

INHERITANCE BY LAW IN THE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN AND THE REPUBLIC OF UZBEKISTAN

**YUSIFOV Shukur Mahammad oghlu - Head of the Department of "Civil Law"
of Baku State University, Doctor of Philosophy in Law, Associate Professor**

DOI: <https://doi.org/10.71404/NP.2025.2.29>

Unlike the Republic of Azerbaijan, the General and Special Parts of both the Civil Code of the Republic of Kazakhstan and the Civil Code of the Republic of Uzbekistan were adopted not on the same day, but at different times. The General Part of the Civil Code of the Republic of Kazakhstan was adopted on December 27, 1994, the Special Part on July 1, 1999, the First Part of the Civil Code of the Republic of Uzbekistan on December 21, 1995, and the Second Part on August 29, 1996.

Keywords: Article, state, international, economic, social.

Studying the legislation of the Republic of Kazakhstan and the Republic of Uzbekistan on inheritance by law is an urgent issue from both a scientific and practical point of view. Thus, in studies related to inheritance, it is of particular importance to conduct comparative studies and to identify their valuable aspects and shortcomings. These are the following:

1) Studying the legal norms reflected in the legislation of the Republic of Kazakhstan and the Republic of Uzbekistan regarding inheritance by law helps to further deepen knowledge on the issue under study;

2) The legislation of the Republic of Azerbaijan creates the basis for the adoption of the best legal decisions on improving the norms reflected in the law on inheritance and the subsequent updating of national legislation.

Comparative jurisprudence, also known as comparativism in modern jurisprudence, deals with comparing the general properties of different legal systems and the specific aspects of

their manifestations. Comparativism involves comparing legal objects that exist in the past or at present. Therefore, any legal norm or legal institution can be taken as an object for comparative research. According to A.I. Guliyev, the comparative legal approach includes methods and means with the help of which the legal systems of different countries are compared in order to determine the general characteristics and specific aspects of modern manifestations. Such a comparison involves the study of overlapping characteristics of laws and legislation currently existing in different legal families or separate legal systems (synchronous comparison). For comparison, the legislative acts being compared (micro-comparison), more complex components of their units (institutional, sectoral and inter-sectoral comparison), as well as the legal system as a whole (macro-comparison) can be selected [5, p. 5].

According to A.I. Guliyev comparative jurisprudence should play a primary role in legal science. It seeks to explain to lawyers, above all, the meaning and role of law, using the experience of different peoples of the world for this. On the other hand, it seeks to contribute mainly to the development of international relations in a practical way, opening up opportunities for agreement on the forms of regulation of these relations. Finally, comparative jurisprudence helps lawyers from different countries improve their national law [5, p. 35].

An analysis of the legislation of foreign countries, including the Republic of Kazakhstan and the Republic of Uzbekistan, indicates that there

are certain points in terms of harmonization of norms related to inheritance, including inheritance by law. These points require in-depth study. In the current circumstances, the creation of a single legal space related to inheritance is extremely necessary, and this makes the problem under consideration even more urgent.

The Constitution of the Republic of Kazakhstan, among other rights, enshrined such rights of citizens as the right to private property and the right to inheritance. Thus, according to the second part of Article 26 of the Constitution of the Republic of Kazakhstan dated August 30, 1995 (this article is reflected in the second section of the Fundamental Law entitled "Individual and Citizen"), property, including the right to inheritance, is guaranteed by law [3].

Section 6 of the Civil Code of the Republic of Kazakhstan (Special Part) dated July 1, 1999 is devoted to the Law of Inheritance (Chapters 57-60 and Articles 1038-1083) [1]. Chapter 57 is entitled "General Provisions on Inheritance" (Articles 1038-1045, Chapter 58 "Inheritance by Will" (Articles 1046-1059), Chapter 59 "Inheritance by Law" (Articles 1060-1071), Chapter 60 "Acquisition of Inheritance" (Articles 1072-1083).

Article 1060 of the Civil Code of the Republic of Kazakhstan entitled "General Provisions" states:

"1. Heirs by law shall be called to inherit in accordance with the procedure for a queue as provided for by Articles 1061 – 1066 of this Code.

