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Protection of the rights and interests of the child during inheritance: constitutional principles

Захист прав та інтересів дитини при спадкуванні: конституційні засади

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Abstract

The protection of the rights and interests of the child is a priority of the family policy of any civilized state. Today's youth is developing rapidly, mastering new technologies and types of communication. This is especially important from a perspective point of view because researching this legal phenomenon, we care about the future – our heritage, the rights, and the interests of our descendants. In this study, we looked at the basic principles and legal norms related to children's rights to inheritance. Additional attention is paid to the inheritance rights of persons conceived but born after the death of the testator. We used general scientific and special scientific methods such as system-structural and formal-legal to study regulations and analyze and interpret legal provisions related to inheritance by children. As a result of the study, we found that the inheritance right of children is a complex legal phenomenon, which is based on national and international law, ratified by relevant laws, and therefore approved as part of national law. Civil law guarantees the testator's children a mandatory share of the inheritance, which is detailed in the code and case law. The legal capacity of a person conceived but born after the death of the testator is conditional and becomes valid only in the case

Анотація

Охорона прав та інтересів дитини є пріоритетом сімейної політики будь-якої цивілізованої держави. Нинішня молодь стрімко розвивається, опановуючи нові технології та види комунікації. Це особливо важливо з перспективної точки зору, оскільки дбаючи та досліджуючи дане правове явище, ми дбаємо про майбутнє – свою спадщину, права та інтереси наших нащадків. У цьому дослідженні ми розглянули основоположні принципи та правові норми, пов'язані з правами дітей на спадкування. Додаткова увага приділяється спадковим правам зачатих, але народжених вже після смерті спадкодавця, осіб. Ми використали загальні наукові та спеціальні наукові методи такі як системно-структурний та формально-юридичний для дослідження нормативно-правових актів та аналізу і тлумачення правових положень, пов'язаних зі спадкуванням дітьми. У результаті дослідження, ми встановили, що спадкове право дітей є комплексним правовим явищем, яке ґрунтується на нормах національного та міжнародного права, ратифікованого відповідними законами, і, отже, схваленим у вигляді складової національного законодавства. Цивільне законодавство гарантує дітям спадкодавця

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of live birth, which opens up opportunities for inheritance.

Keywords: rights and interests of the child, inheritance, civil judiciary, legal protection, constitutional principles.

Introduction

The emergence of new forms of civil relations forces to reconsider the basics of civil law in order to find optimal solutions to resolve legal situations caused by technological and social development. We strive to pass laws based on the principles of equality, justice, the rule of law, non-discrimination, and the protection of vulnerable groups. A special role in this is played by children who quickly and efficiently get used to using smartphones, social networks, and new technologies (Steshenko, 2019). As a result, new regulations are being passed on the protection of children's rights on the Internet, for example, to restrict the use of their personal data in order to obtain targeted advertising. However, other important issues cannot be overlooked, one of which is the inheritance of property rights and money by children.

In this regard, it should be noted that the study of this problem is not new. For example, back in 1979, the European Court of Human Rights ruled in the case of *Marckx v. Belgium* (CASE OF MARCKX v. BELGIUM, 1979), according to which the separation of children born in and out of wedlock in inheritance rights is a manifestation of discrimination (Novikov, 2015). As a result of this case, a decade later, Belgium made changes by adopting a new Civil Code, in which such a distinction no longer existed (Goldhaber, 2007).

Despite its long history, the issue of children's inheritance rights is still relevant not only for legal science but also for each of us, because everyone has to face inheritance at least once in their life. And because, as stated in the Declaration of the Rights of the Child, adopted by the UN on November 20, 1959 (UN, 1959), children are subject to special legal protection both before and after birth, this makes the subject of our study even more relevant.

обов'язкову частку спадщини, що деталізується в нормах кодексу та судовій практиці. Правоздатність зачатої, але народженої після смерті спадкодавця, особи, є умовною, і стає дійсною лише у випадку народження живою, що відкриває можливості для спадкування.

Ключові слова: права та інтереси дитини, спадкування, цивільне судочинство, правова охорона, конституційні принципи.

Theoretical Framework or Literature Review

Inheritance and property rights of children have not left the focus of domestic researchers, especially with the adoption of the new Civil Code in 2003, and to this day.

