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MARRIAGE AFTER DEATH: LEGAL AND RELIGIOUS ASPECTS (COMPARATIVE ANALYSIS)

Mendzhul Marija. Marriage after Death: Legal and Religious Aspects (Comparative Analysis)

The full-scale war has been raging in Ukraine for over three years, and for eleven years in a hybrid format. In the absence of official statistics on the death toll, it is evident that the losses for our country are dramatic and increasing every day. The death of a person is a grief for families, and in many cases, young men and women do not manage to get married. Still, many issues arise regarding the legal consequences that death entails. On the one hand, in the national legislation of most states, death is a legal fact that terminates family and other legal relations. Yet, in other countries, there is a practice of marrying a deceased person. In this respect, a number of questions are to be discussed, in particular: is it possible to marry a deceased person, does this violate the rights of the deceased, what are the legal consequences of marriage to a deceased person, does marriage to a deceased person violate the rights and interests of other family members (heirs)?

To answer these questions, it is important to clarify the nature of death from a religious and legal perspectives, the rights of the deceased and their relatives, consider the issues of dignity and respect after death, clarify the reasons for the existing practice of marriage after death and the legal consequences of such marriages. Therefore, the paper provides a comparative analysis of religious and legal norms, identifies current trends in the regulation of such categories as marriage and death, and specifies the optimal approaches for Ukraine, considering the war risks. The comparative legal, dialectical, systemic and historical-legal methods were applied in the study. This comprehensive methodology allowed us to obtain clear results and conclusions. The findings of the study allow us to argue that it is unlikely that the experience of France and some Asian countries in the legal regulation of marriage with the deceased will spread to other European countries and Ukraine. Still, in the context of the war in Ukraine, it is necessary to strengthen guarantees for those children who will be born after the death of a person in two, three or more years (owing to the use of reproductive technologies), in particular in the field of inheritance and social protection.

Keywords: *death, marriage, law, religious norm, legal consequences, human dignity.*

Introduction

A full-scale war has been raging in Ukraine for over three years, and despite the lack of official statistics on the death toll, it is evident that the losses for our country are significant. Every death is a grief for families, and in many cases young men and women do not manage to get married. Death is a natural phenomenon governed by legal and canonical norms. In the national law of most states, death is a legal fact that terminates family relations. Yet, some countries have the practice of marrying a deceased person. This raises a number of questions, including: is it permissible to marry a deceased person? Does it violate the rights of the deceased? What are the legal consequences of marrying a deceased person? Does the marriage with the deceased violate the rights and interests of other family members (heirs)?

To answer these questions, it is important to clarify the nature of death from the religious and legal point of view, the rights of the deceased and their relatives, the legal bases for the body of the deceased, the existing practice of marrying the deceased and potential legal consequences of such marriages. The issue of death, treatment of the deceased person's body and actions for their burial have both religious and legal aspects.

A considerable number of studies are devoted to analysing the concept of death. The problems related to death and eternal life are thoroughly covered from the historical perspective in the work of Ratzinger Joseph (Pope Benedict XVI) "Death and Eternal Life".¹ Pope John Paul II also wrote about death and salvation.² In article "Religious and philosophical understanding of death: a comparison of approaches" O. Lypko showed the evolution of perceiving death from the Christian Middle Ages to the twentieth century, including the reduction of modern man's attention to death and the afterlife. The scholar also concludes that the position of the Catholic and Orthodox theologians on the modern perception of death differs from the earlier Christian interpretation, due to the "trivialization" of death in the modern mass culture with an emphasis on material values.³

At present, almost every religion gives a person hope for life after death through the soul (its eternal life or reincarnation). Similarly, no religion promises immortality, and, therefore, the matter of death is a vital pillar of doctrine alongside that of life. Approaches converge implying that if a person follows the instructions of a certain doctrine, there will be eternal life of their soul. In view of the above, one of the essential Christian ideas is the sermon on "the resurrection of the dead from the grave, the triumph of the righteous and the death of sinners, whose retribution is possible only in the afterlife."⁴

¹ Ratzinger Joseph, «Śmierć i życie wieczne», Warszawa: Oficyna Wydawniczo-Poligraficzna Adam, 2005, 266 p.

