

Special Ways to Protect the Inheritance Rights of Minors

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Abstract. The relevance of the subject matter is primarily conditioned by the specific features of the civil status of minors as participants in hereditary legal relations. Their lack of absolute autonomy and legal independence requires the use of special ways to protect their inheritance rights, but the structured list of special ways to protect them is not legally consolidated. The purpose of the study is to identify and reveal the essence of special methods of protection that can be applied in case of violation of the inheritance rights of minors. Using the method of analysis, the content of the legal nature of special ways to protect the inheritance rights of minors is clarified. The comparative legal method helped determine how much external objective factors and social factors determine the choice of certain special ways to protect the inheritance rights of minors. As a result of the conducted research, the content of special methods of protecting inheritance rights is revealed. The expediency of applying specific special methods of protection to hereditary legal relations involving minors is substantiated. The features of protecting the inheritance rights of minors are illustrated. The following special ways of protecting the inheritance rights of minors are identified and analysed: invalidation of the certificate of inheritance rights; reduction of the size of the mandatory share; interpretation of the will carried out by the court; recognition of the will (separate order) as invalid; certification of the fact that an individual (legal entity) is the executor of the will. Special ways of protecting inheritance rights, consolidated in civil legislation, are investigated, considering the specifics of the legal status of the subject whose inheritance rights are violated. It is indicated that the level of effectiveness of such methods of protection depends primarily on the type of right that has been violated and is subject to protection. It is noted that in practice, the chosen algorithm for protecting the inheritance rights of minors should first of all ensure the effectiveness of protecting the violated right. The results of the study can be used in notarial activities when it is necessary to ensure compliance with the rights and legitimate interests of a minor as an heir. In addition, the conclusions of the study are of practical importance for ensuring the unity of judicial practice in resolving inheritance disputes involving a minor and for choosing the most effective way to protect their rights

Keywords: invalidation of the certificate of inheritance rights, reduction of the amount of the mandatory share in the inheritance, interpretation of the will by the court, recognition of the will (separate order) as invalid, executor of the will

Introduction

The Constitution of Ukraine establishes the right of everyone to protect their rights and freedoms, the rights and freedoms of other people from violations and illegal encroachments by any means not prohibited by law [1].

It is with the category of protection that the implementation of inheritance rights by a minor is closely related. There is a need to coordinate and achieve a balance both in the behaviour of the minor heir and in the behaviour of other participants in hereditary legal relations, to coordinate such relations with each other in order to eliminate obstacles in the exercise of inheritance rights.

Article 15 of the Civil Code of Ukraine establishes the right to protection of civil rights and interests, establishing that everyone has the right to protection of their civil right in the event of its violation, non-recognition, or challenge. Everyone has the right to protect their interest, which does not contradict the general principles of civil legislation [2].

J.L. Chorna notes that the right to protection is inextricably linked to the subjective civil right itself, which is a measure of the possible behaviour of an authorised person.

This includes the ability to: act independently, expect appropriate behaviour from a third party, demand to perform certain actions, and protect the violated right by law-free measures of law enforcement protection [3, p. 19].

The civil rights protection institute has undergone significant changes with the latest codification of the civil legislation of Ukraine. In comparison with other post-Soviet states, in Ukraine, the institute for the exercise and protection of civil rights has received detailed legislative regulation. This, in turn, gave rise to the development of scientific civil studies, in particular, on the protection of subjective inheritance rights.

In the scientific plane, the issue of protection of subjective civil rights in general has become the object of numerous studies and remains relevant in the Ukrainian science of civil law.

The institute for civil rights protection was comprehensively and fragmentarily studied by such prominent researchers as: T.V. Bodnar, who investigated the most common methods of protection in civil law as a change and termination of legal

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relations [4], I.O. Dzera analysed civil law methods of protection of property rights, categorised them, and analysed their features [5], and also revealed the content of the methods of protection used by co-owners in the exercise and disposal of the right of common partial ownership and its termination [6]. Topical issues of civil protection of property rights and the practical effective application of such issues have been studied by Ye.O. Charytonov. The researcher established a comprehensive vision of civil protection of property rights, characterised the features of the implementation of the right to protection of property rights in modern conditions [7]. At the same time, O.A. Pidopryhora analysed problems of civil protection of intellectual property rights [8]. These researchers have made a significant contribution to the study of the issue of civil protection, which does not negate the need and relevance of further study of certain (narrower) aspects of this issue.

