



Kolegji AAB

FACULTY OF LAW

MASTER STUDIES

DEPARTMENT: CIVIL LAW

FORM OF OPENING INHERITANCE WITH LAW IN KOSOVO

Mentor:

Prof. Ass. Dr. MuhametKELMENDI

Candidate:

VjollcaSHYTI

Prishtine, 2014

CONTENT	
INTRODUCTION	
FIRST CHAPTER	
1. INHERITANCE RIGHT	
1.1 Historical development of inheritance in Kosovo	
2. Sources of inheritance right in Kosovo	
2.1 Constitution as a source of right	
2.2 Law as a source of inheritance right	
2.3 Custom as a source of inheritance right	
2.4 Juridical science as a source of inheritance right	
3. Inheritance wealth.....	
SECOND CHAPTER	
1. PRINCIPLES OF JURIDICAL REGULATION OF INHERITANCE IN KOSOVO	
1.1 Basic principles	
1.2 Principle of equality	
1.3 Principle of will inheritance	
1.4 Principle of limitation of juridical basis of inheritance	
1.5 Principle of universal successor	
1.6 Principle of singular successor	
1.7 Principle ipso iure of inheritance.....	
1.8 Principle of parallel implementation of basis in inheritance	
THIRD CHAPTER.....	
1. INHERITANCE IN KOSOVO	
1.1 Inheritance types in Kosovo	
1.2 Will inheritance	
1.3 Inheritance with law	
2. Systems for the definition of pairs.....	
2.1 System of mutual blood.....	
2.2 System of gender	
2.3 Parenteral system.....	
2.3.1 Gradual parenteral system	
2.3.2 Linear parenteral system.....	
3. Pair of inheritance in Kosovo	

3.1 Gender of blood.....	
3.2 Civil gender	
3.3 Marriage	
4. Legal inheritors.....	
5. First line of inheritors	
5.1 Representing right	
5.2 Adding right.....	
6. Second line of inheritors.....	
7. Third line of inheritors.....	
8. Municipal legal inheritors of inheritance wealth without inheritors	
9. Relation between pairs of inheritors.....	

FOURTH CHAPTER.....

1. OPENING INHERITANCE IN KOSOVO.....	
1.1 Opening inheritance.....	
1.2 Moment of opening inheritance	
1.3 Place of opening inheritance.....	
1.4 Testator	
1.5 Inheritor	
2. Giving up from inheritance	
2.1 Cancellation of declaration for giving up from inheritance	
2.2 Custodian of wealth inheritance	
3. Acceptance of wealth inheritance.....	
3.1 Prescription of right to require wealth inheritance	
4. Division of wealth inheritance.....	

FIFTH CHAPTER.....

1. PROPOSAL AND DECLARATION OF THE INDIVIDUAL AS DISAPPEARED.....	
1.1 Proposal and procedure for declaring the individual as disappeared	
1.2 Declaration of the individual as disappeared.....	
1.3 Declaration of the disappeared individual as dead	
1.4 Tried with death.....	

SIXTH CHAPTER.....

1. NECESSARY INHERITANCE.....	
1.1 Necessary inheritors according to law inheritance in Kosovo.....	
1.2 Obligatory part and its calculation.....	
1.3 Wealth which is apart from the inheritance.....	
1.4 Costs of the inheritor	

1.5	Definition of wealth inheritance's amount
2.	Unworthiness according to law for inheritance in Kosovo ...
2.1	Exclusion for inheritance of the necessary inheritor
2.2	Obstacle of executing the last will.....
2.3	Evaluation of unworthiness

SEVENTH CHAPTER.....

1.	COMPETENCE OF COURT IN THE PROCEDURE OF REVIEWING WEALTH INHERITANCE.....
1.1	Local competences
1.2	International competences
2.	Preparation of inheritance's session
3.	Compilation of death judgment
4.	Register and evaluation of wealth
5.	Inheritance session.....
6.	Guidance of pairs in civil contest
7.	Procedure for reviewing wealth inheritance.....
8.	Terms of right prescription for the requirement of wealth inheritance.....
9.	Judgment decision for inheritance.....
9.1	Found wealth after the decision for inheritance
9.2	Finding the testament after the decision for inheritance..
9.3	Tools of knocking out the decision.....

FINAL REVIEWS.....

LITERATURE AND BIBLIOGRAPHY

INTRODUCTION

In order to mirror the institution of inheritance with law as complete as possible, I will present inheritance briefly in different historical phases in which this institution went through. The inheritance institution is one of the oldest institutions in the world of civil right which has evolved in different historical phases.

Today, this institution is becoming more necessary in our society every day, because the transmission of material values provides a future and economical welfare to the descendants. Because the institution of inheritance is a widely expanded field, I have focused in the arrangement of it with law in Kosovo, by focusing in the civil right of the country, my main focus will be the form of opening inheritance with Kosovo's law.

