

The Legal Position and Factual Situation of Women Participation to Inheritance in Kosovo

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Abstract

The right to inheritance represents one of the basic human rights. As such this right is regulated by the law. The Law on Inheritance in Kosovo regulates substantially, all the issues related to inheritance. In this context, this Law contains numerous rules that proclaim full equality of women with men to inheritance.

Regardless of equality proclaimed by law practical reality of life indicates a different situation. This reality proves that women participation to inheritance nevertheless is very small. The reasons for this situation are numerous and diverse, but mostly they have to deal with the still existence in people's conscience of many customary rules, which constantly treated women as a subject of second hand. In this article a modest attempt is made to reflect besides legal aspect also the practical situation indicating the degree of women participation to inheritance in Kosovo, in all grades that she may appear as heir.

Keywords: Kosovo, Inheritance, Women, Law, Will.

1. Introduction

As is known from the degree manifestation of women participation to inheritance depends on her position in family and generally in society. In fact, women participation degree to inheritance affects not only in social position, but also cultural, educational and scientific ones, including the degree of representation in country public institutions as well as her position in decision-making at all levels of society. Therefore, a higher level of women participation to inheritance dictates that her independence degree to mark advanced dimensions. In fact, all this would dictate inevitably in advancement of knowledge level, and therefore her more active role in society.

Inheritance aspects of women in society generally, and in Kosovo society in particular continue to attract attention of different theoreticians, civil society but also to respective state bodies, which in essence belongs the burden that through exercising legal authorizations to influence in increasing of awareness concerning fulfillment of this right, for woman and man as well.

In Kosovo the degree of women participation to inheritance results to be at very low levels. The reasons of this situation are related to customary nature, respectively of archaic mentality, tradition influence, and customary law impact, according to which women did not have the right to inherit in her husband's family neither in origin.

Following this article will be treated the historical aspect of women participation to inheritance in Kosovo issue, and further will be reflected legal and practical aspects of situation that characterize the actuality of this issue. Whereas in the end will be presented some of the main conclusions that refer to this issue.

2. A brief overview of the historical position of women to inheritance

Within this treatment briefly will be discussed about the position of women to inheritance according to Albanian customary law, during the Turkish rule and until the World War II, and according of Law on Inheritance of former Socialist Autonomous Province of Kosovo. Literature used proves that women position to inheritance during the historical development, observed in the legal context, has marked constantly

improvements. This aspect, including the one who reflects factual participation of women to inheritance during the history will be treated in the following topics

2.1. Women position to inheritance according to the Albanian customary law

As is known, Albanian customary law, in particular The Kanun of Lekë Dukagjini and The Kanun of Skënderbeu as its main sources, besides numerous rules with multidimensional nature contains also some rules of hereditary character (See: Chapter VIII of The Kanun of Lekë Dukagjini and Chapter X of The Kanun of Skënderbeu).

According to Albanian customary law (See: The Kanun of Labërisë, Pukës etc.) the right to inheritance had only men (Elezi, 1983, pg. 37-45.) and only men who were from the father blood tree and not from affinity genus. (Elezi, 1994, pg. 143). As it results, the Albanian customary law before "Sharteve of Idriz Suli", excluded woman and daughter from the right to inheritance.¹

Whereas after them it was allowed for women to take a quarter of the property, just like Islamic law allowed. Under the influence of this right, the Albanian customary law provided also the cases when the spouse might be excluded from inheritance. Such cases were: a) when she was suspected of adultery (having sexual relations with a third person) and b) when she had another religion and could not inherit the Islam for example, when she was catholic and denied the Islam religion (Elezi, 1994, pg. 144).

The Albanian customary law contained also some special rules for the widow, which after the death of husband had some limited rights. Thus, in case she had any children or she was old, she could stay to the husband's house or return to parental house.

When she was staying at husband's house, the heirs of his property were obliged to provide her the food, clothing and respect. (See: Nye 37, paragraph 99 of The Kanun of Lekë Dukagjini). When she went to her parent's house or lived separately and did not get remarried, she had the right while she was alive, to get of three burden corn per year. Therefore,

¹ In this aspect, The Kanun of Lekë Dukagjini in Nye 36, paragraph 91(a) emphasizes that "Neither to the parent or to husband the woman is not part of the inheritance". Furthermore Nye 92 states that: If there would not be men at all in a house, and a hundred of daughters have no right to interfere to inheritance, nor sons and their daughters.

when woman returned from parental house, brothers and other heirs of the father's property had a duty to welcome daughters or to advise the widows when they could not get married (Elezi, 1994, pg. 144).