² Jan Paweł II, "Evangelium vitae. Encykliki Ojca Świętego Jana Pawła II", Kraków: Znak, 2002, p. 840–987.

³ Lipka Olena, "Religious and philosophical understanding of death: a comparison of approaches", *Bulletin of the National University "Lviv Polytechnic"*, 550, 2006. p. 87.

⁴ Raspopov E. I., «The problem of immortalism in the religious worldview», *Scientific notes of the National University "Ostroh Academy". Series «Historical Religious Studies»*, 11, 2014, p. 152.

For this reason, the study aims to perform the comparative analysis of religious and legal norms as well as current trends in the regulation of such categories as marriage and death, to specify the optimal approaches for Ukraine, taking into account its war risks. The stated purpose determined the following tasks to be fulfilled: to clarify the existing religious norms and approaches that allow marriage after death, to study, from the comparative perspective, legal approaches in different states regarding the regulation of marriage after the person's death.

Religious and legal norms regarding marriage after death

From the standpoint of law, death is a legal fact that can be grounds for terminating most legal relations (for example, termination of marriage, employment, etc.), as well as the basis for hereditary legal relations. After the death of a person, relatives (heirs) will be entitled to protect the rights of the deceased to preserve his or her honour, business reputation and property. It is an established practice worldwide to legally protect the body of the deceased, their grave. Thus, the Ukrainian law provides for criminal liability for an offensive action over the grave or another burial place, as well as the body (remains, ashes) of the deceased (Article 297 of the Criminal Code).⁵

The law normally stipulates that the rights to the body of the deceased belong to his or her heirs, usually relatives. Nevertheless, the state provides that additional protection of the rights of the deceased may impose certain measures even against the will of the heirs. Thus, should a violent death is suspected, an autopsy must be performed to determine the circumstances of the death. Additionally, in Ukraine, a mandatory autopsy is performed in the following cases of death: a child under 1 year old; actions of external factors (injuries, actions of extreme temperatures, electric impact, poisoning, etc.); after an abortion performed outside a medical institution; industrial injuries; for people who were not under medical supervision, as well as for those whose identity was not verified. To compare, the German law is given, where, due to religious and other beliefs, the legal grounds for the mandatory autopsy procedure are narrower than those in Ukraine.⁶

Thus, the issue of human death and burial is regulated by both legal and canonical norms. There is a conflict over the execution of the death penalty. Although European states have abolished the death penalty, it is still a form of punishment in some US states. Further, in the United States, a woman was executed for the first time.⁷ From the religious viewpoint, no one has the right to deprive a person of their life, so the death

⁵ Criminal Code of Ukraine, 2001. Available at: <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (Accessed: March 12, 2025).

⁶ Lysak A. V., Pustovit S. V., Dyadyk O. O., «Historical and ethical and legal aspects of autopsy. Experience of Ukraine and other countries», *Ukrainian medical journal*, 5, 2017. URL: <https://www.umj.com.ua/article/115966/istorichni-ta-etiko-pravovi-aspekti-autopsiyi-dosvid-ukrayini-ta-inshih-krayin> (Accessed: March 12, 2025).

⁷ In the United States, a woman was executed for the first time in almost 70 years. URL: <https://www.ukrinform.ua/rubric-world/3169879-u-ssa-vperse-za-majze-70-rokiv-stratili-zinku.html> (Accessed: March 14, 2025).

penalty is condemned. Yet, when a believer is condemned, they may have hope in God, forgiveness of sins, and salvation of their soul.