For example, Bodnar (2013), in his study, points to the systemic role of family law as a connecting element for the rights of the child to maintenance, property, and inheritance. The author notes that family law as part of private law has prospects for its development in ensuring adequate legal regulation of children's rights.

Moreover, Kravets (2013), in his research, refers to problematic aspects of inheritance, in particular, going to court due to violation of notarial rules, for example, when a notary does not comply with guarantees of rights, interests of the child, not taking into account the consent of hereditary property of a minor. In this regard, the author insists on further improvement of legislation, in particular, in order to relieve the judiciary, to resolve inheritance disputes peacefully.

Besides, Pavlyuk (2013), in her article, considered how inheritance takes place in different countries. She concluded that blood ties were important for countries that were strongly influenced by Roman law, and for German countries, the heir could act as a creditor over other testamentary heirs in the case of a mandatory share of the inheritance. Thus, according to the researcher, inheritance has its own specifics for each national jurisdiction. She points out that the question of accepting the inheritance of a person conceived but born after the death of the testator remains open for discussion by scholars.

Biryak and Goncharova (2015) state that adoptees have equal rights to blood heirs. In their study, they conclude that there is every reason to consider a codified act in the field of civil law as

a source of the legal protection of inherited property and property rights of heirs.

Finally, Rozhon (2016a), in her fundamental work, analyzes the problematic issues of inheritance by children. For example, she examines the inheritance rights of children in different countries and details the specifics of different jurisdictions, in particular, European countries such as Germany, Italy, France, Switzerland, and Asian countries – China, and Japan. Accordingly, it is concluded that principles such as consanguinity are common to inheritance. The decision of the European courts, she notes, clearly shows that there is no legal distinction between relatives and adopted children born out of wedlock or in wedlock. In addition, the author examines the phenomena of postum and nasciturus, conceived but born after the discovery of the inheritance, children (postustus), and persons (nasciturus) in relation to the testator. With regard to this aspect, it is concluded that the legal capacity of such persons is possible only if they are born alive. At the same time, not all countries have the right to inherit nasciturus. This is especially true of the right to a compulsory share in the inheritance.

Methodology

In this study, we use general scientific and special scientific methods such as system-structural and formal-legal.

We used the system-structural method to consider the rules of law relating to inheritance. For example, norms on inheritance by children are contained in Book 6 of the Civil Code of Ukraine, which creates a system on a par with other norms of the Code contained in other sections, such as protection of civil law, principles of civil law, norms on property rights, etc. In this regard, there was an urgent need to study the inheritance law of children in conjunction with other rules of law. With the help of the system-structural method, it became possible to demonstrate the connection between the regulation of the Civil Code and other normative legal acts, for example, in the field of constitutional, family law, legislation, rules of notarial acts. As a result, the institution of inheritance by a child can be considered as a system of legal norms that regulate social relations in this aspect, which is possible through the system-structural method.

Using the formal-legal method, we consider the legal norm in its separate form. For example, Art. 1241 of the Civil Code considered by us in the

light of its grammatical, lexical, logical interpretation as a separate legal norm, resulting in a circle of subjects entitled to inherit a mandatory share, which serves as a kind of safeguard for these subjects in the case, when the testator does not indicate them in any way in the will or deprives them in the inheritance.

It should be remarked that the legal nature of the category of mandatory share can be established only by combining the system-structural and formal-legal methods, as structural provisions on a mandatory share of inheritance belong to the section on testamentary inheritance, however, using these methods is possible to prove that, in essence, the right to receive a mandatory share in the inheritance belongs to the inheritance by law.

