A historical overview of the Albanian law of inheritance

Literature

Kewords: institution of inheritance, culture, civil code, etc.

Laura Vorpsi		University of Tirana, Faculty of Law, Civil Department, Albania.
Arsim Sinani		State University of Tetova, Faculty of Law & AAB University, Kosova.

Abstract

Albania even nowadays continues to implement the same rules that were applied before the declaration of independence. As regards the heritage, it is regulated by the law and with the same norms that were applied before. Thus, during the Turkish reign every justice relashionship was regulated by the norms of Shariat, Muslim right, which its source had from Quran. Later, in 1994 when the Civil Code entered into power the institution of inheritance was firmly regulated in Albania.

1.1. Heritage Institute along with the Historic Developments of the Albanian State until after the Entry into Force of the Civil Code of 1994

Before we focus on a more detailed historical heritage of this institute, we want to emphasize that this institution has evolved steadily. It is framed in that way to adapt cultural developments, political, economic and social components. This makes this institution dynamic enough. We also want to emphasize the importance of historical study of this institute which is directly linked to the implementation of the principle according to which: “Inheritance law applies whenever the law of time is opened”[23] . So inheritance in any case governed by the law of the time of death of the decedent regardless of what period reviewed was born or given in a dispute about it. But let's look closely at the characteristics and evolution of the institute in different periods of inheritage.

1.2. Heritage Institute in the years 1912-1929

During this period in Albania will continue to be applied the same rules that were applied even before the declaration of independence. This happened as a result of sanctions by the state at that time, it will continue to apply these same norms of law that were implemented earlier. This will happen until new legislation is taken up by the Albanian state. So Turkish law would continue to regulate any legal relationship in Albania, including the heritage. The latter is not regulated by the Civil Code, but with the norms of Islamic law, Sharia, which had its source from the Koran. Thus the holy book of Muslims, at least in this respect, stretched out its influence on that part of the population that was not under this faith. To restore legal heritage and exactly what is important to be said is that there were three different categories of heirs:

[23] Shih fjalinë e fundit të nenit 318 të Kodit Civil.

1. Heirs with certain parts, which were part of the father, the paternal grandfather, brothers and sisters by the mother, or wife or husband, daughter, son, daughter, sister germane, sister of the father, mother, grandmother father and mother. [24]

It is noted that for this category of descendants is related with unequal inherited position that exists between children girls and boys and between men and women. But it should be emphasized that this inequality should be present in all legislation of the time, including those of the most developed countries of the time.

2. Heirs without certain parts who inherited only if the heritage was received after heirs of the legacy of the first category remained unallocated portion of the inheritance.

These are called heirs to inherit the order determined by law. They were called like this to inherit the order, respectively:

- decedent's sons and their male descendants, without limitation

- absent father and his grandfather or great-grandfather

- german brother and brother of the father as well as their male offspring

- german uncle and uncle of the decedent's father, son, uncle, son and uncle german by the father, the decedent's father and son and son from a german paternal uncle, grandfather of the testator[25].

So, in short in this category the nearest heir excluded the farthest one.

3. Other legal heirs of the decedent who inherited only after they had received their heirs parts of two categories before and after that it still remained hereditary wealth without being separated. Even these heirs to the legacy were called in the order determined by the law, which is respectively:

- male children of the daughters, without restrictions as well as the female children of the descendent without restrictions,

- grandfathers and grandmothers by mother’s side

- male children of german sisters, female children of german sisters, male children of the sisters by father’s side, female children of the sisters by father’s side, male children of the sisters by mother’s side as well as female children of the sisters by mother’s side

- german aunts, aunts by father’s side, mother’s germane sister, mother’s sisters by father’s side and mother’s sisters by mother’s side.[26]

[24] Për më shumë shih "E drejta civile III (Trashëgimia) nga Ardian Nuni dhe Luan Hasneziri, fq. 261-265.
[25] Po aty fq.266-267.
[26] Po aty fq 268-269.