In the current conditions, the issue of effective protection of the rights of minors, in particular, in the field of inheritance, is becoming particularly relevant. The legislator has not identified a clear list of special ways to protect inheritance rights, but these can be identified based on the results of a systematic analysis of Book 6 “Inheritance Law” of the Civil Code of Ukraine. This determines the purpose of this study, which is to investigate the effectiveness of special methods of protecting the inheritance rights of minors. To achieve this goal, the study sets the following tasks: to conduct a systematic analysis of the norms of the Civil Code of Ukraine and identify special ways to protect inheritance rights; to consider the possibility of using special methods to protect the inheritance rights of minors; to determine the expediency, sufficiency, and effectiveness of using special methods to protect the inheritance rights of minors.

Materials and Methods

In order to comprehensively and thoroughly investigate the issue of special ways to protect the hereditary rights of minors, and to clarify their essence and qualitative characteristics, a system of general scientific and specific methods was applied.

The scientific provisions of the fundamental theoretical scientists in Ukrainian legal science were used to choose the right methods for conducting the research and implementing the tasks set.

The method of analysis was applied to find out the legal nature of special ways to protect the inheritance rights of minors. Using this method, both the norms of current legislation and studies on the specifics of protecting the inheritance rights of minors were analysed. The legal status of property that is part of the inheritance and the legal status of minors as heirs of such property was also analysed. Scientific approaches to understanding the very concept of “protection of civil rights” and its reflection by the legislator in the norms of civil legislation were considered.

The content of special methods of protecting the inheritance rights of minors was characterised using the comparative legal method. With the help of the comparative legal method, the issues of conditionality of special methods of protecting the inheritance rights of minors by external objective factors and social factors were investigated. The authors compared the content and composition of the legal norms that set out the considered methods of protection. A synchronous comparative analysis of the norms of Book 6 “Inheritance Law” of the Civil Code of Ukraine was carried

out and they were compared with the general provisions of the Civil Code of Ukraine in the context of civil rights protection, considering the peculiarities of inheritance relations and the legal status of minors – their participants.

In addition, the linguistic and systematic methods of the formal legal method were applied to analyse the norms of the Civil Code of Ukraine, which define special ways to protect the hereditary rights of minors, and their requirements and relationships in the legal system of our state were determined. This ensured the comprehensiveness of the information on the issue under study.

The method of interpretation was used to reflect the application of the norms of the Civil Code of Ukraine in the practical implementation of the protection of inheritance rights of minors using special methods of protection. During the study, a systematic interpretation of the norms of civil legislation on determining the size of the mandatory share in inheritance by reducing it, issuing a certificate of inheritance rights, interpreting a will, and appointing its executor was carried out.

The systematisation method was used to obtain a complete description of special ways to protect the inheritance rights of minors. The content of each special protection method, the possibility and procedure of their application, both separately and in combination, were considered.

With the help of a functional approach, the question of the expediency of applying a particular special method of protecting the inheritance rights of minors in practice was revealed. Similarities and differences in the practical application of special and general methods of protecting the inheritance rights of minor heirs were reflected.

With the help of a clear application of these methods, the authors of this study ensured the achievement of the set research goal and fulfilled the tasks of the study. The necessary theoretical means of methodological research were comprehended and applied to conduct doctrinal research on the issue under study.

Results and Discussion

First of all, the analysis of the provisions of Chapter 3 of the Civil Code of Ukraine “Protection of Civil Rights” allows the protection of civil rights to be understood as a person’s own actions to restore violated, unrecognised, or disputed civil rights, and the actions of an authorised entity, the activities of a jurisdictional body (its officials and officers), who, within the limits of the legally granted competence and in accordance with the established procedure, take measures for this restoration [2].

At the same time, the defining features of protection should be met in the actual implementation, and effectiveness should be determined precisely because of the ability to protect certain rights from violations.

At the same time, a harmonious combination of its static state and dynamics is important for understanding the category of protection, that is, a set of legal means should be combined with activities to protect the relevant subjective civil law [9, p. 150].

