V.V. Kryzhanivskyi (2007) considered such an aspect of the presumption of innocence as the prohibition to call the accused a criminal as part of the two-component "protective function". The research-to-practice advice of T. Slutska (2018; 2019) is aimed at how not to violate the presumption of innocence in the situation of release of persons from serving a sentence with probation. The researcher also reviewed the ECHR's position on this principle of criminal proceedings and unequivocally states that guilt cannot be summarised without a court verdict. The task of N. Syza and O. Matokhniuk (2018) was to understand the content of the principle under consideration and, as a result, to formulate substantive recommendations for improving the Ukrainian criminal procedural legislation. These researchers quite fairly concluded that content is not only a theoretical category since high-quality practical activity of a law enforcement officer implies mastering doctrinal approaches to the components and aspects of such a procedural guarantee as the presumption of innocence. As an author's advice, in case of violation of the presumption of innocence by officials, these researchers suggest that the officials should publicly apologise to the person concerned. In addition, N. Syza and O. Matokhniuk (2018) formulated a mechanism for refuting information when certain persons have made unreasonable statements about the guilt of a person. Such stigmatisation is unacceptable for civil society in a state governed by the rule of law. Therefore, this is also the case of the negative social consequences of unsuccessful procedural decisions in these civil cases when it comes to disinheritance as a result of the intentional deprivation of life of the testator by the heir, which was not confirmed in the court's guilty verdict.

Materials and methods

The study employed the systematic analysis to identify the components of the presumption of innocence which allow denying the admissibility of establishing the circumstances of intentional deprivation of the testator's life by the heir in a civil case. The deductive method was used to investigate the use of Item 5 of Part 1 of Article 284 of the Criminal Procedural Code of Ukraine (2012) as a ground for closing the proceedings by the court. The method of induction helped to formulate the thesis on stigmatisation as a consequence of unsuccessful procedural decisions in the circumstances of a civil case on deprivation of the right to inheritance.

To substantiate the conclusion based on the thesis that the deceased heir, the accused, inflicted serious bodily harm on his father, the testator, as a result of which the latter died, used the formal logical method. The systematic analysis helped to summarise the scientific positions and practice of the ECHR (by studying the following decisions: Cleve v. Germany (2015), Pasquini v. San Marino (no. 2) (2020), Farzaliyev v. Azerbaijan" (2020), "G.I.E.M. S.R.L. and Others v. Italy" (2018); the materials of the manual (Council of Europe, ECHR, 2020) on Article 6 of the European Convention on Human Rights (1950) were studied. This method also helped to formulate the relevant arguments to form the belief that there is a possibility of violations already identified by the ECHR.

The case study approach, methods of comparison, and generalisation were used to properly process the decisions of national courts available in the Unified State Register of Court Decisions. Thus, the most recent case of the Shepetivka City District Court of Khmelnytskyi No. 688/2840/22 (2023) on this issue was heard in the first instance. Subsequently, the judgement dated 16 March 2023 was appealed, and a cassation appeal was filed with the Cassation Civil Cour of the Supreme Court (CCC SC) against the judgement dated 8 June 2023 (Judgement of the Khmelnytsky Appeal Court in Case No. 688/2840/22, 2023). The judges of the CCC SC had different positions on the resolution of the dilemmas

under consideration. The chairman appealed to the members of the Scientific Advisory Council of the Supreme Court (SAC SC) to obtain scientific opinions (Judgement of the Panel of Judges of the First Judicial Chamber..., 2024). A need for a scientific solution to the following two legal dilemmas occurred, namely: 1) what to do with the enforcement of Article 1224 of the Civil Code of Ukraine (2003), and 2) how will the presumption of innocence "react" if a court in a civil case takes up the task of clarifying circumstances that were not established and confirmed by a guilty verdict in criminal proceedings, since it was never delivered at all? Scientific conclusions were prepared in the above and comparable proceedings (Zaika, 2022; Scientific conclusion by Associate Professor O. Pechenyi..., 2022; Drozdov, 2024).

Comparing and summarising the available legal positions of the Supreme Court, it was established that on 13 March 2024, the panel of judges of the First Judicial Chamber of the CCC SC, considering that an exceptional legal problem arose in the case regarding the resolution of both issues cited above (Decision of the Grand Chamber of the Supreme Court…, 2024), referred case No. 688/2840/22 to the Grand Chamber of the Supreme Court by its decision (Decision of the panel of judges of the First Judicial Chamber..., 2024). On 3 April 2024, the Grand Chamber returned the same case to the panel of judges of the First Judicial Chamber of the CCC SC for consideration because "the reasons stated in the judgement dated 13 March 2024 do not indicate the existence of an exceptional legal problem (Item 62) (2024) (Decision of the Grand Chamber of the Supreme Court..., 2024). On 29 May 2024, the First Trial Chamber of the CCC SC re-scheduled the hearing by the joint chamber (Judgement of the Supreme Court of Ukraine in Case No. 688/2840/22, 2024b).

