

## Some Aspects of The Procedure for Reviewing the Inherited Property In The Republic Of Kosovo

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### Abstract

Being a devisor is an important moment in the life of any person, because inheritance according to positive legal provisions is transfer by law or based on the testament of the property to one or more heirs or legates, in accordance with the rules provided for by law. So, heritage is a legal title of acquiring property or rights without compensation which were in ownership of the devisor at the moment of opening the heritage. Heritage largely or in small scale impacts on improvement of the economic or social condition of any devisee.

Considering that earning property or rights is a legal basis of earning the heritage, the legislator of Kosovo has regulated the procedure of reviewing the property of the devisor by provisions of the Law on uncontested procedure, as adopted by the Assembly of the Republic of Kosovo on 20 November 2008 and entered into force 15 days following its adoption. Number of unresolved cases in Kosovo is enormously large. For these reasons, study of this topic is important because treatment of these problems in theoretical and practical aspect till now has not been satisfactory.

We have set our attention on analysing the basic criteria related to allocating the territorial competence and jurisdiction of the court; the actions which need to be undertaken by the court in relation to preparation and holding the hearing for review of heritage property, such as: compiling death act, assigning the temporary measure to secure the heritage property, appointment of the temporary custodian, inventorying and assessment of heritage property; announcement of testament; hearing to review

the heritage property and issuing a decision as a final act by which the procedure is completed.

The aim of the study and surveying of this topic has been identification of deficiencies and obstacles which negatively impact on increase of efficiency of courts, as the absence of a sufficient number of courts, failure to timely submit death cases of persons by the civil services clerks and failure to abide by the principle of urgency in the procedure of review of the heritage property. Making the notary services functional in Kosovo from 2012, represents a significant step towards increase of efficiency in respect to heritage property review, because now all cases of heritage are reviewed in notary and only the contested ones have still remained under court jurisdiction.

By applying new methodological and technical actions, and in particular the legal normative method in understanding and interpreting the legal norms and having a new critique approach regarding some problems discussed at this work, we have come to conclusion that the Republic of Kosovo has the legal infrastructure completed in this compatible field with the European Union standards. In cooperation with the international factor, pressure must be added to Serbia for returning the cadastral books and other documentation plundered by Serbia and the number of judges must be doubled in the field of review of heritage cases in order for the efficiency to resolve cases of inheriting, to bring the wanted parameters, a thing which undoubtedly is in function for strengthening the rule law in Kosovo and for constructing a democratic society.

**Keywords:** devisee, deviser, law, testament, judge, case, procedure

## **1. In heritage review the uncontested procedure rules are applied**

In the procedure for review of the heritage property, the court finds who the devisee of the dead person are, or of the person whose death has been announced by a court decision, what is the property his wealth consists of, and what rights from his heritage property belong to the devisees, legates and other persons.<sup>1</sup> In case the heritage (hereditas) consists of immovable property, the review of the heritage property is started officially at court (*ex officio*) upon receiving the information that a person has died, or that a person has been announced dead. The purpose here is to review the heritage property in the shortest term possible, that in no moment the heritage property is not without its owner, that it is preserved and to secure it from destroying, theft or any form of alienation in unauthorised manner thereof. The main aim and importance of the principle of official character, as determined by the legal provisions related to initiation and implementation of the heritage review procedure derives from the high interest and general social need.<sup>2</sup>

Heritage property review procedure involves a series of actions undertaken by the court during heritage review procedure and other actions for implementation of the practices of the final court decision and. When reviewing heritage, Kosovar courts, in principle apply special rules (*lex specialis*) as provided for by the Law on uncontested procedure<sup>3</sup> (hereinafter: LNCP). Regardless the fact how specific these rules are, and in essence they differ from general rules of contested procedure foreseen by Law on contested procedure<sup>4</sup>

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<sup>1</sup> Article 125 of the Law on uncontested procedure, Official Gazette of the Republic of Kosovo, no. 03/L-007.

<sup>2</sup> Kreč-Pavić: Komentar Zakona o nasljeđivanju sa sudskom praksom, Narodne Novine, Zagreb, 1964, pg. 580.

<sup>3</sup> Law on uncontested procedure, Official Gazette of the Republic of Kosovo, no. 03/L-007.