Hence, modern understanding of death as the social values implementation is distorted. O. A. Potsulko rightly remarks that “in modern society, where success and material well-being are important, old age and death are considered not as integral parts of the life process, but as a defeat, a reminder of the limitations of our power over nature”.⁸ The aspiration to be young and immortal is not new to humanity. However, the development of medicine and biotechnologies may soon further affect not only the life of an individual but also that of a society, as well as accelerate the transformation of existing values.

Until the 1920-s, only church ceremonies were executed for marriages in European countries⁹ between living people. Marriage to the deceased should be distinguished from levirate marriage, which was common in the history of many peoples, including ancient Jews. In the event of a man's death, his brother was to marry a widow and support her children.¹⁰ The practice of levirate marriages is still widespread in African countries and India¹¹. The purpose of levirate marriages is to preserve family property, hence, these are different from marriages with the deceased.

In different countries it is rather common to observe that marriage after death is not regulated by law, i.e. brides do not have such a right. Yet, such marriages may be concluded on religious grounds. In particular, according to some religions, if a person dies unmarried, they will not have happiness in the afterlife. Indeed, the tradition of marrying the “soul” of the deceased was quite common in South Korea. It is known that in 1982-1984 marriage ceremonies were held with deceased citizens of South Korea. In 1982, a posthumous wedding of a Korean boxer took place with his pregnant bride. Hong Jin Moon died in a car accident in December 1983, and the posthumous wedding ceremony was held on February 20, 1984.¹²

Similar traditions have existed in China for over 3 000 years. Given the gender imbalance caused by birth control policies, experts note that there are 34 million more men than women, many of them die unmarried. The rituals of two dead persons' marriage are common, along with the cases of marriage between the deceased and a living person. When marrying two dead persons in China, the bride's family may even demand a “dowry,” which includes valuable property. The very ritual of marrying two

⁸ Potsulko O. A., «The problem of morality in understanding the essence of life and death in the era of biomedical technology», *Philosophy in modern scientific and socio-political discourses: conference proceedings*, 2020, p. 156.

⁹ Berveno Serhiy, Lazur Yaroslav, Mendzhul Marija, «Marriage: religious and legal aspects», *Cogito. Multidisciplinary Research Journal*, 2, 2020, p. 78.

¹⁰ Ogolla Maurice, «Levirate Unions in both the Bible and African Cultures: Convergence and Divergence», *International Journal of Humanities and Social Science*, 10(1), 2014, p. 288.

¹¹ Bride dies of heart attack at her wedding in India, so groom marries sister instead. URL: <https://www.nzherald.co.nz/lifestyle/bride-dies-of-heart-attack-at-her-wedding-in-india-so-groom-marries-sister-instead/MITTWJ5GLA2K4I2HT4ACGDTE0I/> (Accessed: March 18, 2025).

¹² Posthumous marriage. URL: https://en.wikipedia.org/wiki/Posthumous_marriage (Accessed: March 18, 2025).

dead involves digging up the remains of the bride and burying them in the grave of the groom. In recent years, there have been cases of not only looting graves, but also murders to arrange marriage between the dead where, according to press reports, the price of the remains varies from \$4 500 to \$7 500. Most cases are found in northern and central China, such as Shanxi, Shaanxi and Henan.¹³ Relatives arrange weddings for the dead for various reasons, but in fact due to the common belief that the failure to fulfil the deceased's desire for marriage will bring them misfortune.

Japan has also had a long tradition of marriage after death. Ellen Shattschneider notes that in the memorial practice of northern Japan there was common the rite of "marriage to a doll-bride", which arose during World War II. The soul of the deceased was embodied in a statuette. According to the researcher, such marriages reflected complex relationships between the living and the dead, the abstraction of social relations.¹⁴

In Taiwan, it is quite common to find a bride or groom for a posthumous marriage by placing red envelopes with money, a note, hair and nails of the dead.¹⁵ The person who takes such an envelope is obliged to marry the dead.