Considering a proper and effective way to protect the inheritance rights of minors, then first of all it is necessary to indicate that this depends both on the type of violation itself and on the specifics of the legal status of the person whose inheritance rights are violated – a minor. Despite the fact that the legislator imposes the obligation to protect the

inheritance rights of minors primarily on parents (adoptive parents), guardians, and relevant state bodies, however, this does not negate the possibility of independent protection.

Notably, the legal uncertainty in which the property is located from the time of opening the inheritance to the time of its acceptance also determines the peculiarity of protecting the inheritance rights of minors. For minor heirs who have accepted the inheritance, the right of ownership arises from the moment of opening the inheritance, regardless of the time of its acceptance.

Yu. Zaika identifies the conditions under which mandatory heirs (which include minors) acquire the right to protect subjective rights. To such conditions, the researcher refers: 1) persons not specified in the will as heirs or the amount of the share left to them under the will does not correspond to the size of the mandatory share, which is defined in the law; 2) other persons are indicated in the will (regardless of whether they are heirs by law) to whom the rights to inherited property are transferred; 3) property that the will does not cover is less than the mandatory share; 4) heirs under the will did not give up the inherited property [10, p. 78-79].

A systematic analysis of the norms of Book 6 "Inheritance Law" of the Civil Code of Ukraine identifies the following special ways to protect the inheritance rights of minors: invalidation of the certificate of inheritance rights; reduction of the size of the mandatory share in the inheritance; interpretation of the will by the court; recognition of the will (separate order) as invalid; certification of the fact that an individual (legal entity) is the executor of the will.

One of the most common in the practical application of special methods of protection in inheritance legal relations is the invalidation of a certificate of inheritance rights. This method is used when a will was drawn up in violation of the requirements that are mandatory for its validity.

Minors can be plaintiffs in this category of cases if their civil rights or interests are violated by the content of the certificate of inheritance rights. As a rule, such a violation is associated with non-receipt of the certificate or with incorrect determination of the share in the inheritance according to the certificate. In addition, if the certificate is issued to another heir for the property that minors claimed as subjects of the right to a mandatory share in the inheritance.

Claims to invalidate certificates of inheritance rights are usually combined with other claims. These may be claims that give rise to grounds for declaring the certificate invalid, for example, regarding: invalidity of the will, removal from the right to inheritance, invalidity of marriage, invalidation of adoption, invalidation of refusal to accept the inheritance, etc. In addition, it is permissible to combine claims for invalidation of a certificate with claims for recognition of property rights in the order of inheritance, payment of monetary compensation, etc.

According to O.Ye. Kukhariev, a special feature is that the issuance of a certificate of inheritance rights to the heir who accepted the inheritance is not restricted by any time limit. That is, in fact, the heir can apply and receive certificates of inheritance rights several years after the opening of the inheritance (for example, if there are no funds to issue the inheritance). At the same time, the conditions for accepting inheritance established by civil legislation must be met [11, p. 78-79].

This method of protection should not be identified with making changes to the certificate of inheritance rights, since the latter as a way to protect inheritance rights, in

particular, minor heirs, is regulated by a separate article of Chapter 89 of the Civil Code of Ukraine (Article 1,300 of the Civil Code of Ukraine), is an independent method of protection, which is primarily associated with making adjustments to the certificate of inheritance rights. The latter should not always be conditioned by the preliminary recognition of the certificate as invalid.

The claim to make certain changes to the certificate of inheritance rights does not deprive the defendant of the right to inherit property in such court cases, but it changes its share [12].

For example, if the certificate of inheritance rights was received by the testator's son from the second marriage (the defendant), who accepted all the inherited property, and then the minor son from the first marriage (the plaintiff) applied to the notary, then the appropriate way to protect the plaintiff's rights is to make changes to the certificate. It is not advisable to recognise the certificate of inheritance rights as invalid in this case, since the defendant in any case remains the heir under the law of the first stage. At the same time, the defendant's share in the inheritance will decrease.

Changes to the certificate of inheritance rights are also made in the event of a change in the queues of heirs in court, a reduction in the size of the mandatory share in the inheritance, and in other similar cases.

One of the special ways to protect the inheritance rights of minors is to reduce the size of the mandatory share, that is, in fact, to change the object of legal relations.