Results and Discussion

Let's start the study of our problems with the basics of legislation. In Ukraine, the protection of childhood is the task of public authorities (paragraph 3 of Article 51 of the Constitution). It is the regulations of national law that determine property and family, parent and child issues. However, in these areas, Ukraine also applies the rules of international law, in particular, treaties, agreements, and conventions (Stepanova & Maimur, 2020). For example, ratification of international conventions is the basis for their approval as part of our national legislation (Zabokrytsky, 2015). As noted by Tatsiy et al. (2011), we should borne in mind the public law agreements concluded between Ukraine and other states or organizations – subjects of international law – regardless of the name of the agreement and the number of copies. The legal basis for this is contained in the Law on International Treaties of Ukraine (Law № 1906-IV, 2004). In addition, the rules of the Vienna Convention (UN, 1969) apply. The definition of an international agreement is contained in paragraph "a" of Part 1 of the Law and Art. 2 of the Vienna Convention, according to which, international agreements are subject to international law. A similar interpretation is contained in Art. 2 of Law No. 1906-IV (Law № 1906-IV, 2004). Ratification means recognizing the validity of an international treaty, that is, giving consent to its binding force. Other ways are signing, joining, accepting, and approving the agreement (Article 8 of Law No. 1906-IV). International agreements on the rights of the child belong to the category of agreements on rights, freedoms, and obligations (paragraph "b" of Part 2 of Article 9 of Law No. 1906-IV). In addition, Ukraine is a party to international conventions in the field of protection of

children's rights, including the Convention on the Rights of the Child (UN, 1959), and the Convention on the Exercise of Children's Rights (Council of Europe, 1996). The preamble to the UN Convention on the Rights of the Child states that children deserve special care and support (UN, 1959). Part three of Article 10 of the UN Covenant (1966a) contains a similar provision. In accordance with Part 1 of Art. 24 of the UN Covenant (United Nations, 1966), every child has the right to adequate protection by family, state, and society (Snizhko, 2009). Part 3 of Article 12 of the UN Convention on the Rights of the Child (UN, 1959), among other guarantees, states the procedural right of the child to be heard in court. In addition, the ETS Convention No. 85 (Council of Europe, 1975), ratified by Ukraine in 2009 (Law № 862-VI, 2009), in Art. 6 marks the equality between the rights and responsibilities of parents in relation to illegitimate children and those born in wedlock, which corresponds to Art. 52 of the Constitution (Law № 254к/96-BP, 1996) and Art. 141, 142 of the Family Code of Ukraine (Law № 2947-III, 2002), which, in turn, results in the possibility for illegitimate children to inherit (Borisyuk, 2021).

The hereditary right of a child is by its nature a civil property right. Civil law provides for other types of property rights of children. Among them: the right to maintenance, use of the property of parents, etc. As for inheritance, children in this aspect have the right to inherit in law (by law) and by will. If the child does not inherit by will, it belongs to the first stage of inheritance, which means that it is the priority over other stages (Dzera, Luts, & Kuznetsova, 2013). The first stage also includes the parents of the testator, the second of the spouses who survived the deceased. Persons of the priority have an equal right to a share in the inheritance, therefore, according to the law, it is divided equally between them. It is considered that the child has inherited unless otherwise stated (Part 4 of Article 1268 of the Civil Code). As a general rule, the inheritance on behalf of a minor child is accepted by the parents, which is signed by a notary in one of them, if the other spouse died, or both parents. Inheritance is managed by persons of guardianship and trusteeship. Parents do not need special documents on this right for legal representation, for example, a power of attorney is not required. At the same time, the basis of legal representation is the child's birth certificate or the decision to appoint a person as a guardian (hereditary property). If such a person wishes to agree on the inherited property of a child, which is subject to mandatory state registration and notarization, such a person must obtain the

permission of the guardianship authority. If a person is deprived of parental rights by a court decision, the judicial body in this decision states the prohibition of alienation of property or housing of the child. The notary at the address of property or housing is notified of this court decision.

Minors, minor children, disabled parents, and disabled adult children have a legal guarantee that they will not be deprived of their inheritance in the case of a will in which they do not appear. Due to this Art. 1241 of the Civil Code establishes a rule on the obligatory share equal to half of the inheritance that individuals could receive in the case of inheritance by law. Ukrainian legislation does not provide a mechanism for depriving the subjects of Art. 1241 of this guarantee, however, can be eliminated under Art. 1224 of the Civil Code as unworthy. According to this norm, a person is not entitled to an inheritance if his actions contributed to the death of the testator or otherwise showed his unworthy behavior to the heir (Law № 435-IV, 2003a).