Some tribes in South Africa also feature a tradition of posthumous marriages. For instance, marriages with pastoralists are common in South Sudan.¹⁶ There is also a tradition of posthumous marriages in south-eastern Nigeria (Igbo). They are concluded so that the family continues should a man die and leave no sons. For women, this is important because in the event of the husband's death and the absence of sons, they are not entitled to inherit, so they marry even dead fetuses in case of miscarriage.¹⁷ In 2019, the press reported on the marriage of Nigerian Chiniere Ikemefun Orji to her dead husband.¹⁸

Given the significant impact of religious beliefs on a person, marrying the deceased may be an obstacle to remarrying and creating a full-fledged family, although in many Asian countries, marriages with the dead ("spiritual marriages") are a traditional ritual that has no legal consequences.

From the conventional legal perspective, death is a fact that terminates a marriage. Nonetheless, studies show that there are some cases of legal regulation stipulating the possibility of marriage after death.

¹³ Grace Tsoi, «China's ghost weddings and why they can be deadly». URL: <https://www.bbc.com/news/world-asia-china-37103447> (Accessed: March 18, 2025).

¹⁴ Ellen Schattschneider, «Buy Me a Bride: Death and Exchange in Northern Japanese Bride-Doll Marriage», *American Ethnologist*, 28, 2001, p. 854-880.

¹⁵ Taiwan Posthumous Marriage – What is it? URL: <https://lft-taiwan.com/taiwan-posthumous-marriage/> (Accessed: March 19, 2025).

¹⁶ Ghost marriage in South Sudan. URL: https://en.wikipedia.org/wiki/Ghost_marriage_in_South_Sudan (Accessed: March 19, 2025).

¹⁷ Agbo, Maria, Charity, «Posthumous marriage in Igbo land, Southeastern Nigeria and its effects on child development and education», *International Journal of Psychology and Counselling*, 8(3), 2016, p. P. 29.

¹⁸ The Nigerian woman who married her husband after his death. URL: <https://www.bbc.com/news/av/world-africa-49109902> (Accessed: March 19, 2025).

In most countries worldwide, including the United States, however, it is not allowed to marry a deceased person. At the same time, the decision of a Florida court in 1987, recognizing the legal validity of the marriage after the death of the Venezuelan, at the request of his bride, is quite well known. Yet, upon the groom's children's appeal, the court decision was overturned.¹⁹

In European states, some examples of marriage to a deceased person, particularly in modern France may be observed. According to the provisions of Art. 171 of the French Civil Code, the President may, for good reasons, allow marriage in the event of the death of one of the future spouses, as long as there is a sufficient set of facts that unequivocally confirm his consent to marriage for life.²⁰ In this case, the consequences of the marriage date back to the day before death. However, this marriage does not give the right to inherit in favour of the other spouse.

Such provisions of the French Civil Code have historically been designed to enable women who lose beloved husbands to marry and at the same time enable children to acquire the status of being born in marriage, as well as the right to receive a survivor's pension. France is not the only European country where such a practice has existed. For example, posthumous marriages took place in Germany from 1941 to March 1946²¹.

Article 170 of the French Civil Code was amended in 1959, after the death of 423 people in the Malpasat Dam. Marriages with those who died in this catastrophe were very important at that time, as children born out of wedlock did not have the same rights as children born in wedlock, including inheritance. However, there were rather complex requirements, in particular to prove the consent of the deceased (for example, the completion of formalities before the wedding ceremony). The mitigation of the existing encumbrances took place in 2011 and the norm has been in force since then. Thus, currently, strong evidence of the deceased's consent to marriage is required. It may be in the form of fulfilling official formalities (publication of information about planned marriage), drafting a marriage contract, renting a room to celebrate a wedding, ordering various services for organizing a wedding (for example, the services of a photographer, etc.), purchasing a suit, dress, wedding rings, showing parents, relatives, friends and colleagues, having common children, etc.²² Furthermore, in order to marry a deceased person in France, the case of death must be of sudden nature, for example due to a car accident, a natural disaster etc.