Results and discussion

To analyse the problem, the study employed a scientific approach based on the analysis of constitutional, criminal procedural, civil, and conventional provisions – "*In dubio pro persona*" or "*in dubio pro* homine" (in substantial doubt – in favour of the person). Overall, the approach of scientific interpretation has been chosen, which has already been described from different perspectives by Y. Yevgrafova (2010) and O.V. Kaplina (2012). V. Lemak and A. Badyda (2019) have already emphasised that this "interpretation" should not be considered as an avoidance of the law. The point is that the court must interpret how to act in a situation where certain legal provisions are applied, when there is a conflict or gap. To clarify the meaning of the above articles of the Civil Code of Ukraine (2003) and the Criminal Procedural Code of Ukraine (2012), the court in the situation described above should specify how to apply them. The relevant "rule" should guide how to do this correctly: for the benefit of the individual. The Supreme Court also chose this "method". In January, the Judgement of the Supreme Court of Ukraine in Case No. 688/2840/22 (2024b) once again emphasised this (Items 47-49 of the judgement). This is how further arguments will be formed.

The ruling to close criminal proceedings based on Item 5 of Part 1 of Article 284 of the Criminal Procedural Code of Ukraine (2012) does not refute the presumption of innocence of a person and is not a ground for stigmatisation. A crime committed by an heir against the testator or other heirs is referred to in Part 1 of Article 1224 of the Civil Code of Ukraine (2003), since intentional deprivation of life, within the meaning of the Criminal Code of Ukraine (2001), is murder, which is criminalised under Article 115 of the Criminal Code of Ukraine (2001). This provision also refers to attempted murder (which is divided into completed and unfinished), which constitutes an unfinished criminal offence.

In turn, the actions of the deceased heir were not classified as murder (a crime against human life), but under Part 2 of Article 121 of the Criminal Code of Ukraine (2001) as grievous bodily harm (a crime against human health), which resulted in the death of the father, the testator, in hospital. The pre-trial investigation in this criminal proceeding resulted in the drafting of an indictment, its approval by the prosecutor and submission for trial. On the last day of October 2019, the court of first instance made a procedural decision on the fate of the criminal proceedings. The heir was previously charged under Part 2 of Article 121 of the Criminal Code of Ukraine (2001). However, due to the death of the accused heir, the criminal proceedings were closed. The court decision does not mention any appeals from his relatives regarding his rehabilitation. This fact is emphasised in the Decision of the Shepetivka City District Court of Khmelnytskyi Region in Case No. 688/2840/22 (2023), which was adopted by the first instance upon consideration of a civil case on disinheritance.

A literal interpretation of the provisions of Part 1 of Article 1224 of the Civil Code of Ukraine (2003) suggests that persons who have committed a crime such as intentional murder – Article 115 of the Criminal Code of Ukraine (2001) – or attempted murder – Articles 15 and 115 of the Criminal Code of Ukraine (2001) – are not entitled to inheritance. The commission of a crime such as causing grievous bodily harm to a person, which resulted in the death of the victim, due to a different focus of the criminal intent – to "harm" the health of a person, rather than to deprive them of life – is not covered by the content of Part 1 of Article 1224 of the Civil Code of Ukraine (2003). Accordingly, the deceased heir – the accused, who inflicted grievous bodily harm on his father – the testator, as a result of which the latter died, cannot be considered as having no right to inheritance, based on the analysis of the content of Part 1 of Article 1224 of the Civil Code of Ukraine (2003). Thus, the qualification of the committed unlawful act is decisive, which, logically and among other things, should be stated and confirmed in the court's guilty verdict based on the court's review of the totality of evidence.

To understand the depth of the issue, it is necessary to consider such components as the characteristics of the specified grounds (Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine) for closing criminal proceedings as a final procedural decision and its consequences; it is necessary to consider the issue of continuation of the trial despite the death of the accused and whether the presumption of innocence is "consistent" with such a final procedural decision to close based on Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012).

During the period of the Criminal Procedural Code of Ukraine (1960), the conventional approach to criminal procedural doctrine was to divide all grounds for closing a criminal case into two groups – rehabilitating and non-rehabilitating (Goncharenko *et al.*, 2012). However, the current Criminal Procedural Code of Ukraine (2012) has forced

adjustments to these established doctrinal views. The impact of these changes on the classification of grounds for closing criminal proceedings was one of the first to be clarified by A.O. Lyash and S.M. Blahodyr (2013) when the new criminal procedural legislation had only entered into force. Since 2012, the national legislator no longer accepts the approach that the grounds for closing criminal proceedings are also grounds for refusing to initiate criminal proceedings. Moreover, the very institution of refusal to initiate criminal proceedings under the current Criminal Procedural Code of Ukraine (2012) is not prescribed, while many researchers even speak of its inadmissibility. However, there are researchers who enter the debate, providing strong counterarguments. Thus, Y.P. Alenin (2012) argues that the law should mandate at least some procedural possibility to verify information before it is registered in the Unified Register of Pre-trial Investigations. The researcher advises on how to avoid unreasonable commencement of pre-trial investigation by introducing relevant changes and amendments to the Criminal Procedural Code of Ukraine (2012). The conventional form of refusal to initiate criminal proceedings under the Criminal Procedural Code of Ukraine (1960) should not be mentioned, but its modernised version should be regulated. Such a balanced scientific approach, based on relevant empirical data on the state of pre-trial investigation for 2012-2024, should be fully supported.

