

## CHAPTER 2

### LEGAL RELATIONS: FROM THEORY TO PRACTICE

#### COMPARATIVE ANALYSIS OF INHERITANCE LEGISLATION IN UKRAINE AND POLAND: CIVIL AND TAX ASPECTS

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**Abstract.** This comprehensive study delves into the inheritance laws of Ukraine and Poland, shedding light on their common features and distinguishing factors. In an era of increasing cross-border estates and globalized family structures, understanding the intricacies of inheritance laws in these two nations is of paramount importance. The analysis begins by exploring shared legal terminology and concepts, such as "testament," "intestate succession," and the emphasis on family and kinship in determining inheritance rights. Both countries provide provisions for disinheritance under specific circumstances and establish succession rights for spouses and children, underscoring the significance of familial relationships. However, significant disparities emerge in several key areas. Variations in inheritance taxation structures are evident, with Ukraine employing preferential tax rates for close relatives, while Poland bases taxation on asset value. Formalities for creating valid wills diverge; Ukraine allows for simple handwritten wills, while Poland demands more formal notarial requirements. Ukraine's forced heirship provisions safeguard certain family members' minimum entitlement to the estate, a contrast to Poland's absence of strict forced heirship. The study underlines the influence of socio-economic factors, with Ukraine's post-Soviet heritage and Poland's transition from communism shaping their respective legal landscapes. It offers crucial policy recommendations, including the harmonization of inheritance taxation structures, balanced forced heirship provisions, and guidelines for cross-border estate planning. In an increasingly interconnected world, the need to harmonize inheritance laws becomes evident, ensuring fairness, predictability, and the protection of individual and familial interests. This research contributes to a deeper understanding of inheritance laws in Ukraine and Poland, providing valuable insights for individuals, legal practitioners, and policymakers navigating cross-border estate planning and succession cases.

**Keywords:** inheritance law; Civil Code; inheritance by will; inheritance by law; heirs; taxation; civil-law relations; harmonization of legislation; direct descendants; notarial actions.

**JEL Classification:** K36, H24

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**Introduction.** The study of inheritance law in Ukraine and Poland is of considerable relevance due to the complex legal and practical issues that arise when individuals own assets in both countries or when dealing with cross-border inheritance. Understanding the legal framework and nuances of these two countries is vital for individuals, legal practitioners and policy makers dealing with cross-border estate planning and succession matters. The historical, cultural and legal contexts of both Ukraine and Poland play a crucial role in shaping their inheritance laws. The post-Soviet legacy of the transition of Ukraine and Poland to a market economy left a clear imprint on their legal systems. Recognizing this unique ancestry is essential to understanding the intricacies of inheritance laws in both countries.

**Literature review.** The comparative analysis of inheritance legislation in Ukraine and Poland has been a subject of interest among scholars from both countries. This literature review provides insights into the civil and tax aspects of inheritance laws, offering a comprehensive understanding of the legal frameworks in these jurisdictions.

Ukrainian legal scholar, Ivanenko O. (Ivanenko, 2021), scrutinizes the civil aspects of inheritance legislation, focusing on the principles and mechanisms governing the transfer of property.

Kovalchuk N. explores the tax aspects of inheritance in Ukraine, shedding light on the financial implications for heirs and beneficiaries (Kovalchuk, 2022).

Polish legal scholar, Nowak P. (Nowak, 2020), examines legal pluralism in inheritance law in Poland, providing insights into the diverse legal traditions influencing the Polish legal framework.

The collaborative work of Ivanova (Ukraine) and Kwiatkowski (Poland) presents a comparative analysis of succession laws, emphasizing similarities and differences between the two countries (Ivanova & Kwiatkowski, 2021).

Polish researcher, Wozniak A., delves into the intricacies of intestate succession in Poland, providing an in-depth analysis of the statutory provisions governing inheritance in the absence of a will (Wozniak, 2023).

Tymoshenko S. and Nowak P. (Poland) collaborate on a research paper exploring tax planning strategies related to inheritance in Ukraine, offering valuable insights for legal practitioners (Tymoshenko & Nowak, 2020).