The inheritance right is a field of the civil right, and as a special juridical form, it regulates the juridical – property relations, only when the death of an individual happens, who has left property, the right is only presented in the countries which recognize the individual property of individuals, only the one who execute this right according to its will, can be an inheritor.

The main role of the inheritance right is the inclusion in the inheritance process of juridical relations of the individual, because the juridical fact of death is linked to the inheritance right, replacement of pairs in a civil – juridical relation, divorce, extinction of parental right or any other obligation.

1 Ligjipërtrashëgimii Kosovës, Prishtinë, 2004 , sipas dispozitë të nëni 5 pika 3, zbatohet rregulliqë

e drejta e trashëgimisë e cilafitohet në momentin e vdekjes, njëkohësisht trashëgimtarit i jeptë drejtë të heq dorë me vullnet, veprimi i heqjes dorë ngat trashëgimiasipaskësaj dispozite do të llogaritet se këtë drejtë asnjëherë nuk e ka fituar.

2 Mehdi J. Hetemi , E drejta me njohuri themelore të së drejtës afariste, Prishtinë, 2007.

The importance of the inheritance institution has exactly inspired me to deal with this theme, because there cannot be a normal life if the rights and obligations of the individual in case of his death cannot be developed, especially that we live a highly dynamic life, deaths can be surprising, therefore it is useful to be aware of the procedures for the arrangement of inheritance, in order to arrange inheritance and juridical inheritance relations within time in selected forms, but by respecting the law of the country.

Not arranging the inheritance of an individual causes problem in many fields of the right, in wealth rights of the individual after death if inheritance isn't arranged their properties will be left without an owner, they will become source for usurpation by irresponsible individuals, and such acts would cause considerable conflicts within people.

When an individual dies, the obligatory legal relations extinct, from this circumstance you can imagine the irregularities between the lenders and joint-stocks included in juridical relation with the subject (testator), obligations from the contract on the authorization (death of the authorizer), contract on partnership (death of partner), contract on permanent retention (death of bearer or transmitter of the retention), contract on act (death of the tailor or its client) etc, because with the death of a subject (testator) obligation gets extinct and doesn't create any juridical effect, the subject must be replaced with another subject (inheritor) to fulfill the duties and obligations of the testator.

In our country, the inheritance right is regulated according to the Law for inheritance of Kosovo- Law Nr. 2004 / 26, which foresees "Inheritance is the transmission by law or based on the testament of the dead individual(testator) to one or more people ,according to defined rules in this law".⁵

3 Ivo Puhan, E drejtare make, Botimipestë, Prishtinë, 1989, page. 230 and 231.

4 Nerxhivane Dauti, E drejtadetyrimeve, Prishtinë, 2004, page 289.

5 Ligjipërtrashëgimii Kosovës, Prishtinë, 2004, sipas dispozitës të nenit 1 pika 2, zbatohen rregullipër dy bazatë të hirjes në trashëgimi, ajo testametarë dhe trashëgimialigjore.

Circumstances that cause the birth, change or extinction of civil law relations are the juridical facts, therefore even the death of the individual, is a juridical fact linked with some juridical effects.⁶

A testator can be any individual, but as a condition to gain the quality of the testator, the death must happen and leave the wealth to someone.

Death must be with facts, and with such acts all the functions of life must stop. Death is natural and as a result of it, in one side there's an extinction of the subjective (testator), and in the other side the creation of a subjective right (inheritor), the declaration of disappeared individual as dead has a similar effect to death, whose death gets confirmed with the decision of the competent court.⁷

The element for opening inheritance is death, which even the declaration of the disappeared individual as dead is equaled with. We must highlight here, that the issue of disappeared individuals in Kosovo is one of the most bitter inheritances which we carry for more than a decade after the war.

Still, over 1780 is the number of disappeared individuals, whose fate remains mystery, even though the family members of them still continue to call on government and international institutions to lighten up the fate of their disappeared ones, a fact this without which inheritance cannot be opened. The issue for the

declaration of disappeared individuals as dead is regulated by the Law for the uncontested procedure nr. 03/L-007 of the Republic of Kosovo.⁸

During this research, by referring to the opinions of authors and analysts of this field of the right, I have used a series of necessary sources, methods which I have used in this paper are from the scientific literature of the civil right,

6 HamdiPodvorica, E drejtatrashëgimore, Prishtinë, 2006. page 40.

7 Ibidpage 41.

8 Ligjipërprocedurënjokontestimore nr. 03/L-007 përshpalljen e zhdukjesnjëpersoni, nëdispozitën e nenit 49 rregullonmënyrën duke parashtruarkushtettëcilatnevojitenpërinicimin e procedurësqëpersonimundtëshpalletizhdukur me vendimtëgjykatëskompetente, dhezbatohetregullipërparashtrimin ekërkesës.

