

UDC 347.65/68

DOI <https://doi.org/10.32849/2663-5313/2021.8.02>**Mariya Mykhayliv,***PhD in Law, Associate Professor, Associate Professor at the Department of Civil Law and Procedure, Ivan Franko National University of Lviv, 1, Universytetska street, Lviv, Ukraine, postal code 79000, mariy.mykhayliv@gmail.com***ORCID:** [orcid.org/0000-0002-5007-7810](https://orcid.org/0000-0002-5007-7810)

Mykhayliv, Mariya (2021). Registration of the right to inheritance under private international law. *Entrepreneurship, Economy and Law*, 8, 11–17.

## REGISTRATION OF THE RIGHT TO INHERITANCE UNDER PRIVATE INTERNATIONAL LAW

**Abstract.** *The purpose* is to analyze the registration of the right to inheritance under the laws of Ukraine and foreign countries, determine the procedure for obtaining a certificate of inheritance by heirs; identify gaps in the legal regulation of registration of the inheritance right and put forward ways to address them. **Research methods.** The paper is executed by applying the general research and special methods of scientific cognition.

**Results.** The analysis of succession laws in different states revealed both common and different approaches to the legal regulation of the relevant issues. In particular, it is established that the basis for issuing a certificate of inheritance in the states is the heir's application submitted to a notary or other authorized body at the place of opening the inheritance. As a general rule, a certificate of inheritance is given the heirs at any time upon the expiration of six months from the date of opening the inheritance. However, the laws of individual states provide for the case of obtaining such a certificate before the expiration of six months from the date of opening the inheritance, in particular, if the notary has relevant information that there are no other heirs except for those who suggest the issuance of the certificate.

The article also analyzes and highlights the features of obtaining a European Certificate of Succession. Thus, it was established that the European Certificate of Succession was introduced to quickly and effectively resolve the issues of cross-border inheritance of property in the European Union. It also allows heirs, legatees, executors, guardians of inherited property to prove their status easily, as well as grants the rights and powers in the territory of a foreign EU member state where part of the inherited property is located. Obtaining such a certificate is not mandatory, but it is valid throughout the European Union.

**Conclusions.** Based on the analysis of doctrinal definitions of the term “certificate of succession”, the author states that a certificate of inheritance cannot certify the transfer of ownership of inherited property from the testator to the heirs as after accepting the inheritance by the heirs in the manner and terms prescribed by law, the right of ownership of the heirs arises from the date of opening of the inheritance. Consequently, the author notes that in the context of international succession, the certificate of inheritance is a title deed confirming functional role and is the legal fact that proves the heir's right to inheritance.

**Key words:** inheritance, certificate of inheritance, registration of right to inheritance, heirs, succession.

### 1. Introduction

The development of international private relations and adaptation of civil laws of foreign countries necessitate the improvement of the civil legislation of Ukraine that, in particular, concerns succession rules. Although succession law has undergone significant updates since the adoption of the Civil Code of Ukraine in 2003, there are many areas of concern which, based on the analysis of judicial and notarial practice in succession matters, need addressing, including in the part of the registration of inheritance rights.

**Analysis of recent researches and publications.** Many domestic and foreign scientists

paid attention to the registration of the right to inheritance, they are as follows: V.V. Valakh, I.A. Dikovska, M.M. Diakovych, I.V. Zhylinkova, Yu.O. Zaika, A.Ye. Kazantseva, O.O. Karmaza, V.I. Kysil, L.V. Kozlovska, O.Ye. Kukhariev, P.S. Nikitiuk, Z.V. Romovska, A.A. Rubanov, Ye.O. Riabokon, I.V. Spasybo-Fatieieva, S.Ya. Fursa, Ye.O. Kharytonov et al. However, science has many issues which need studying and are relevant today.

**The purpose of the article** is to analyze the provisions of civil laws in terms of the registration of the right to inheritance; determine the procedure for obtaining the certificate of inheritance by the heirs; identify gaps in

the legal regulation of registration of inheritance rights and put forward ways to address them.