According to Kukharev (2021), the right to a mandatory share of inheritance should be attributed to inheritance by law, while structurally in the code it is contained in the part on the rules of inheritance by will. Replacing this institution of inheritance by law with alimony, that is, the payment of money, as is the case in Western jurisdictions, where instead of inheritance in the form of movable or immovable property is its monetary equivalent or compensation, according to the author, is impractical, because it does not fit economic conditions of Ukrainian society. And the abolition of the right to a mandatory share, in general, would be contrary to the principles of civil law, in particular, the principle of justice, which is enshrined in Art. 3 of the Code.

To protect his right to a compulsory share of the inheritance, a person may apply for this in court using a claim for recognition of his right. Alternatives are to invalidate another person's inheritance certificate or a claim for redistribution of inheritance.

Next, let us consider the Constitutional Court's regulation (Decision No. 15-rp / 2004, 2004) on the compulsory share, which concerned the interpretation of the rule of law as to who are the adult children of the testator are entitled to the compulsory share. Before that, we will indicate the constitutional norms that guided the court in making a decision.

Thus, the establishment of an exhaustive circle of persons guaranteed the right to inherit by law is considered a restriction on the freedom of wills, which, therefore, is not absolute (Decision No. 15-rp/2004, 2004). According to para. 3 art. 13 of the Constitution, with the acquisition of property, individuals have obligations. For example, a person is obliged to use his property in a way that does not harm society and nature. The Basic Law guarantees the right of private property on the territory of Ukraine under Art. 41. It also contains the rule that property should not harm the rights, freedoms, and interests of others. This corresponds to the norm of Art. 319 of the Civil Code.

Chapters 23 and 24 provide details of property law regulation. The right of ownership is the absolute right of a person to own, use, and dispose of his thing or property. Absolute ownership means that a person exercises it independently of the will of others, and any restriction or interference with the exercise of this right outside the limits permitted by law is a violation of it. The owner exercises his powers about his property at his discretion, which is his will concerning the thing or property. Thus, between the owner as a person, a subject of law, and the thing (property), there is a relationship in which the owner has the right to freely dispose of their thing. Unlawful deprivation or restriction of property rights is inadmissible, according to para. 4 Art. 41 of the Basic Law. The main basis for the lawful acquisition of property rights is the conclusion of a transaction. Restriction of property rights is possible only on the basis and in the manner prescribed by law, and confiscation is applied solely based on a court decision.

Based on these constitutional principles, the court ruled that, regardless of the disability group, the adult incapacitated children of the testator have the right to inherit a mandatory share of the inheritance. At the same time, the list of other persons entitled to a mandatory share is exhaustive, and the norm itself contains provisions for determining the size of such a share (Article 1241 of the Civil Code of Ukraine).

This regulation has recently received new details in the Supreme Court ruling (Resolution No. 159/4322/14-ts / 2021, 2021) in case 159/4322/14-c, which clarified the need to establish the fact of disability to address the incapacity of a person at the time of the opening of the inheritance. According to the plot of the case, the plaintiff demanded that she be

recognized as the owner of the obligatory share in the father's inheritance. In her arguments, she referred to disability and incapacity for work, which the courts of first and appellate instance did not take into account, as the documents on incapacity for work had been obtained after her father's death. The Supreme Court stated that, according to the decision of the medical commission, the plaintiff was diagnosed with a disability from childhood, which means that she had a persistent physical disorder at the time of adulthood. Thus, the plaintiff was incapacitated under Art. 1 of the Law (Law № 1058-IV, 2003) at the time of his father's death. The court noted that the decisive factor was not whether the plaintiff could have worked physically, but what group of persons she belonged to at the time of the testator's death.

It is worth noting the justification for reducing the mandatory share of the inheritance (Kovalchuk, 2009). In the formation of judicial practice, it became possible to identify the main aspects of this problem. For example, in deciding this issue, the court must assess the nature of the relationship between the parties to the inheritance, as well as other significant circumstances (Morozov, 2016), which includes the property status of the heir (Resolution No. 7 / 2008, 2008). In addition, these may include prolonged lack of communication between the parties, failure to take proper care of the deceased, hostility, antisocial behavior of the heir, etc.