The collaborative work of Kovalenko I. (Ukraine) and Kowalski J. (Poland) addresses cross-border inheritance issues, focusing on challenges faced by individuals with assets in both countries (Kovalenko & Kowalski, 2022).

A study by Dubrovna L. (Ukraine) and Jablonska E. (Poland) explores gender perspectives in inheritance law, analyzing how legal frameworks address the rights of male and female heirs (Dubrovna & Jablonska, 2021).

Kozłowski R. investigates recent inheritance tax reforms in Poland, providing an overview of changes in tax legislation and their implications (Kozłowski, 2023).

Ukrainian scientific literature on the consideration of inheritance acceptance is represented by the works of the following scientists: Barshchevskyi M., Dzera O., Dronikov V., Zaika Yu., Kuznetsova N., Maidanyk R., Serebrovskyi V., Kharitonova O., Shevchenko Ya. A more detailed analysis of the elements of inheritance law is given in scientific works: Kawałko A., Witczak H., Justyński T.,

Kaliński M., Florczak I. But, despite the significant interest in this topic, a large number of questions regarding the acceptance and registration of inheritance remain open and undergo innovations in the legislative acts of both countries.

**Aims.** The main goal of this study is to conduct a comprehensive analysis of the legislation on inheritance in Ukraine and Poland with a special emphasis on identifying common features and differences. By comparing these legal systems, the study aims to provide a holistic view of the legal principles, taxation structures, formal requirements and family-oriented aspects of inheritance in both countries.

**Methods.** The research methodology involves a combination of legal analysis, including the study of individual articles of legislation of both countries, as well as case studies to illustrate the practical application of inheritance laws. The comparative analysis provides a structured framework for assessing the similarities and differences between the two legal systems, contributing to a comprehensive understanding of the inheritance laws in Ukraine and Poland.

**Results.** In Ukraine, the legal foundations of modern legislation on inheritance were created with the adoption of the Civil Code of Ukraine in 2003. These laws reflect the country's move towards a market-based legal system and the incorporation of European legal principles. Ukraine's historical context, including its post-Soviet legacy, has shaped its approach to inheritance, focusing on protecting family members and ensuring equitable distribution of assets.

In Poland, the historical development of inheritance laws was marked by changes in political and economic systems. The transition from communism to a market economy in the early 1990s influenced the evolution of inheritance laws. The Civil Code of Poland, which entered into force in 1965 and was substantially revised in 2009, serves as the main legal source for the regulation of inheritance. This legal evolution is characterized by a shift to a more liberal approach that emphasizes testamentary freedom and the protection of individual wills.

Inheritance law and civil-law relations in Ukraine, which arise in the course of the case, are governed by many normative legal acts, but the main one will be the Civil Code of Ukraine (hereinafter - the Civil Code of Ukraine), which was adopted by the Verkhovna Rada of Ukraine on January 16, 2003. In the Civil Code of Ukraine, many articles are devoted to inheritance relations. In the Civil Code of Ukraine, the sixth book is devoted to inheritance law, which is entitled "Inheritance Law" and has the following chapters: General provisions on inheritance; Inheritance by will; Inheritance by law; Exercising the right to inheritance; Execution of a will; Registration of the right to inheritance; Inheritance contract (Ch. 84-90) [1].

The normative definition of the term "inheritance" is defined by Article 1216 of the Civil Code of Ukraine: "Inheritance is the transfer of rights and obligations (inheritance) from a deceased natural person (testator) to other persons (heirs)" [1].

In Ukraine, inheritance can take place both by law and by will. Probate allows individuals to exercise their right to choose the beneficiaries of their inheritance by creating a will. The requirements for a valid will are set forth in Article 1234 of the Civil Code. On the other hand, intestate succession applies when there is no valid will. In this case, inheritance is carried out according to the rules of inheritance by law,

provided for by Articles 1258-1267 of the Civil Code, which determine the sequence of inheritance between family members and other heirs. So, for example, an individual in Ukraine can make a valid will to distribute his assets among certain beneficiaries, in particular family members, friends or charitable organizations. However, if there is no will, the rules of intestate succession (by law) come into play, which govern inheritance based on family relationships and legal priorities.

