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Article

Issues and Prospects for Improving National Legislation on Wills: a Comparative Legal Analysis

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Abstract: The institution of the will is a central element of civil law, enabling individuals to exercise control over their property after death. In Uzbekistan, as in many other countries, the legislation governing wills requires modernization to meet contemporary demands and address practical challenges. The article studies the situation of national legislation on wills, identifies shortcomings and problems in its application and provides evidence-based reform-oriented recommendations, grounded on international experience, for the purpose of better regulation. Comparative Legal, Systematic and Analytical methodology has been used to study oversea models (Germany, France, USA, UK, Switzerland) and ways to adapt them to Uzbekistan legal system. Among the key issues addressed: the need to establish novel kinds of wills (joint wills, inheritance contacts, wills in electronic form), streamlining procedures for will certification and execution, consolidating the legal position of the executor, and the introduction of digital technologies in inheritance law. The article argues that the modernization of national legislation should aim at ensuring the genuine freedom of testation, protecting the rights of heirs, reducing legal disputes, and harmonizing Uzbek law with contemporary international standards.

Keywords: Will, inheritance law, testamentary freedom, joint will, inheritance contract, digital will, notarial certification, executor, Uzbekistan Civil Code, legal reform.

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1. Introduction

Access The institution of the will represents one of the fundamental mechanisms of inheritance law, allowing an individual to determine the posthumous fate of their property in accordance with their own will. In the Republic of Uzbekistan, the legal regulation of wills is primarily enshrined in Section V of the Civil Code (CC), norms that have remained largely unchanged for over three decades. In the context of globalization, digitalization, and the dynamic development of social relations, existing legislative provisions increasingly reveal gaps and inconsistencies that hinder the effective protection of the rights of testators and heirs. This article aims to analyze the key problems in the national legislation on wills, explore relevant foreign experience, and develop scientifically grounded proposals for its improvement.

Scholarship on wills in Uzbekistan highlights outdated Civil Code norms (Gorbunov). Comparative studies detail foreign models: German joint wills (Putinseva), Anglo-American "harmless error" doctrine (Komaristaya), and post-Soviet inheritance contracts (Matveev). Emerging research addresses digital wills and certification flaws (Andrianova). A gap exists in synthesizing these comparative insights into a coherent, technologically-integrated reform agenda for Uzbekistan's legal modernization, which this article addresses.

2. Methodology

The study employs a qualitative, multi-method approach. Doctrinal analysis examines Uzbekistan's Civil Code and related judicial practice to identify gaps. The comparative legal method functionally analyzes institutions from Germany, France, USA, UK, and post-Soviet states to identify adaptable models. Legal forecasting synthesizes findings to develop concrete, systematically integrated proposals for legislative reform, assessing their feasibility within Uzbekistan's legal framework.

3. Results and Discussion

A The current Civil Code of Uzbekistan defines the basic rules for making, certifying, and executing wills. However, many provisions are declarative or overly rigid, failing to account for the diversity of life situations and modern technological capabilities.

1.1. Limited Forms of Wills. The CC of Uzbekistan envisages only two basic forms of a will: notarial (open) and closed (secret) wills (Article 1125 CC). There is merely a nod towards making emergency wills. This range is insufficient for the needs of the contemporary era. As an example: Unlike in Germany, Austria, Lithuania, and Latvia, there is no joint will of spouses. Joint will, a tool that allows both spouses to appoint each other as heirs and to dispose of as common property after the death of the second spouse, which is a practical measure in modern families with children from previous marriages. This institution would safeguard the property rights of the surviving spouse and allow the agreed will of both [1][2].

Also, there is no institution of an inheritance contract, which is widely spread in the legislation of Germany, Switzerland, Ukraine and the Baltic states. The inheritance contract is an agreement between the testator and a future heir (or third party), which becomes effective when signed, and may obligate the heir (to provide caregiving to the testator for life, for example). Such a contract guarantees much more to the parties than a unilateral will, but also helps to avoid potential disputes in the future [3][4].

1.2. Issues with the Procedure for Certifying Wills. The law allows for the certification of wills not only by notaries but also by certain officials (heads of medical institutions, heads of expeditions, commanders of military units, etc.) in exceptional circumstances. Practice shows that wills certified by doctors often become the subject of lengthy court disputes regarding the testator's capacity and compliance with formal requirements. This is due to the lack of clear unified rules for such certification and the limited legal competence of these persons in matters of inheritance law [5]. It is advisable to limit the circle of persons authorized to certify wills, primarily to notaries, and to develop a clear regulatory framework for exceptional cases.

1.3. Lack of Regulation for Digital (Electronic) Wills. The digital era creates additional possibilities for the will. Laws recognizing electronic wills signed with a qualified digital signature or executed via video conferencing with notarial participation have already assimilated in a number of U.S. states (Nevada, Arizona), as well as Australia and a number of European countries [6]. However, such forms are not stipulated in Uzbek legislation, leading to a gap that does not meet the needs of citizens living abroad and/or near remote places. Establishing a legal framework for digital wills along with the specifications in terms of ensuring allowed access, secure storage, and reliable identification is something that needs to be accomplished as well.