The application of the Convention on the Exercise of Children's Rights (Council of Europe, 1996) to inheritance remains controversial. Under paragraph 4 of Art. 1 of the Convention, in the Law on its ratification (Law № 69-V, 2006) the legislator states that its scope includes court cases that concern, inter alia, issues of parent-child relations, as well as any other issues related to the child personally, his family (management of his property) (Mamich, 2012). Although no direct inheritance is mentioned, a systematic and logical interpretation of the law on the inheritance of children suggests that the Convention applies to this relationship, as the child has procedural rights under this international treaty, may use them in cases concerning his person or property. Nevertheless, in the Unified State Register of Judgments of Ukraine, we have not been able to find any act in the case of inheritance of property by a child that would refer to the provisions of this Convention (Council of Europe, 1996).

Persons born after the death of the testator have the right to inherit (Article 1222). However, the civil capacity of a conceived person is a debatable issue, as there are differences in the interpretation of the legal status of a conceived but not yet born person in the context of inheritance (Rozhon, 2016a). In this regard, Nichiporuk (2004) cites the example of *nasciturus* – a person conceived but not yet born at the time of the testator's death, who inherits under Roman law as if he had already been born, because the case concerns his benefit. This point of view is based on a study of the ancient Roman Laws of the XII tables, where there is a corresponding mention of the right to inherit *nasciturus* (Buletsa, 2011). Subsequent sources such as the Institutions of Gaius and the Digests of Justinian also mention the inheritance of the *nasciturus*. In Tertullian we find the expression “*homo est et qui est futurus; etiam fructus omnium iam in semine est*” (van der Lof, 1988: 16), which is translated as “he is a man, who is to be a man; the fruit is always present in the seed” (Tertullian of Carthage, 2019: 16). This reflects the dialectical unity of man as the essence of the future and the present (Tertullian, 1984), which in the legal interpretation puts a sign of equality between the human embryo and man. Later, the achievements of Roman law passed to the legal systems of the Romano-Germanic legal family (Levy, 1942; Kalyuzhny & Wolf, 2014; Kharytonov & Kharitonova, 2014; Potokin, 2021). For example, the German Civil Code of 1923 contained a rule according to which a person conceived but not yet born at the time of the opening of the inheritance was considered born at the time of the opening of the inheritance (Zalesky, 1996).

According to the classical understanding, civil capacity arises from birth (Dzera, Luts, & Kuznetsova, 2005). A similar understanding is enshrined in Part 2 of Art. 25 of the Civil Code of Ukraine. At the same time, legal capacity is not affected by the ability to exercise or be aware of one's rights. Thus, the question arises as to whether it is legal to protect the rights of a child conceived but not yet born when it comes to inheritance? Is it possible to say that we are not talking about a person before birth, so we deprive the *nasciturus* of legal capacity? Thus, the question of the temporal limits of determining the reference to the legal capacity of the *nasciturus* is debatable. As Punda (2004) points out, the legal capacity of a *nasciturus* is conditional. Rozhon (2016a) believes that it makes sense to specify in civil law the norm according to which a conceived person if born alive, is legally competent from the moment of conception

(Vodopyan, 2006). However, under the systematic and meaningful interpretation of civil law, this meaning is already enshrined in the existing legal norms. For example, in the understanding of the Civil Code of Ukraine, the legal capacity of a conceived but not yet born person makes sense only when such a person becomes a child, i.e., is born (after the death of the testator), as stated in Art. 1222 of the Code. Article 1298 of the Code calls conceived but unborn at the time of the opening of the inheritance, persons – provided they are born alive – heirs. Thus, from this point of view, which embodies the doctrine of civil capacity in Ukraine, the fact of the birth of a living person is the beginning of his legal capacity. Accordingly, the birth of a person entails his ability to inherit. The protection of the interests of the conceived but not yet born person in this sense is to protect the opportunities that arise in the person in the future in connection with the fact of his future birth and all subsequent life events that usually follow. A child born can inherit no matter what time it has lived, because hereditary legal relations are already in force. After all, when a child is born, the child is a subject of law (Rozhon, 2016a). According to Rozhon (2016a), in the case when the inheritance in the will applies to the *nasciturus*, and instead of one child twins or triplets are born, the inherited property intended for the *nasciturus* should be divided equally between the twins (triplets). Simultaneously, the testament loses its force with the death of the *nasciturus* – if the conceived but not yet born person to whom the testament was made is not born or is stillborn (Rozhon, 2016a). In his article, Rozhon (2016a) notes that the issue of inheritance of *nasciturus* and postums (namely the children of the testator) is resolved differently depending on national jurisdiction. For example, in Tajikistan and Kyrgyzstan, only posthumous people have the right to inherit. In the United States and the United Kingdom, the mobility of property is important, so inherited real estate is opened at the location, and movable property – is at the place of domicile (Rozhon, 2016a). In Germany, the law of the testator's country applies to both types of property (Boguslavsky, 2007).