The systematic interpretation of Paragraph 2 of Part 1 of Article 1,241 of the Civil Code of Ukraine indicates that the size of the mandatory share in the inheritance can be reduced considering the nature of the relationship between the testator and the heirs, and considering circumstances that are of significant importance, for example, the property status of the heir.

On the one hand, the legally consolidated impossibility of depriving a mandatory share in the inheritance is a way to protect the inheritance rights of minors, because the testator's children are referred by Article 1,241 of the Civil Code of Ukraine to the list of persons entitled to a mandatory share in the inheritance [2]. On the other hand, the share of a minor as an heir cannot be increased by depriving them of the right to a mandatory share in the inheritance of another heir, but the amount of such a share can be reduced. The choice of a legal successor with such a reduction is not allowed.

In turn, a minor as a subject of the right to a mandatory share can make claims to other heirs and other persons related to the protection of inheritance rights to a mandatory share, in particular, on the recognition of the right to inheritance, on the redistribution of inheritance, invalidation of the certificate of inheritance rights, etc.

As a special way to protect the rights of heirs, including minors, which is used only in hereditary legal relations, is the interpretation of a will by the court.

The specifics of applying this method of protection are actually determined by the nature of hereditary legal relations, the legal nature of the will as a unilateral transaction, and the postponement of its validity in time. The study agrees with the definition provided by O. Kukhariev that the interpretation of a will is an intellectual process aimed at clarifying the content of the will as a unilateral transaction, from the text of which it is impossible to establish the true will of the testator [13].

Only a valid will can be interpreted. Since an invalid transaction does not create legal consequences, except for those related to its invalidity (Part 1 of Article 216 of the Civil Code of Ukraine) [2], an invalid will is not subject to interpretation [14, p. 216].

The importance of determining the actual will of the testator is determined by the following objective factors: the ability to make a secret will, the content of which is not known to the notary; an increase in the number of subjects who have the right to certify the will; property that can be included in the inheritance, not limited in number and value; modernisation of the legal status of inherited property, for example, inheritance of a share in the authorised (compiled) capital of a legal entity, inheritance of unified property complexes, intellectual property rights; the existence of several wills, in which inconsistencies arise as a result of modified or cancelled testamentary orders; consolidation in the current legislation of new types of wills and testamentary orders that are more complex in their content [14, p. 207-208].

Notably, it is the judicial interpretation of a will that is a way to protect the rights of heirs. If the actual will of the testator is consistent with the will of the heirs, then there is no violation of the rights of the latter. If the content of the will is unclear and/or allows for an ambiguous understanding of the actual will of the testator, which, as a result, gives rise to a dispute between the heirs, and therefore, it is the court that has the obligation to carry out its interpretation [11, p. 20].

Recognition of a will (separate order) as invalid can also be considered as a special way to protect the rights of minors in hereditary legal relations. This method is used if the will was made without meeting all the necessary requirements for its form and content. In practice, it is not uncommon for the testator's order to transfer property to an outsider who was not a close relative of the testator, did not take care of the testator during the period of illness, and therefore, minor heirs, although entitled to receive a mandatory share in the inheritance, may not perceive such an order and doubt the free expression of the will, the actual will of the testator.

Recognition of a will as invalid may be a way to restore the right of a minor heir to inherit in the corresponding queue of heirs, and the size of the share in the inheritance in this case will be greater than the size of the mandatory share. Both the minor heir and their legal representative can file claims for invalidation of a will.

At the same time, given the legal nature of a will as a unilateral transaction, declaring a will invalid is not equivalent to such a general method of protection as declaring a transaction invalid. As with the interpretation of a will, in this case, the content of the will should not change after the inheritance is opened, since this will lead to a change in the actual will of the testator, which is unacceptable. In fact, the invalidity of a will is equal in terms of the legal consequences of the absence of a will.

An important special way to protect the inheritance rights of minors is to certify the fact that an individual (legal entity) is the executor of a will. Such certification is essentially a multi-stage notarial process, which goes through three stages in its development. The first step is to issue a certificate to the executor of the will. The next stage depends on the actions of the participants in the inheritance legal relationship (heirs, notary, executor of the will), which are aimed at fulfilling the will of the testator. The last, third stage is the termination of the powers of the executor of the

will. Each of these stages in its development goes through three stages [13, p. 13].