**Research methodology** is based on the analytical and legal methods of analysis. General scientific and special methods have been used. Research tasks have been solved when studying, analyzing, and synthesizing relevant scientific literature. The fundamental principles of the domestic and foreign regulatory environment have been examined. As a result, the applied methods have contributed to generating reasonable conclusions. Thus, using the comparative method, the author has contrasted the national legal framework with a foreign one regulating the registration of inheritance rights in foreign states. The descriptive method has made it possible to convey research findings in a logical sequence. The analytical method has allowed the author to formulate recommendations on optimizing the national system of statutory support. Therefore, the conducted analysis of relevant sources based on the abovementioned methods has allowed the author to provide specific recommendations on terminology and statutory support.

**Basic material statement.** The final step of exercising the right to inheritance by the heirs, who have accepted the inheritance, is its registration. The registration of the inheritance right is one of the stages of the notarial process, which involves the heirs' appeal to a notary to receive the certificate of inheritance, issuing the certificate of inheritance by a notary, committing other actions related to the introduction of amendments to the certificate of inheritance, or declaring it invalid as provided for by the law.

According to Ye.O. Kharytonov, at first sight, the period between the acceptance of the inheritance and registering the right to inheritance through issuing the relevant certificate is an example of a gap between the juridical fact of inheritance acceptance, which exists in a non-formalized form, and its registration. The terminology of Chapter 89 of the Civil Code (hereinafter – CC) of Ukraine “Execution of the Right to Inheritance” directly confirms the above. Such an approach is relevant to the concept of organizational relations studied by the author, and some scientists believe that it should be applied towards inheritance legal relations (Kharytonov, Kharytonova, 2008, pp. 220–237).

## **2. Special aspects of the legal regulation of the registration of inheritance rights under the legal systems of Ukraine and foreign states**

Chapter 89 of the CC of Ukraine is devoted to the execution of the right to inheritance. Thus, according to art. 1296 of the CC

of Ukraine, an heir who has accepted the inheritance may receive a certificate of inheritance. If the inheritance has been accepted by several heirs, the inheritance certificates shall be issued to each of them with the names and other heirs' shares specified. Absence of the inheritance certificate shall not disinherit an heir (Verkhovna Rada of Ukraine, 2003).

As a general rule, the inheritance certificate is issued by a notary to heirs who have accepted the inheritance in the manner prescribed by law, after six months from the date of opening the inheritance, except as provided by law. The basis for issuing the inheritance certificate is the application of the heir submitted to a notary at the place of opening the inheritance.

That sort of approach to the legal regulation of the issues related to the registration of inheritance is observed in the laws of foreign states. Thus, according to the CC of Georgia “The persons invited as heirs may demand that a deed of title to the inheritance be issued by a notarial office located at the place of the opening of the estate. In the cases prescribed by law, the obtaining of a deed of title to the inheritance shall be obligatory. A deed of title to the inheritance shall be issued to the heirs at any time after the lapse of six months from the day of the opening of the estate” (art. 1499 of the CC of Georgia) (Bigvava, 2002).

However, compared to the CC of Ukraine and other foreign states, the CC of Georgia stipulates that the title deed may be issued before the lapse of the six-month period in those cases where a notarial office has a document evidencing that there are no other heirs to the estate but those who are applying for the title deed (art. 1500 of the CC of Georgia). The similar provision is found in the CC of the Republic of Belarus (para. 2, art. 1084), the CC of Turkmenistan (para. 2, art. 1257), the CC of the Republic of Kazakhstan (para. 2, art. 1073).

A title deed may be issued for both the entire estate and a part thereof. The title deed is issued either to all coheirs as a single deed or to each of them separately, as they wish. Issuance of a title deed on a part of the estate to one heir shall not deprive the other heirs of the right to obtain a title deed on the remaining part of the estate (art. 1503 of the CC of Georgia).