Besides the widow, also the girls that were declared virgins publicly meaning those who decide not to get married until they were alive, they had the right to administration of deceased father's property. When there was no boy alive, she had the right to inherit. In other words they had some limited rights, but not the full right to inheritance like boys. After their death, the property was inherited from cousins of paternity tree (Elezi, 1944, pg. 144).

From this brief reflection of women inheritance issue, observing this in the context of customary rules, it may be concluded freely that Albanian customary law, despite some later modest changes, represents a right that in foundation denied the right of woman to inheritance, and so determined also her subordinate position in Albanian society through the centuries.

2.2. Women position to inheritance during the Turkish rule until the World War II

After a long resistance for more than one hundred years at the beginning of the century XVI Albanian lands were included entirely under Ottoman rule (The History of Albanian People, 1976, pg. 70). Since Turkish invaders in every point of view, were foreigners for Albanians, they were forced to put their invasion at powerful military base (Rrahimi, 1961, pg.11).

Albanian people's position during the Ottoman rule was very difficult. This difficult position was manifested in economic life, as well as in political and social ones. Turkish regime, during the five centuries rule in Albanian territories caused a general stagnation in social-economic, cultural and educational life. As a result of this situation, among people reigned poverty and misery. Famine, diseases and deaths were of a high level. Also, in the majority of the population reigned ignorance and illiteracy. Turkish administrative organization never resulted to the establishment of a sustainable administrative-legal order. On the contrary, in invaded territories reigned true anarchy. The majority of officers belonged to Turkish origin and did not speak the language, customary law and other attributes of the Albanian people. Administrative personnel and judges were very corrupted, because they did not serve to citizens without taking the bribe (Rizaj, 1982, pg. 497-498).

In general, Turkish and religious state law recognized legal and testamentary legacy. (Aliu, 1986, pg. 195). Consequently, within Turkish law woman appeared as a legal and testamentary heir, although in some cases was not equal to man (Verbani, year, pg. 1). In fact, within Sharia law all women (whether the fourth ones) inherited only the woman part, whereas man inherited the man part even from each woman who died before him. Consequently, woman of the nearest degree of genus blood did not exclude from inheritance male heirs of the most distant degree, so not even heirs from paternity trunk had advantages against heirs at maternity trunk. But when it came to the same degree of blood genus, males had the right to inherit more, usually two times more than females (Ismajli, 2005, pg. 225).

Although The First Balkan War paved the way for the destruction of Turkish invasion in Albanian lands (Hadri, 1976, pg. 117), the consequences of which was Kosovo occupation from Serbia (1912). With the Kosovo occupation from Serbia, Turkey legal provisions that were applied for centuries made room for laws, respectively numerous decrees of Serbia of that time. Thus, in the field of civil issues Serbia imposed the application of the Kingdom Serb-Croatian-Slovenian Civil Code of 1844 and other laws regulating civil-legal relations (Obradović, 1981, pg.24). In general, this legislation recognized the legal and testamentary legacy, but it gave an advantage to legal legacy. Woman, excluding some specific cases, was equal to inheritance with man. So at the same blood genus degree men had the right to inherit more than women.

During the World War II Kosovo was invaded by different occupiers (German and Bulgarian). During this period were applied different provisions regulating civil-legal relations, including those that addressed heritage issues. Consequently, each of the invaders in their part implemented their own right, but also allowed the application of domestic law when they considered closer to Kosovo population. Determined by the element time, foreign occupiers even though announced new changes in property and inheritance relations, they nevertheless allowed these relations to be addressed through Sharia law and the Albanian customary law. Since women position to inheritance according to these two types of rights is elaborated above, I do not see any reason to do it now (Statovci, 1976, pg. 318).