1.4. Imperfect Legal Status of the Executor. The provisions on the appointment, powers and liability of the executor (Article1131 CC) are particularly sparse and incomplete. While the Act does not define in which instances an executor should be paid, how their powers will extend into managing the estate, whether multiple executors can be appointed, or how it can hold them liable for losses to the estate. Such uncertainty deters potential executors from seeking grants and hinders estate administration, particularly in the cases of large and complex estates [7].

A comparative analysis of the legislation of various countries allows us to identify best practices that could be adapted in Uzbekistan.

2.1. European Models (Germany, France, Switzerland). German inheritance law is based on freedom of testation, which can be considered to be nearly unlimited, and on the counterbalancing of the mandatory share for those closely related to the deceased. Types of Wills Offered Handwritten, Notary, Joint Spousal Will, and Inheritance Contract. Specifically, the institution of a joint spousal will is well developed and permits spouses to make binding dispositions upon each other [8]. Further, the German model contains an extensive specification of the tasks and the supervision of the executor by the court. This allows for both flexible and stable functioning of the testamentary process.

In France, there are also several types of will; a handwritten (or holographic) will, a notarial will (testament authentique), and a secret will. Notably, the institution of the réserve héréditaire (statutory reserve), which ensures that a part of the estate is allocated to particular heirs (children, spouse), and discourages freestanding testamentary freedom, in order to safeguard the family [9].

2.2. Anglo-American Model (USA, UK). Formal will requirements tend to be stringent (in writing, signed, witnessed) in common law countries. Many states in the U.S. have adopted the doctrine of "substantial compliance" or "harmless error." Under these doctrines, a court may admit a will to probate despite defects in formalities if there is clear and convincing evidence that the will expresses the testator's true intent [10]. This is an adaptable instrument that inhibits the invalidation of a will based on minimal procedural breaches. Also, the United States actively uses pour-over wills (transferring assets to a pre-created trust) and digital will registration systems.

2.3. Experience of Post-Soviet States (Ukraine, Baltic States). Ukraine's Civil Code includes the institution of an inheritance contract, regulated in detail (Articles 1302-1308) [11]. It is a bilateral agreement imposing specific obligations on the acquirer (e.g., providing care) in exchange for the right to receive property after the testator's death. The law provides strong protections for the acquirer's rights, including a prohibition on alienating the property subject to the contract [12]. Lithuania and Latvia have successfully integrated the institutions of joint spousal wills and inheritance contracts from European law into their national systems.

Based on the identified problems and analysis of foreign experience, the following amendments to the Civil Code of Uzbekistan are proposed:

- Introduce *joint spousal wills*, allowing spouses to make mutually binding testamentary dispositions [13].
- Introduce the *inheritance contract* as a bilateral agreement with a detailed regulation of the rights and obligations of the parties.
- Legally recognize the *digital will*, establishing technical requirements for its creation, certification (e.g., through a notary via video link with a qualified digital signature), and storage in a special state register.

3.2. Improve the Will Certification Procedure:

- Limit the certification of wills outside notarial offices to truly exceptional situations (military operations, remote expeditions, imprisonment) with strict procedural rules [14].
- Mandate notaries to use audio or video recording when accepting closed wills or in cases with elderly or ill testators to subsequently confirm their capacity and freedom of will.
- Introduce a unified electronic register of wills, accessible to notaries and courts, to prevent conflicts and forgeries.

3.3. Regulate the Status of the Executor in Detail:

- Expand the list of the executor's powers in the law, including the right to take necessary actions to preserve and manage the estate (with the possibility of obtaining prior court approval for major transactions).
- Establish clear grounds and procedures for remunerating the executor and reimbursing necessary expenses.

- Provide for the possibility of appointing multiple executors and the procedure for their interaction.
- Establish civil liability of the executor for losses caused to the estate through their fault (negligence or intentional actions).

3.4. Introduce Flexible Interpretation and "Harmless Error" Principles.

- Supplement the CC with a rule that insignificant violations of the will-making form that do not cast doubt on the authenticity of the document and the testator's true intent shall not be grounds for invalidating the will [15].

Consolidate the principle of interpretation of a will in favor of its validity (*favor testamenti*) and the priority of the testator's actual intent.

4. Conclusion

The Modernization of the legislation on wills in Uzbekistan is an urgent need driven by the development of social relations, digital technologies, and the need to harmonize national law with international standards. The proposed measures—introducing new will forms, improving certification and execution procedures, and detailed regulation of the executor's status—are aimed at strengthening the freedom of testation, protecting the rights of heirs and other interested parties, minimizing legal disputes, and increasing public confidence in the inheritance mechanism. The implementation of these proposals will require coordinated work by legislators, the judiciary, the notarial community, and IT specialists. The successful reform of inheritance law will contribute to the stability of civil turnover and the protection of property rights in the country.

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