In Germany, receipt of the inheritance certificate is regulated by Division 8, Book 5, namely §§ 2353–2370 of German Civil Code, BGB (Yakovlev, 2015). The probate court must issue to the heir on application a certificate concerning his right of succession, and, if he is entitled only to a share of the inheritance, concerning the size of his share (certificate of inheritance). Under § 2359 of German Civil Code, the certificate of inheritance may be issued

only if the probate court is of the opinion that the facts required to substantiate the application have been established.

A somewhat similar approach to the legal regulation of the procedure for receiving the certificate of inheritance is also found in the CC of the Republic of Moldova. However, compared to the German Civil Code, a notary, who carries out inheritance proceedings, is authorized to issue the certificate of inheritance.

Thus, according to art. 2542 of the Republic of Moldova, by relying on an application of the heir, a notary, who carries out the inheritance proceedings, shall issue the certificate of inheritance confirming the right of the heir to the inheritance. In case of several heirs, the certificate of inheritance shall specify the size of the inherited shares of all co-heirs. The certificate of inheritance doesn't list the property belonged to the mass of the succession (Parliament of the Republic of Moldova, 2002).

According to art. 2548 of the CC of the Republic of Moldova, the certificate of inheritance shall be issued after the notary, who carries out inheritance proceedings, recognizes the reliability of facts which substantiate the application for issuance of the certificate. The notary shall include in the certificate of inheritance all recognized co-heirs who accepted the inheritance, even if they were not specified in the application for issuance of the certificate.

In addition to the certificate of inheritance, the notary may issue an heir certificate to the heir, who accepted the inheritance, to legalize his position in relations with third parties. The heir certificate doesn't supersede the certificate of inheritance. When issuing the certificate of inheritance, the heir certificate is revoked by a notary and shall be returned to him by the heir. These provisions shall be mentioned in the heir certificate.

If the elements which are subjected to proving are confirmed, a notary immediately, in accordance with the procedure stipulated by law, issues the certificate of inheritance. If the elements which are subjected to proving are a triable issue, the notary doesn't issue the certificate which the heirs demand. The notary also takes all reasonable measures to inform an applicant and relevant persons about the issuance of the certificate (Parliament of the Republic of Moldova, 2002).

### 3. Legal nature of the European Certificate of Succession

It is worth mentioning that Regulation (EU) № 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Suc-

cession as of 4 July, 2012 (hereinafter – Regulation (EU) № 650/2012) (European Union, 2012) introduced a European Certificate of Succession to resolve the issues of cross-border inheritance of property in the European Union quickly and effectively and allow heirs, legatees, executors, guardians of hereditary property to easily prove their status as well as the rights and powers in the territory of a foreign EU member state where part of the inherited property is located.

A European Certificate of Succession is issued by the court or other body empowered under national law to deal with the matters of succession. It should be for each Member State to determine in its internal legislation which authorities have competence to issue the Certificate. The Member States should communicate to the Commission the relevant information concerning their issuing authorities in order for that information to be made publicly available.

Although a certificate is not obligatory, it should produce the same effects in all Member States without following any procedure. A European Certificate of Succession is a title deed which gives grounds for registering hereditary property by a relevant authority of a Member State of the European Union.

However, art. 1 (2) k of Regulation (EU) № 650/2012 states the following shall be excluded from the scope of this Regulation: the nature of rights in rem, i. e. “any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register” (European Union, 2012), therefore, the authorities of a state the legislation of which doesn't know such rights in rem, or the commission of such actions will violate the public order of the state, may not be obliged to record rights in rem specified in the European Certificate of Succession in their registers.

In such a case, art. 31 of Regulation allows adapting the closest equivalent of right in rem under the law of that State which conducts recording (Stamatiadis, 2017, p. 644).

A European Certificate of Succession doesn't supersede documents which may be used with the same purpose in the Member States of the European Union but, after its issuance, with a view to using it on a territory of a particular Member State of the European Union, it has the same legal effect as a document issued by an authority of a Member State of the European Union pursuing the same purpose in the territory of its state.