2.3. Women position to inheritance according to the Law on Inheritance of Socialist Autonomous Province of Kosovo in 1974

After the World War II, Kosovo remained within Yugoslavia, respectively Serbia, at the beginning in very uncertain position, and later on by identity and subjectivity (autonomous province) within Yugoslavia federation.² Life of the Kosovo Albanian people, especially the first two post-war decades, has been very difficult, thisThis, due to the fact that party apparatus (League of Communists) and state security were completely dominated by Serbs and Montenegrins. As a result of controversies, efforts, demands and a constant resistance in the seventieth the position of Kosovo Albanians undergoes in some significant advancing changes (Malcolm, 2001, pg. 327).

In 1995, in the former Yugoslavia was issued the Law on Inheritance, which was also applicable in Kosovo. By constitutional amendments of the former Yugoslavia Constitution of 1963 Kosovo acquires the right to legislate. Within the acquired competencies, on 30 December 1974 Kosovo issues its first Law on Inheritance (Podvorica Hamdi, Inheritance Law,..., pg. 12). The aim of this law (The Law on Inheritance, Socialist Autonomous Province of Kosovo Official Gazette No. 43/1974) was to regulate on legal and sustainable basis issues referring legacy.³ The article 2, paragraph 1 of this law had addressed the principled solution according to which "The hereditary property of the deceased prior to all, its children and spouse". These persons, in fact, constituted the first rank of heirs. The identical solution had contained also the article 4 by which was addressed the inheritance issue of the decedent's property that did not have descendant, and which was inherited by the second rank of heirs inheritance. Whereas, according to the paragraph 1 of this article " the property of the decedent had not left the newborn shall inherit its parents and spouse. In accordance with paragraph 2 of the same article parents inherited the half of property, while the other half of property inherited decedent's spouse.⁴ In addition,

² Kosovo status issue in Communist Yugoslavia was decided as well as all other essential issues, from above. This means that Kosovo Albanians had no opportunity, as there have been promises during the war, to be declared by themselves for their future.

³ Outside the scope of this law were left legal-inheritance relations concerning apartments, which were regulated in a unique way at the former Socialist Republic of Serbia level.

⁴ Thus, if one of the parents of the decedent had died before the decedent, the hereditary property share that would have belonged if he had lived after the decedent inherited its children (brothers and sisters of the decedent), his grandchildren, and great-grandchildren, and further descendants. In all cases the decedent's brothers and sisters

the article 7 of the Law on Inheritance regulated the issue of parent's property inheritance who had died without descendants. According to this article "If both decedent's parents had died before the decedent, and did not leave any newborn, the entire hereditary property inherited decedent's spouse. Whereas the article 8 addressed the property inheritance issue by grandparents (third rank of inheritance). The article 17 of the Law on Inheritance addressed the inheritance issue of surviving spouses of the decedent. According to paragraph 1 of this article "If after the decedent lived two or more wives by marriages previously accepted, the part that would inherit one wife, was shared between all wives of such marriages".⁵ The Law on Inheritance, in the article 20 had determined the right to inheritance of people living in extramarital union. According to this article these people (male or female) had the same rights just like people living in marital unions.

From a comprehensive analysis that may be done to these and other provisions of the Law on Inheritance of Kosovo in 1974 and its amendments and supplements in 1979, easily it may be concluded that they have guaranteed full equality of man and woman to inheritance. This equality, it seems was designed for all ranks of heritage. Regardless of this, it can be emphasized that based on practical reality, under the influence of many unwritten rules (customary) and a tradition created among centuries, nevertheless the Albanian woman in very rare cases uses this right among the basics. Consequently, the use of this right is estimated to have been expressed mainly in cases when the decedent died without leaving heirs representing the first rank of heritage (descendant and spouse). So, it may be said freely that the Law on Inheritance of 1974 women *de jure* were equal to inheritance, but *de facto* they did not use the right to inheritance in accordance with this law.

only by father's side inherited in equal shares father's hereditary property share, whereas siblings by mother's side inherited in equal shares only mother's share, in the meantime siblings of a mother and a father inherited in equal shares to siblings by the father the father's share, whereas siblings by the mother the mother's share.

⁵ The right to inheritance according to paragraph 1 of this article referred only to after living spouses of the decedent. Consequently, this right did not belong to the descendant's spouse who eventually had died prior to the decedent.

