

# TYPES OF WILLS: A COMPARATIVE LEGAL ANALYSIS

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**Annotation.** The article states that by means of a will, a person (the testator) can determine in advance the disposition of all or part of their property and thereby avoid a number of problems in the future. The right to make a will may be exercised throughout a person's lifetime and includes both the right to draft one or more wills and the right to amend or revoke them.

The purpose of this study is to conduct a comparative legal analysis of the types of wills under the civil laws of Ukraine and certain European countries, and to identify common and distinguishing features based on the analyzed legislation.

The methodology of this study involves a comprehensive analysis of the civil legislation of Ukraine, the United Kingdom, Germany, Italy, France, and Poland, specifically focusing on the provisions of inheritance law regarding the types of wills and their characteristics. The study employs an analysis of legal literature, particularly civil codes, as well as comparative and systemic approaches to the examination of will types.

It is noted that the civil legislation of each country defines its own specific features regarding wills, which may share common traits with Ukrainian law or be radically different, incomprehensible, or even strange. At the same time, however, wills play an important role in the institution of inheritance law, and the experience of foreign countries can be useful in the process of reforming national civil legislation.

The article provides a detailed analysis of the legislation of foreign countries, and based on the results of this legal analysis, conclusions are drawn regarding the common and distinguishing features of existing classifications of wills. It is noted that the classification of wills in the Civil Code of Ukraine differs most radically from that of the United Kingdom. The existence of trust wills, living wills, and statutory wills is particularly uncommon in our legal system. Furthermore, holographic wills are absent in Ukraine (unlike in Poland, Germany, France, and Italy), and there is no practical need to introduce them. Notarized wills – also known as public wills – are characteristic of all the countries studied, as well as Ukraine. Another common feature is the existence of joint wills and secret wills.

**Key words:** inheritance law, wills, types of wills, comparative study, civil legal relations.

## 1. Introduction.

Ukrainian law defines a will as a personal disposition by a natural person in the event of their death, which by its nature constitutes a unilateral legal act [1]. Through a will, a person (the testator) may determine in advance the disposition of all or part of their property and thereby avoid a number of problems in the future. The right to make a will may be exercised throughout a person's lifetime and includes both the right to draft a will or multiple wills and the right to amend or revoke them. All of the testator's aforementioned powers, together with the means of their legal protection and enforcement, constitute the realization of testamentary freedom, which is a principle of inheritance law. Testamentary freedom, as a principle of inheritance law, includes, among other elements, the necessity of respecting the testator's will and the obligation to carry it out [2].

At the same time, it is necessary to take into account the existing statutory requirements regarding the types and content of a will, the procedure for its certification, the legal status of the testator, and so on, to ensure that the will is not subsequently declared invalid or void.

The main purpose of a will is to appoint an heir or heirs, as well as to determine the legal disposition of the estate (the testator's rights and obligations) that constitutes the subject of inheritance [3]. The civil legislation of each country defines its own specific features of wills, which may share common traits with Ukrainian law or be radically different, incomprehensible, or even strange. Nevertheless, the will occupies an important place in the institution of inheritance law, and the experience of foreign countries can be useful in the process of reforming national civil legislation.

## 2. Analysis of scientific publications.

The legal nature of wills has always been an active area of research among Ukrainian civil law scholars. In particular, research has focused on issues such as the form, content, and execution of wills; the grounds, procedure, and consequences of declaring them invalid; the analysis of judicial practice; and the specific features of certain types of wills. In general, the works of T.Y. Bilous, I. Dzery, O. Kalinichenko, A.Y. Kirik, O.E. Kukharev, M.O. Mikhailiv, M.V. Parasyuk, S.M. Sibilova, A. Fursa, and others can be highlighted. As for the issue of comparative legal analysis of types of wills in Ukraine and abroad, it has not actually been studied, since comparative research has most often been conducted regarding inheritance legal relations, intestate succession, or inheritance law in general.

**3. The aim of the work** is to conduct a comparative legal analysis of the types of wills under the civil laws of Ukraine and certain European countries, and to identify common and distinguishing features based on the analyzed legislation.

## 4. Review and discussion.

The Civil Code of Ukraine distinguishes the following types of wills: ordinary wills, conditional wills, secret wills, joint wills, wills with a testamentary bequest, wills designating an heir, and partial wills [1].

In the United Kingdom, the classification of wills differs significantly from the Ukrainian one. First and foremost, standard wills should be distinguished, which are divided into simple (single) and mirror wills. A simple will is the most common and, depending on the person's wishes, can be either straightforward or complex. It is often drawn up by people who are not in a relationship, though there may be exceptions. This type of will may be drawn up by people who are married or living with a partner but have children from previous marriages; if the husband/wife/partner already has a will, etc.

Unlike a unilateral will, mirror wills are drawn up by spouses or civil partners. The Ukrainian equivalent here would be a joint will (albeit with significant differences). By their nature, these are two separate wills that reflect each other's wishes. Upon the death of one spouse or partner, the property automatically passes to the surviving spouse or partner, and upon the death of the latter, it is distributed in accordance with the wishes of the individuals specified in the mirror will. At the same time, it is important to note that the surviving spouse has the right to amend their will after the death of the first spouse, which can lead to unpredictable consequences [4].