Whereas If we see testamentary legacy we will note that it has been implemented although not recognized by Sharia. But few testaments were designed based on common law or the rates of other religions, for that part of the population that did not belong to the Muslim faith. But even in those cases where it is applied inheritance testamentary are noticed some limitations that can be divided into two groups:

a. the heir could leave with testament only specific types of treasure[27] and only a part of the treasure (only 1/3 of it). But as exception, when the descendent didn't have legal heirs, could leave 2/3 of the treasure on favor of whoever and 1/3 passed to the state.

b. the content of the testament didn't depend only from the will of the descendent but also from the will of the heirs who when the descendent let his treasure with testament to an only heir, should expressed their consent according to this disposal. Otherwise the testament would be invalid.

contents of a will depended not only on the will of the descendent but also the will of the heir who left his fortune to his only heir who will have to express his/her consent in this regard available, otherwise the testament would be avoided.

1.3. Heritage Institute According to Civil Code of 1929

Approval of the Civil Code marks one of the largest achievements of the time in the field of law. Moreover it represents the most advanced experience of the time because it was supported in the Italian and French Code of that time by making a detailed regulation of the heritage with fully 319 clauses. Among the most important characteristics of these clauses can be mentioned:

1. It didn't make a definition of the term "heritage";

2. Defined the types of heritage; by dividing it in legal heritage and testamentary;

3. Defined the cases when could the legal heritage be implemented; so as just in the Code that is in power even today, the legal heritage was implemented when there wasn't made a testament, when it was proclaimed invalid or when there was made a testament only for a part of the treasure;

4. Were defined the legal heirs; who were respectively the children and their descendants without restrictions, by making the difference between natural and legitimate children, the antecedents, the transversal gender and in the absence of the above heirs the treasure passed to the state;

5. The husband or wife wasn't recognized as a legal heir with full rights; they weren't included in the row of legal heirs only if they were competing with legitimate children;

[27] Pasuria mylk.

6. Was predicted that the adopted children should inherit the same as the legitimate children; with the exception of the fact that they weren't exclusive heirs of the first row;

7. Gave the definition of the testament; as a revocable act by which the descendent disposed the whole or a part of the treasure, for the time after death, in the favor of one or more people;

8. Were defined the conditions to dispose with the testament as well as the cases of the incompetency of the physical person; when it wasn't conceived yet at the time of the opening of the heritage, when after the birth had not lived or when he was unworthy;

9. To inherit, heirs must give consent tacitly or expressed;

10. The testaments were divided in ordinary testaments[28] as well as special testaments;

11. Anticipated legal reserve depending on the type of legal heir who enjoyed reservation and depending on the number of heirs who wielded it;

12. The testament could be made on condition or term by defining the cases when conditions were considered as non-existent or invalid;

13. Clarified the issues that link our inventory with hereditary.

In short, this was a code that had made a very detailed prediction of all elements of the heritage institute.

1.4. Heritage Institute during the years 1944-1982

After the liberation of the country and the establishment of the communist regime in Albania, the economic, political and social circumstances were reflected in all legislations in general and especially in the institute of heritage. The main characteristic of this period was the fact that there was no law to regulate this institution given that the postwar government abolished those dispositions of the Civil Code of 1929 which were contrary to the new political spirit. During this period the relationships of the inheritance were regulated partly by the Civil Code [29] and partly by the juridical practice. But it should be noted that in all those cases in which the code was in violation of the new legal order when new judicial practices were implemented.

This situation continued until 1954, a year in which is issued the first Decree "Over the inheritance" in which are noticed two characteristics:

1. The number of dispositions which regulate this relationship is largely reduced. Such a thing has made that part of the elements of this relationship remain outside the area of regulation. Thus, it happens for example that with the term or condition testament or with deposit and the opening of the olographic testament and the one which is secret, etc.

[28] Ollograf dhe noterial.
[29] Nga pjesa e mbetur e tij.

2. The Decree had a retroactive power [30]

Also it is worth mentioning the fact that the Decree except that it predicted the stocktaking of the property also it predicted the appointment of a caretaker of the hereditary property[31] that was made by the side of a judge. This Decree was in power until the approval of the Civil Code of 1982. It is qualified that through this Code are made steps backward in the whole system of law including also the institute of heritage. This institution, in this Code, finds a very limited regulation given that only 25 dispositions were dedicated to the heritage.