Conclusions

1. Protecting the interests of the child is a special type of legal protection due to the objective reasons for the biological development of the child, which makes it a vulnerable category of the population. Norms concerning the child's right to inherit can be found in several legal acts, which is a set of norms that regulate this legal

phenomenon. Priority in this belongs to the Constitution of Ukraine, the Civil and Family Code, as well as the rules of notarial acts.

2. The legal capacity of a person (*nasciturus*) conceived but not born at the time of the discovery of the inheritance is conditional and becomes valid upon the birth of a living person, which is the dialectical unity of the legal capacity of the *nasciturus*.

Bibliographic references

- Biryak, LP, & Goncharova, A.V. (2015, May). Inheritance rights of children and adopted children. In "Activities of public authorities to ensure the stability and security of society." Conference Abstracts, Sumy, May 21-22, 2015, SSU. Recovered from <https://essuir.sumdu.edu.ua/bitstream-download/123456789/41648/1/buryak.pdf;jsessionid=B3291910B20ED66E5B93C7293AC736F0> (access date: 02.02.2022)
- Bodnar, T. (2013). Family law in the legal system of Ukraine. *Private Law*, 1, 129-134. Recovered from http://nbuv.gov.ua/UJRN/prpr_2013_1_14
- Boguslavsky, M.M. (2007). *International private law*. Moscow: Jurist. ISBN 978-5-91768-645. Recovered from <https://znanium.com/catalog/document?id=372469>
- Borisyuk, I.E. (2021). Council of Europe Conventions and Ukrainian Legislation in the Field of Child Rights Protection: Relationship Problems. *Legal Position*, 2(31), 69-73. Recovered from <https://doi.org/10.32836/2521-6473.2021-2.14> (access date: 02.02.2022)
- Buletsa, S.B. (2011). The moment of emergence of legal capacity in the civil law of Ukraine, Slovakia and Hungary. *Scientific Bulletin of Uzhgorod University*, 16, 92-95. Recovered from <https://dspace.uzhnu.edu.ua/jspui/handle/lib/17513>
- Council of Europe. (1975). *Convention on the Legal Status of Children born out of wedlock*. Recovered from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=085> (access date: 02.02.2022)
- Council of Europe. (1996). *European Convention on the Exercise of Children's Rights*. Recovered from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=160> (access date: 02.02.2022)
- Decision No. 15-rp / 2004. Constitutional Court of Ukraine, Verkhovna Rada of Ukraine of November 11, 2004. Recovered from <https://zakon.rada.gov.ua/laws/show/v015p710-04#Text> (access date: 02.02.2022)
- Dzera, O.V., Luts, V.V., & Kuznetsova, N.S. (2005). *Scientific and practical commentary on the Civil Code of Ukraine*. Kyiv: Jurinkom Inter. Recovered from <https://jurkniga.ua/contents/naukovo-praktichnyy-komentar-tsvlnogo-kodeksu-ukrani-u-2-tomakh.pdf>
- Dzera, O.V., Luts, V.V., & Kuznetsova, N.S. (2013). *Scientific and practical commentary on the Civil Code of Ukraine*. Kyiv: Jurinkom Inter. Recovered from <https://yurincom.com/book/naukovo-praktichnyy-komentar-tsvlnogo-kodeksu-ukraini-v-2-tomah/>
- Goldhaber, M. (2007). *A People's History of the European Court of Human Rights*. Rutgers University Press. Recovered from <https://doi.org/10.36019/9780813541280> (access date: 02.02.2022)
- Kalyuzhny, R.A., & Vovk, V.M. (2014). *Roman private law*. Kyiv: MP Lesya.
- Kharytonov, Ye.O., & Kharytonova, O.I. (2014). From understanding the reception of Roman law to the formation of a general theory of the interaction of legal systems. *Law of Ukraine*, 1, 274-297. Recovered from https://pravoua.com.ua/ua/store/pravoukr/pravo_ukr_1_14/Kharytonov-Kharytonova_1_14/
- Kovalchuk, A.M. (2009). Features of determining the size of the mandatory share of property in the inheritance. *University Scientific Notes*, 4, 90-93. Recovered from http://old.univer.km.ua/doc/specvtr/Aref_Kovalchuk.pdf
- Kravets, Y.I. (2013). Protection of hereditary rights of the child in Ukraine. *Problematic issues of the state of observance of human rights protection in Ukraine*, 2, 153-154. Recovered from <http://elar.naiu.kiev.ua/jspui/handle/123456789/12707> (access date: 02.02.2022)
- Kukharev, OE (2021). The essence of the right to a mandatory share in the inheritance in the inheritance law of Ukraine. *Entrepreneurship, economy and law*, 2, 11-15. Recovered from <https://doi.org/10.32849/2663-5313/2021.2.02> (access date: 02.02.2022)
- Law № 1058-IV / 2003. About compulsory state pension insurance, Verkhovna Rada of Ukraine of July 9, 2003. Recovered from <https://zakon.rada.gov.ua/laws/show/1058-15#Text> (access date: 02.02.2022)