Regulation (EU) № 650/2012 (art. 63 (2)) enshrines that the Certificate may be used,

in particular, to demonstrate one or more of the following:

a) the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;

b) the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;

c) the powers of the person mentioned in the Certificate to execute the will or administer the estate (European Union, 2012).

To receive the European Certificate of Succession, an heir (applicant) shall submit a standard application to the issuing authority and mention all the necessary information enshrined in art. 65 (3) of Regulation (EU) № 650/2012 (European Union, 2012). In addition, the application shall be accompanied by all relevant documents which prove the information outlined in the application. Upon receipt of the application and documents attached, the issuing authority shall verify the information. It shall carry out the enquiries necessary for that verification of its own motion. After verification, the issuing authority shall issue the European Certificate of succession to a person who submitted an application.

The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies. The issuing authority shall keep a list of persons to whom certified copies have been issued. The Regulation states that the certified copies issued shall be valid for a period of six months, to be indicated in the certified copy by way of an expiry date. Once this period has elapsed, an heir must apply for an extension of the period of validity of the certified copy or request a new certified copy from the issuing authority. The Regulation also provides for the cases of modifying, suspending the European Certificate of Succession and appealing against decisions of the issuing authorities.

The European Certificate of Succession shall meet the rules provided by art. 68 of the Regulation (EU) № 650/2012 (European Union, 2012). The contents of the certificate are usually consistent with the legislative requirements for the contents of the certificate of succession of most European countries.

Heirs are entitled to receive such a certificate. Thus, in terms of such relations, they are free to use other documents they received (national certificates of succession or certificate of inheritance, etc.) under the law of the state where the inheritance was opened. However, Regulation (EU) № 650/2012 envisages the prohibition of claiming such documents from the heirs if they have received

and show a European Certificate of Succession (European Union, 2012).

According to research staff of the Institute for Comparative and International Private Law of Max Planck, legal rules of individual Member States preventing the issuance of more than one national inheritance certificate may be used to hinder issuing a national certificate and a European Certificate of Succession for the same succession property. At the same time, if national laws of a Member State don't have similar rules, the issuance of both certificates is open because Regulation doesn't cover that sort of case (Reinhartz, 2015, pp. 247–249).

Analyzing Regulation (EU) № 650/2012, foreign scientists concluded that a European Certificate of Succession generates three effects:

- presumption of the accuracy of information specified in a European Certificate of Succession;
- public confidence in a European Certificate of Succession;
- legitimacy of grounds for entering records on succession property in the relevant registers of the EU Member States (Kresse, 2016, p. 679).

A European Certificate of Succession can be issued only by a specific Member State of the European Union for the use in another Member State. Thus, in I. A. Dikovska's opinion, the introduction of the rules regulating the issuance or circulation of a European Certificate of Succession into the legislation of Ukraine is out of the question now. At the same time, the scientist finds it expedient to study the experience of legal regulation and application of the European Certificate of Succession to understand the way succession takes place when mass of the succession is located in different Member States and facilitate the introduction of the rules of Succession Regulation into Ukraine when it becomes an EU member (Dikovska, 2020, p. 293).

#### **4. Legal nature and significance of a certificate of inheritance**

The doctrine still has controversies about the legal nature and significance of a certificate of inheritance. Most scientists believe that the certificate of inheritance doesn't have constitutive nature but is a title deed (Pecheny, 2012, pp. 304, 305; Abova et al., 2007, p. 113). According to some scientists, who have opposite opinions, the right of ownership, and, accordingly, the powers of possession, use, and disposal of property are generated by the acceptance of the inheritance, not a certificate of inheritance; it originates not from the moment of the certificate's receipt but since opening the inheritance. Therefore, it takes a lot to recognize a certificate of inheritance as a title

deed. A certificate of inheritance legitimizes an heir who accepted the inheritance, i. e. it confirms realized succession (Kazantseva, 2012, pp. 302–303).