In contrast to mirror wills, there are joint wills (or mutual wills) – legally binding agreements between two people, usually spouses, that ensure that after the death of one party, the surviving party cannot change the agreed-upon terms.

Another type is a trust will. These are typically used when a person wishes to provide for minor children, protect assets from potential creditors, or manage family wealth over time. In general, the following types can be distinguished: a discretionary trust (a trustee is appointed to manage the estate of a loved

one (children, incapacitated persons)); a property trust (allows you to specify who should benefit from the property or a share of the property); a life interest trust or perpetual ownership trust (allows you to grant another person the right to use the assets for the duration of their life following the testator's death); flexible life estate trust (similar to property trusts but offering additional flexibility, allowing trustees to modify payments or terms depending on changing circumstances). Additionally, it is important to note the living trust (also known as an inter vivos trust), which is established during a person's lifetime and allows assets to be transferred into the trust while the person is still alive.

A living will or advance directive is a written document that allows you to express your future wishes regarding care and medical treatment in the event that you lose legal capacity and are unable to communicate your preferences. Such a will does not pertain to the division or transfer of property.

Legal wills are drafted and approved by the Guardianship Court on behalf of the person who lacks legal capacity. To draft a statutory will, an authorized person, such as an attorney-in-fact or a representative of the Guardianship Court, must file a petition with the Guardianship Court. In this case, the Court assesses the person's best interests, taking into account their prior wishes, family circumstances, and financial situation [5].

Compared to the United Kingdom, the German Civil Code recognizes significantly fewer types of wills. The most common type is a handwritten will, also known as a holographic will or a private will. Such a will can be drafted by anyone at any time at home. Therefore, there are generally no costs associated with creating this type of will. It is important that the entire will be written by hand. A combination of computer printouts, copies, and handwritten sections is also not permitted. The will must specify the date and place of its creation. The will must be signed by the testator in their own handwriting, including their first and last name. If the will consists of multiple pages, the signature must appear on each page.

A public or notarized will is drawn up with the assistance of a notary. Notarization can take place in two ways: 1) the will is dictated orally to the notary; 2) a written record of the last will and testament may be submitted to the notary.

A joint will allows two people to dispose of their property in a single will and can be used by both married couples and registered civil partners. A joint will can be handwritten or notarized and cannot be changed after the death of the first spouse or partner. If the marriage or registered civil partnership is dissolved, the joint will also becomes invalid.

A variation of the joint will is the so-called "Berlin will." In this type of joint will, the two spouses or partners in a registered civil partnership mutually designate each other as sole heirs. Upon the death of one person, all property passes to the surviving partner, who becomes the primary heir, and only upon the death of the second person does the estate pass to the next heir [6].

The Polish Civil Code stipulates that property may be transferred after death only by will. Therefore, there is no other legal way to transfer one's assets to specific individuals after death. A will must be drawn up in the appropriate form and executed by a person who is of sound mind and has full legal capacity.

All wills are divided into general and special wills. General wills are the most common form of disposing of property after death. Legislators designed them to be appropriate for standard situations where no sudden or unforeseen events occur. These include: a handwritten (holographic) will, a notarized will, an allographic will, or a formal will.

A holographic will is written by hand and includes the date and signature. However, the absence of a date does not invalidate a holographic will if it does not raise doubts regarding the testator's capacity to make a will, the content of the will, or the relationship between multiple wills [7].

A notarial will is drawn up in the form of a notarial deed. An allographic will is a much less common form of a simple will. It is not widely used, mainly due to the requirement for two witnesses and the requirement that the will be drawn up in the presence of the mayor (or city council chair), district chair, provincial marshal,

district or municipal secretary, or the head of the civil registry office. The will is drafted and read aloud in the presence of witnesses, and the document is signed by the testator, the witnesses, and the person to whom the will was read. Additionally, this form is not suitable for deaf or mute individuals.

A special will may be drawn up only under strictly defined circumstances, such as when there is a fear of imminent death. This form of will is intended to provide the opportunity to express one's wishes regarding the disposition of one's assets in urgent and unforeseen circumstances. An oral will is drawn up in the presence of three witnesses. This form may be chosen if there is a fear of imminent death or special circumstances that make compliance with the standard form impossible or very difficult. An oral will must be drawn up within one year of its presentation or, if necessary, confirmed by testimony in court.

A will made during a voyage may be drawn up while traveling on a Polish seagoing vessel or aircraft before the ship's captain or his deputy by declaring the will to the ship's captain or his deputy in the presence of two witnesses. The ship's captain or his deputy records the testator's will, noting the date of its execution, and reads it aloud to the testator in the presence of the witnesses. The document is then signed by the testator, the witnesses, and the ship's captain or his deputy. If the testator is unable to sign, the reason for the absence of the testator's signature must be noted in the document. If this form is not possible, an oral will may be made.

A military will may be made only by members of the Armed Forces or persons associated with them. It is important to note that a special will loses its validity six months after the circumstances justifying the deviation from the standard cease to exist, unless the testator dies before the expiration of this period. The running of the time limit is suspended for the period during which the testator is unable to execute a standard will.