- Law № 1906-IV / 2004. On the international agreements of Ukraine, Verkhovna Rada of Ukraine of June 29, 2004. Recovered from <https://zakon.rada.gov.ua/laws/show/1906-15> (access date: 02.02.2022)
- Law № 254к/96-BP /1996. Constitution of Ukraine, Verkhovna Rada of Ukraine of June 28, 1996. Recovered from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (access date: 02.02.2022)
- Law № 2947-III / 2002. Family Code of Ukraine, Verkhovna Rada of Ukraine of January 10, 2002. Recovered from <https://zakon.rada.gov.ua/laws/show/2947-14#Text> (access date: 02.02.2022)
- Law № 435-IV / 2003. The Civil Code of Ukraine, Verkhovna Rada of Ukraine of January 16, 2003. Recovered from <https://zakon.rada.gov.ua/laws/show/435-15#Text> (access date: 02.02.2022)
- Law № 69-V / 2006. On the ratification of the European Convention for the Exercise of the Rights of the Child, Verkhovna Rada of Ukraine of August 3, 2006. Recovered from <https://zakon.rada.gov.ua/laws/show/69-16#Text> (access date: 02.02.2022)
- Law № 862-VI / 2009. On the ratification of the European Convention on the Legal Status of Children Born Out of Wedlock, Verkhovna Rada of Ukrain of January 14, 2009. Recovered from <https://zakon.rada.gov.ua/laws/show/862-17#Text> (access date: 02.02.2022)
- Levy, E. (1942). Reflections on the First Reception of Roman Law in Germanic States. *The American Historical Review*, 48(1), 20-29. Recovered from <https://www.jstor.org/stable/1843246> (access date: 02.02.2022)
- Mamich, O.V. (2012). Council of Europe Convention on the Exercise of Children's Rights, 1996 and its implementation in Ukraine. *Current issues of state and law*, 64, 40-46. Recovered from http://nbuv.gov.ua/UJRN/apdp_2012_64_7
- Marckx v. Belgium. (Application no. 6833/74) ECHR. 13 June 1979. Recovered from <https://hudoc.echr.coe.int/eng?i=001-57534> (access date: 02.02.2022)
- Morozov, E. (June 5, 2016). Reasons to reduce the mandatory share in the inheritance. *Ligamedia*. Recovered from <https://blog.liga.net/user/emorozov/article/22484> (access date: 02.02.2022)
- Nichiporuk, P. (2004). Nasciturus-postumus: Roman legal terminology used to define a conceived child. *Right of the Ancients [Ius Antiquum]*, 14, 116-131. Recovered from <http://elar.uniyar.ac.ru/jspui/handle/123456789/2585>
- Novikov, D.V. (2015, December). The limits of state intervention in the exercise of property rights in the case law of the European Court of Human Rights. In *Civil Justice in the Light of Judicial Reform in Ukraine*. Conference Abstracts NU «OLA» (15.12.2015), 132-136. Recovered from <http://hdl.handle.net/11300/3684> (access date: 02.02.2022)
- Pavlyuk, N.M. (2013). Legal status of obligatory heirs as subjects of inheritance rights in European countries. *Journal of Kyiv University of Law*, 2, 205-209. [In Ukrainian]
- Potokin, Y.N. (2021). The influence of Roman Law on the formation and development of the Romano-Germanic legal family. *Laplage em Revista*, 7(3B), 669-676. Recovered from <https://laplageemrevista.editorialaar.com/index.php/lpg1/article/download/1611/1373>
- Punda, O.O. (2004). The problem of civil capacity of the embryo and human fetus. *Life and Law*, 7, 40-45.
- Resolution No. 159/4322/14-ts / 2021. The Supreme Court of Ukraine of May 26, 2021. Recovered from <https://verdictum.ligazakon.net/document/97429139> (access date: 02.02.2022)
- Resolution No. 7 / 2008. On judicial practice in cases of inheritance. The Supreme Court of Ukraine of June 30, 2008. Recovered from <https://zakon.rada.gov.ua/laws/show/v0007700-08#Text> (access date: 02.02.2022)
- Rozhon, O.V. (2016a). Conflicting issues of inheritance of a conceived but not yet born person. *Legal Scientific Electronic Journal*, 5, 21-24. Recovered from http://lsej.org.ua/5_2016/7.pdf (access date: 02.02.2022)
- Snizhko, M. (2009). Protection of children's rights in Ukraine, taking into account international agreements on family law. *Legal Journal*, 3, 83-90. Recovered from https://minjust.gov.ua/m/str_19188 (access date: 02.02.2022)
- Stepanova, A.O., & Maimur, F.F. (2020, May). Ratification of international treaties in Ukraine: theoretical and legal aspect. Recovered from "Science, trends and perspectives". Abstracts of XVII International Scientific & Practical Conference. Tokyo, Japan 2020, 362-264.
- Steshenko, V.M. (2019). Legal protection of the rights of children and adolescents and a secure information space. *Kharkiv: Law*. Recovered from https://nlu.edu.ua/wp-content/uploads/2021/05/msc_7_copy.pdf (access date: 02.02.2022)

