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THEME:

**THE NECESSITY OF HERITAGE**

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### INTRODUCTION

Heritage institution undoubtedly is considered as one of the oldest institutions of civil law. This institution has a lifespan of early civilizations and it is found in ancient Greece, ancient Rome, and many other civilizations. Normally, at that time it did not have this role that it has today. However, with the evolution of society a lot of things have changed, especially with the creation of nation - states has come to a greater attention from the state for this matter. Therefore, given the importance and development of heritage necessity as a separate part of the heritage, which speaks to the relationship between the decedent and heirs, as well as many other elements related to heritage, we thought it was reasonable to talk about such topic. Thus, the fundamental purpose of this topic is that the necessity of heritage to be seen more closely, namely the fact of persons who have been guaranteed the right of inheritance and the property on which they have the right to, which is called the compulsory share.

Therefore, besides introduction and methodology, I have divided this topic into three parts which review and analyze the necessity of heritage. **In the first part**, mainly I talked about necessity of heritage as an etymological, historical and legal concept, continuing then with the elaboration of heirs and their rights, the analysis about wills and their types, and for the final part we talk about the calculation of the compulsory share. **The second part** focuses more on: proceedings of excluding the heir from inheritance, then the reduction of testamentary dispositions and the return of the donation due to violation of the compulsory share, deprivation of the compulsory share to the benefit of the heirs, unworthiness and obstruction of the realization of last will. **The third and last part**, talks about the relationship between gender and heritage, namely the rights of women to participate in wealth, then unworthiness in inheritance, donations and their return, calculations of donations, donations that do not count on the hereditary part, cancellation of the declaration of renunciation from inheritance, the consequences of renouncing from inheritance, the prediction of the right of inheritance property search.

This paper ends with a general conclusion of this analysis. In the end I want to thank my prof. Dr. Sc. Muhamet Kelmendi for the time allocated to me, his suggestions and professional support.



## **METHODOLOGY**

This paper's methodology was prepared in the academic level of study, which are crowned with the final master thesis paper. Therefore, in this scientific paper there are used scientific methods and empirical scientific methods. Specifically, comparative methods are used between the right of necessity of heritage in Kosovo and Albania, then the necessity of heritage analysis in these two countries. Besides the juridical method, which is the basis for a paper such as this nature and as a method meant analysis of the Law of Inheritance in Kosovo, which among other things it has given us much interesting data which have strengthened this paper.

Another method was the statistical method and I used this method for the analysis of charts. In the course of methodology, importance has had the method of content analysis of concept documents, scientific texts, and official websites of the most important institutions that deal with the right of inheritance, Roman, civil law, as well as browsing encyclopedias, newspapers, different books etc, which have further contributed to the enrichment with data to this paper.

The study of literature has been another important method, which also has further strengthened this scientific work. One of the main methods has been a qualitative research with in-depth interviews with target groups, which are realized with responsible credible involved in the necessity of heritage as:

- **Jurist / of the right of inheritance**
- **Officer / of the jurisprudence dealing with the analysis of hereditary right**

Mostly, these groups have been targeted during this research. Interviews were conducted according to a pre-designed questionnaire and responses are then analyzed and used in quotes in the paper. Besidethe biographical data, the interviews contained 16 questions (with other sub-questions) which served as the main method in the elaboration and analysis of this paper.



## CONCLUSIONS

As a general conclusion, we can say that this topic deserves special attention in the study of jurisprudence, the fact that addresses a very sensitive issue, often by the difficult nature, but the treatment becomes even more difficult from an ambiguity type by jurists. Therefore, generally on the basis of this on what we analyzed and elaborated, we can say that the heritage concept is a very important social institution, which has a lifespan of almost as ancient as man himself. While the necessity of heritage relates to persons who have been granted the right to inheritance and are recognized as compulsory heirs, and the property on which they have the right to which is called the necessity of heritage property. Today, when we talk about the necessity of heritage, we should keep in mind the order of legal heritage, under which heirs of the first, second, third part and so on are included. Important role in this regard as we saw, have the wills and their types, which are mainly done in the presence of the appropriate person.

But what we were interested in was the fact of exclusion of the heir from the necessity of heritage, under which it meant lifting the quality of heir from the decedent with the declaration of last will, as he has nothing to gain from inheritance for example, when the heir was rude against the decedent, his child, adopted child, parents or has committed a serious offense against them and if he/she is profligate. Also, we saw that unworthiness is hereditary legal institution, with the presentation of which a person *ex lege* loses the legal authorizations of the heir and has great importance for the right of inheritance, and therefore the reasons that cause the unworthiness of a person for inheritance, the court is officially obliged to care, and for other reasons, only when the interested part raises objection. We also saw the donations, which are considered as any waiver of the right-forgiveness of debt, any transfer of assets on behalf of an heir in anticipation of the inheritance, or to establish or expand family or to exercise a profession, and any other gratuitous possession, as well as many other issues which are not enough to knit in short, on all of the necessity of heritage issues and its relation to gender equality remain challenges for Kosovo's society, this due to many factors and a greater social awareness.