3. Some data related to Kosovo women inheritance

The Law on Inheritance in Kosovo (applicable law No. 2004/26) recognizes legal and testamentary inheritance. Legal inheritance defines the issue of heirs derive by law. Since their number is large is determined the need to be built the so-called inheritance ranks. So the first rank of inheritance is constituted by the decedent's children and spouse (Nuni, 2010, pg.58 – 61); the second rank of inheritance is constituted by decedent's parents and spouse, when the latter does not inherit at the first rank of inheritance;⁶ whereas the third rank of inheritance is constituted by the decedent's grandparents. In terms of inheritance, heirs of the first ranks exclude other heir ranks. It should be emphasized the fact that, when it comes to legal inheritance, the legislator through legal solutions specified by the Law on Inheritance in Kosovo has decided solutions that ensure a complete equality of women with men to inheritance, despite the fact which rank of heirs they do belong. Despite this, current practical realities of life prove that women participation to inheritance is very small. Although statistics nationwide lack, this conclusion is based on data that we have obtained regarding property inheritance issue (observing this in gender context) in municipality of Gjilan, Kamenicë, Mitrovicë and Vushtrri for the period 2008-2012.⁷ According to data that geodetic directories of these municipalities have women participate as heirs up to 15.32% (tabular statements of geodesy departments). This is a relatively low participation, considering the fact of women participation to the extent of country's population (about or over 50%) (Tabular statements of geodesy departments). These data indicate that within these municipalities the lower degree of women participation to inheritance however was marked in Mitrovica municipality, where this participation is only 13.73% (tabular statements geodesy of departments). The reasons of women low participation to inheritance should be seen at still preservation in people's

⁶ Spouse will not come in a situation to inherit at the first rank of inheritance in any case when the decedent does not have children, whether born in marriage or extramarital, respectively adopted.

⁷ These data should be taken with reservation because when I got these data from the responsible officials of geodetic directories of the municipalities included in research (Gjilan, Kamenica, Mitrovica and Vushtrri) I was told, that the same, for many reasons, cannot be 100 % accurate.

consciousness the rules of customary law and tradition and a low level of awareness of women regarding inheritance acceptance.

Unlike the legal heirs, testamentary heirs derive from the will. Consequently, according to the defined solutions by the Law on Inheritance in Kosovo women are fully equal to men when it comes to testamentary inheritance. Therefore, she has the right to have shares of property for the time after death, as well as to be the heir of the decedent's property through this legal instrument.

According to the research conducted regarding women position to inheritance in municipalities: Gjilan, Kamenicë, Mitrovicë and Vushtrri during the period 2008-2012 it results that from three wills done, none of them women was the beneficial to property inheritance. The reasons of this situation, similar as in cases of legal inheritance must be seen in the existence of old mentalities and low level of population awareness concerning the position that women should have in family and society.

4. Women position inheritance in her family of orizin

Within this short treatment will be discussed about women position to inheritance as the decedent's child, the decedent' sister and the decedent's parents. The sources used prove that despite the fact that woman in the legal aspect in these three qualities is considered to be equal to men (at same qualities) in practical terms she as heir is appeared in a few cases. About this will be discussed in the following topics.

4.1. Legacy of women as the decedent's child

According to the Law on Inheritance (paragraph 1 of the article 12) the decedent shall be inherited, prior to all others, by his children and spouse. In this regard (paragraph 2 of the article 12 of this law) is specified the right of each decedent's children (including his spouse) shall inherit in equal shares. In the context of right to inherit, the Law on Inheritance in Kosovo (article 22) specifies that the children born in marriage and outside marriage when the fatherhood is regularly known or verified by a court or competent body order, as well as those adopted, and their descendants, shall have equal rights to inheritance (Podvorica, 2012, pg. 161 -171). Also, the Law on Inheritance in the article 24 related to the article 22 specifies that the adoptee and his descendants shall have the same rights towards the adopter as to adopter's children and their descendants (Podvorica, 2012,

pg.203–211), respectively those outside marriage concerning decedent's inheritance. These and other legal provisions that address decedent's children inheritance issues are built in a manner that ensure full equality to inheritance of male and female children. This conclusion may be easily done based on the fact, there is not a single provision; this law does not even raise the eventual formal separation issue of male and female children. Simply, the legislator does not make distinctions of children of feminine gender from those of masculine gender, does not favour children of one gender to children of the other gender, but provides them full equality.