<sup>4</sup> Law on contested procedure, Official Gazette of the Republic of Kosovo, no 038-201 14039. Although the principle of urgency and official principle are foreseen as the basic principles in the imperative provisions of the Law on uncontested procedure, the case law shows that during the three latest decades in Kosovo, heritage courts have not abide with such principles when reviewing the heritage property. From 1981 when the demonstrations burst in Kosovo against the wild and hegemonic Serb regime until 1989, Serbian judges discriminated the Albanian parties by dragging the heritage review for years. From 1990 until 12 June 1999, when Kosovo Liberation Army in alliance with NATO liberated Kosovo, the situation regarding heritage review was very difficult. Because the courts consisted of Serb judges, because the wild Serb regime expelled from job all Albanian judges, and because of the armed war in years 1998-1999, heritage review and deciding on such cases of Albanian parties was very rare.

Immediately after liberation, Kosovo started work with the judicial system of Kosovo, but, courts have encountered and continue facing even today many difficulties regarding review of heritage when the heritage property consists of immovable property. When the occupation

(hereinafter: LCP), nevertheless, there is still possibility that in the cases foreseen by legal norms to have also rules of contested procedure being applied.

The first specific of rules of procedure for heritage property review is that the heritage court can ground its decision also on evidence which has not been administered before the court. The possibility of such actions of the court enables that the review procedure of heritage property, assessment of evidence administered in other cases, instead of having such evidence administered by the court, heritage review procedure to be different from contested procedure where the parties have the main initiative for issuing evidence, whereas now this role is taken by the court considering that the procedure is initiated *ex officio*.<sup>5</sup> This does not mean in any way that heritage court may ground its decision in any kind of evidence. In contrary, it increases the responsibility of the court so that the decision of the court is only grounded on concrete issues which at the same time are subject of heritage review. Different from this, in contested procedure, court is notified through some personal senses with the nature and with the content of evidence means and without mediation of anyone else to decide on the value of evidence.<sup>6</sup>

The second specific is that the procedure for heritage property review is activated *ex officio*, once the court has been informed that a person has died or he/she has been announced dead according to a court decision (Article 127 of LNCP). Contested procedure is initiated by a claim and it is not allowed that initiation is conducted by the court officially.

The third specific is related to the fact that the participants in a procedure of heritage property review cannot assign the case and territorial jurisdiction of court by agreement. In contrary, the litigating parties in a contested procedure with an agreement can assign the case and territorial jurisdiction of court, whereas for economic and trade matters the case and territorial jurisdiction of court Tribunal of Arbitrage.

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power of Serbia left Kosovo took with it all the cadastral books and other cadastral documentation. For this reason, equipping of citizens with possession lists and other documents became impossible, so even after the war, courts of Kosovo cannot be proud of the high level of efficiency regarding decision making on cases related to heritage review.

Realisation of agreement for returning the cadastral books and other cadastral documents reached in the end of 2011 between the Republic of Kosovo and the Republic of Serbia, and inauguration of the notary system in Kosovo from midyear 2012 is rightly expected to accelerate the process for deciding on and reviewing the heritage which for decades are waiting in the shelves of courts.

<sup>5</sup> Podvorica Hamdi : Heritage law, Trend, Prishtina, 2010, page 154

<sup>6</sup> Brestovci, Faik: Civil procedural law I, re-edition IV, GrafoBeni. Prishtina, 2006, pg. 35

For the moment of death, the court may be notified through an act of death by the authorised clerk of civil status, from the devisee of the heritage, from legates, from testament executor or any other person who submits secure and credible evidence that the devisor has died. This does not change the opinion regarding the fact that the court officially initiates the procedure for review of heritage property, because the activity of interested persons in the mentioned meaning is only related to notification of the court regarding the relevant legal facts related to death or announcing a natural person dead, or notification about his/her heritage property, considering the fact that for the issue of initiating the procedure of heritage property review, it is the court that itself decides (before initiating the procedure, the court can seek also supplementary evidence, to corroborate facts in official manner, when they are absent, etc.).<sup>7</sup>

This rule also has exceptions, because when a devisor has left behind only movable heritage property, the heritage property review procedure is not initiated ex officio by the court, but its initiation depends on the fact that the devisees of the heritage seek or not the movable heritage property review procedure. The review procedure for heritage shall not be applied at all in case the devisor (de cuius) has not left any heritage property, because in such cases there is no object for review. The heritage property shall not be reviewed also when the devisor has left heritage property but no legal devisees are left also by testament. In such cases, according to Article 21.1 of LHK, the heritage property belongs to the municipality where the devisor has had the property or where his last place of residence was. Whereas according to Article 21.2 of the same law, the property is handed over to the Republic of Kosovo and not to the municipality when the place of residence of the devisor is not known or is outside Kosovo. When devisees are not known, the court, through announcement shall summon the persons alleging on heritage to appear at the court within a time limit of 1 year. If the devisee appears after expiry of legal time limit of one year, he/she shall not be deprived from the right to heritage or from the part which would belong to him/her from the heritage property (Article 127.2 of the Law on Heritage of Kosovo).