Thus, there are more grounds for making a procedural decision on closure, and their wording is partly more extensive and not always correct for understanding. I.V. Basysta *et al.* (2022) noted the validity of the opinion of V.M. Tertyshnyk (2017) regarding the division of all grounds for closing criminal proceedings into four groups, namely, the allocation of such grounds as rehabilitating, post-rehabilitating, non-rehabilitating, and formal procedural. Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012) refers to those "that entail the closure of criminal proceedings due to the existence of decisions on a certain fact that have entered into legal force" (Tertyshnyk, 2017), i.e., it is a formal procedural ground. Notably, "these facts that have become legally binding" must be documented (Basysta *et al.*, 2022). However, as of mid-2024, there is no unity in investigative and judicial practice regarding the document used to confirm the fact of a person's death (Tumanyants, 2000). Therewith, Kh.M. Lepka (2014), with proper argumentation, recommends considering such documents the following: "a death certificate issued according to the procedure established by law or an act record (extract), as well as a court decision declaring a person dead, which has entered into force".

The next aspect that needs to be clarified is the continuation of the trial in circumstances where the closure of criminal proceedings on this formal procedural ground is not allowed. Even though Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012) contains a legislative instruction to continue the proceedings for the rehabilitation of the deceased, the law enforcement agencies do not have reliable standardised guidelines on what actions and documents should be used to confirm the need to continue the proceedings for further rehabilitation and who should initiate such proceedings (Basysta *et al.*, 2022). Clearly, as Kh.M. Lepka (2014) correctly states, some of the provisions of the Criminal Procedural Code of Ukraine (2012) should have referred to the filing of a relevant petition or appeal by "close relatives of the deceased, as well as the defence counsel". Such an appeal or petition should contain a description of the circumstances that may indicate the existence of grounds for the rehabilitation of the deceased. In response to them, the court's activities should be focused on conducting the relevant checks (Basysta *et al.*, 2022). However, such research initiatives have not yet been successful, even though the draft laws on the rehabilitation of the deceased in criminal proceedings have been available since 2014 (Draft Law of Ukraine No. 4504, 2014).

Another prominent aspect is the presumption of innocence and the closure of criminal proceedings based on Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012). Overall, the logic underlying the effect of the presumption of innocence on those criminal proceedings in which procedural decisions to close them (including those that "reflect the opinion of the person's guilt" without being a guilty verdict (Nor, 2011a)) were made under the rules of national criminal procedural law (Nor, 2011b). Thus, as V.T. Nor (2011b) correctly concludes, when it comes to non-rehabilitative grounds for closing criminal proceedings, in such a case, although the court's decision "does not state a conclusion of innocence, but rather assumes it, the presumption of innocence applies to such a defendant".

In the case under consideration, it was stated that the grounds for closing criminal proceedings, which are mandated in Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012), are not rehabilitative. There is no information that the relatives of the deceased defendant applied to the court to continue the proceedings to rehabilitate the deceased. As a result, the deceased heir stayed in the criminal proceedings initiated against him under Part 2, Article 121 of the Criminal Code of Ukraine (2001) in the status of an accused at the time of the final decision to close the criminal proceedings under Item 5, Part 1, Article 284 of the Criminal Procedural Code of Ukraine (2012). In other words, the deceased accused heir did not acquire the procedural status of a convicted or acquitted person, depending on the type of sentence and the fact that it entered into force (Basysta *et al.*, 2022). Because only in such a final court decision as a guilty verdict that has entered into force, the court finds a person guilty, and this already entails the relevant legal consequences for that person. In this way, society can ensure legal stability.

Thus, as stated in the Judgement of the Constitutional Court (CC) of Ukraine No. 1-r/2019 (2019), the guilt of the deceased defendant was not established by a court verdict that entered into force, and therefore, by virtue of the principle of presumption of innocence, "a person is presumed innocent of committing a criminal offence" according to Parts 1 and 4, Article 17 of the Criminal Procedural Code of Ukraine (2012). It is also worth noting the mandatory requirement "*in dubio pro reo*" – when assessing the evidence, all doubts are "in favour of her innocence", as also emphasised by the CC of Ukraine in its decision (Judgement of the Constitutional Court of Ukraine No. 1-r/2019, 2019). The provisions of Article 17 of the Criminal Procedural Code of Ukraine (2012) are an implementation of the constitutional requirement, specifically Article 62 of the Constitution of Ukraine (1996). The existing practice of the CC regarding the interpretation of the principle of presumption of innocence and its application suggests that, like the ECHR, the CC considers the presumption of innocence as a mandatory

component of a fair trial (Decision of the Constitutional Court of Ukraine No. 3-r(II)/2022, 2022). The same fundamental provision permeates the entire text of the EU Directive 2016/343 (2016). The Constitutional Court also states that the presumption of innocence applies at all stages of criminal proceedings, even when they have already been exhausted, and is not limited to them.

Part 5 of Article 17 of the Criminal Procedural Code of Ukraine (2012) also mandates that "treatment of a person whose guilt in committing a criminal offence has not been established by a court verdict that has entered into force shall be consistent with the treatment of an innocent person". In unison with this, the CC in its decision of 2022 clarified that regardless of the grounds for closing criminal proceedings against a person, after such a procedural decision, the public authorities cannot perceive this person as having not committed a crime (Decision of the Constitutional Court of Ukraine No. 3-r(II)/2022, 2022).