Despite the fact that the legislator through legal solutions has ensured equal treatment to inheritance of all decedent's children, regardless of their gender affiliation that they have (males or females), factual situation proves for a very different reality. This ascertainment is based on data that we have provided regarding to decedent's children property inheritance issue (observing this in gender context) for the municipality of Gjilan, Kamenicë, Mitrovicë and Vushtrri for the period 2008-2012. According to the information available to geodetic directories of these municipalities, women as the decedent's child participate as property heir in 186 cases, respectively 24.34 % (Tabular statements of geodesy directories).⁸ This participation is estimated to be satisfactory in comparison to participation that women generally manifested as property heir. However, when this participation is compared to male child participation, it turns out to be very low. Thus, until the male child according to research conducted in municipalities of Gjilan, Kamenica, Mitrovica and Vushtrri participates in 3847 cases as property heir, female child participates in only 186 cases (Tabular statements of geodesy directories). However, when these data are compared to general inheritance data, then it will be argued even more strongly the fact that indeed women participation to inheritance as decedent's child is very small and about 3,73% (Tabular statements of geodesy directories).

This low degree of woman participation to inheritance as decedent's child it may be explained with still preservation in people's consciousness the rules of customary law and tradition and with still low level of women awareness concerning inheritance acceptance. The results of this research

⁸ It is estimated that in most of the cases where have been inheritance transfers in Kosovo, women regardless of the status she had in family, willingly gave up from their right to inheritance. The reasons for this must be different and have deep roots in history.

prove that women participation as decedent's child has been expressed mainly in cases when the decedent has no left behind children of masculine gender.

4.2. Women inheritance as the decedent's sister

The decedent's sisters issue inheritance is regulated by provisions of the article 15 of the Law on Inheritance of Kosovo (LIK), and it has been treated as same as decedent's brothers inheritance. These two categories of heirs Kosovo legislator fully equalizes. According to paragraph 1 of this article (15 of LIK) if one of the decedent's parents died before him, the part of hereditary property that would have belonged to him if he had survived the decedent, shall be inherited by his children (the decedent's brothers and sisters), his grandchildren, and great-grandchildren, and further descendants. Also, according to paragraph 2 of the article 15 of Law on Inheritance of Kosovo, if both parents of the decedent have died before him, the part of hereditary property that would have belonged to each of them if they had survived the decedent shall be inherited by decedent's brothers and sisters, his grandchildren, and great-grandchildren, and further descendants. Finally in the context of paragraph 3 of the article 15 of Law on Inheritance in Kosovo, at all times, the decedent's siblings related to him through his father only shall inherit equal shares of the father's hereditary share, and siblings related to him through his mother only shall inherit equal parts of the mother's hereditary share; and siblings related to the decedent through the same mother and father shall inherit the father's hereditary share in equal parts with the siblings from the father's side, and the mother's hereditary share with the siblings from the mother's side.

From the legal provisions analysis who address decedent's siblings inheritance it can be easily concluded that Kosovo legislator set clear frames to ensure fully equal position of brothers and sisters to inheritance, in any case when they in compliance with legal provisions, get called to inheritance. Therefore, the legislator does not recognize any favour to brothers against sisters, neither to sisters between each other (big sister or little sister etc).

However, regardless of what legal provisions specify, in practice there is completely different situation. Thus, when the heirs get called to inheritance, are mostly brothers who inherit, and very few women. This situation is also reflected from the data of geodetic directories in Gjilan, Kamenica, Mitrovica and Vushtrri for the period 2008-2012. According to

these data the decedent's sisters have participated to inheritance in his property in 39 cases, respectively in 5.11%. These data were compared to data reflecting the degree of women participation to inheritance generally. Therefore, if these data are compared to the overall data that exist for the four abovementioned Kosovo municipalities then it is evident that this participation is many times smaller, and it is about 0.78 % (Tabular statements of geodesy directories). On the other hand, the participation of brothers, observed in the context of statistics geodetic directories of aforementioned municipalities included in research, marked a significantly a greater presentation (211) cases (Tabular statements of geodesy directories).