The status of a minor heir imposes on the notary the obligation to notify the relevant guardianship authority about the issuance of the certificate of the executor of the will. The powers of the executor of the will end with the full implementation of the will of the testator. It is the executor of the will, in accordance with the requirements of Article 1,290 of the Civil Code of Ukraine, who is obliged to contribute to the fact that the minor children of the testator receive their share in the inheritance as mandatory heirs [2].

According to the provisions of Article 1,293 of the Civil Code of Ukraine, minor heirs, their legal representatives, and the guardianship authority have the right to appeal in court only those actions of the executor of the will that do not meet the requirements of the Civil Code of Ukraine, other laws, or violate the interests of heirs [2].

At the same time, the executor of the will is personally interested in preserving the inherited property and further distributing it among the heirs in accordance with the will of the testator.

It is important for national law-making and law enforcement practice to investigate and analyse ways to protect the inheritance rights of minor heirs in the European Union countries. The constant growth of the volume of capital that is under the legal regulation of different states, the intensive relocation of individuals to foreign countries, the increase in private law relations with the participation of a foreign element necessitates the adaptation of Ukrainian legislation to the legislation of the European Union countries, to coordinate existing conflicts in the legal regulation of this sphere of relations.

Interesting in the framework of this issue are special ways to protect the inheritance rights of minors, which are consolidated in the national legislation of the EU country and which are manifested through the activities of specially authorised bodies (officials). For example, in Poland, there is a court for guardianship and custody, which is responsible for granting permission by parents (one of the parents) or another legal representative of a minor heir to renounce the inheritance. At the same time, considering the actual circumstances, this court may decide that it is more profitable for the child to accept the inheritance than to refuse it [16].

Considering the role of the activities of Ukrainian courts in the structure of the system of special methods of protection, then such courts act primarily as impartial arbitrators, unbiased and independent of the interests of a particular party in the case. That is why, according to the researcher, the existing model of the guardianship and custody court in Poland could be borrowed by Ukrainian legislation. This would not only ensure that the best interests of minors are respected, but also introduce a narrow specialisation of judges, which would have a positive impact on the level of their competence and reduce the burden on courts of general jurisdiction.

According to the researcher, special ways to protect the inheritance rights of minor heirs include judicial protection in force in Italy. The law of this state provides for the possibility to apply to the court for protection of the violated (disputed) right of inheritance by filing a claim for restitution. The defendant in this claim can be any buyer of inherited property or a person from among the receiving parties and/or beneficiaries under the will [17].

The researcher is convinced that the main disadvantage of this method of protecting minors, considering the norms of current legislation, is a significant duration in time, because the claim can be filed much later than the date of opening the inheritance. In this case, other heirs who have received the inheritance will not be able to provide guarantees of the plaintiff's absence of claims regarding the inherited property transferred to third parties, which, in turn, makes it difficult to alienate this property and transfer it as collateral.

Within the framework of the study, it is advisable to pay attention to the right of a minor heir to apply to other heirs with a "property (monetary) claim" consolidated in the legal systems of Germany and Austria. This right is based on the payment of monetary compensation to the minor heir, as a person entitled to a mandatory share in the inheritance, for the unimplemented expectation of receiving the inheritance.

The advantage of this method of protecting the inheritance rights of minor heirs, according to the researcher, is primarily that the person receives monetary satisfaction and does not violate the freedom of the will, and the rights of other heirs to the received inheritance. Especially considering that disputes regarding obtaining a share of an inherited property in practice are often quite long and financially costly, which can lead to the loss of the property itself or its value can decrease. In addition, having received a share in the inheritance in the form of specific property (movable or immovable), a minor cannot always dispose of this property independently. But the funds received as compensation would have a higher market turnover compared to inherited property.