Moreover, as it happened with the decree "Over the inheritance" in the aspect of the inheritance this Code also had a retroactive power[32]. Over all, given that the private property was abrogated and the incomes of every individual were small, there was left very few to be inherited or to be left in inheritance. Therefore this Code had many shortcomings given that outside its regulation were left important institutes of inheritance as was for example the institution of burden.

But what should be highlighted, is linked with the fact that these predictions, made in different periods, of the institution of inheritance, some less and some more, has contributed to be formed the today Civil Code in general and the dispositions related to the inheritance especially.

2. Institution of inheritance according to the Civil Code of 1994

In our heritage legislation known as the derivative form of acquisition of ownership. Through it is made possible the passing of the property from a newly deceased person, to one or some other people – the heirs.

Such a thing, as it happens in all legislations is conducted in two ways, according to the law or through the free expression of will by the testator and materialized in the testament. Our legislation makes provision of the institution of law in Article 316 of the Civil Code which states:

"Heritage is passing by law or testament (inheritance) of a deceased person, one or more persons (heirs), according to the rules set out in this Code".

From the above-mentioned and cited predictions it results that the institute heritage has several features, which are valuable not only for our legal system but also for a good part of other legislation law. Among the main features can be mentioned:

[30] Neni 62 i Dekrtetit "Mbi trashëgiminë": "dispozitat e këtij dekreti zbatohen edhe për trashëgimitë që janë çelur para hyrjes së tij në fuqi, përveç kur pasuria e përbashket trashëgimore është pjestuar me vendim gjyqësor ose me marrveshje të trashëgimtarëve"

[31] Neni 16 i Dekretit " Mbi trashëgiminë"

[32] Neni 352, paragrafi i parë i Kodit Civil 1982: "Dispozitat e këtij Kodi për fitimin e pronësisë me trashëgim, zbatohen edhe për trashëgimitë që janë çelur para hyrjes në fuqi të tij, kur pasuria trashëgimore nuk është pjestuar me marrveshje të trashëgimtarëve, me vendim gjyqësor ose me akt noterial".

1. Inheritance is a way to acquire property mortis caousa therefore due to death [33].

Like that in order to be in front of the heritage institute must be met two conditions mentioned above. Thus:

a. it should be verified the death of a person;

b. it should be verified that this person has property rights and obligations.

This means that the juridical relationship of the inheritance can find implementation only after the death of an individual and only if this individual has left behind property rights and obligations. It has little importance in this aspect whether at the moment of death this individual has had or not legal or testamentary heirs. If we were in such a situation, in which we have lack of legal or testamentary heirs, all the property rights and obligations that this individual has left behind should pass to the state. Such a thing is expressed very clearly in the 336 section of the Civil Code:

“When the decedent has not left heirs until the sixth grade, then the state is called on his heritage”.

2. Through heritage it is made the passage in a universal way[34] or specific[35] of the property from the decendent to the legal or testamentary heirs[36].

- With the passage in a universal way of the property will mean the passage from the decendent to the heirs, of the completeness of property rights that the decendent has had at the moment of death. Thus in this way it is not only made the transfer of the rights but also of the obligations that the decendent has had at the moment of death. This constitutes what it is called object of inheritance. This is the general rule of passing the inheritance wealth, but the exception to this rule exists, which has to do with the particular succession..

- So, we are going to face particular succession in those cases where the decedent has with a will only some certain items in favor of one or more specific persons. In this case this person who can be called the legatee acquires rights only. In this way s/he benefits only the ownership of the property which is a legacy from the decedent without being forced to respond to other duties that may have the hereditary property. But as exception the individual that benefits the property with a specific succession (legatee) is responsible for the hereditary obligations only if these obligations burden on the property, thing or the right that this heir has benefited through the testament.

[33] Neni 330 i Kodit Civil: " Trashëgimi fitohet me vdekjen e trashëgimlënësit".
[34] Suksedim universal.
[35] Suksedim i veçantë.
[36] Neni 332 i Kodit Civil: "Trashëgimtari mund të fitoj të gjithë pasurinë e trashëgimlënësit ose një pjesë të saj, ose vetëm një send të caktuar apo një të drejtë tjetër pasurore".

