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Ключові слова: прийняття спадщини, спадкоємці, місце відкриття спадщини, час відкриття спадщини, строк для прийняття спадщини.

Key words: inheritance acceptance, heirs, place of inheritance opening, time of inheritance opening, term for inheritance acceptance.

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NATURE OF “DISCRETION” CATEGORY IN PRIVATE LAW

One of the established modern patterns of legal regulation in Ukraine and some European countries is its formalization. Formalization is an increase in the importance of legal norms with relatively defined content in legislation and as a result the expansion of the field of “discretion”. This allows accommodating the needs and interests of subjects in the process of implementing their rights more completely and precisely.

The analysis of current legislation allows us to specify that the word “discretion” is most commonly found and used in private law. This is due to the adoption of the Civil Code of Ukraine in which the legislator increased opportunities for subjects of civil relations to determine their own sets of behaviour and to regulate relations using dispositive norms.

In that regard, the Civil Code of Ukraine indicates that the word “discretion” is used not only in articles that cover separate civil relations (Article 708 of the Civil Code of Ukraine), but in articles that have general significance: Article 12, part 1 of the Civil Code of Ukraine (a person shall exercise its civil rights freely and at his/her own discretion); Article 20 of the Civil Code of Ukraine (a person may exercise the right to protection at his/her own discretion); Article 319, part 1 of the Civil Code of Ukraine (the owner shall possess, use and dispose of his/her property at his/her own discretion); Article 628, part 1 of Civil Code of Ukraine (provisions (items) established at the discretion of the parties and agreed upon between them, other provisions compulsory per the acts of civil legislation shall constitute the content of an agreement); Article 271 of the Civil Code of Ukraine (substance of personal non-property right shall constitute a possibility for

a natural person to freely and at its own discretion determine his/her conduct in the area of private life).

Speaking of civil law, it must be understood as a combination of concepts, ideas (principles) and legal norms established on the principles of dispositivity, legal equality and initiative of parties, ground for acquisition and procedure, protection of rights and obligations of individuals and legal entities and also societies, who act as subjects of non-property and property (civil) relations aimed at meeting both material and immaterial needs of individuals and protecting their interests.

It is appropriate to recall that civil law is a manifestation of private law since it predominates norms of private law. A person, who exercises his/her right and interest, is free to choose permissible ways and means. Government agencies and other administrative authorities, for their part, can't intervene in the process of implementation of an authorized person of its subjective law, interfere with it, impose restrictions, etc.

One of the most significant principles is the principle of the freedom of contract. Parties at their own discretion within the boundaries of law decide to conclude the agreement and its content, guided by justice, fairness and reasonableness.

Thus, the manifestation of a person to enter into treaty relations; the freedom to choose the form of agreement by parties; the right of parties to conclude agreements, established by the law, and the agreements that are not established by the law, but do not contradict it, cover the freedom of concluding the agreement and thereby assume that a person has discretion.

So, the question of discretion is complex and contentious in law. Over many years, the issue of the category «discretion» draws the attention of researchers who ambiguously assess discretion from the theoretical and practical perspectives. Discretion in private law is an implementation of legal norms in which individuals are free to choose sets of behaviour by assessing based on inner certitudes in accordance with their legal awareness based on legal principles, moral standards and circumstances of law enforcement situation. The possibility of implementation is laid in legislation in Ukraine and some European countries. Discretion stands as a type of cognitive activity that comprises intellectual and willing elements. This is a cognitive activity of an individual which is accompanied by assessment and comparison and thus discretion does not appear but develops.

Ключові слова: приватне право, цивільне право, категорія, розсуд, свобода договору.

Key words: private law, civil law, category, discretion, freedom of contract.