2. When inheriting by law, an adopted person and his descendants on the one side and the adopter and his relatives on the other side are equated to blood relatives.

Adopted persons and their descendants shall not inherit by law after the death of blood parents of the adopted person or his other blood relatives.

Parents of an adopted person and his other blood relatives shall not inherit by law after the death of an adopted person and his descendants.

3. Each subsequent queue of heirs by law shall receive the right to inherit in the case there are no heirs of the previous queue, their removal from inheritance, their non-acceptance of inheritance or refusal from it, except for the

cases indicated in paragraph 5 of Article 1074 of this Code.

4. The rules of this Code concerning the queues for calling heirs by law to inherit and concerning size of their shares in inheritance may be changed by a notarized agreement of interested heirs which is entered after inheritance opens. Such an agreement must not infringe the rights of the heirs, which are not a party to it, nor the heirs who have the right to an obligatory share".

To date, seven lines of succession have been established by law. According to Article 1061 of the Civil Code of the Republic of Kazakhstan, the right of the first queue to inherit by law shall be granted in equal shares to the children of an estate-leaver, including those born alive after his (her) death as well as the spouse and parents of the estate-leaver.

The testator's grandchildren and their issue shall inherit by right of representation.

According to Article 1062 of the aforementioned Code, "If there are no heirs of the first category the legal heirs of the second category shall be the full and half brothers and sisters of the testator, his (her) grandfather and grandmother both on the side of the father and on the side of the mother.

The children of full and half brothers and sisters of the testator (nephews, nieces of the testator) shall inherit by right of representation.

If there are no heirs of the first and second categories the legal heirs of the third category shall be the full and half brothers and sisters of the parents of the testator (uncles and aunts of the testator).

Cousins of the testator shall inherit by right of representation (Article 1063 of the Civil Code of the Republic of Kazakhstan).

Article 1064 of the Civil Code of the Republic of Kazakhstan, entitled «Next category Heirs», states:

«1. If there are no heirs of the first, second and third categories, the right to inherit by law shall be acquired by the testator's relatives of the third, fourth and fifth degree of kinship who are not qualified as heirs of the preceding categories.

The degree of kinship shall be determined by the number of births that separate relatives from each other. The birth of the testator in this case does not count.

2. Under paragraph 1 of the present article the following shall be called upon to inherit: as heirs of the fourth category: relatives of the third degree of kinship – great grandfathers and great grandmothers of the testator; as heirs of the fifth category: relatives of the fourth degree of kinship – children of full nephews and nieces of the testator (grandsons and granddaughters once removed) and brothers and full sisters of their grandfathers and grandmothers (grandsons and granddaughters once removed) and full brothers and sisters of their grandfathers and grandmothers once removed); as the heirs of the sixth category: relatives of the fifth degree of kinship – children of grandsons and granddaughters of the testator once removed (grand grandsons and grand granddaughters once removed), children of his cousins (nephews and nieces once removed) and children of his grandfathers and grandmothers once removed (uncles and aunts once removed).

3. If there are no heirs of the preceding categories the following shall be called upon to inherit as heirs of the seventh category by law: stepsons, stepdaughters, the stepfather and the stepmother of the testator.

In accordance with paragraph 5 of Article 1074 of the Civil Code In the case of a refusal of an inheritance, an heir shall have the right to indicated that he repudiates it for the benefit of other persons from among heirs by will or by law of any queue.

A refusal from an inheritance for the benefit of heirs who are deprived of the inheritance by their testator shall not be allowed.

Article 1067 of the Civil Code of the Republic of Kazakhstan entitled “Inheritance Under the Right to Representation” states:

“1. The share of a legal heir who has died before the opening of the inheritance or simultaneously with the testator shall be passed by right of representation to his relevant issue in the cases specified in paragraph 2 of Article 1061, paragraph 2 of Article 1062 and paragraph 2 of Article 1063 of this Code and it shall be divided between them in equal shares.