3. In the case of legal succession or testamentary transfer of property from the decedent to a heir or heirs is always done by respecting the rules and restrictions laid down by the Civil Code.

This entirely means that the property of the decendent cannot pass in an unlimited way to every person. But will always happen respecting the testamentary definitions that the decendent himself has made with his free own will or in case of the lack of testament, pursuant to applicable provisions. In this way the law foresees some rules and definitions that are related to the circle of people who can be legal or testamentary heirs, with the order of legal heirs, with the respect of the legal reserve, with the property that will be transferred, with the elements that should contain the testament in order to be valid or invalidity cases.

4. After the decedent's death, his heirs benefit his relative wealth. This means that the heirs not only enjoyed the decedent’s rights but also obligations that burden on the inheritance. So when the heirs agree to receive this quality, they assume not only the rights but also obligations that the decedent has had before death. Thus the heirs in this case do not own the right of choice to benefit but only the rights by giving up the responsibilities. But under Article 341 of the Civil Code heirs are responsible for the obligations that burden on the property hereditary in proportion to their shares, up to the value of the inheritance that they took.

Continuing in the same article it is provided that these duties consist of:

a. the obligations of the decendent;

b. the costs of his funeral;

c. costs required for maintenance and administration of inheritance, until it passes to the respective heirs.

What should be emphasized is that not all the obligations that the descendent used to have pass in an unlimited way to the heirs. From these are excluded those obligations that have a narrowed personal character. So do not pass to the heir those obligations that because of their characteristics could be fulfilled or complemented only by the descendent. If we were in front of such a situation we would noticed that this kind of obligations would be extinguished immediately with the death of the descendent.

5. In our right of inheritance it is accepted the full equality between man and woman, between female and male children, as well as between the children born from the marriage and also those born out of the wedlock.

This comes, as said above, as result of fulfillment of the principle for full equality in front of the law and the elimination of any kind of discrimination. A principle that has its source in the section 18 of the Constitution of the Republic of Albania, according to which:

"All are equal before the law and no one can be discriminated because of the gender, descent, social origin or social status".

In the same spirit of the Constitution are the forecasts made when the Civil Code states that spouses inherit each other equally and benefit equally from the other heirs, children, regardless of whether they are girls or boys, in order to inherit equally by their parents or other deviser and regardless of whether children are born from parents who are legally married or not. The same can be said for children who are adopted[37].

6. Civil law has recognized the right of inheritance by will disposed of some or all of its assets.

Thus, if the decedent has a will disposed of all his property, then heirs will be determined by the people of the decedent. But if the will is declared totally or partially invalid, the decedent's will not be considered but the will is going to be implemented partially or totally appropriate legal heritage.

7. In the case of implementation of legal heritage, the legislation has foreseen the equality of the parts of the heirs that belong to the same inheritance. So, in case of opening of the inheritance law, when people benefit from it belong on the same inheritance, they benefit equally regardless of sex or relationship they had with the decedent. But in this case it is also made an exception for the deceased spouse who benefits ½ part of the inheritance in case if he is called in inheritance with other people who are not of the first row. Also in case when the descendent has not left other heirs of the first three rows except the spouse, all the property is acquired by inheritance to the surviving spouse [38]. All this is made in order to protect the living spouse.

8. In those cases when the legal inheritance will be implemented, it is defined that the call for inheritance is made on the basis of blood cognation of the heirs with the decendent. In this case finds implementation the principle according to which the heirs of the closest blood cognation exclude from the inheritance the heirs of the furthst blood cognation. So, if a person dies leaving heirs of the first row and the second, but the property does not have a will, the heirs of the first row will automatically exclude from the inheritance heirs of the second row. Whereas, the heirs of the first row themselves, as it is said above, inherit the property in an equivalent way.

Features mentioned above serve to outline general Heritage Institute of Albanian legislation. But of course to get to the form that has taken this legislation today it was needed a several years long work, which has bases where it has bases and the state of Albania today.

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[37] Neni 362 i Kodit Civil:"Fëmijët e lindur jashtë martese, kur atësia ose mëmësia është njohur rregullisht, si dhe fëmijët e birësuar barazohen me fëmijët e lindur nga martesa".
[38] Neni 361 i Kodit Civil