In function of urgent review of heritage property, the court may order with no postponement undertaking measures to secure heritage property, register and assess the heritage property, appointment of temporary custodian of the heritage property, if according to the law such appointment is required, notification of the custodian body when childbirth is expected of a child who would be entitled to heritage and so on.<sup>8</sup>

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<sup>7</sup> Огубећ В. Антић: *Nasledno pravo*, Glas, d.o.o, Belgrade, 2002, pg 341.

Law on Heritage of Kosovo has not foreseen the grounds for entitlement to heritage by contract, as it is foreseen by Law on Heritage of Austria and of some other western countries.

When juveniles or sick people or those not able to act are involved in the procedure and when they do not have authorised or legal representative, with the purpose of ensuring each entity an adequate legal protection, the court is obliged to immediately notify the custodian body, in order to have a custodian appointed.

Heritage property review decision may be grounded by the court also on evidence which the court itself has not administered in court hearings, but they have been administered by another authorised state body within exercising of its legal authorisations. The reason of waiving from the directness principle in favour of the transversal principle is conditioned by the economisation and increase of the speed of development of heritage property review procedure which is grounded on non-contesting the factual state between litigants in the procedure and on the fact that the decision of heritage court can always be corrected in contested procedure (contested procedure as a correctional procedure for review of heritage).<sup>9</sup>

If we look at the provisions of the Article 125 of LNCP, it is not difficult concluding that in reality the heritage courts have three basic tasks: a) to verify the object of heritage property; b) to verify the grounds for entitlement of devisees to heritage (by law or through testament); c) to verify who the universal or singular successors are and their heritage parts, and who eventually are the other beneficiaries (legates) and what rights these persons are entitled to regarding the heritage property of the deviser (*de cuius*).

Object of heritage property consists of the entirety of rights of the "*de cuius*" at the moment of his/her death suitable for heritage, such as: 1) real rights (property right, pledge, servitude, possession...); 2) obligation rights (sale contract, damage compensation, groundless enrichment, provisions, insurance premiums...); 3) copyrights (industrial property...shortly, rights and items belonging to persons).

No devisee may inherit without adequate heritage grounds. In Article 8 of LHK there are two grounds foreseen for entitlement to heritage: a) the grounds for entitlement to heritage by law, and b) base for entitlement to heritage by testament. Base for entitlement to heritage by testament is a stronger base than the base for heritage entitlement by law. Legal devisees are entitled to heritage only until there is no valid testament and there are no devisees by testament.

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Non-determination of grounds for entitlement to heritage by contract constitutes a large legal gap of the Law on Heritage in Kosovo, because in all countries where their laws on heritage foresee the third ground of entitlement to heritage – entitlement to heritage by contract, the latter is considered as the strongest base of entitlement to heritage compared to the two previous ones.

<sup>8</sup> Podvorica Hamdi : *Heritage law, Trend, Prishtina, 2010, page. 153.*

<sup>9</sup> Олибер В. Антић : *Nasledno pravo, Glas, d.o.o, Belgrade, 2002, pg. 342.*

Person inheriting the whole heritage property of de cuius, and his debts and proportionately by obtained rights accepts the passive as well, he is called universal successor. Singular successor is called the devisee who only obtains benefit from heritage, so obtains the rights determined by the active and is not responsible for the debts of the devisor.<sup>10</sup>

Court decides through a decision on the procedure of heritage review. There is no place for implementation of the heritage property review procedure, until the death of de-cuius is not adequately verified.<sup>11</sup> The unique opinion prevails in the legal doctrine and in the case law that the moment of death of de cuius is considered the time of death noted in the act of death, in death certificate or in the court decision for announcing a person dead. In the decision by which a missing person is announced dead, the court notes the day and time of death if such a thing is possible, because this would then be considered as the time of death of this person.<sup>12</sup>

## **2. Case and territorial jurisdiction of the court**

Municipal court is competent for review of heritage in viewpoint of case and territorial jurisdiction and the litigants in the procedure cannot upon agreement amend the case and territorial jurisdiction. This means that the case and territorial jurisdiction has been regulated by LNCP by imperative legal norms (jus cogens). In the heritage property review procedure, the principle of two instances applies at deciding by the court: in the first instance the panel consists of one professional judge, whereas in the second instance according to appeal, the panel consists of three professional judges.