2. The issue of an heir who has died before the opening of the inheritance or simultaneously with the testator and who would not have had a right of inheritance under Article 1045 of

this Code shall not inherit by the right of representation”.

Article 1045 of the Civil Code of the Republic of Kazakhstan entitled “Dismissal of Improper Heirs from Inheritance” states:

“1. Persons who deliberately deprived testator or potential heirs of life, or made an attempt to take the testator’s life shall have no right to inherit neither by law nor by will. Persons, for whom a testator left a will after an attempt to take his (her) life, shall be an exception.

2. Persons who deliberately impeded the exercise of the last will of a testator and who assisted calling themselves or persons who are close to them to inherit or increase the share of inheritance which belongs to them, also shall have no right to inherit neither by will, nor by law.

3. Parents who were deprived of parental rights and whose rights were not re-established by the moment of opening inheritance shall not have the right to inherit after their children, nor parents (adopters) and full age children (step-children) who evaded execution of duties entrusted to them by virtue of law with regard to taking care of a testator.

4. The circumstances that serve as a basis for dismissal from inheritance of improper heirs shall be established by the court.

4-1. A person who does not have the right to inherit or who is eliminated from inheritance under the present article (improper heir), shall be obliged to return all the property he groundlessly received from among the inheritance.

When return of inheritance property is impossible, heir shall be obliged to compensate it at its trade price.

5. The rules of this Article shall also apply to testamentary gifts (Article 1057 of this Code).

If the subject of the testamentary refusal was implementation of the certain work for legatee or rendering him (her) the certain service, the later shall be obliged to compensate to the heir implemented the testamentary refusal, the cost of the implemented work.

6. The rules of this Article shall apply to all heirs, including those who have the right to an obligatory share”.

In accordance with Article 1068 of the Civil Code of the Republic of Kazakhstan, citizens relating to the heirs by law, specified in the arti-

cles 1062, 1063, 1064 of this Code incapable on inheritance opening day, but not entering the circle of heirs of that order, which are called to inherit, shall inherit under the law together and on a level with successors of this turn if not less than year to death of heir were on his expense irrespective of whether they lived together with heir or not.

Incapable persons who are recognized as heirs by law as indicated in Articles 1061, 1066 of this Code, but who are not the heirs of that queue which is called to inherit, shall inherit together with the heirs of this queue, provided they were dependent on an estate-leaver not less than one year prior to his death, irrespective of whether or not they lived together with the estate-leaver.

If there are other heirs by law, the persons called to inherit on the basis of this Article shall inherit not more than one-fourth part of an inheritance.

We would like to note that the Supreme Court of the Republic of Kazakhstan adopted Normative Resolution No. 13 on June 28, 2002, entitled "On Judicial Practice in Cases on Establishing Facts Having Legal Significance", the content of which also covers inheritance issues, and on June 29, 2009, No. 5 on "On Some Issues of the Application of Inheritance Legislation by Courts", which is directly related to inheritance issues. It is indicated in paragraphs 1-3 of the Normative Decision dated June 29, 2009 (some changes were made to paragraph 3 of the said Normative Decision on March 31, 2017):

1. When resolving disputes on inheritance cases, courts must be guided by the legislation in effect on the day of opening of the inheritance. A new law introducing any changes or additions to the previous procedure for regulating inheritance relations applies to those rights and obligations that arise after its entry into force.

2. According to Article 1042 of the Civil Code of the Republic of Kazakhstan, Inheritance shall be opened on the score of the death of a citizen or his (her) announcement as deceased.

The day of death of a testator, and in the case of announcing him as deceased the date when the court decision on announcing a citizen as deceased, unless there is a different date

in the court decision, shall be the day of inheritance opening.

If persons who had the right to inherit one after another died on one day, they shall be recognized as deceased simultaneously, and inheritance shall be opened after each of them and heirs of each of them shall be called for inheritance.