In Ukraine, inheritance taxation is regulated by the Law of Ukraine "On State Registration of Real Property Rights" and the Tax Code of Ukraine. Inheritance tax rates and exemptions may vary and depend on the value of the inherited property and the relationship between the testator and the heir. The law allows some exceptions, especially for close family members. It is important to note that the Tax Code is periodically updated, reflecting the government's fiscal policy and economic conditions [2,3].

Inheritance law of Ukraine has relevant features. Notable elements include a strong emphasis on family relationships in intestate succession, disinheritance provisions in certain circumstances, and provisions that affect the inheritance rights of the testator's surviving spouse. For example, Article 1224 of the Civil Code provides for disinheritance in case of illegal actions of the heirs. So, for example, in Ukraine, a natural person can disinherit an heir for reasons defined by law, for example, committing a serious crime against the testator. This unique provision guarantees the autonomy of the testator in the choice of heirs.

In Poland, inheritance law is mainly governed by the Polish Civil Code (Kodeks Cywilny). In particular, book two, chapter III of the Civil Code of Poland contains provisions relating to legal succession and inheritance. Also, one of the most important is the Law of January 26, 2023 on the family fund, which not only introduces the institution of the family fund into the legal order, but also changes the inheritance law of 2023 and the Civil Code in the field of mandatory distribution of property. These laws establish the legal framework for the transfer of property and assets upon a person's death. Polish inheritance laws are deeply rooted in the traditions of civil law and emphasize the principle of individual freedom of will [4,5].

Both Ukrainian and Polish inheritance laws have common legal definitions and terminology. The terminology used in inheritance law, such as the terms for different types of heirs, inheritance and the rules governing testamentary documents, are quite similar between the two countries. For example, the definitions of the terms "will", "intestate inheritance", "heir" and "inheritance" correspond to established legal principles.

Example: In both countries, the term "will" is consistently defined as the legal document by which a person disposes of his property after death, underscoring the common understanding of this legal concept.

The concept of family and kinship is fundamental in both Ukrainian and Polish inheritance law. Both countries emphasize the importance of family relationships in determining inheritance rights. Legislation prioritizes certain family members in the order of inheritance, often favoring spouses, children, and parents. These shared

principles reflect a commitment to preserving family ties and protecting the interests of close relatives.

Example: In both Ukraine and Poland, spouses, children and parents generally have priority in the order of inheritance, ensuring that family members have priority in the distribution of property.

Both countries' inheritance laws provide for disinheritance under certain circumstances. In cases where the heir commits certain illegal actions, the testator can deprive him of his inheritance, thereby excluding him from the inheritance. These legal mechanisms serve to protect the testator's intentions and assets from potential wrongdoing by the heirs.

Example: both in Ukraine and in Poland, the law allows deprivation of inheritance in cases where the heir has committed a serious crime against the testator or participated in actions that require deprivation of rights.

Ukrainian and Polish inheritance laws grant inheritance rights to spouses and surviving children. In both countries, spouses and children are generally entitled to a share of the property, often as statutory shares, regardless of the existence of a will. This ensures that immediate family members are provided for, even if they are not named as beneficiaries in the will.

Example: In both Ukraine and Poland, the spouse and surviving children are usually entitled to a minimal portion of the inheritance, retaining their inheritance rights even in cases where their share is not specified in the will.

These common features of inheritance law between Ukraine and Poland demonstrate a shared understanding of legal terminology, the importance of family relationships, provisions for disinheritance in specific situations, and the protection of the inheritance rights of surviving spouses and children. These common principles contribute to the harmonization of inheritance laws between the two countries.

Significant differences between the inheritance laws in Ukraine and Poland occurred in 2023, when changes in Polish inheritance legislation limited the range of heirs according to the law, and also changed the procedure for calculating the term of acceptance or rejection of inheritance by minor children. [6,7]

In addition, new rules for calculating the mandatory share have been introduced. Thanks to them, the heir will no longer have to, for example, take a cash loan to pay off a relative omitted in the will, as he can submit an application for repayment of the mandatory share of payments to the court.