In turn, Article 6 § 2 of the European Convention on Human Rights (1950) states that "everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law". Therewith, the European Convention on Human Rights (1950) does not object to presumptions of fact and law, "...for the right of everyone charged in a criminal case to be presumed innocent and of the prosecution to bear the burden of proving all allegations of guilt is not absolute" (Item 355) (Council of Europe, ECHR, 2020).

Accordingly, the ECHR case-law on criminal proceedings contained in the relevant manual on Article 6 of the ECHR (Council of Europe, ECHR, 2020), systematised and analysed, does not contain a case analogous to the situation under consideration. Although pp. 68-69 of the Ukrainian translation of the said manual on Article 6 of the ECHR (Council of Europe, ECHR, 2020), namely, Item 326 contains a list of situations and court decisions where the ECHR "examined the application of Article 6 § 2 to judgements rendered after the closure of criminal proceedings, specifically, Allen v. the United Kingdom (2013)" (Council of Europe, ECHR, 2020). The guidelines on "subsequent proceedings" describe the prohibition of treating a person in respect of whom proceedings have been closed as guilty of offences for which they were previously charged (Council of Europe, ECHR, 2020). Notably, Item 324 of the manual quoted above is formulated simultaneously and analogously to the situation with the acquittal of a person in Allen v. the United Kingdom (Council of Europe, ECHR, 2020), i.e., procedural decisions on closure and acquittal are put on the same level. It should also be remembered that if the applicant was not tried and convicted posthumously (§ 284) (Judgement of the European Court of Human Rights in Cases Nos. 32631/09 and 53799/12, 2019), the presumption of innocence is violated (Item 316**)** (Council of Europe, ECHR, 2020). With all of the above, one should also be aware of the conceptual impact of these judgements, and admittedly all ECHR judgements overall, on national criminal procedure legislation (Kaplina & Tumaniants, 2021) and court practice. The national state of affairs in this area is an illustration of how the legislator has implemented and continues to implement (or acts contrary to) the ECHR standards.

Thus, considering the above interpretations of the CC, constitutional and criminal procedural provisions that are part of the presumption of innocence and ensuring proof of guilt, as well as the ECHR practices, it is clear that by issuing a ruling to close criminal proceedings due to the death of a person, in our case, a person who was in the status of an accused and died, the court does not resolve the charges on the merits. The court also did not refute the presumption of innocence. The presumption of innocence can only be rebutted by a court verdict of guilty, and then only if it enters into force. For the ECHR practice, this legal presumption is helpful in situations where the court needs to decide on an unknown fact. For Ukrainian courts in criminal proceedings, the situation is analogous. That is why there is a system of proving the guilt of the accused. It is built by the prosecution based on the totality of evidence collected and verified following the procedure established by the Criminal Procedural Code of Ukraine (2012). The court also directly receives, verifies, and evaluates such evidence. And only when there are indisputable grounds to hold the accused criminally liable for this fact, already known and proven by irrefutable evidence, the court issues a guilty verdict. In this way, the presumption of innocence is refuted. If the presumption of innocence is not rebutted in court proceedings, it becomes "*praesumptio iuris et de iure*". In other words, the accused is deemed not to have committed a crime and is not subject to criminal liability, i.e., they "fall out" of the status of an accused. As a result, in any trial, those components that have been assessed by the court in favour of a person's innocence cannot continue to stigmatise such a person, and therefore they are presumed innocent (Judgement of the European Court of Human Rights in Cases Nos. 32483/19 and 35049/19, 2024).

Thus, the possibility of stigmatising such an accused in any way is unacceptable. The mere raising of the issue of the possibility of depriving an heir of the right to inheritance based on being found guilty of intentionally taking the life of the testator, without a court conviction, is the beginning of stigmatisation. Moreover, the current Criminal Procedural Code of Ukraine (2012) not only requires a court verdict against such an heir, but also that this verdict must enter into force. An heir who was in the procedural status of an accused in criminal proceedings and died cannot be perceived by society as a criminal in the circumstances of the situation under consideration. We cannot and must not continue the shameful tradition of "punitive justice". The existing amount of social stigma should be reduced, and court decisions should be fair, as should any court proceedings in which an impartial attitude towards the individual is dominant. All this, in its positive totality, will contribute to the growth of public trust in the judicial system, and as a result, will create a state of social harmony and reduce deviations.

Establishing the circumstances of a criminal offence in a civil case, and as a result, in a court decision, and assessing them would be a violation of the European Convention on Human Rights (1950). Civil inheritance cases are not complicated in themselves, but the issue of atypical inheritance situations is already a challenge for both researchers who thoroughly advise on how to act in different scenarios (Diakovych *et al.*, 2020) and judges. Overall, the issues declared in this study are covered by the general approach described by V.V. Vapniarchuk *et al.* (2019) regarding the inviolability of private property rights and protection against encroachments on property, and these issues are especially acute when the property owner died.

A. Goncharova *et al.* (2022) and M.O. Mykhayliv (2023) thoroughly and meaningfully covered the general principles

of adaptation of civil law in the field of inheritance to the law of the European Union and how inheritance is ensured under the law of the European Union. Thus, based on their beliefs, let us ask ourselves how to establish inconsistencies in our reality. Specifically, when a court in a civil case tries to take over the powers of a court in criminal proceedings.

