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The Right to Inherit According to the Legislation in Kosovo

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Abstract: Inheritance law as a branch of civil law studied and codified since Roman times or since the first written law which is studied to this day as the right of each subject of the right to inherit property as from parents as well as from other persons who, with their last will, want to transfer the inheritance to another person not of blood. An important but complicated issue if we do not have the legal basis and we do not have protection from the law regarding the right to inherit. So since the first written laws, the inheritance to other persons besides the legal ways has been possible to pass through a document written by the testator himself, which document we legally call a will. And today the transfer of the inheritance can be done through the will, which is only coming and increasing the number of wills, and considering the situation related to the will and the knowledge about the will, I, as a researcher of bachelor studies, have tried to finish my studies with this topic and thus formulating the thesis with the title Testament and its types. Thus, it should be noted that the work is formulated in chapters, which talk about the right of inheritance, the ways of passing the inheritance and thus focusing more on the passing of the inheritance by will, the types of will, the history of the will, which content I claim that it is as we envisioned it in the presentation of the paper.

Keywords: Inheritance Law; Ways of inheritance; Inheritance by will; Types of will.

INTRODUCTION: The will is a very old phenomenon, it has been known since ancient times. The testament also existed among the Greeks, the Romans, the Chinese, the ancient Egyptians, etc. It was also applied to the Arabs in the time of ignorance. In some eras the will was used for bad purposes and for injustice. Among the Romans, the head of the family had the right, through the will, to do with his wealth as he wanted, without any conditions, to leave a will to strangers and to deprive his children of the right to inherit. Then, later, children were given the right to inherit a quarter of the property, provided they behaved well with their parents. Among the Arabs, in the time of ignorance, they left wills to foreigners only for boasting and exposure, while their own relatives left them poor and needy. However, later, Islam improved and regulated the destiny of the will in a fair and meritorious manner. Initially, and before the right of inheritance was legislated, he forced rich people to bequeath all their wealth to their parents and relatives. Even today, the Testament, although not much used so far, is a legal way for the transfer of wealth, which avoids conflicts between family members.

I. INHERITANCE RIGHT NOTION AND MEANING

The term inheritance has various meanings, but in the legal sense, it is used to refer to an inheritance in a will. Inheritance is nothing but succession to those rights to which the deceased was entitled**. [1]** According to the legislation in Kosovo, it is stated that: inheritance is the transfer by law or on the basis of a will of the property (inheritance) of a deceased person (the heir) to one or more persons (the heirs or legatees), according to the rules specified in this law, **[2]** so

inheritance usually refers to a gift of personal property or money to a beneficiary (legatee) of a will. **[3]**

Inheritance is the practice of passing on property, titles, debts, rights and obligations after the death of an individual. **[4]** Inheritance rules differ between societies and have changed over time. In law, the heir is a person who has the right to receive part of the property of the deceased person (the person who died), in accordance with the rules of inheritance in the jurisdiction of which the deceased was a citizen or where the deceased (heir) died or property owned at the time of death. **[5]**

Inheritance can be either under the terms of a will or intestate if the deceased had no will. However, the will must comply with the laws of the jurisdiction at the time it was created or it will be declared invalid (for example, some states do not recognize holographic wills as valid, or only in specific circumstances) and legacy laws then apply.

A residuary estate is a bequest to all of the decedent's personal property that has not otherwise been effectively disposed of by his will. A vested legacy is one by which a certain interest, whether present or future in possession, passes to the legatee. A conditional inheritance is one so given to a person that it is uncertain whether any interest will ever vest in it. **[6]**

A person does not become an heir before the death of the deceased, as the exact identity of the persons entitled to inherit is determined only then. Members of noble or royal houses of rule who are expected to become heirs are called heirs apparent if they are in the first place and incapable of being displaced from the inheritance by another claim; otherwise, they are heirs presumptive. There is another concept of shared inheritance, waiting to be waived by all. **[7]**

In modern law, the terms inheritance and heir refer exclusively to the inheritance of property originating from a decedent who dies. Beneficiaries in property succeeded to a will are generally called beneficiaries, and specifically devisees for real property, bequestees for personal property, or legatees. **[8]**

An inheritance can be lost by domestication, removal and passing. When the heir dies before the will or before the condition in which the inheritance was given is fulfilled or before the time in which it is directed to enter the interest has arrived, the inheritance is interrupted or extinguished.

I.1. Heritage object

The inheritance measure consists of the totality of all rights and obligations, all assets and liabilities of the deceased suitable to be inherited and passed on to the heir. According to the Law on Inheritance of the Republic of Kosovo, it is stated that objects and rights can be objects of inheritance in Kosovo, more specifically as follows: Objects and rights belonging to individuals can be inherited. **[9]**

I.2. Subjects of hereditary right

Subjects of the right according to the legislation are natural and legal persons who during their lifetime acquire rights and obligations, thus achieving the ability to act upon reaching the age of eighteen (18), they have the right to have those rights and obligations provided by law have the right to apply. Therefore, in inheritance law,**[10]** subjects are natural persons who in this case can be the heirs of the testator from his blood line, i.e. children, spouse, parents, brothers, sisters, grandparents and so on, as well as heirs from profit by adopting a child as well as people he does not have in the family,**[11]** so the testator by expressing his last will in a document called a will leaves the property to someone who may not have it in the family, that is, a friend or a relative of his or any member of the family. **[12]** So the subjects of inheritance law are two (2) which are called:

- The legatee (the natural person who leaves his property to the heirs by law or by will);
- Heirs (natural persons who inherit (receive) the decedent's property after his death, either through the law or through legal work);**[13]**

I.3. Basics of the call to inheritance

All natural persons under the same conditions are equal in inheritance. **[14]** Children born out of wedlock, when paternity has been regularly recognized or confirmed by a decision of the court or competent body, as well as adopted children are equal to legitimate children. **[15]** The adopted does not inherit in the family of his origin, nor does it inherit him.**[16]** Foreigners are equal in inheritance with Kosovars, subject to reciprocity. Reciprocity is presumed. **[17]**

LMT recognizes two bases of calling in inheritance: the law and the will. The will is the most powerful basis because it is an expression of the will of the heir. This means that the inheritance according to the law exists only when there is no will, when the will is null, when the universal successor - the testator is not designated by the will, but only the singular legatee, when the person designated as the heir on the basis of the will dies before the testator, when the heir renounces the inheritance, when the heir under the will is not the same. **[18]**

I.3.1. Inheritance by Law

Inheritance based on the law is the basis of the call to inheritance because whenever there is no will, this basis is expressed. The legal heirs are: the testator's children, his adopted children and their descendants, the spouse, parents, brothers and sisters and their descendants, grandparents and their descendants. **[19]** By law, the testator is also inherited by his extramarital spouse, who is equal to the married spouse. Extramarital partnership in the sense of this Law is considered the life partnership of an unmarried woman and an unmarried man which has lasted for a long time and which has ceased with the death of the testator, provided that the presumptions for the validity of the marriage have been met. **[20]** These persons are called to inherit according to the order specified in this Law. **[21]**

1. Lines of inheritance – The first line of inheritance consists of the unborn and the spouse of the deceased. These inherit the testator in equal parts. The testator is inherited by his children and his spouse before everyone else. **[22]** These persons inherit equally.
2. The second line of inheritance consists of the parents and the spouse of the deceased in case the deceased did not leave any children. These inherit in equal shares. But when the parents inherit only because the spouse died before the dekujus, then the parents inherit the entire inheritance. **[23]**
3. The third row consists of the grandparents of the deceased. This happens when the testator is left with neither an unborn nor a spouse nor a parent, then the grandparents inherit from the father and mother in equal shares. **[24]**

The right of representation - This is the right constituted for the benefit of the children of that heir who died before his parent as a testator. In such cases, the share that would have belonged to the deceased child is inherited by his children on the basis of representation. Reduction and increase of the inherited part - The right to increase and decrease the inherited part is an exception, therefore it is applied with increased care. Thus, a reduction of the inheritance portion is provided for the spouse who is not the parent of the surviving child, while the increase of the inheritance is provided both for the spouse who does not have sufficient means or the ability to maintain it, as well as for the parents and children under the same conditions. **[25]**

Necessary heirs and the necessary and available part of the inherited property – Necessary heirs are the decedent's descendants, adopted children and their descendants, spouse, parents, adopter,

siblings, grandparents and other ancestors. The adopter from partial adoption, the brothers and sisters of the testator, grandparents and other ancestors, can have the quality of necessary heir only if they have no means of existence. However, the necessary heir can only be the one who has been called to inherit according to the legal order. Necessary heirs are entitled to the part of the inheritance that the testator could not dispose of.

I.3.2. Inheritance by Testament

A testament is an oral or written expression of a person's last will. According to the law in Kosovo, Testament means an expression of the last will given in the form provided by law, with which the testator (testator) orders how to deal with his property after his death. The testator can declare his last will orally in front of two witnesses, only if due to extraordinary circumstances he is unable to make a written will. **[26]**

The will which was compiled on the basis of the law and which has no defects, is the basis for inheritance based on the will. So the transfer of the inheritance can also be done through a written document while the testator was alive, which document has become fully valid and is opened after the death of the testator. Testament means an expression of the last will given in the form provided by law, with which the testator orders how to deal with his property after his death. **[27]** Two or more persons cannot make a will by the same act, neither for the benefit of a third person, nor as regards mutual dispositions. **[28]** A will is considered valid if it does not contain defects in terms of capacity to act, expression of will and form. **[29]**

Conclusion

From a general point of view, I emphasize that the Law of Inheritance is a branch of Civil Law that includes a set of rules after the death of an individual such as: his will, reserved parts, inherited property, division of inheritance, etc. According to the Law on Inheritance of Kosovo, it is emphasized that: Testament means the expression of the last will given in the form provided by law by which the testator (heir) orders how to deal with his property after his death. From all this, I emphasize that nowadays the will is used to a small extent as a way of passing on the inheritance of the testator, but even though it is not very used, we as lawyers and the general public are aware that we can pass on the inheritance through a document of written by the person himself and expressing his last wish in his writing, which becomes valid after the death of the testator. However, even though the will is legally defined in the state of Kosovo as a way of passing on the inheritance, I think that it would be better for the public if we lawyers try to let them know what a will is and how everyone who has property how they can make a will. And so I think it will be in favour of those who read what is given in the thesis of the topic that I have assigned for graduation.

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