If we analyse the provisions of the Article 128 of LNCP, it may be found that Kosovar legislator body took as basis three basic criteria for determining the case and territorial jurisdiction of the court for heritage property review procedure: the place where the devisor had the place of residence at the time of death; the place where the devisor had the heritage property or the largest part

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<sup>10</sup> Hamdi Podvorica: *Heritage law*, Trend, Prishtina, 2010, page. 21.

Legal representatives, custodian or authorised person, heritage court can give instruction how to realise the rights which the juvenile persons, mentally ill or those with limited capacity of action are entitled to, but he/she himself is not authorised to undertake procedural actions on the name and account of abovementioned persons which they have not undertaken. In case the legal representative, custodian or authorised person neglects or does not undertake necessary procedural actions which they have been authorised to carry out, then the heritage court is authorised to notify the custody body for the legal consequences that may be caused as a result of such flaws.

<sup>11</sup> Kreč-Pavić: *Komentar Zakona o nasljeđivanju sa sudskom praksom*, Narodne Novine, Zagreb, 1964, pg. 581.

<sup>12</sup> Hamdi Podvorica: *Family law*, Iliria University, Prishtina, 2006, pg. 113.

of it at the time of his death. If at the same time two criteria are met: that of the place where the devisor had the residence at the time of death and that of the place where the devisor had the heritage property or the largest part of it at the time of his/her death, we are of the opinion that the best solution would be for determining the case and territorial jurisdiction to give priority to the second criterion - the place where the devisor had the heritage property or the largest part of it at the time of his/her death, because the judicial expenses related to inventorying and evaluation of heritage property shall bring to minimum and in more consequent manner the principle of economy of procedure would be applied.

Legal provisions do not exactly regulate to what level of procedure development the court may be announced as incompetent and the case files may be sent to the competent court<sup>13</sup>, and this gap and deficiency of LNCP can bring unease to judges when they have to issue such decisions. However, according to a stance of comparative legal doctrine, the court may take such a decision latest until participants discuss the merits in the first hearing of heritage property review procedure.<sup>14</sup>

According to provisions of the Article 129.2 of LNCP, if the immovable property of the devisor is abroad, the court of Kosovo shall be competent for review of heritage e only if according to the law of state in which such property is, the foreign court is not competent. When according to findings of the court, for implementation of the heritage procedure, the court of the foreign state is competent and not the court of Kosovo, the Court of the Republic of Kosovo is obliged to immediately interrupt the procedure that has been initiated and all case files should be sent to the competent court of the foreign state, thus implementing the rules of international private law.

When speaking of the review of heritage property of a foreign citizen, the Kosovar heritage law is strongly grounded on the principle of reciprocity, which already has a broad application in the democratic countries and in the international private law. According to this principle that is fair and supported almost by all democratic countries of the world, if in the state of a foreign citizen the heritage property is reviewed for a citizen of Kosovo, according to the law of that state, then the heritage property of the citizens of that country having place of residence in the Republic of Kosovo, shall be reviewed according to LHK.<sup>15</sup>

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<sup>13</sup> Podvorica Hamdi : Heritage law, Trend, Prishtina, 2010, page 158.

<sup>14</sup> Hamdi Podvorica, the same work, pg. 21.

<sup>15</sup> Hamdi Podvorica, the same work, pg. 159.

In the Republic of Kosovo, the Law on notary in Kosovo was adopted, No. 03/ L-010 on 17 October 2008 and in compliance with the legal authorisations, the Ministry of Justice has approved the necessary administrative instructions and the secondary legislation and the



### 3. Preliminary actions

Actions which are undertaken by the court before initiating the hearing on heritage are called preliminary actions.<sup>16</sup> Based on the provisions of LNCP, before holding the heritage review hearing, the court carries out the following preliminary actions: a) compiling the act of death; b) temporary measure for securing the heritage property; c) inventorying and evaluation of property; ç) appointment of the temporary custodian of heritage property. When the court finds that the person who has left a testament has died or has been announced dead pursuant to court decision of final form, it announces the testament where the devisees, legates and other interested persons can be present.