Apparently siblings' participation to inheritance is very small. This may be explained by the fact that in the conditions of life in Kosovo there are very rare families which absent the heirs of the first rank of inheritance. Bearing in mind that they have used this right is natural the decedent's siblings does not come at rank to inherit decedent's hereditary property. On the other side, much smaller participation of sisters to inheritance in comparison to their brothers,⁹ it can be explained by the fact of influence that still have rules of customary law in rural and undeveloped areas of the country, of tradition, but also with the level of culture existing in the country concerning issues related to inheritance. It must be emphasized the fact that decedent's sister, in cases when she gets called to inheritance, usually inherited the property in the situations where the decedent's brothers were absent.

4.3. Women inheritance as a decedent's parent

Issues related to the decedent's parents' inheritance, regardless of their gender, were addressed by the article 14 of the Law on Inheritance in Kosovo. Decedent's parents get called to inheritance in cases when the decedent did not leave first rank heirs. The decedent's parents shall inherit in the second rank of inheritance. Therefore, "when both parents are alive in case of decedent's death, and when compete with them the decedent's spouse, to each parent will belong, duly a quarter of hereditary part"

⁹ According to Sabri Zylfiu, an independent surveyor from Prishtina, states that sisters mainly participate to inheritance when they lack brothers. Whereas, when they have brothers, usually they give up from the inheritance right, because they do not want the property from the family of origin to pass the husband's family. The interview was conducted on April 18, 2013 (source).

(Podvorica, 2012, pg. 55). This means that the decedent's parents shall inherit the decedent's half property, whereas his spouse shall inherit the other half of the property. According to paragraph 2 of the article 14 of the Law on Inheritance in Kosovo in cases when the decedent did not leave a spouse, then the decedent's parents shall inherit its entire property in equal shares. Finally, it must be emphasized the fact when one parent dies without leaving descendants, then him according to the article 16 of the Law on Inheritance in Kosovo shall inherit the other parent. By analysing these and other provisions which address the decedent's parents inheritance issues easily it may be concluded that all those have determined sustainable solutions expressing full equality of his both parents in this regard, irregardless of if it is about its mother or father. With such solution Kosovo legislator has preserved the treatment coherence without any type of heirs discrimination concerning the gender, despite the rank of inheritance they do belong. Therefore, in legal terms, the decedent's father in cases when his parents get called to inheritance does not have any single favour in comparison to his mother.

Even though, the legislator considers equal the decedent's parents in cases when they get called to inheritance, practical realities of life prove otherwise. This fact is argued also by geodetic directories data of these municipalities: Gjilan, Kamenica, Mitrovica and Vushtrri for the period 2008-2012. These data prove that the decedent's mother has participated as heir of his property in 253 cases, respectively in 33, 12 % (Tabular statements of geodesy directories). These data were compared to data reflecting women participation degree to inheritance in general. This means, if this participation is compared to the general data that exist for four aforementioned Kosovo municipalities, then it will turn out to be that this participation is not just many times smaller, but also negligible and is about 5.07 (Tabular statements of geodesy directories). On the other side, father's participation observed in the context of geodetic directories statistics in these four municipalities has marked a higher presentation of participation to inheritance (633 cases) (Tabular statements of geodesy directories).

Relatively small participation of the decedent's parents to inheritance it can be explained with what have been emphasized above that regarding life conditions in Kosovo there are very rare families which heirs of the first rank of inheritance are absent. Bearing in mind they have used this right is

natural that the decedent's parents does not come in rank to be called to inheritance.

On the other side, smaller participation of the decedent's mother to inheritance in comparison to his father, in cases when they get called to inheritance, it may be explained with the influence still manifested in society of some customary rules and traditon, but also with the level of culture existing in the country concerning issues related to inheritance, where women practically is treated more differently. According to some evaluations in some cases to the decedent's father and mother is transferred the proprietorship into real estate only due to the fact of accomplishment of any right from social security of the decedent, also these data must be taken with reservations concerning the issue that is the subject of this research.