In 2020, France will see a sharp decline in official marriages due to the COVID-19 pandemic. Thus, in 2020, the French couples concluded 148,000 marriages, including 144,000 between persons of different sexes and 4 000 between persons of the same sex,

¹⁹ *Woginiak v. Kleiman*, Florida Court of Appeals, April 5, 1988. URL: http://fl.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19880405_0041685.FL.htm/qx (Accessed: March 19, 2025).

²⁰ *Le Code civil des Français*, 21 mars 1804. URL: <http://codes.droit.org/CodV3/civil.pdf> (Accessed: March 22, 2025).

²¹ Posthumous marriage in Germany. URL: https://en.wikipedia.org/wiki/Posthumous_marriage_in_Germany (Accessed: March 24, 2025).

²² Marie-Cécile Bizard, «Le mariage posthume». URL: <https://www.eurojuris.fr/categories/mariage-pacs-concubinage-vie-civile-4800/articles/mariage-posthume-37389.htm> (Accessed: March 24, 2025).

which is 34.1% less than in 2019. Quarantine measures, restrictions on mass gatherings led to the transfer and the abolition of many weddings, the lowest rate of marriages was recorded in April-May 2020.²³

Given the possibility of sudden death as a result of COVID-19, the application of Article 170 of the French Civil Code, which allows marriage registration with a deceased person, may be quite relevant. Before the pandemic, about fifty marriages with a deceased person had been registered, and there was even a case of such a marriage in 2017 between persons of the same sex (men).²⁴

In other words, the existing provision of the French Civil Code allows marriage with a deceased person, while establishing additional conditions concerning the will of the deceased (there must be a set of facts confirming the consent of the deceased to marry) and the procedure for marriage (marriage with the deceased requires permission of the President of France). There are also peculiarities in the marriage ceremony itself, the bride can stand next to the photo of the deceased groom, and instead of his consent, the decree of the President of France is read.

In addition, the French Civil Code contains provisions in Article 171, which define the legal consequences of this marriage, in particular a preventive provision aimed at eliminating the abuse along with protecting the property rights and interests of other heirs – a person married to a deceased person cannot be their heir. Yet, a person married to a deceased person in France is entitled to a common surname, a survivor's pension, and the right to widow's insurance benefits.

Kirsten Rabe Smolensky concludes that autonomy and respect are not unlimited, and she justifies the following among the principles of restricting the rights of the dead – the impossibility, the importance of law, time limits and the conflict of interest between living and dead people. According to the scholar, the law maker is to be guided by these criteria while determining the posthumous rights to be stipulated by law.²⁵ Considering the variety of foreign practices, it may be stated that the right to posthumous marriage is guaranteed by law (in France) and practiced by virtue of tradition and religious beliefs (in China, South Korea and South Africa). In this case, this right is exercised by living people (living groom or relatives of the deceased bride and groom) and, therefore, it is unacceptable to believe that the deceased is entitled to marry.

Conclusion

The right to marry the deceased is controversial and debated due to religious and legal aspects. It is apparent because of a potential conflict between the interests of a living person (groom, relatives of the deceased) and the deceased person. In addition, when a person is dead, it is difficult to prove their will and desire to marry for life. Further, it

²³ Bilan démographique, 2020. URL: <https://www.insee.fr/fr/statistiques/5012724> (Accessed: March 24, 2025).

²⁴ Isabelle Corpart, «Mariage à titre posthume pour tous». URL: <https://www.actu-juridique.fr/civil/personnes-famille/mariage-a-titre-posthume-pour-tous/> (Accessed: March 26, 2025).

²⁵ Kirsten, Rabe, Smolensky. «Rights of the Dead». URL: https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v37n03_cc4_smolensky_final.pdf (Accessed: March 29, 2025).

should be borne in mind that a living person may refuse to marry even on the registration day.