3. The place of opening of the inheritance is the last place of residence of the testator. In accordance with Article 16 of the Civil Code, the place of residence is recognized as the locality where the citizen permanently or predominantly resides. According to paragraph 2 of Article 51 of the Law of the Republic of Kazakhstan dated July 22, 2011 No. 477-IV "On Population Migration", registration of citizens is carried out at the place of residence and at the place of temporary stay (residence). In accordance with subparagraph 17-1 of Article 1 of the Law "On Population Migration", the place of temporary stay (residence) is a building, premises or dwelling with an address that is not a place of residence and in which a person stays (lives) temporarily. As a rule, the last place of residence of the testator coincides with the place of permanent residence.

If the last place of residence of the testator who owned property in the territory of the Republic of Kazakhstan is unknown or is located outside of it, the place of opening of the inheritance in the Republic of Kazakhstan is recognized as the location of such inherited property (location of real estate, place of registration of movable property, location of the bank in which the testator's account is opened, etc.). If the said inheritance is located in different places, the place of opening of the inheritance is the location of the real estate included in it, and in the absence of real estate – the location of movable property or its most valuable part. The value of the property is determined based on its market value [7].

We consider it necessary to state that, in accordance with the first paragraph of Article 4 of the Constitution of the Republic of Kazakhstan, the normative decisions of the Constitutional Court of the Republic of Kazakhstan and the Supreme Court of the Republic of Kazakhstan are considered the law in force in the said country.

Commenting on Article 4 of the Constitution of the Republic of Kazakhstan, R.N. Yurchenko correctly states that the Decisions of both the Constitutional Court and the Supreme Court are binding [9, p. 24].

In accordance with Part 1 of Article 7 of the Law of the Republic of Kazakhstan dated April 6, 2016 "On Legal Acts", which includes 67 articles and 15 sections, normative legal acts are divided into two types: primary and secondary [6]. According to the second part of Article 7 of the aforementioned Law, the following are considered to be the main normative legal acts:

1) Constitution of the Republic of Kazakhstan; Constitutional Laws of the Republic of Kazakhstan; Codes of the Republic of Kazakhstan; Consolidated Laws of the Republic of Kazakhstan (A consolidated law is understood as a normative legal act that regulates similar (identical in essence) public relations, adopted by combining several normative legal acts without significant changes in content, in order to improve the legislative system when codification is not possible) [10, p. 182]; Laws of the Republic of Kazakhstan; Temporary resolutions of the Government of the Republic of Kazakhstan having legal force;

2) Normative legal decrees of the President of the Republic of Kazakhstan; normative legal acts of the Chairman of the Security Council of the Republic of Kazakhstan;

3) normative legal decisions of the Parliament of the Republic of Kazakhstan and its Chambers;

4) Normative legal decisions of the Government of the Republic of Kazakhstan;

5) Normative legal decisions of the Constitutional Court of the Republic of Kazakhstan, the Supreme Court of the Republic of Kazakhstan;

6) Normative legal decisions of the Central Election Commission of the Republic of Kazakhstan, the Supreme Chamber of Auditors of the Republic of Kazakhstan, the National Bank of the Republic of Kazakhstan and other central state bodies;

7) Normative legal orders of the ministers of the Republic of Kazakhstan and other heads of central state bodies;

8) Normative legal orders of heads of departments of central state bodies;

9) Normative legal decisions of maslikhats (local representative bodies elected by the pop-

ulation of a region, city of republican significance, as well as the capital or district in the Republic of Kazakhstan), normative legal decisions of akims (regional executive body, district state administration in the Republic of Kazakhstan), normative legal decisions of akims (head of local executive body in the Republic of Kazakhstan. Akim is the official representative of the President of the country) and normative legal decisions of inspection commissions.

According to Part Three of Article 7 of the Law of the Republic of Kazakhstan "On Legal Acts", the following are secondary regulatory legal acts:

- 1) statute;
- 2) technical regulations;
- 3) rules;
- 4) instructions.

Therefore, normative decisions of the Constitutional Court of the Republic of Kazakhstan and the Supreme Court of the Republic of Kazakhstan are the main type of normative legal act.