5. Women position to inheritance in marriage and extra-marital union

Within the following topics addressed, will be discussed about women position to inheritance as a lawful wife and as the decedent's extra-marital spouse. The sources used prove that in legal terms, at issues related to inheritance, the legislator has equalized extra-marital spouse to marital spouse. Despite that, in practice it appears that extra-marital wife is treated differently from the marital one. All this will be reflected in the following topics.

5.1. Women inheritance as the decedent's spouse

In accordance with paragraph 1 of the article 12 of Law on Inheritance in Kosovo, the decedent shall be inherited, prior to all others, by his children and spouse. The spouse, as well as the decedent's children get called to inheritance before any other possible heir. In fact, children and the decedent's spouse belong to the first rank of inheritance and they exclude from inheritance all the other persons which law in general principles foresess as a possible heir of the decedent's property. In these cases the spouse participates to inheritance in equal shares with the decedent's children. This means, duly, hereditary property of the decedent will be divided into as many parts as he has children plus the spouse.¹⁰ Whereas,

¹⁰ If the decedent has left behind three children and wife, then his property, duly, will be divided in four equal parts.

in cases when the decedent did not leave descendants, then in accordance with paragraph 1 of the article 134 of the Law on Inheritance in Kosovo, shall be inherited by his parents and spouse.¹¹ If the decedent did not leave parents at all, respectively if the decedent's parents had died before him, then in accordance with paragraph 3 of the article 14 of the Law on Inheritance in Kosovo, the spouse inherit the entire property.

From an analytical overview that may be done to these and other legal provisions¹² by which may be addressed the decedent's spouse inheritance issues, easily can be concluded, observing this in the gender context, Kosovo legislator has ensured equal treatment regardless of the fact if the surviving spouse is of masculine or feminine gender.¹³ In fact, this solution should be seen at logical concept and coherence that other solutions of the Law on Inheritance in Kosovo address, at issues referring to women treatment, despite the rank of inheritance, in which she is appeared when she gets called to inheritance.

Nonetheless, when women inheritance issue is put in practical terms, similar to the report with other women qualities as heir (child, decedent's sister etc.) then there is a completely different situation. This fact, indicate also geodetic directories municipalities data: Gjilan, Kamenica, Mitrovica, and Vushtrri during the period 2008-2012. According to these data, the decedent's spouse in four aforementioned municipalities has participated as heir of property in 292 cases, respectively 38, 22 % (Tabular statements of geodesy directories). This participation is estimated to be satisfactory in comparison to participation that manifested women as property heirs in

¹¹ The absence of the decedent's descendants, as it results, is an absolute barrier to the development of the first rank of inheritance. In these cases the decedent's spouse is not excluded from inheritance, but he is transferred from the first rank of inheritance to the second.

¹² The decedent's spouse, according to paragraph 1 of the article 26 of the Law on Inheritance of Kosovo, has the right to ask for the entitled share from the joint property gained by work between the spouses during their marriage. Therefore, in cases when the decedent and his spouse had common property under their matrimonial property regime, only the share that pertains to the decedent after distribution of the common property shall fall in the scope of inheritance (paragraph 2 of the article 26 of Law on Inheritance of Kosovo). This means that for the common property share that belongs to the decedent's spouse is applied a special regime and the same cannot be the subject of inheritance.

¹³ Legal provisions included in the Law on Inheritance of Kosovo, in general, have provided a treatment that is to be evaluated concerning the spouse position, when it comes to her participation to inheritance. Of course, these are already standard solutions posed in all modern states.

general. Although, when these data are compared to the general data existing for four aforementioned Kosovo municipalities (4986), then it will turn out to be really small participation and is about 5,85 (Tabular statements of geodesy directories). The low degree of the decedent's spouse participation to inheritance, similar to other cases when women gets called to inheritance, it may be explained by still preservation in people's consciousness of customary law rules and tradition, as well as by still low degree of women awareness concerning inheritance acceptance.