In this regard, there arises a question about respect for the dignity of the deceased. Is the person's death not a reason for not only the termination of their rights, but also for the termination of respect to their dignity? Human dignity is so valuable that it has a protective effect even after death. National legislations of many states specifies liability for mockery over the body (ashes) of the deceased or their grave. The integrity of the body and its inviolability will be protected even after the death of a person, which leads to the criminalization of trafficking in human organs, even after his death.

In view of the above, as well as the moral and religious views established in European countries, it is unlikely that France's experience in the legal regulation of marriage with the deceased will spread to other countries.

It is hardly possible to predict legislation development in the conditions of war and numerous deaths among military personnel. In the Ukrainian society, the legalization of posthumous marriages is obviously unlikely. However, it is necessary to provide guarantees for those children who will be born after the death of a person in two, three or more years, in particular in the field of inheritance and social protection.

REFERENCES

- Agbo, Maria, Charity, (2016), *Posthumous marriage in Igbo land, Southeastern Nigeria and its effects on child development and education*. International Journal of Psychology and Counselling, 8(3), p. 28-33.
- Berveno, Serhiy, Lazur, Yaroslav, Mendzhul, Marija, (2020), *Marriage: religious and legal aspects*. Cogito. Multidisciplinary Research Journal, 2, p. 77–85.
- Bilan démographique, (2020). <https://www.insee.fr/fr/statistiques/5012724> [in Ukrainian]
- Bride dies of heart attack at her wedding in India, so groom marries sister instead. <https://www.nzherald.co.nz/lifestyle/bride-dies-of-heart-attack-at-her-wedding-in-india-so-groom-marries-sister-instead/MITTWJ5GLA2K4I2HT4ACGDTEOI/>
- Criminal Code of Ukraine (2001). <https://zakon.rada.gov.ua/laws/show/2341-14#Text> [in Ukrainian]
- In the United States, a Woman was Executed for the First Time in Almost 70 years. <https://www.ukrinform.ua/rubric-world/3169879-u-ssa-vperse-za-majze-70-rokiv-stratili-zinku.html> [in Ukrainian]
- Corpart, I. (2017) «Mariage à Titre Posthume pour Tous». *Actu-juridique.fr* <https://www.actu-juridique.fr/civil/personnes-famille/mariage-a-titre-posthume-pour-tous/>
- Schattschneider, E. (2001), “Buy Me a Bride: Death and Exchange in Northern Japanese Bride-Doll Marriage”. *American Ethnologist*, 28, p. 854-880.
- Grace, T. (2016) “China’s ghost weddings and why they can be deadly”. <https://www.bbc.com/news/world-asia-china-37103447>
- Ghost marriage in South Sudan. https://en.wikipedia.org/wiki/Ghost_marriage_in_South_Sudan
- Jan Paweł II, (2002), “Evangelium vitae. Encykliki Ojca Świętego Jana Pawła II”, (in Poland), Kraków: Znak, p. 840–987.