#### a ) Compilation of the act of death

When a person dies or has been announced dead pursuant to court decision of final form, the municipal body of competent service for maintaining the death matrix book is obliged that within time limit of 15 days from the day of death registration, to deliver the act of death to the heritage court (Article 133.1 of LNCP). This makes us understand that the act of death is a public document and has the importance of the initiating act for the heritage procedure and amounts to important data related to the death of the devisor such as: first name, father's name, last name, if the dead person is a female, the maiden name must be inserted as well, day/date, month and year of death, date of birth and address, profession and citizenship; if she/he has left heritage property, the value and the place where that property is, has he/she left money, deposits, savings books, securities and valuable items of gold; has he left a testament, agreement for dividing and cessation of property or contracts for life holding, has he/she left children, are they from marriage, out-marriage or adopted, name and last name, date of birth, place of residence, respectively place of residence of other cousins who may be entitled to heritage based on law or by

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tariffs. Now the first notaries have already been certified, and it is soon expected making a notary system functional, which as intention has protection of legal interests of the natural and legal persons. Once this system is functional, many competences for deciding on legal matters in the field of uncontested procedure what till now has been competence of municipal court by law are foreseen to be transferred to the notary system and thus the courts gradually shall be released from the large burden of unresolved cases. When not contestable, the devisees property and heritage review shall be carried out by the notary within a very short time limit and in this way justice soon will come to the heirs.

<sup>16</sup> Hamdi Podvorica, the same work, pg 160.

testament; is a child expected to be born after one's death and do his/her children or spouse have any custodian, if before him/her the spouse has died, or any other child or person who might declare of entitlement to heritage, the names of the adult persons of the family union and the whole property of that family union, and other relevant details for fair review of heritage of property. Details for compilation of act of death can be taken from the cousins of the dead person, from persons with whom he/she lived or even from other persons who can give details which are noted at act of death.

Municipal body of the competent service for maintaining the matrix book of deaths shall deliver the act of death to the court without abovementioned data filled in, if such data wasn't possible to be gathered, but in that case, the reasons of death are mandatory to be included in absence of which the act of death cannot be presented as a full document, and there are also facts which must be mentioned if such facts help the court to find the heritage property and the devisees. The act of death that lacks part of necessary data is called incomplete act of death.<sup>17</sup> In case a person has died outside the territory of the municipality where his/her residence was, the competent body for holding the death books at the heritage court shall only deliver the certificate from the death book, and the data available, and which may serve for compilation of the act of death.<sup>18</sup>

Act of death is also compiled if the dead person has not left any kind of property,<sup>19</sup> because it serves the court to decide what further actions are to be undertaken in the procedure.

Court shall compile by itself the act of death if such an act of death has been submitted as incomplete or only the certificate from the death matrix book has been submitted where the court pursuant to final decision announces a person dead, when found that such an act is possible and interests of litigants in the procedure are not harmed.

#### b) Assigning the temporary measure for security of the heritage property

The temporary measure for security of the heritage property can be assigned by the competent municipal service and also by the heritage court. The heritage court can impose the measure of security at all stages of development of the procedure, upon proposal of the interested persons or ex

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<sup>17</sup> Drago Bago, Nerimana Tralić, Zdravko Petrović, Maliha Pavlaković: *Osnovi naslednog prava PP "To je to"*, Sarajevo, 1991, pg. 109.

<sup>18</sup> Article 133.3 of the Law on Uncontested Procedure. 03/L-007.

<sup>19</sup> Article 133.4 of the Law on uncontested procedure. 03/L-007.

officio. Appeal against decision for assigning the temporary measure of heritage property security does not prevent execution thereof.

According to provisions of the Article 145.1 of LNCP, the competent municipal service shall assign the temporary measure for security of the heritage property if it is found that none of the present devisees is able to administer heritage property, and there are no legal representatives, or in case the devisees are unknown or they are absent, and when other circumstances require special care. In such or similar cases, the whole property or only one part of it shall be delivered for preservation to a safe person and the competent court in the territory of which the property is, shall immediately be informed. Afterwards, the court may amend this measure or to abrogate it.<sup>20</sup>

According to Article 145.2 of LNCP, the cash money, securities, valuable items, savings books and other important documents must be delivered for protection to the court in the territory of which the property is. This court shall notify the heritage court for all measures assigned for security of heritage property in order to review the whole movable heritage property as well.

c ) Appointment of temporary custodian for the heritage property

Participants in the procedure who are mentally ill or with deficient psychic development, juvenile and unable to protect own interests, without legal representative, without ability to act and in other cases as determined by law, heritage court appoints a temporary custodian of heritage property. We share the same opinion that that the court would not be wrong as if for such cases would notify immediately the body of security, which within the legal competences along with the temporary custodian would undertake all necessary measures for adequate legal protection in a procedure.