The Polish legislature is also considering the introduction of an audiovisual will. This became a hot topic in 2024, when the first draft amendment to the Civil Code was developed. Legislative work is currently underway on the second version, adopted by the Commission for the Codification of Civil Law. According to the new draft (dated October 28, 2025), an audiovisual will will be a form of oral will. The legislature has provided for the possibility of using this option only in certain situations. Thus, a last will and testament may be recorded on a smartphone when, due to extraordinary circumstances, preserving a standard form of a will is impossible or excessively difficult, and there is a fear of the testator's imminent death [8].

In Italy, the following types of wills exist: holographic, public, secret, and special. A holographic will is the simplest and most common form. To be valid, it must be entirely handwritten by the testator, including the date and signature. It does not require the involvement of a notary, but for this very reason, it is important that it be drafted precisely in accordance with the requirements of the Civil Code [9].

A public will is drawn up by a notary at the testator's dictation in the presence of two witnesses. After being read aloud, the document is signed and officially registered. This is the most formal and secure form, recommended in cases of complex inheritance matters or potentially contentious family situations. A secret will can be drafted by the testator themselves or by a third party, even mechanically. It is then sealed and deposited with a notary in the presence of two witnesses. Its contents remain confidential until the testator's death. Special wills are provided for exceptional situations, such as war, natural disasters, or isolation. They are valid for a limited time and permitted only when ordinary wills cannot be used [10].

Interestingly, joint wills (where two or more people jointly set forth their wishes in a single document) and reciprocal wills (where two or more people make arrangements in a single document for the benefit of one another) are prohibited. However, wills are valid if two or more persons set forth obligations to one another in separate documents [11].

In France, there are four main types of wills: authentic, secret, holographic, and international. An authentic will is a document drawn up by a notary. It must be drawn up in the presence of the testator and two witnesses. In addition, authentic wills are registered in the Central Register of Last Wills and Testaments, which eliminates the risk of their loss. Authentic wills are the least likely to be contested in court [12].

A secret will is drafted by the testator themselves and then handed over in an envelope to a notary in the presence of two witnesses. Thus, the contents of the will remain confidential until the inheritance case

is resolved. Secret wills are also registered in the Central Register of Last Wills and Testaments; however, only the date of registration can be guaranteed, while the validity and accuracy of the contents cannot be certified. In France, it is rarely used. Less than 1% of the wills registered each year are secret wills. A secret will is subject to strict formal requirements. Any error can render it invalid. Furthermore, neither the notary nor the witnesses can guarantee its content.

A holographic will is a document in which the testator personally attests to their final wishes by writing them out by hand on a blank sheet of paper. Although it is not mandatory to submit it to a notary, this can be done voluntarily. The main problem with such wills is that nearly half of them are declared invalid due to errors in form or content. An international will is a document intended for individuals residing abroad or who have assets located outside of France. This document is recognized in all countries that have signed the Washington Convention and is registered by a notary. In this case, the testator is free to choose the language in which the will is drafted [13].

## 5. Conclusions.

After conducting a legal analysis of the civil legislation of Ukraine, the United Kingdom, Germany, France, Italy, and Poland regarding types of wills, the following comparative conclusions can be drawn: 1) The classification of wills set forth in the Civil Code of Ukraine differs most radically from that of the United Kingdom. Particularly uncommon in our legal system are trust wills, living wills, and statutory wills. Regarding the latter, in Ukraine, as in the other countries studied, it is not possible to execute a will on behalf of an incapacitated person (who suffers from mental disorders). Under national law, a person lacking legal capacity is barred from entering into any legal transactions, including wills, and there are no mechanisms for others or authorized bodies to draft a will on their behalf. The only way to inherit such a person's property is by intestacy. Although the English experience certainly deserves attention; 2) In Germany, France, Poland, and Italy, there is the holographic will – the simplest type of will, which is handwritten, does not require notarization, but is most often subject to challenge in court. In Ukraine, however, a will – regardless of whether it is handwritten or typed – must always be certified by a notary or other officials, the list of whom is defined by the Civil Code. We believe that introducing a simple holographic form under current conditions would be entirely inappropriate, due to the high risk of forgery and the high percentage of such wills being declared invalid in court. Although this form would be the most convenient for testators; 3) Notarized wills, also known as public wills, are characteristic of all the countries studied, as well as Ukraine. However, in Ukraine, uncertified forms of wills are not permitted a priori; 4) The legislation of Ukraine, the United Kingdom, and Germany provides for a joint will, or the term more commonly used in the national legal system – a marital will. In Poland, Italy, and France, this type is not provided for; 5) Polish law distinguishes between travel wills and military wills among the special types of wills. Although Ukrainian law does not specifically provide for such types, it does define the particularities of certifying wills of military personnel; persons aboard sea or river vessels flying the Ukrainian flag; and persons participating in search or other expeditions; 6) In France, Italy, and Ukraine, secret wills are provided for, and the procedure for their drafting and announcement shares common features across all these countries.

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