Considering all the above and answering this question, it is necessary, first of all, to come to the understanding that the court in a civil case cannot take over the powers inherent in the court and the prosecutor during the criminal proceedings. The presumption of innocence of a person, among other things, also implies that the burden of proving the person's guilt rests with the state, represented by its authorised bodies. However, different principles apply in civil proceedings. V. Vapniarchuk *et al.* (2020) and O. Drozdov *et al.* (2021) have already noted that neither the truth can be established based on objectively proven facts nor the proper standard of proof, which is different in criminal proceedings, can be ensured by a court in a civil case. In addition, the only state body in this civil case is the court, which does not and cannot under any circumstances exercise its uncharacteristic prosecutorial function of maintaining the prosecution (Basysta *et al.*, 2023).

The presumption of innocence is not only a mandatory element of the constitutional right to judicial defence, without which a fair trial is impossible, but also an important constitutional guarantee that requires a fair trial and effective judicial defence. This necessitates the need to ensure that a person can express their opinion regarding their innocence and prove this position in court, otherwise the basic principles of judicial proceedings, namely those set out in Part 2 of Article 129 of the Constitution of Ukraine (1996) regarding equality (Item 1) and competition (Item 3), will be violated. It is clear that in the above civil case it will be impossible to follow the quoted principles of judicial proceedings, as well as to ensure the above guarantees if the civil court undertakes to clarify the circumstances that were not established and confirmed by the guilty verdict in the criminal proceedings, since it was not delivered at all.

Within the framework of the existing regulatory model embodied in Part 1 of Article 1224 of the Civil Code of Ukraine (2003) and in the situation when a civil court undertakes to clarify circumstances that were not established and confirmed by a guilty verdict in criminal proceedings, there will be violations already known from the ECHR practice identified by this court. This is a form of condemnation by public authorities and posthumous conviction outside the framework of due process. Such violations of the European Convention on Human Rights (1950) have already been established by the ECHR as a violation of its Article 6 § 2 (Judgement of the European Court of Human Rights in Cases Nos. 32631/09 and 53799/12, 2019).

Thus, it is unacceptable that the violations of Article 6 § 2 of the European Convention on Human Rights (1950), which have been repeatedly stated by the ECHR, will occur again in national court practice. And this is quite predictable if the CCC SC resorts to establishing in a civil case, and as a result of such consideration – in a court decision, the circumstances of intentional deprivation of life of the testator in the above procedural situation.

Conclusions

Society is entitled to expect justice from the court and its decisions. Achieving this result is the task of the judiciary and a guarantee of social harmony. The legislative division of courts into those that conduct civil, criminal, administrative, and commercial proceedings is not baseless. The system for collecting, verifying, and assessing facts in these proceedings is not uniform, and different procedural codes regulate and enforce it. Derogations are unacceptable. Thus, in the situation under consideration, according to the rules of criminal proceedings, the accused son was prosecuted for intentionally taking his father's life. The death of the son (heir), who was in the criminal procedural status of the accused, led to the closure of the criminal proceedings. As a result of severe bodily injuries inflicted on him by his son, the father, who was the testator, died. Thus, both the heir and the testator had already died at the time of the court hearing of the dispute over disinheritance. Based on the totality of the investigated circumstances, it was proved that the deceased heir – the accused, who inflicted grievous bodily injuries to his father – the testator, as a result of which the latter died, cannot be considered as having no right to inheritance, based on the analysis of the content of Part 1 of Article 1224 of the Civil Code of Ukraine. First of all, it follows from the analysis of the content of the provision that the qualification of the committed unlawful act as murder or attempted murder is decisive, which is not the case in the situation under consideration here; secondly, the presumption of innocence does not cease to apply to such an accused; thirdly, since the guilt of the deceased accused was not established by a court verdict that entered into force, and therefore, by virtue of the principle of the presumption of innocence, the person is considered innocent of committing a criminal offence.

Based on the analysis and synthesis of criminal procedural provisions, it is stated states that by making a procedural decision to close criminal proceedings due to the death of a person, in the case under consideration – a person who was in the status of an accused and died, the court does not resolve the charges on the merits. In addition, the court does not refute the presumption of innocence by such a procedural decision, since it can only be refuted by a court verdict that has entered into force.

If a civil court takes up the task of clarifying circumstances that were not established and confirmed by a criminal conviction, there will be violations of Article 6 § 2 of the European Convention on Human Rights, which are already known from the ECHR practices. When considering the dispute on disinheritance described above, the court is not entitled to rely on the circumstances of the indictment and the grounds for closing the criminal proceedings against him (the heir who was accused of causing grievous bodily harm that resulted in the death of the testator) under Item 5, Part 1, Article 284 of the current Criminal Procedural Code of Ukraine. Such "assumption" of the powers by a civil court, which are exercised only in criminal proceedings, is not allowed when resolving a dispute over inheritance. It was stated that even raising the issue of the possibility of depriving an heir of the right to inheritance based on being found guilty of intentional deprivation of the testator's life, without a court conviction, is the beginning of stigmatisation of a person.

Prospects for further research into the issue are to develop an algorithm of actions for judges in analogous situations where violations of the European Convention on Human Rights and stigmatisation of a person due to the criminal orientation of criminal justice are clear and predictable.