In P.S. Nikitiuk's opinion, a certificate of inheritance is an authoritative assessment of the legality of inheritance – an act of unquestionable jurisdiction. A certificate of inheritance is a juridical fact. In any case, it changes both the legal status of the inheritance and the persons who have received it or to whom it applies (Nikityuk, 1973, pp. 166, 202). The issuance of a certificate of inheritance is the statement of the fact of acceptance of the inheritance by the heir, authentication of legal succession, which took place through accepting the inheritance, with retroactive effect until the moment of its opening (Argunov, 1994, pp. 188–190, 203).

According to L.V. Kozlovska, a certificate of inheritance proclaims or confirms the origin of inheritance rights as a necessary condition for the origin of ownership of immovable property and other rights in rem. In such a case, a certificate of inheritance exercises a constitutive function. It is essential to differentiate between inheritance as the acquisition of inheritance right and the acquisition of property right by inheritance. As a result, it is differentiated cases when rights in rem cannot be exercised without receiving a certificate and when rights in rem don't originate before receiving a certificate of inheritance (Kozlovska, 2015, p. 297).

O.Ye. Kukhariev states a certificate of inheritance is a document confirming the transfer of ownership of succession property from the testator to the heirs (Kukhariev, 2013, p. 292).

In the opinion of the article's author, a certificate of inheritance cannot confirm the transfer of ownership of succession property from the testator to the heirs: when heirs have accepted inheritance in the manner and terms prescribed by law, inheritance rights originate since opening inheritance. This fact is confirmed by the provisions of para. 3, art. 1296 of the CC of Ukraine, absence of the certificate of inheritance shall not deprive an heir of the right to inheritance. An heir's lack of the certificate of inheritance cannot be a reason for initiating proceedings. In this context, receipt of a certificate of inheritance by the heir, who has accepted the inheritance, is his right, not an obligation.

However, in case of the origin of a dispute about inheritance or re-registration of succession property by the heir in his name, a certifi-

cate of inheritance serves as a document which indicates that the person named in the certificate is a legitimate heir and the right to the property specified in the certificate belongs to him as the heir who has accepted the inheritance in the manner prescribed by law.

Taking into account the above, the author holds that a certificate of inheritance is a standard document confirming both the heir status and his ownership of inherited property transferred from the testator to the heir, who has accepted the inheritance in the place of its opening and the manner prescribed by law, by succession. Thus, in international succession, a certificate of inheritance is a title deed document and the juridical fact proving the heir's rights to succession property.

### 5. Conclusions

Having analyzed the civil succession laws of Ukraine and foreign states, the author has found both similar and distinctive approaches to the legal regulation of relevant matters.

It has been established that states consider the heir's application submitted to a notary or another authorized agency at the place of opening of inheritance as a ground for issuing a certificate of inheritance. In most states, such a certificate is issued when the period for accepting inheritance has elapsed. However, in some countries, the certificate can be obtained before the expiration of the term for acceptance of the inheritance if there is sufficient information evidencing that there are no other heirs to the estate but those who are applying for the title.

Attention is paid to the legal nature of a European Certificate of Succession. In particular, that kind of certificate was introduced to quickly and effectively resolve the issues of cross-border inheritance of property in the European Union and allow heirs, legatees, executors, guardians of hereditary property to easily prove their status as well as the rights and powers in the territory of a foreign EU Member State where part of the inherited property is located. It is highlighted that receipt of a certificate is not obligatory but has the same effect across the European Union.

Therefore, the author suggests interpreting a certificate of inheritance as a standard document confirming both the heir's status and ownership of succession property transferred from the testator to the heir, who has accepted the inheritance in the place of its opening and the manner prescribed by law, by succession.