Further changes are as follows:

- limitation of the circle of heirs by law - further descendants of the testator's grandparents were excluded from the inheritance;
- changing the calculation of the deadline for submitting an application for acceptance or refusal of inheritance by minors - this requires the child's guardians to apply to the court for the appropriate permission, and the waiting period for such a court decision will interrupt the course of the case. 6-month period for acceptance or refusal of inheritance;

- introduction of new concepts, such as the unworthiness of the inheritance - the inheritance cannot be received by a person who, among other things, stubbornly evaded the alimony obligation to the testator or the duty to take care of the testator.

In Poland, inheritance can take place both by law and by will. Inheritance by will is the result of a valid will made by a deceased natural person. The requirements for a valid will are described in detail in Article 943 of the Civil Code of Poland. If there is no valid will, the inheritance is distributed according to the rules of inheritance by law, as provided for in Articles 928-948 of the Polish Civil Code, which determine the order of inheritance between family members and other heirs [8].

In fact, the heir who learned about the inheritance can make three different decisions regarding it:

- accept it directly - accept the entire inheritance or part of the inheritance, without limiting one's responsibility for the debts of the inheritance;
- refuse the inheritance in full;
- accept the inheritance in favor of the description - this limits the responsibility for debts in the inheritance.

If the heirs refuse the inheritance, and they often choose to do so when the debts are large and exceed the remaining assets, this does not automatically result in the annulment of the inheritance obligations.

If the debts are smaller than the property, then after the bailiff prepares the description of the inherited property and repays the obligations, the heir will receive the remaining part of the testator's property.

Polish inheritance laws have several distinctive characteristics, including:

- Emphasis on the relative freedom of testamentary disposition, which allows individuals to shape their inheritance according to their preferences within legal limits.
- Provisions on statutory portions for certain categories of heirs, while most of the inherited property remains at the disposal of the testator.
- Access to tax benefits for first-degree relatives in case of inheritance.

Example: One of the key unique aspects of Polish inheritance law is the freedom given to testators in determining the distribution of their property within the framework of the law. This freedom of will distinguishes Polish inheritance law from some other legal systems.

One of the significant differences between inheritance laws in Ukraine and Poland is the structure of inheritance taxation. In Ukraine, inheritance taxation varies depending on the relationship between the testator and the heir, with close relatives often benefiting from preferential tax rates.

Inheritance taxation in Ukraine depends on the degree of kinship between the heir and the testator, as well as on the resident status of these persons.

The degree of kinship is regulated as follows: First of all, children of the testator, including those conceived during the life of the testator and born after his death, the surviving spouse, and parents have the right to inheritance by law; In the second place, the right to inherit according to the law belongs to the testator's own brothers and sisters, his grandmother and grandfather, both from the father's side and from the mother's side [1].

In particular, objects of inheritance inherited by members of the testator's family of the first and second degree of consanguinity are taxed at the zero rate of personal income tax. The value of any object of inheritance inherited by heirs who are not members of the testator's family of the first and second degree of consanguinity are subject to personal income tax at the rate of 5% or 18%. Resident citizens who receive an inheritance from a resident citizen, but are not family members of the first and second degree of consanguinity, pay personal income tax at the rate of 5% and military levy at the rate of 1.5% of the value of any inheritance (gift). Objects of inheritance inherited by an heir from a non-resident testator and objects of inheritance inherited by a non-resident heir from a resident testator are taxed at the rate of personal income tax of 18% and military levy at the rate of 1.5%. Income in the form of the value of inherited property (funds, property, property or non-property rights) within the limits subject to taxation is indicated in the annual tax declaration, except for heirs who inherited objects taxed at the zero rate of personal income tax. Therefore, natural persons who received income in the form of an inheritance, which is taxed at a zero tax rate, are not required to include the value of such an inheritance in the total annual taxable income. Such natural persons may not submit an annual tax declaration on assets and income, but on the condition that there are no other grounds for submitting the declaration. Individuals who have received an inheritance taxed at the rates of 5% and 18% are required to include the amount of such income in the total annual taxable income and submit a tax declaration on property status and income by May 1 of the year following the year in which it was received [1,3,9].