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Conflict of interest

The authors of this study declare no conflict of interest.

References

[1] Abbasova, D.L. (2024). *Ethical norms in the criminal process of Ukraine*. Kyiv: Yurinkom Inter.
[2] Alenin, Y.P. (2012). Features of initial stage of pre-trial investigation on a new Criminal Procedure Code (positive and negative aspects). *Scientific works of the National University of Odesa Law Academy*, 11, 395-403.
[3] Basysta, I.V., Blahuta, R.I., & Komissarchuk, Yu.A. (2022). *Current issues of applying criminal procedural legislation: Educational handbook*. Lviv: Lviv State University of Internal Affairs.
[4] Basysta, I.V., Galagan, V.I., & Udovenko, Z.V. (2023). Prosecutor's authority to conduct procedural actions in criminal proceedings: specific issues. *Scientific Bulletin of Kherson State University. Series "Legal Sciences"*, 1, 16-25. doi: 10.32999/ksu2307-8049/2023-1-3.
[5] Borysova, V.I., Ivanova, K.Yu., Iurevych, I.V., & Ovcharenko, O.M. (2019). Judicial protection of civil rights in Ukraine: National experience through the prism of European standards. *Journal of Advanced Research in Law and Economics*, 10(39), 66-84. doi: 10.14505//jarle.v10.1(39).09.
[6] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
[7] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[8] Council of Europe, ECHR. (2020). *Guide on Article 6 of the European Convention on Human Rights. Right to a fair trial (criminal procedural aspect)*. Retrieved from https://www.echr.coe.int/Documents/Guide_Art_6_criminal_UKR.pdf.
[9] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[10] Criminal Procedural Code of Ukraine. (2012, November). Retrieved from https://zakon.rada.gov.ua/laws/show/ 4651-17.
[11] Criminal-Procedural Code of Ukraine. (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1001-05#Text.
[12] Diakovych, M.M., Mykhayliv, M.O., & Kossak, V.M. (2020). Features of the inheritance rights of children born as a result of artificial insemination. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(4), 214-230. doi: 10.37635/jnalsu.27(4).2020.
[13] Directive of the European Parliament and of the Council No. 2016/343 "On the Strengthening of Certain Aspects of the Presumption of Innocence and of the Right to be Present at the Trial in Criminal Proceedings". (2016, March). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343.
[14] Draft Law of Ukraine No. 4504 "On Amendments to the Criminal Procedure Code of Ukraine (Regarding the Procedure for Rehabilitation, Including Rehabilitation of the Deceased)". (2014, March). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=4504&skl=8.
[15] Drozdov, O. (2024). Scientific conclusion by Professor O. Drozdov "On the removal of the right to inheritance of a person accused of causing grievous bodily harm to the testator, resulting in the latter's death, in the absence of a court conviction" (in response to the request by Judge B. Hulko, Head of the Civil Cassation Court, in case No. 688/2840/22, proceeding No. 61 – 10433 sv 23. 24.02.2024.
[16] Drozdov, O., Hryniuk, V., Kovalchuk, S., Korytko, L., & Kret, G. (2021). The standard of proof "beyond a reasonable doubt" in criminal proceedings of Ukraine in the context of the ECHR case-law. *Amazonia Investiga*, 10(46), 281-289. doi: 10.34069/AI/2021.46.10.28.
[17] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.
[18] Goncharenko, V.G., Nor, V.T., & Shumilo, M.E. (Eds.). (2012). *Criminal Procedure Code of Ukraine: Scientific-practical commentary*. Kyiv: Justinian.
[19] Goncharova, A., Fursa, S., Chuikova, V., Danylenko, O., & Hlushchenko, N. (2022). Foreign element in legal regulation on succession: The experience of Regulation (EU) Nº 650/2012. *Revista Jurídica Portucalense*, 31, 9-38. doi: 10.34625/issn.2183-2705(31)2022.ic-01.
[20] Judgment of the Constitutional Court of Ukraine No. 1-r/2019 in Case No. 1-135/2018(5846/17). (2019, February). Retrieved from https://zakon.rada.gov.ua/laws/show/v001p710-19#Text.
[21] Judgment of the Constitutional Court of Ukraine No. 3-r(II)/2022 in Case No. 3-20/2021(40/21). (2022, June). Retrieved from https://zakon.rada.gov.ua/laws/show/v003p710-22#Text.
[22] Judgment of the European Court of Human Rights in Case No. 23349/17 "Pasquini v. San Marino (No. 2)". (2020, October). Retrieved from https://hudoc.echr.coe.int/eng?i=001-205166.
[23] Judgment of the European Court of Human Rights in Case No. 25424/09 "Allen v. the United Kingdom". (2013, July). Retrieved from https://hudoc.echr.coe.int/fre?i=001-122859.
[24] Judgment of the European Court of Human Rights in Case No. 29620/07 "Farzaliyev v. Azerbaijan". (2020, May). Retrieved from https://hudoc.echr.coe.int/eng?i=001-202532.
[25] Judgment of the European Court of Human Rights in Case No. 48144/09 "Cleve v. Germany". (2015, January). Retrieved from https://hudoc.echr.coe.int/eng?i=001-150309.
[26] Judgment of the European Court of Human Rights in Cases Nos. 1828/06, 34163/07 and 19029/11 "G.I.E.M. S.R.L. and Others v. Italy". (2018, June). Retrieved from https://hudoc.echr.coe.int/eng?i=001-184525.
[27] Judgment of the European Court of Human Rights in Cases Nos. 32483/19 and 35049/19 "Nealon and Hallamv. the United Kingdom". (2024, June). Retrieved from https://hudoc.echr.coe.int/eng?i=001-234468.
[28] Judgment of the European Court of Human Rights in Cases Nos. 32631/09 and 53799/12 "Magnitskiy and Others v. Russia". (2019, August). Retrieved from https://hudoc.echr.coe.int/fre?i=001-195527.