## References:

- Abova, T.Ye., Boguslavskiy, M.M., Svetlanova, A.G.** (2007). *Kommentariy k Grazhdanskomu kodeksu Rossiyskoy Federatsii* [Commentary on the Civil Code of the Russian Federation]. Moscow: Yurayt-Izdat (in Russian).
- Argunov, V.** (ed.). (1994). *Pravovyye osnovy notarial'noy deyatel'nosti* [Legal foundations of notarial activity]. Moscow: BEK (in Russian).
- Bigvava, Z.K.** (ed.). (2002). *Grazhdanskiy kodeks Gruzii* [Civil Code of Georgia], transl. I. Meridzhanashvili, I. Chikovani. St. Peterburg: Yuridicheskiy tsentr Press (in Russian).
- Dikovska, I.A.** (2020). *Mizhnarodne spadkuvannya u YeS ta Ukrayini: napryamy adaptatsiyi prava Ukrayiny do prava YeS* [International inheritance in the EU and Ukraine: directions of adaptation of Ukrainian law to EU law]. Kyiv: Alerta (in Ukrainian).
- European Union** (2012). Regulation (EU) № 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession of July 12, 2012. Retrieved from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0107:0134:EN:PDF> (in English).
- Kazantseva, A.Ye.** (2012). *Nasledstvennoye pravo* [Inheritance law]. Moscow: Norma (in Russian).
- Kharytonov, Ye.O., Kharytonova, O.I.** (2008). *Tsyvilni pravovidnosyny* [Civil relations]. Kyiv: Istyna (in Ukrainian).
- Kozlovskaya, L.V.** (2015). *Teoretychni zasady zdiysnennya i zakhystu spadkovykh prav* [Theoretical principles of implementation and protection of inheritance rights]. Kyiv: Yurinkom Inter (in Ukrainian).
- Kresse, B.** (2016). Article 62: Creation of a European Certificate of Succession. *Calvo Caravaca, A.L., Davi, A., Mansel, H.P. (eds.). The EU Succession Regulation Commentary*. Cambridge: Cambridge University Press (in English).
- Kukharyev, O.Ye.** (2013). *Spadkove pravo Ukrayiny* [Inheritance law of Ukraine]. Kyiv: Alerta (in Ukrainian).
- Nikityuk, P.S.** (1973). *Nasledstvennoye pravo i nasledstvennyy protsess (problemy teorii i praktiki)* [Inheritance law and hereditary process (problems of theory and practice)]. Kishinev: Shtiintsa (in Russian).
- Parliament of the Republic of Moldova** (2002). *Grazhdanskiy kodeks Respubliki Moldova ot 6 iyunya 2002 goda № 1107-XV* [Civil Code of the Republic of Moldova from June 6, 2002, № 1107-XV]. Retrieved from: [https://online.zakon.kz/Document/?doc\\_id=30397921#pos=425;46](https://online.zakon.kz/Document/?doc_id=30397921#pos=425;46) (in Russian).
- Pecheny, O.P.** (2012). *Spadkove pravo* [Inheritance law]. Kharkiv: Faktor (in Ukrainian).
- Reinhartz, B.** (2015). Article 62: Creation of a European Certificate of Succession. *Bergquist, U., Damascelli, D., Frimston, R., Lagarde, P., Odersky, F., Reinhartz, B. EU Regulation of Succession and Wills Commentary*. K ln: Verlag Dr. Otto Schmidt KG (in English).
- Stamatiadis, D.** (2017). Article 69: Effects of the Certificate. *Pamboukis H.P. (ed.) EU Succession Regulation № 650/2012: A Commentary*. Athens; M nchen; Oxford; Baden-Baden: Nomiki Bibliothiki; C.H. BECK; Hart Publishing; Nomos (in English).
- Verkhovna Rada of Ukraine** (2003). *Tsyvilnyi kodeks Ukrainy: Zakon Ukrainy vid 16 sichnia 2003 roky № 435-IV* [Civil Code of Ukraine: Law of Ukraine from January 16, 2003 № 435-IV]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/435-15> (in Ukrainian).
- Yakovlev, T.F.** (ed.). (2015). *Grazhanskoye ulozheniye Germanii: Vvodnyy zakon k Grazhdanskomu ulozheniyu = B rgerliches Gesetzbuch Deutschlands mit Einf hrungsgesetz* [Civil Code of Germany: Introductory Law to the Civil Code = B rgerliches Gesetzbuch Deutschlands mit Einf hrungsgesetz], transl. M. Korableva, M. Shvedchikova. Moscow: Infotropik Media (in Russian).