5.2. Women inheritance as the decedent's extra-marital spouse

According to paragraph 2 of the article 11 of the Law on Inheritance in Kosovo the decedent is inherited by his extramarital spouse¹⁴ that is as equal as the marital spouse.¹⁵

Whereas, in accordance with paragraph 1 of the article 28 of the Law on Inheritance in Kosovo a man and a woman cohabiting in a non-marital relation may inherit each other as spouses if:

1. The non-marital relation with the decedent up to the moment of death has lasted for at least 10 years, or children were born from this relationship, for at least 5 years, and
2. At the moment of the decedent's death, neither of the cohabiters was legally married to a third person, or if the decedent was legally married to a third person, he had filed a petition for divorce or annulment of his marriage, and after his death such petition was found to have merit.
3. If they had lived together for at least 10 years, but did not have common children.

Consequently, paragraph 3 of the article 28 of the Law on Inheritance in Kosovo specifies that cohabiters shall not be compulsory heirs.

From the analysis done to these legal provisions it may be concluded that nevertheless the legislator equals marital spouse to extramarital spouse

¹⁴ Factual union (extramarital) is equal to marital relation in terms of rights and obligations to care, mutual financial support, and property rights as defined by law. For this more broadly see: Gashi, Aliu and Vokshi, 2012, pg. 97-99.

¹⁵ Extramarital union, in terms of this provision (11.3 of Law on Inheritance of Kosovo), implies the cohabitation union between an unmarried woman and an unmarried man, which has lasted for a long time and ended because of the death of the decedent, subject to fulfillment of presumptions of validation of the marriage.

in cases related to inheritance, yet it cannot be said that this equality is comprehensive. This conclusion results by the fact that involvement to inheritance of non-marital spouse the legislator conditioned through establishing a certain conditions (deadlines concerning the duration of such union and the fact of not being in a lawful marriage with a third person) as well as the denial of their rights to be compulsory heirs. On the other hand, when legal provisions included to this treatment are analysed in the context of gender equality for non-marital spouses, it may be concluded that the same provide their full equality. Therefore, to the non-marital spouse the legislator does not recognize any privilege in comparison to extramarital spouse.

Despite of the existing solutions, the situation observed in practical terms it turns out to be not pleasant. This fact is proven also by the data of the geodetic directories of municipalities: Gjilan, Kamenica, Mitrovica, and Vushtrri during the period 2008-2012. According to these data the decedent's nonmarital spouse participation degree to inheritance has been small and is about in 13 cases or 1.70 % (Tabular statements of geodesy directories).

This participation if compared to the general used data of geodetic directories of four municipalities in which this research has been conducted, it turns out to be many times smaller, and is about 0.26 %. The reasons of low participation of extramarital spouse to inheritance should be seen in the fact that such marriages in Kosovo are still few, but also in other circumstances related to tradition.

6. Conclusion

The results of researches conducted indicate that women position to inheritance is equal to men position and this position is guaranteed by the Law on Inheritance of the Republic of Kosovo.

The right of women to inherit in time and different space has manifested more or less advanced levels. The results of this paper prove that socio-economic and other circumstances related to them, sensitively have determined women position to inheritance and society in general.

References prove that The Kanun of Lekë Dukagjini, The Kanun of Skënderbeu and other Albanian Kanuns sanctioned the rule that the ability to inherit had only men, and only men who were from the father's trunk blood and not from the mother's trunk genus. The Albanian customary law,

despite some modest changes later, represents a right that basically denied woman's right to inheritance, and so has determined its subordinate position in the Albanian society for centuries.

Researches conducted indicate that in our territory where Sharia law has been applied women presented as legal and testamentary heir, although in some cases it was not equal to men. In fact, under Sharia law all women (even if they were the fourth ones) inherited only the women part, whereas men inherited men part, from each woman that died before him.

Kosovo Law on Inheritance of 1974 and its amendments and supplements of 1979 had proclaimed the full equality of men and women to inheritance. Despite this, it can be said without any hesitation that based on the practical reality, under the influence of many unwritten rules (customary) and a tradition created for centuries, nonetheless the Albanian women in very rare cases used this right as one of the basics.

The legislator through legal solutions designed to Inheritance Law of Kosovo has ensured equal treatment to inheritance of the decedent's children; brothers and sisters; his parents and spouse regardless of their gender affiliation. Despite this, practical realities of life prove the existing of a situation that may be considered discriminatory concerning people coming from these categories and who belongs to feminine gender. This fact is proven by the data that we have been referred during the preparation of this topic.

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