[29] Judgment of the Grand Chamber of the Supreme Court in Case No. 688/2840/22. (2024, April). Retrieved from https://reyestr.court.gov.ua/Review/118465144.
[30] Judgment of the Khmelnitsky Appeal Court in Case No. 688/2840/22. (2023, June). Retrieved from https://reyestr.court.gov.ua/Review/111529642.
[31] Judgment of the Panel of Judges of the First Judicial Chamber of the Cassation Civil Court of the Supreme Court in Case No. 688/2840/22. (2024, March). Retrieved from https://reyestr.court.gov.ua/Review/117788728.
[32] Judgment of the Shepetivka City District Court of Khmelnytskyi Oblast in Case No. 688/2840/22. (2023, March). Retrieved from https://reyestr.court.gov.ua/Review/109694351.
[33] Judgment of the Supreme Court of Ukraine in Case No. 240/4894/23. (2024a, January). Retrieved from https://reyestr.court.gov.ua/Review/116241970.
[34] Judgment of the Supreme Court of Ukraine in Case No. 688/2840/22. (2024b, May). Retrieved from https://reyestr.court.gov.ua/Review/119559344.
[35] Kaluzhna, O., & Shevchuk, M. (2022). Unconditional grounds for challenges to judges in criminal proceedings of Ukraine and ECtHR standards. *Access to Justice in Eastern Europe*, 2(14) 46-82. doi: 10.33327/AJEE-18-5.1-a000110.
[36] Kaplina, O., & Tumaniants, A. (2021). ECTHR decisions that influenced the criminal procedure of Ukraine. *Access to Justice in Eastern Europe*, 1(9), 102-121. doi: 10.33327/AJEE-18-4.1-a000048.
[37] Kaplina, O.V. (2012). Problems of unity of terminological scientific toolkit in determining methods of interpretation of legal norms. *Actual Problems of State and Law*, 63, 26-34.
[38] Kivalov, S.V., & Tsutskiridze, M.S. (2023). *Criminal Procedure of Ukraine*. Odesa: "Yuridika" Publishing House.
[39] Kryzhanivskyi, V.V. (2007). The principle of the presumption of innocence in criminal proceedings' (comparative legal research). (PhD thesis, Taras Shevchenko National University of Kyiv, Kyiv, Ukraine).
[40] Lemak, V., & Badyda, A. (2019). Interpretation of law: Problems of defining the concept, composition, practical need. *Public Law*, 4(36), 133-143. doi: 10.37374/2019-36-15.
[41] Lepka, Kh.M. (2014). Features of closing a criminal case by the court in case of the accused's death. *Scientific Bulletin of Kherson State University (Series Legal Sciences)*, 4(2), 114-117.
[42] Lyash, A.O., & Blahodyr, S.M. (2013). Closing of criminal proceedings under the new Criminal Procedure Code of Ukraine: Some issues. *Advocate*, 1(148), 25-28.
[43] McWilliams, E.R., & Hunter, B.A. (2021). The Impact of criminal record stigma on quality of life: A test of theoretical pathways. *American Journal of Community Psychology*, 67, 89-102. doi: 10.1002/ajcp.12454.
[44] Moore, K.E., Phillips, S., Kromash, R., Siebert, S., Roberts, W., Peltier, M., Smith, M.D., Verplaetse, T., Marotta, P., Burke, C., Allison, G., & McKee, S.A. (2024). The causes and consequences of stigma among individuals involved in the criminal legal system: A systematic review. *Stigma and Health*, 9(2), 224-235. doi: 10.1037/sah0000483.
[45] Mykhayliv, M.O. (2023). Adaptation of the civil legislation of Ukraine in the field of inheritance with EU law. *Balkan Social Science Review*, 21(21), 87-103. doi: 10.46763/BSSR2321087m.
[46] Nor, V.T. (2011a). The presumption of innocence as a constitutional principle in criminal proceedings and its application in the practice of the European court of human rights. *Journal of NUOA: Ostrog. Law Series*, 1(3).
[47] Nor, V.T. (2011b). The presumption of innocence as a principle of criminal proceedings and its interpretation by the European court of human rights. *Bulletin of the Lviv University. Series Law*, 53, 389-401.
[48] Scientific conclusion by Associate Professor O. Pechenyi "On the application of the construction of Article 1224 of the Civil Code of Ukraine to cases where the heir who is being disqualified died after the opening of the inheritance". (2022). Retrieved from https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/nauk_visn/Nauk_visn_755_17978_20_1.pdf.
[49] Silver, J.R., Shi, L., & Hickert, A. (2024). Stigmatizing "evildoers": How beliefs about evil and public stigma explain criminal justice policy preferences. *Psychology, Crime & Law*. doi: 10.1080/1068316X.2024.2364286.
[50] Sliusarchuk, Kh.R. (2017). *Standards of proof in criminal proceedings*. (PhD thesis, Ivan Franko National University of Lviv, Lviv, Ukraine).
[51] Slutska, T. (2018). *The presumption of innocence in action?! The practical implementation of this principle in respect of persons released from punishment serving with test.* Retrieved from https://protocol.ua/ua/prezumptsiya_nevinuvatosti_v_dii_praktichna_realizatsiya_tsogo_printsipu_shchodo_osib_zvilnenih_vid_vidbuvannya_pokarannya_z_viprobuvannyam/.
[52] Slutska, T. (2019). *250 legal positions of the European Court of Human Rights in criminal proceedings: Updated, systematized collection.* Retrieved from https://protocol.ua/ua/250_pravovih_pozitsiy_espl_u_kriminalnomu_provadgenni_onovlena_sistematizovana_dobirka/.
[53] Stepanenko, A.S. (2017). *The standard of proof "beyond a reasonable doubt" in criminal proceedings*. (PhD thesis, National University "Odesa Law Academy", Odesa, Ukraine).
[54] Syza, N., & Matokhniuk, O. (2018). The presumption of innocence as a component of the right to a fair trial in the practice of the European Court of Human Rights. *Scientific-Practical Journal "Herald of Criminal Justice"*, 3, 36-44.
[55] Tertyshnyk, V.M. (2017). *Scientific-practical commentary on the Criminal Procedure Code of Ukraine*. Kyiv: Alerta.
[56] Tumanyants, A.R. (2000). *Control functions of the court in the field of criminal justice*. Kharkiv: Osnova.
[57] Vapniarchuk, V.V., Puchkovska, I.I., Tavolzhanskyi, O.V., & Tashian, R.I. (2019). Protection of ownership right in the court: the essence and particularities. *Asia Life Sciences*, 2, 863-874.
[58] Vapniarchuk, V.V., Zhuravel, V.A., Trofymenko, V.M., & Karpenko, M.O. (2020). The essence of the philosophical category truth: Criminal procedural aspect. *Astra Salvensis*, 1, 273-290.
[59] Yevgrafova, Y. (2010). Doctrinal interpretation of legal norms (laws): Nature and implementation. *Bulletin of the Academy of Legal Sciences of Ukraine*, 2, 40-51.
[60] Yudkivska, H.I. (2008). *The presumption of innocence in criminal proceedings of Ukraine and the practice of the European Court of Human Rights*. (PhD thesis, Academy of Advocacy of Ukraine, Kyiv, Ukraine).
[61] Zaika, Yu. (2022). *Scientific conclusion*. Retrieved from https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/nauk_visn/Nauk_visn_755_17978_20.pdf.