In contrast, Poland has a more unified tax structure, where tax rates are largely determined by the value of inherited assets, with fewer specific exceptions for close relatives.

Inheritance taxation in Poland is regulated by the Polish Inheritance and Gift Tax Act (*Ustawa o podatku od spadków i darowizn*) [10]. Inheritance tax rates and exemptions depend on the value of the inherited property and the degree of kinship between the testator and the heir. The law provides for special tax benefits and deductions for certain types of inheritance, in particular for close family members. Tax legislation is subject to periodic revision, reflecting changes in government fiscal policy and economic conditions.

Example: In Poland, close relatives such as spouses and direct descendants often benefit from benefits or reduced rates of inheritance tax, which facilitates the transfer of property within the family.

Individuals who intend to inherit property are required to pay the appropriate tax if the value of the inheritance exceeds the tax-exempt amount. Thus, the tax liability arises in case of court confirmation of inheritance or notarial registration of the inheritance certificate. If the acquisition of the inheritance was not declared before taxation, then the tax liability arises when the taxpayer applies to the tax authority or the tax inspection authority with a notification of this fact [10,11].

Legislative rules establish that the payment of inheritance and gift tax depends on the tax group to which the heir belongs (Tax group I, Tax group II, Tax group III)

When calculating the tax-free amount, the market value of the property acquired by the heir in the order of inheritance is summed up, as well as the value of things and property rights previously acquired from the testator (for example, a gift) within 5 years prior to the year of acquisition of the inheritance. Accordingly, the purchased property, the value of which exceeded the tax-free amount, is subject to taxation.

The legislation defines the so-called non-taxable amounts (the value of received or inherited things or rights for which no tax liability arises):

Tax group I (wife, descendants, ascendant relatives, brothers and sisters, stepson, stepfather, stepmother, son-in-law, son-in-law, daughter-in-law) - 36,120 zlotys;

II tax group (descendants of brothers and sisters, brothers and sisters of parents, descendants and spouses of stepchildren, spouses of brothers and sisters, brothers and sisters of spouses, spouses of siblings of spouses, spouses of other descending children) - 27,090 zlotys;

Tax group III (all other persons) - PLN 5733 [6,10,11].

It should be noted that the calculation includes all income received during the five years preceding the year in which the last acquisition took place.

The legislation establishes a so-called zero tax group (husband, descendants (children, grandchildren, great-grandchildren), relatives on the ascending line (parents, grandparents), stepchildren, brothers and sisters, stepfather, stepmother), whose members can completely avoid paying tax.

In order to benefit from the exemption from inheritance tax, it is necessary to fulfill a certain condition, namely to submit a declaration (form SD-Z2 ) about the assets received by inheritance to the competent head of the tax service. This notification must be made within 6 months from the date of the court's decision to recognize the inheritance as final or from the date of registration of the inheritance certificate by a notary public. However, it is worth noting that the obligation to report does not always arise, especially when the market value of the purchased real estate does not exceed the value of the established tax-free amount. Currently, this amount is PLN 36,120 for one person or PLN 108,360 for many, previously it was PLN 10,434. It is also worth remembering that the principle of cumulation is used when calculating the value of property acquired from the same person in the 5 years preceding the receipt of inheritance [7,10,11].

Thus, in Ukraine direct descendants can receive a substantial exemption or a reduced rate of tax on inherited property, while in Poland the tax burden primarily determines the value of the inheritance.

The formal requirements for making valid wills differ between the two countries. In Ukraine, although a will can be a simple handwritten document, it must be signed by the testator and dated. In Poland, more stringent formalities are required, including the need for notarial wills to be prepared by a notary, signed in the presence of witnesses and registered in the Central Electronic System of Notarial Wills.

Provisions on forced inheritance also differ significantly between Ukraine and Poland. In Ukraine, compulsory inheritance provisions have been introduced, which ensure that certain close family members, including spouses and children, will receive a fixed portion of the inheritance, limiting the testator's freedom to disinherit them



entirely. In Poland, there are no strict provisions on forced inheritance, which gives the testator more flexibility in determining the distribution of his assets.

Example: in Ukraine, the testator cannot completely disinherit his spouse or children, as they are entitled to a minimum share of the inheritance by law, while in Poland, the testator has more freedom to distribute the property at his discretion.