As in the Republic of Kazakhstan, private property and the right of inheritance are guaranteed in the Republic of Uzbekistan. In other words, according to Article 41 of the Constitution of the Republic of Uzbekistan dated December 8, 1992, which consists of the Preamble, 6 (six) sections, 27 (twenty-seven) chapters and 155 (one hundred and fifty-five) articles, the secrecy of banking transactions, deposits and accounts, as well as the right of inheritance, are guaranteed by law.

According to Part 3 of Article 65 of the Constitution of the Republic of Uzbekistan, private property is inviolable. The owner may not be deprived of his property in cases and in the manner prescribed by law and without a court decision [4].

Article 41 of the aforementioned Constitution is reflected in Chapter IX of the Basic Law entitled "Economic, Social, Cultural and Environmental Rights", and Article 65 is reflected in Chapter XII entitled "Economic Foundations of Society".

Section 5 of the Civil Code of the Republic of Uzbekistan (Part Two) dated August 29, 1996 is devoted to the right of inheritance (Chapters 66-69 and Articles 1112-1157) [2]. Chapter 66 is entitled "General Provisions on Inheritance"

(Articles 1112-1119, Chapter 67 is entitled “Inheritance by Will” (Articles 1120-1133), Chapter 68 is entitled “Inheritance by Law” (Articles 1134-1144), Chapter 69 is entitled “Acquisition of Inheritance” (Articles 1145-1157).

Article 1134 of the Civil Code of the Republic of Uzbekistan entitled “General Provisions” states: “Heirs by operation of law are called to inheritance in the order of priority established by Articles 1135-1141 of the present Code.

In case of inheritance by operation of law, an adopted child and his descendants on the one hand and an adoptive parent and his relatives on the other are equated to relatives by blood relatives.

An adopted child and his descendants do not inherit by operation of law after the death of the parents of the adopted child, his other 501 blood relatives in the line of ascent. The parents of an adopted child and his other blood relatives in the line of ascent do not inherit by operation of law after the death of the adopted child and his descendants. Each succeeding priority of the heirs by operation of law acquires the right to inheritance in case of the absence of heirs of the preceding priorities, removal from inheritance or non-acceptance by them the inheritance or refusal from it”.

Heirs of the first priority by operation of law Children of the deceased (included of adopted children), spouse and parents (adoptive parents) of the deceased acquire the right for the inheritance by operation of law in equal share at the first priority. Children of the deceased who were born after his death are heirs of the first priority.

Heirs of the second priority by operation of law The full and half brothers and sisters of the deceased, his grandfather and grandmother, both on the side of the father and on the side of the mother acquire the right for the inheritance by operation of law in equal share at the second priority.

Heirs of the third priority by operation of law The own uncles and aunts of the deceased acquire the right for the inheritance by operation of law in equal share at the third priority.

Heirs of the fourth priority by operation of law The other relatives of the deceased up to the sixth degree of relation included acquire the right for the inheritance by operation of law

at the fourth priority where relatives of closer degree relation have preferred right for the inheritance regarding to the relatives of farer degree of relation. Heirs of the fourth priority calling to the inheritance inherit at the equal share.

Heirs of the fifth priority by operation of law The disabled dependants of the deceased acquire the right for the inheritance by operation of law at the fifth priority if they do not inherit on the basis of Article 1141 of the present Code.

Article 1141 of the Civil Code of the Republic of Uzbekistan entitled “Dependents of the deceased who are not capable of work” states: “Persons who are not capable of work and who not less than one year before the death of the deceased they were dependent upon him regardless of whether they lived together with the deceased not shall be categorized as heirs by operation of law. They shall inherit together with heirs of this priority that is called to inheritance in the presence of other heirs. Persons who are not capable of work categorized as heirs by operation of law indicated in Articles 1136-1138 of the present Code who neither are nor indicated in the circle of heirs of that priority that is called to inheritance, shall inherit together with heirs of this priority if less than one year before the death of the deceased were dependent upon him regardless of whether lived together with him. Persons who are called to inheritance on the basis of the present Article, in the presence of other heirs by operation of law shall inherit together not more than the fourth part of inheritance”.