Conclusions

Thus, the special methods of protecting inheritance rights laid down in the norms of Book 6 "Inheritance Law" of the Civil Code of Ukraine can be applied to minors, considering not only the specifics of their legal status but also the legal uncertainty in which the property is located from the time of opening the inheritance to the time of its adoption. The level of effectiveness of such methods of protection depends primarily on the type of right that is violated and subject to

protection. That is why it is important in practice to correctly determine the feasibility of using in each specific case either one special method of protecting the hereditary rights of minors, or the correct combination of several special methods of protection, or the complex application of general and special methods of protection, which are consolidated by the norms of current civil legislation. The chosen algorithm for protecting the inheritance rights of minors should, first of all, ensure the effectiveness of protecting the violated right, correspond to its nature, the nature of the violation, and the consequences that the violation entailed. In addition, the chosen method of protection should ensure the restoration of the violated right or guarantee the minor the opportunity to receive appropriate compensation.

Considering the desire of the EU states to achieve unification of the substantive legal norms of all member states, including in the field of inheritance by minors, is advisable, according to the author of the study, to eliminate as much as possible the existing differences regarding the ways of protecting inheritance rights that can be applied. At the same time, it is necessary to consider the peculiarities of the legal system of our state.

It is advisable to adopt the experience of foreign countries in introducing specialised courts, whose activities will be aimed, in particular, at protecting the rights of minor heirs. It is also necessary to pay attention to the possibility of legislating the right of a minor heir to receive monetary compensation instead of a mandatory share in the inheritance. This method of protection would allow effectively and quickly restoring the violated rights of a minor heir.

According to the author of the study, in general, further development and deepening of relations between Ukraine and the EU states on the issue under study should be carried out by implementing legislative norms aimed at strengthening the protection of hereditary rights of minors, and the application of conflict-of-laws rules, which would have the task of determining which state's law will be applicable to private law relations with a foreign element with the participation of minors. This may be the subject of further study and more detailed analysis.

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Спеціальні способи захисту спадкових прав неповнолітніх осіб

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Анотація. Актуальність обраної теми дослідження зумовлена передусім особливістю цивільно-правового статусу неповнолітніх осіб як учасників спадкових правовідносин. Відсутність у них абсолютної самостійності та юридичної незалежності вимагає використання спеціальних способів захисту їхніх спадкових прав, однак структурований перелік спеціальних способів захисту нормативно не закріплений. Мета проведеного дослідження – виокремити та розкрити суть спеціальних способів захисту, які можуть бути застосовані в разі порушення спадкових прав неповнолітніх осіб. За допомогою методу аналізу з'ясовано зміст юридичної природи спеціальних способів захисту спадкових прав неповнолітніх осіб. Порівняльно-правовий метод допоміг визначити наскільки зовнішні об'єктивні фактори та суспільні чинники зумовлюють вибір певних спеціальних способів захисту спадкових прав неповнолітніх осіб. В результаті проведеного дослідження розкрито зміст спеціальних способів захисту спадкових прав. Обґрунтовано доцільність застосування конкретних спеціальних способів захисту до спадкових правовідносин за участі неповнолітніх осіб. Проілюстровано особливості захисту спадкових прав неповнолітніх осіб. Виокремлено та проаналізовано такі спеціальні способи захисту спадкових прав неповнолітніх осіб: визнання недійсним свідоцтва про право на спадщину; зменшення розміру обов'язкової частки; тлумачення заповіту, яке здійснює суд; визнання заповіту (окремого розпорядження) недійсним; посвідчення факту про те, що фізична (юридична) особа є виконавцем заповіту. Досліджено спеціальні способи захисту спадкових прав, закріплені цивільним законодавством, з урахуванням особливості правового статусу суб'єкта, спадкові права якого порушено. Зазначено, що рівень дієвості таких способів захисту залежить насамперед від виду того права, яке порушено, та підлягає захисту. Звернено увагу, що на практиці обраний алгоритм захисту спадкових прав неповнолітніх осіб повинен насамперед забезпечити ефективність захисту порушеного права. Результати дослідження можуть бути використані в нотаріальній діяльності, коли необхідно забезпечити дотримання прав та законних інтересів неповнолітньої особи як спадкоємця. Також висновки дослідження мають практичне значення для забезпечення єдності судової практики під час вирішення спадкових спорів за участі неповнолітньої особи та для вибору найбільш ефективного способу захисту її прав

Ключові слова: визнання недійсним свідоцтва про право на спадщину, зменшення розміру обов'язкової частки у спадщині, тлумачення заповіту, яке здійснює суд, визнання заповіту (окремого розпорядження) недійсним, виконавець заповіту