- Tatsiy, V.Ya. (2011). Constitution of Ukraine. Scientific and practical commentary. Kharkiv: Law. Recovered from <http://194.44.152.155/elib/local/r61.pdf> (access date: 02.02.2022)
- Tertullian of Carthage. (2019). Apology of Tertullian. Dalcassian Publishing Company. Recovered from https://books.google.de/books?id=JPbADwAAQBAJ&printsec=frontcover&hl=ru&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false
- Tertullian, C.S.F. (1984). Apology. Theological Works, 25, 176-225.
- UN. (1959). Declaration of the Rights of the Child. Recovered from https://zakon.rada.gov.ua/laws/show/995_384#Text (access date: 02.02.2022)
- UN. (1966a). International Covenant on Economic, Social and Cultural Rights. Recovered from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (access date: 02.02.2022)
- UN. (1969). Vienna Convention on the Law of Treaties. Recovered from https://zakon.rada.gov.ua/laws/show/995_118#Text
- United Nations (1966). International Covenant on Civil and Political Rights. Recovered from <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (access date: 02.02.2022)
- Van Der Lof, L. J. (1988). Tertullian on the Continued Existence of Things and Beings. Journal of Augustinian and Patristic Studies [Revue d'Etudes Augustiniennes et Patristiques], 34(1), 14-24. Recovered from <http://www.etudes-augustiniennes.paris-sorbonne.fr/volume-34-1988?lang=fr>
- Vodopyan, T.V. (2006). The problem of the legal status of a conceived but not yet born child in civil law. University Scientific Notes, 2(18), 133-138. Recovered from http://nbuv.gov.ua/UJRN/Unzap_2006_2_21
- Zabokrytsky, I.I. (2015). Problems of the legal status of international treaties of Ukraine in the system of sources of constitutional law of Ukraine. Bulletin of the National University "Lviv Polytechnic", 825, 69-78. Recovered from <https://science.lpnu.ua/sites/default/files/journal-paper/2017/jun/4872/zabokrytsky.pdf> (access date: 02.02.2022)
- Zalessky, V.V. (1996). German Law: Civil Code. Moscow: MTsFER. Recovered from <http://lawlibrary.ru/izdanie17111.html>