According to Article 1140 of the Civil Code of the Republic of Uzbekistan entitled “Inheritance by right of representation”, inheritance by right of representation assumes the passage of the share of an heir by operation of law to his descendants in case of his death before the opening of the inheritance, in which connection the share shall be divided among descendants equally who are the same degree of relation with a represented heir by operation of law. The right of representation shall act without limitation of the degree of relation upon the inheritance in a descending straight line or the right of representation shall acquire accordingly nephews (nieces) of the deceased represent-

ing his native brothers (sisters) or first cousins of the deceased representing his uncles or aunts upon the inheritance in a side line)".

Article 1140-1 of the Civil Code of the Republic of Uzbekistan entitled "Lapse of right to acceptance of inheritance (hereditary transmission)" states:

In case where heir, called to inheritance under the will or law, died after opening of inheritance having had no time to accept it, the right to acceptance of inheritance due to him shall be transferred to his heirs under the law, and if all hereditary property has been bequeathed – to his heirs under the will (hereditary transmission). The right to acceptance of inheritance in the course of hereditary transmission shall not be included into the structure of inheritance opened after such heir's death. The right to acceptance of inheritance belonged to a dead heir can be exercised by his heirs on common grounds.

The heir's right to accept a part of inheritance as an obligatory share stipulated by Article 1142 of the present Code, shall not be transferred to his heirs.

In order to ensure the correct and uniform application of the legislation on the right of succession by the courts, on July 20, 2011, the Plenum of the Supreme Court of the Republic of Uzbekistan adopted a Resolution entitled "On the Application by Courts of the Legislation on the Right of Inheritance" consisting of 24 (twenty-four) paragraphs [8]. Paragraph 4 of the mentioned Decision states that, since the estate includes only property that belongs to the testator on legal grounds, buildings erected without permission or not properly registered are included in the estate only if the deceased's right of ownership to the said buildings is recognized in the established manner.

If the transactions of purchase and sale, exchange, donation, etc. made by the testator are recognized as invalid after his death, the returned property is also included in the estate.

In the event of the death of a participant in common joint ownership, the inheritance opens in relation to the common property falling to his share, and if it is impossible to divide the

property in kind – in relation to the value of such share.

References

1. Civil Code of the Republic of Kazakhstan (Special Part) dated July 1, 1999 (as amended and supplemented as of March 13, 2025): [Electronic resource] / <https://is.gd/S8ncVa>
2. Civil Code of the Republic of Uzbekistan (Part Two) dated August 29, 1996 (as amended and supplemented as of September 10, 2024): [Electronic resource] / <https://is.gd/yncFr4>
3. Constitution of the Republic of Kazakhstan // Adopted on August 30, 1995 (with amendments and additions as of September 19, 2022): [Electronic resource] / <https://is.gd/jquMDH>
4. Constitution of the Republic of Uzbekistan of December 8, 1992 (as amended and supplemented as of 01.05.2023): [Electronic resource] / <https://is.gd/K7UZ2r>
5. Guliyev, A.I. Comparative jurisprudence. Baku: "Afpoligraf" printing house, – 2019. – 240 p.
6. Law of the Republic of Kazakhstan On legal acts // Adopted on April 6, 2016: [Electronic resource] / <https://is.gd/AWJPBw>
7. Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated June 29, 2009 No. 5 "On Certain Issues of the Application of Legislation on Inheritance by Courts" (as amended on March 31, 2017): [Electronic resource] / <https://is.gd/nVvQ1G>
8. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 05 "On the application by courts of legislation on the right of inheritance" dated July 20, 2011: [Electronic resource] / <https://www.lex.uz/acts/2414323>
9. Yurchenko, R.N. On the legal nature of regulatory decisions of the Supreme Court of the Republic of Kazakhstan and their practical application // – Astana: Bulletin of the Institute of Legislation of the Republic of Kazakhstan, – 2009. No. 4, – pp. 24-27.
10. Zhakupov, R.E. On the issue of consolidated law // – Astana: Bulletin of the Institute of Legislation of the Republic of Kazakhstan, – 2013. No. 3, – p. 181-183.