According to Article 146.2 of LNCP, before appointment of a temporary custodian by the court, if possible the custodian personality shall seek the opinion of the persons who appear as devisees. In this legal provision other devisees who are capable of acting are referred to, participation in the heritage procedure, who would be able to understand actions and consequences thereof, because seeking the opinion for the personality of the custodian by devisees without capability of acting would not have legal effects.

d) Inventorying and assessment of property of the devisor

Inventorying and assessment of property of the devisor constitutes a range of procedural activities which verify the composition and the value of heritage

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<sup>20</sup> Општер В. Антић : Nasledno pravo, Glas, d.o.o, Belgrade, 2002, fq.350.

property.<sup>21</sup> Inventorying and assessment of property of the devisor, the whole movable and immovable property under possession of the devisor at the moment of death must be included; property of the devisor at the moment of his/her death found at other persons' at the moment of death, and it must be noted where that property, at who's is that found and on what legal grounds: property of other persons that at the moment of death the devisor had; requests and debts of the devisor. Manner of inventorying and assessment of the property of the devisor has been regulated by provisions of the Article 140. par. 1, 2, 3 of LNCP, according to which: "movable items are inventoried by type, number, dimension and weight or each separately; immovable items are inventoried separately by marking the place where it is found, type and description of the object, culture of land and data on the book of immovable property if they are known; the evaluation is conducted by indicating the value of movable and immovable items of heritage property."

Competent body for inventorying and assessment of property is respective service of the municipality, the court official appointed by the judge and the civil status clerk when this is sought by the devisee at the time of compilation of the act of death. During inventorying and assessment of the property of the devisor, any interested person may attend if she/he has expressed such interest and that cannot be prohibited. Transparency of the process of inventorying and assessment of property of the devisor is secured with the presence of two citizens of adult age and the expert. Presence of the expert is necessary when the devisor leaves large property, art works, shares in enterprise where for inventorying and assessment thereof professional knowledge is required.

Inventorying and assessment of the devisor property is mandatory when in question is harming of necessary part of heritage property; when it is not known whether there is or there is not any place of residence; when the devisees are juveniles or mentally ill or because of other reasons are unable to take care of their interests and in other cases when inventorying and assessment of property of the devisor is reasonable and in these cases the court issues an order.

In other cases, inventorying and assessment of property of the devisor is only done upon request of the legal devisees and those by testament. The request must be submitted to civil status official latest until the moment of compilation of the act of death or competent municipal service. The body to which the request is submitted, is obliged to order inventorying and assessment of the property of the devisor, whereas the devisor who has submitted such a request is not obliged to present the causes and facts where

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<sup>21</sup> Олибер В. Антић: the same work, pg. 347.

such request is grounded.<sup>22</sup> Competent municipal body which has made the inventorying and assessment of the property, shall deliver to the heritage court the details related to inventorying and assessment of property.<sup>23</sup>

d ) Announcement of testament

Court at which the testament is found or to which it is submitted, is obliged to open and read the testament even when review of heritage property is at another court or a body of a foreign state.<sup>24</sup> The Court is going to open the testament without damaging the stamp, will read it in presence of two adult persons who may be potential devisees, legates or interested persons, and they may seek a copy of the testament. In this way the court acts when testament is in question and for more testaments found. The court is not going to undertake actions for announcement of the testament of any document or letter which clearly does not contain elements of testament. In the decision for rejection of testament announcement appeal is allowed<sup>25</sup>, although such a thing is not expressly regulated by provisions of LNCP. This deficiency is good to be corrected through amendment and supplementation of this law in the future.

Court announces the testament when it finds that the presented document contains all elements for validity of testament. According to Article 150.1.2.3.4 of LNCP, it shall compile minutes for announcement of testament, which should contain: number of found testaments, place where dates of testaments are found; has the compiler of act of death submitted the testament to the court or who has done it; what stamp was the testament sealed with and was it submitted open or closed; which persons were present when testament was opened and announced. If it is noticed that something has been erased from the testament, lines have been added or it has been fixed, or there is something suspicious, then these must be inserted in the minutes. In the announced testament, the court makes the certification for its announcement, where the date of announcement is marked, where other testaments of this devisor have been found, numbers and dates of these found testaments. The minutes is signed by the presiding judge of the procedure, minute recorder and witnesses.

When oral testament is in question to be announced, we may say that two situations appear: the first when the witnesses of testament have compiled the document on the statement of will of the testament giver and he/she has signed it by his/her hand, the court is going to announce the content of this

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<sup>22</sup> Опибер В. Антић: the same work, pg. 348.

<sup>23</sup> Article 142 of the Law on uncontested procedure no. 03/ L-007.

<sup>24</sup> Article 149 of the Law on uncontested procedure no. 03/ L-007.

<sup>25</sup> Опибер В. Антић : Nasledno pravo, Glas, d.o.o, Belgrade, 2002, fq.350.

document according to provisions that are valid for announcement of testament in written.<sup>26</sup> Another situation is created when the witnesses of oral testament have not compiled the document on the last statement of the testament giver. In this case the witnesses shall be heard separately for the content of the testament and important circumstances related to validity of the testament. For this testament as well, the minutes are announced in accordance with the provisions which are valid for announcement of the written testament by the testament giver.