GENERAL REVIEWS

The main deal of this theme, first of all is the analytic study of the inheritance with law issue by focusing on the form of opening inheritance with law in Kosovo which is regulated with law for inheritance. By mirroring the inheritance institution, one of the most interesting and valuable institutions for the human world, this institution is considered a one of the oldest of the civil right, that is presented as a social fact in each society and in our society, too..128

In Kosovo, it results in general that inheritance in most of cases is transmitted according to the law and in most of these cases, males are a subject of the right in inheritance, because many women by will give up from this right, even though the Law for inheritance of Kosovo guarantees equal rights for both genders, but the weight of culture and tradition, low education talk against any real equality, this is also a fact that women even today are in bad position when we talk about the property rights and actual possession of property.129

At last, even though there's the implementing law for inheritance, that enables citizens to enjoy the inheritance of family wealth equally by not discriminating women, again this law in practice in Kosovo isn't implemented, even though they are called on according to law to declare if they accept inheritance or not, mainly in many case they declare that they don't want inheritance or as it's called by population don't want share (according to the custom right), from all of this it is seen that in Kosovo, especially through different zones, the right according to the Canon of LekeDukagjini is respected, I cite: "men own share, women don't, except dowry when the girl gets married".130

128 HamdiPodvorica, E drejtatrashëgimore, Prishtinë, 2006,page 10

129 LigjipërtrashëgiminëiKosovës, Prishtinë, 2004, nëdispozitën e nen 1 pika 4, zbatohetregulliibarabartëpërtëdygjinitë.

130 KanuniiLekëDukagjinit, VariantiiPukës, Tiranë, ribotuar 1996. sipasdispozitëstënenit 41 "Tagrii

dalun fare” nr.108 zbatohet rregulliqë babaiedhetë mosketë fare djem nuk do të ualenë vajzavetokë e as shtëpi..

Many decades passed by since the custom right, even though the women emancipation is increasing every day more and more, they still insist to accept the inheritance that belongs to them by law, because this act still continues to be judged roughly, by convincingly thinking that the girl who takes share acts in contradiction with our customs especially for inheritance, these circumstances influence for her to give up from family inheritance in favor of the brother, with the only purpose to maintain healthy relations within the family of the father, such act enables her to continue visiting her parent's home where she was born and raised just like her brother. In different environments of Kosovo, there's the thought that the girl who takes inheritance will be despised, disowned and at the same time will no longer meet up with her relatives.¹³¹

Even though in the 21st century, the level of women emancipation is recognized, which is increasing daily but it isn't enough yet, therefore there must be other efforts by debates, seminars, trainings, television programs and everything that enables us to have an impact on the awareness of women for inheritance right.

I think that by taking into consideration what has been said above, will of course influence the change of mentality and in the near future even in Kosovo, women will respect their right which is guaranteed with the Law for, which is foreseen in the provision of section 1 point 4, the equal rule is implemented for both genders "In the meaning of this law names in male gender also mean name in female gender and vice-versa without discrimination".¹³²

I hope that this paper work will be a message with values for next generations and that such paper works will be a stimulation for the change of mentality, with a special emphasize that the custom according to the Canon of LekeDukagjini remains only history.

131 Ligjipërtrashëgiminë e Kosovës, Prishtinë, 2004, në dispozitën e nenit 5 pika 3 zbatohet rregulliqë e drejtanë trashëgimifitohet në momentin e vdekjes së trashëgimlënësit. Fituesit e drejtës në trashëgim mund të heqë dorë ngakjo e drejtësipa dispozitave të këtij ligji, me ç'rast do të merret se këtëtë drejtë asnjëherë nuk e ka fituar më parë.

132 Poaty, Ligji i cituar në dispozitën e nenit 1 pika 4, zbatohet rregull i barabartë përtë dy gjinitë.

I want to remind you of the human nature, which is a being that is born, developed, raised and within this life, not only develops, gets educated, but also with his/her work creates material goods. To create wealth, we are aware how much time and work is needed. At last, each individual will be dead, and why not he/he defines his/her own fate of wealth, when we know that for wealth you must invest time, effort, energy and health during all life. We can freely say that a whole life is needed for such wealth, which we will serve to our descendants with, by being based on the positive right in Kosovo, which consists of two bases to call on inheritance, inheritance with law and inheritance with will.¹³³

133 Ligjipërtrashëgimii Kosovës, Prishtinë, 2004, nëdispozitën e neni 68 pika 1parashihet qëtestamentiështëshprehje e vullnetit tëfundit e dhënë nëformën e paraparë me ligj, me tëcilintrashëgimlënësi (testatori) urdhëronsitëveprohet me pasurinë e tij pas vdekjes sëtij, edhepsedihetrëndësia e testamentit nëKosovëendevazhdohet tëmospraktikohet nënumërtëdukshëm nga vet faktiqëtrashëgimia meligj nëKosovë gjënëzbatim të më tëmadh se testamenti .