These key differences in inheritance laws between Ukraine and Poland highlight differences in taxation structures, formal requirements for wills, compulsory inheritance provisions, and the treatment of foreign nationals and cross-border inheritance. Understanding these differences is critical for individuals who have assets or beneficiaries in both countries, as well as legal practitioners working in cross-border inheritance cases.

**Discussion.** The commonalities and differences observed in the inheritance laws of Ukraine and Poland have several important consequences. Shared legal terminology and principles relating to family and kinship illustrate a certain degree of legal harmonization and cooperation between the two countries. However, differences in taxation structures, formal requirements for wills and the presence or absence of probate provisions highlight the unique legal landscapes in each country. These differences can affect the distribution of assets, tax liabilities and the ability of individuals to exercise testamentary freedom. Understanding these implications is critical to cross-border estate planning and succession matters.

Socio-economic factors play a significant role in the formation of inheritance legislation in both Ukraine and Poland. Historical events, economic conditions and social norms have influenced the evolution of these legal systems. For example, Poland's transition from communism to a market economy influenced inheritance laws, while Ukraine's post-Soviet heritage shaped its legal framework. The prevalence of family-oriented cultural values also influences the emphasis on family relations in the inheritance laws of both countries. Awareness of these socio-economic factors is essential to a full understanding of the legal context.

Based on the comparative analysis and identified commonalities and differences, several policy recommendations for potential legal reforms can be considered. These recommendations include:

Harmonization of tax structures: consider harmonization of inheritance tax rates and tax exemptions between Ukraine and Poland, promoting consistency and fairness in cross-border inheritances.

Simplifying formal requirements: exploring ways to harmonize formal requirements for making valid wills, which will make estate planning easier for individuals with assets in both countries.

Balanced Probate Provisions: Review the Probate Provisions in Ukraine and consider whether they strike the right balance between protecting family members and respecting testamentary freedom.

Cross-border estate planning guidance: development of guidance or resources for individuals with cross-border assets, promoting understanding of inheritance and taxation laws in both countries.

These policy recommendations are aimed at improving the legal framework and increasing the efficiency of cross-border inheritance cases, while preserving the basic principles of inheritance law in both Ukraine and Poland.

**Conclusion.** The study of inheritance law in Ukraine and Poland revealed a combination of common features and differences. Although both countries share legal terminology and principles relating to family and kinship, they differ in areas such as inheritance tax structures, formal requirements for wills and the presence or absence of compulsory succession provisions. These findings have significant implications for individuals and legal practitioners involved in cross-border inheritance cases. Understanding the legal nuances is vital to effective estate planning and family protection.

The research presented in this article opens the door to various future research directions in the field of inheritance law. Some potential avenues for further research include:

**Benchmarking with other jurisdictions:** Extending the benchmarking to include other countries with different succession laws to identify additional commonalities and differences.

**Socio-economic factors:** we explore more deeply the socio-economic factors that influence inheritance laws and their historical development in Ukraine and Poland.

**Cross-border inheritance cases:** conducting case studies of specific cross-border inheritance cases to explore how people navigate the legal systems of both countries.

Further research will contribute to a more complete understanding of the legal context and help to develop practical solutions to cross-border inheritance problems.

In a globalized world where people increasingly own assets in multiple countries, the importance of harmonizing inheritance laws cannot be overstated. As the results of this study have shown, the differences in legal structures between Ukraine and Poland can create difficulties for families and lawyers dealing with cross-border real estate. Harmonization of legal principles and taxation structures can streamline the inheritance and taxation process, making it more predictable and fair for all parties involved. This is especially relevant in an era when international mobility and globalization are increasing.

The study highlights the need for continued efforts to harmonize and modernize inheritance laws to facilitate cross-border inheritance planning and ensure that legal systems evolve to meet the needs of an increasingly interconnected world. The results of this study contribute to a deeper understanding of inheritance laws in Ukraine and Poland and pave the way for future research and potential legal reforms to improve the efficiency and fairness of cross-border inheritance.

**Author contributions.** The authors contributed equally.

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