When testament has been announced by another judge and not from the heritage court, the minutes along with the source oral testament and with the minutes on hearing of witnesses shall be delivered within a short time limit to the heritage court, whereas it will hold one copy of the minutes itself. Law does not determine the legal time limit in days or months within which the heritage court shall be obliged to deliver the abovementioned documents to the heritage court. But, my opinion is that in this case the legislator body has taken into consideration the principle of urgency of reviewing heritage property, meaning that these actions must be carried out immediately, and setting any other time limit would not be rational and it would not produce the expected efficiency of the procedure.

Written testament given by the author of such testament, the document on oral testament, minutes on the content of written testament by the testament giver, which has been lost or destroyed shall be kept in court separately from the files of other cases, whereas their certified copy is attached to the case file.<sup>27</sup>

#### **4. Hearing for property heritage review procedure**

Hearing for property heritage review procedure is the central and basic stage of heritage procedure.<sup>28</sup> In the invitation for hearing for property heritage review procedure, the court shall notify the litigant parties in the procedure for the initiation of the procedure of heritage; for submission of the written testament to the court or the document for oral testament; for hearing the witnesses of the oral testament. If the devisor has left testament, in the hearing for property heritage review procedure the devisees with the testament shall be invited and the executors of the testament. The situation is complicated when it is not known whether devisees are left or not left by the devisor. In such cases, according to Article 161. 1 of LNCP, the court through public announcement

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<sup>26</sup> Hamdi Podvorica, *Heritage law*, Prishtina, 2010, pg. 163.

<sup>27</sup> Article 153.2 of the Law on uncontested procedure no. 03/L-007.

<sup>28</sup> Hamdi Podvorica, *Heritage law*, Prishtina, 2010, pg. 168.

summons persons who have the right of heritage to appear at the court within a time limit of 6 months from the day of publication of the announcement in "Official gazette of Kosovo". The court shall summon for announcement also the temporary custodian when his address of residence is not known, the legal representative when there is no representative by proxy or is currently abroad, whereas submission of motions was not possible to be orderly completed. According to Article 161.2 of LNCP, the announcement must be attached to the announcement board of the court, and in cases when needed it must also be published in any other suitable manner, but in these provisions it is not clearly specified what needs are referred to and what other suitable manners, so the courts are the ones to decide related to these matters for each case separately.

In the Hearing for property heritage review procedure the court is going to review all matters related to property heritage, and especially the one related to the right to heritage, size of the heritage part and the right of legatee.<sup>29</sup> Until the end of the hearing the devisees can waive from their part of heritage property which would belong to or declare that they accept the heritage.<sup>30</sup> The devisee must clearly state when he/she waives from the heritage, whether he/she waives on his/her behalf or also on behalf of his successors. If the devisee has waived only on his own name, his successor will have the opportunity to inherit it through the right of representation. The statement for waiving from heritage is irrevocable, but it can be annulled if it is verified that the statement has been given by force, by threatening, by fraud or by misleading.

The statement given once is valid only for that property which has been noted in the testament to the devisee or that belongs legally, and not for the property which at that time was not known that it exists.<sup>31</sup> For the property found later, the devisee must seek that the court enables declaring if he/she accepts or waives from the part of the found property,<sup>32</sup> because for the property found later he has not declared with the first statement. The devisee can give the statement for acceptance or waiver from the heritage property which would belong to him can give at heritage court or at another court.

In the hearing for property heritage review procedure, the court collects facts, verifies existence of property heritage, existence of testament, of legatee, orders re-inventorying and reassessment of the heritage property when parties have submitted overturn. If the facts from which existence or non-existence depends are contested in relation to heritage, the court shall interrupt the

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<sup>29</sup> Article 162.1 of the Law on uncontested procedure no. 03/L-007.

<sup>30</sup> Hamdi Podvorica, *Heritage law*, Prishtina, 2010, pg. 169.

<sup>31</sup> Drago Bago, Nerimana Tralić, Zdravko Petrović, Maliha Pavlaković: the same work, pg. 116.

<sup>32</sup> Hamdi Podvorica, *Heritage Law*, Prishtina, 2010, pg. 170.

heritage property review procedure and shall advise the devisees to contested or administrative procedure the rights of whom he considers that are less credible. The court is going to act in this manner especially when facts are contested on which the right to heritage depends; facts on which grounding of request of spouse and successors depends related to separation of items of common household and separation and division of the joint property; facts on which the size of heritage part depends; facts on which legal grounding of exemption of devisees from heritage depends; facts related to circumstances if a devisee has waived from the right of heritage; when from resolution of conflict related to implementation of the right shall depend on composition of the heritage property and the object of heritage.