**Марія Михайлів,**

кандидат юридичних наук, доцент, доцент кафедри цивільного права та процесу, Львівський національний університет імені Івана Франка, вулиця Університетська, 1, Львів, Україна, індекс 79000, [mary.mykhayliv@gmail.com](mailto:mary.mykhayliv@gmail.com)

**ORCID:** [orcid.org/0000-0002-5007-7810](https://orcid.org/0000-0002-5007-7810)

## ОФОРМЛЕННЯ ПРАВА НА СПАДЩИНУ В МІЖНАРОДНОМУ ПРИВАТНОМУ ПРАВІ

**Анотація. Мета** – дослідити питання оформлення права на спадщину за законодавством України та іноземних держав, визначити процедуру одержання спадкоємцями свідоцтва про право на спадщину, виокремити проблеми у сфері правового регулювання оформлення права на спадщину та запропонувати шляхи їх вирішення. **Методи дослідження.** Роботу виконано на підставі загальнонаукових і спеціальних методів наукового пізнання.

**Результати.** За підсумками аналізу законодавства щодо оформлення права на спадщину в різних державах виявлено як спільні, так і відмінні підходи до правового регулювання зазначених

питань. Зокрема, встановлено, що підставою для видачі свідоцтва про право на спадщину є заява спадкоємця, яку він подає нотаріусу або іншому уповноваженому органу за місцем відкриття спадщини. Зазвичай свідоцтво про спадщину видається спадкоємцям після спливу 6 місяців із дня відкриття спадщини в будь-який час. Проте законодавство окремих держав передбачає можливість отримання такого свідоцтва й до спливу 6-місячного строку з дня відкриття спадщини, зокрема у випадку, якщо нотаріальний орган має достатні відомості про те, що, крім осіб, які ставлять питання про видачу їм свідоцтва, інших спадкоємців немає.

Також у статті проведено аналіз процесу отримання Європейського свідоцтва про спадкування та виділено його особливості. Встановлено, що Європейське свідоцтво про спадкування було запроваджене з метою швидкого й ефективного врегулювання питань, пов'язаних із транскордонним спадкуванням майна на території Європейського Союзу, та для створення можливості для спадкоємців, відказоодержувачів, виконавців заповіту, опікунів над спадковим майном легко доказати свій статус, а також права й повноваження на території іноземної держави – члена Європейського Союзу, де перебуває частина спадкового майна. Отримання такого свідоцтва не є обов'язковим, проте документ чинний на всій території Європейського Союзу.

**Висновки.** На підставі аналізу доктринальних визначень поняття «свідоцтво про спадкування» зазначено, що свідоцтво про право на спадщину не може посвідчувати сам перехід права власності на спадкове майно від спадкодавця до спадкоємців, оскільки після прийняття спадщини спадкоємцями у спосіб і строки, передбачені законодавством, презюмується, що право власності у спадкоємців виникає з моменту відкриття спадщини. Також констатовано, що у відносинах міжнародного спадкування свідоцтво про право на спадщину є документом, який має правопідтверджувальне функціональне значення, та тим юридичним фактом, що підтверджує наявність прав на спадкове майно у спадкоємця.

**Ключові слова:** спадкування, свідоцтво про право на спадщину, оформлення права на спадщину, спадкоємці, спадщина.

*The article was submitted 15.08.2021*

*The article was revised 30.08.2021*

*The article was accepted 20.09.2021*