- Kirsten, Rabe, Smolensky. "Rights of the Dead". https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v37n03_cc4_smolensky_final.pdf
- Le Code civil des Français, 21 mars 1804. <http://codes.droit.org/CodV3/civil.pdf>
- Lipka, Olena, (2006), *Religious and philosophical understanding of death: a comparison of approaches*, Bulletin of the National University "Lviv Polytechnic", 550, p. 82–88 [in Ukrainian]
- Lysak, A. V., Pustovit, S. V., Dyadyk, O. O., (2017), *Historical and ethical and legal aspects of autopsy. Experience of Ukraine and other countries*, Ukrainian medical journal, 5. <https://www.umj.com.ua/article/115966/istorichni-ta-etiko-pravovi-aspekti-autopsiyi-dosvid-ukrayini-ta-inshih-krayin> [in Ukrainian]
- Marie-Cécile, Bizard. *Le mariage posthume*. <https://www.eurojuris.fr/categories/mariage-pacs-concubinage-vie-civile-4800/articles/mariage-posthume-37389.htm>
- Ogolla, Maurice, (2014), *Levirate Unions in both the Bible and African Cultures: Convergence and Divergence*, International Journal of Humanities and Social Science, 10(1), p. 287–292.
- Posthumous marriage. https://en.wikipedia.org/wiki/Posthumous_marriage
- Posthumous marriage in Germany. https://en.wikipedia.org/wiki/Posthumous_marriage_in_Germany
- Potsulko, O. A., (2020), *The problem of morality in understanding the essence of life and death in the era of biomedical technology*. Philosophy in modern scientific and socio-political discourses: conference proceedings, p. 153–156 [in Ukrainian]
- Raspopov, E. I., (2014), *The problem of immortalism in the religious worldview*, Scientific notes of the National University "Ostroh Academy. Series "Historical Religious Studies", 11, p. 142–153 [in Ukrainian]
- Ratzinger, Joseph, (2005), *Śmierć i życie wieczne*, Warszawa: Oficyna Wydawnicza Poligraficzna Adam, 266 s.
- Taiwan Posthumous Marriage – What is it? <https://lftl-taiwan.com/taiwan-posthumous-marriage/>
- The first death sentence in 2021 was handed down in Belarus, <https://www.ukrinform.ua/rubric-world/3171557-u-bilorusi-vinesli-persij-u-2021-roci-smertnij-virok.html>
- The Nigerian woman who married her husband after his death, <https://www.bbc.com/news/av/world-africa-49109902>
- Woginiak v. Kleiman, Florida Court of Appeals, April 5, 1988. http://fl.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19880405_0041685.FL.htm/qx

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Марія Менджул. Шлюб після смерті: правові та релігійні аспекти (порівняльний аналіз)

Анотація

Понад три роки в Україні триває повномасштабна війна, а в гібридному форматі — одинадцять років. За відсутності офіційної статистики про кількість загиблих, зрозуміло, що втрати для нашої країни значні, зростають щодня. Смерть людини — це горе для сімей, і в багатьох випадках юнаки та дівчата не встигли одружитися. При цьому виникає чимало питань щодо правових наслідків, які зумовлює смерть. З одного боку, у національному законодавстві більшості держав смерть є юридичним фактом, що припиняє сімейні та інші правовідносини. Водночас у деяких країнах існує практика одруження з померлою людиною. У зв'язку з цим виникає ряд питань, зокрема: чи можна одружуватися з покійною людиною, чи порушує це права померлого, які правові наслідки шлюбу з померлою особою, чи порушує шлюб з померлим права та інтереси інших членів сім'ї (спадкоємців)? Щоб відповісти на ці питання, важливо з'ясувати природу смерті з релігійної та правової точки зору, права померлого та його родичів, врахувати питання гідності та гідності після смерті, з'ясувати причини існуючої практики одруження після смерті та правові наслідки таких шлюбів. Саме тому мета статті полягає у здійсненні порівняльного аналізу релігійних та правових норм, виявленні сучасних тенденцій регулювання таких категорій, як шлюб і смерть, з'ясуванні оптимальних підходів для України з урахуванням ризиків війни. Застосовано порівняльно-правовий, діалектичний, системний та історико-правовий методи. Вказана комплексна методологія дозволила отримати низку чітких результатів та висновків. Зважаючи на отримані результати дослідження, ми обґрунтовуємо, що навряд чи досвід Франції та окремих азіатських держав щодо правового регулювання шлюбу з померлими поширяться на інші європейські країни та Україну. При цьому в умовах війни в Україні необхідно посилити гарантії тим дітям, які народяться після смерті людини через два, три і більше років (через застосування репродуктивних технологій), зокрема у сфері спадкування та соціального захисту.

Ключові слова: *смерть, шлюб, право, релігійна норма, правові наслідки, гідність людини.*