Аналіз допустимості встановлення у цивільній справі обставин умисного позбавлення життя спадкодавця спадкоємцем крізь призму презумпції невинуватості, практику Європейського суду з прав людини та соціальні наслідки такого судового рішення

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Анотація. Актуальність тематики обумовлена тим фактом, що в українській судовій практиці як судді, так і фахівці які входять до складу Науково-консультативної ради при Верховному Суді розійшлися у своїх поглядах щодо можливості усунення від права на спадкування спадкоємця на підставі вимог частини 1 статті 1224 Цивільного кодексу України. Метою цієї публікації було з'ясування таких загальних правових питань, як: застосовність та поширення презумпції невинуватості у перебігу цивільних проваджень, убезпечення від порушення цієї засади при вирішенні окремих цивільно-правових спорів. Методи аналізу, синтезу та порівняння, узагальнення та case study стали у нагоді при дослідженні рішень національних судів загальної юрисдикції різних інстанцій, Конституційного суду України та Європейського суду з прав людини. Констатовано, що померлого спадкоємця – обвинуваченого, який наніс тяжкі тілесні ушкодження своєму батьку – спадкодавцю, внаслідок яких останній помер, не можна вважати таким, що не має права на спадкування, виходячи із аналізу змісту частини 1 статті 1224 Цивільного кодексу України. Доведено, що формою осуду від публічної влади та засудженням посмертно поза межами належної правової процедури буде встановлення судом у цивільній справі обставин умисного позбавлення життя спадкодавця спадкоємцем, померлим на час розгляду цивільного спору. Для цивільного суду неприпустимо виходити з обставин обвинувального акту та підстав закриття кримінального провадження щодо померлого обвинуваченого – спадкоємця. Лише обвинувальним вироком суду констатується винуватість особи. Якщо про неї йтиметься у інших процесуальних рішеннях, то цілком ймовірна соціальна

стигматизація особи. Взяття на себе цивільним судом при вирішенні спору про спадкування повноважень суду, які реалізовуються лише у кримінальному провадженні, не допускається. Практична цінність роботи полягає у напрацюванні аргументів для суду та учасників судового розгляду

Ключові слова: спір про спадкування; обвинувальний вирок суду; закриття кримінального провадження; стаття 6 Європейської конвенції прав людини; право на справедливий суд; соціальна злагода; соціальна стигматизація