According to Article 170.1.2.3.4 of LNCP, when the court interrupts the procedure of heritage property review, sets a time limit not longer than 30 days, within which litigating parties in the procedure need to initiate contested or administrative procedure at the competent body. When the litigants respect the time limits as set by the court and they initiate the procedure, for what they are obliged to notify the court, interruption of the procedure shall last until the contested or administrative procedure shall be concluded with a final decision. If the time limit has expired as set by the court, and the litigant party has not presented any evidence that he/she has initiated the contested or administrative procedure at the competent body, the court is going to conclude the review of property heritage without taking into consideration the requests related to which the participants are advised to initiate the contested or administrative procedure.

## 5. Decision on heritage

The heritage court decides through a decision on heritage.<sup>33</sup> When in heritage procedure the court finds to which persons the right to heritage belongs, it will announce those persons as devisees of the heritage property pursuant to a decision.<sup>34</sup> According to Article 171.2 of LNCP, the decision on heritage contains: name and last name of the dead person, name of one of the parents, date of birth, citizenship of the dead person and last names before entering into marriage for married persons; immovable property with the data from the public books necessary for registration, movable items, other rights which are found by the court to be constituents of heritage property; name and last name of the deviser, his residence, relations of the devisee with the deviser,

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<sup>33</sup> Hamdi Podvorica, *Heritage Law*, Prishtina, 2010, pg 174.

<sup>34</sup> Hamdi Podvorica, the same work, pg 174.



does the devisee inherit by law or by testament, when there are more devisees, the heritage part of each of them expressed in fraction line and the unique personal number of the devisee; is it conditioned, timed, limited or charged on benefit of whom the right of heritage is; name and last name, place of residence of persons to whom the heritage property belonged, the right of legatee or any other right from heritage with the exact records of this right with unique personal number.

According to Article 172 of LNCP if all devisees and legatees through agreement propose the court division and the manner of division of the heritage property, the court incorporates such an agreement in the decision for heritage, the court shall act so even when division of property is done by approving the request of heritage from having lived in family union with the dead.

Whereas, according to provisions of the Article 177 of LNCP, if a part of property is contested, the court shall take partial decision for review of the property heritage only for the uncontested part, after finding who the devisees are, respectively the legatees of the uncontested part.

## **6. Conclusion**

Republic of Kosovo now already has a legal infrastructure compatible with the standards of European Union also in the field of heritage right. Law on uncontested procedure determines the rules and base actions, for which the heritage court verifies the devisees of the devisor, constitute a part of heritage property and the rights the universal and singular successors and the legatee are entitled to. Law on uncontested procedure contains many specifics and special rules which differ from the rules of contested procedure.

Heritage property review procedure differs from the contested procedure for the fact that court initiates heritage property review procedure ex officio, upon notification for the death of the person. The civil status clerk notifies the court of the death of the devisor. This notification can be taken by the court also from devisees, legatees, executor of the testament. Receiving notification from above mentioned persons does not change the rule of initiation being official for the procedure because the court has received from the abovementioned persons only the notification whereas the court itself decides about the initiation of the procedure.

Heritage property review procedure is urgent. In function of realisation of this principle, the court without postponement takes temporary measures for securing the heritage property, inventorying and assessment of property, appoints the temporary custody of heritage property, when according to law is

required appointment thereof, and notifies the body of custody when childbirth is expected, which may be entitled to heritage.

A large number of persons may appear as parties litigating in the procedure, who allege on what basis they inherit. For this reason these parties are often called as litigating parties in the procedure. Court announces devisees for the uncontested parts of heritage property pursuant to decision, whereas for the contested parts the litigating parties in the procedure are advised to initiate the contested procedure.

### 7. Recommendations:

- a) To hire more judges at the courts and to systemise resolution of cases of heritage review in order to melt the large avalanche of unresolved heritage cases as soon as possible.
- b) To raise the awareness of the citizens that the heritage property review procedure in notary offices is more efficient than in the courts, and they should address court only when the issue of heritage is contested.
- c) To increase the pressure over Serbia by the International Community and the Government of Kosovo, so that the cadastral and geodesy books which were taken in the end of the war in Kosovo, to be returned immediately as agreed by the two countries.
- ç) To make amendments and supplementations in the Law on uncontested procedure of Kosovo, in order to eliminate the found gaps and deficiencies.

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