



Research Article

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Inheritance Law as interpreted by the Supreme Court in Albania

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Abstract

In Albanian civil law, inheritance is established as a cornerstone institution within the legal framework. It arises upon the death of an individual and is categorized in two forms: legal inheritance and testamentary inheritance.

This legal concept encompasses all state-issued norms that regulate property relations arising from an individual's death and governs the transfer of assets from the *de-cuius* (the testator) to their heirs. This process confers civil rights and obligations upon the inheritors.

Within civil law, inheritance pertains to property relations that commence posthumously, defined as *"the lawful or testamentary transfer of the deceased's property to one or more individuals in accordance with the provisions of the legal code."*

The legal relationship of inheritance in Albania is contingent upon the death of the testator, marking a pivotal legal fact. This relationship is characterized by its dual nature: it encompasses both property and familial dimensions. The property aspect becomes manifest at the moment of the testator's death, as their rights and real property are transferred to their heirs. Meanwhile, the familial dimension pertains to specific qualities required of heirs, such as blood relations, adoption, or marital status.

A will has legal effect only at the moment of the testator's death, when the inherited property automatically transfers to the heirs by operation of law. The death of the specified individual is essential for initiating these legal effects.

Keywords: Heir, will, legal reserve, inheritance claim.

1. Introduction

The phases and diverse historical developments experienced by Albania have significantly influenced how legislators have addressed various aspects of inheritance. As a fundamental institution within civil law, inheritance emerged alongside the establishment of property rights and will continue to exist as long as property rights themselves endure. As societal relationships with property evolved through different economic formations, so too did the legal framework governing inheritance (Biçoku,

2011). The societal importance lies in the fact that it transfers to the heir the right enjoyed by the deceased while alive, specifically the right to acquire the products of another's labor through their property (Marks, 1981).

Decree No. 1892, issued on July 5, 1954 called "*On Inheritance*", marked Albania's initial regulation of the legal relationships arising from inheritance (Nathanaili and Papuli, 1961). Additionally, the year 1912 was crucial for Albania as it achieved independence and established itself as an autonomous state. Despite the significance of these moments, expected reforms in legislation were delayed. Historical legal regulations concerning inheritance, rooted in customary laws, reflected the cultural and societal attitudes of their time, particularly evident in the subordinate status of women in matters of inheritance. According to these norms, enshrined in the Kanun of Lekë Dukagjini, women were systematically excluded from inheriting any form of property, irrespective of their relationship with the deceased. This gender disparity was explicitly codified in the Kanun: "*The Albanian wife inherited naught from her parents, neither lands nor house; the Kanun regarded the wife as a superfluity in the household*" (Gjeçovi, 1999). The Kanun recognized only legal inheritance, defining it as the transfer of rights among blood-related family members. Only males were considered heirs, as females did not have the right to inherit. The adoption of the new Civil Code in 1929 introduced a modern approach to Albanian law, particularly in civil matters. This was heavily influenced by French and Italian legal principles. While the Code provided for two forms of inheritance—legal inheritance and testamentary inheritance—there was a lack of clear definition regarding the concept of inheritance. Under this Code, legal inheritance applied in cases where there was no will covering the entire estate or part thereof, as well as in cases where the will was wholly or partially invalid. The will would only be enforceable if it met the legal requirements for validity. The provisions of the Civil Code governing legal inheritance also regulated the order of succession for legal heirs. Accordingly, first-degree heirs were considered to be children and their descendants, irrespective of whether they were born within or outside of marriage, provided that paternity was established. This provision, influenced by the French Civil Code, represented a significant advancement in the regulation of familial and inheritance relations at the time. However, despite granting inheritance rights to children born out of wedlock, there existed inequality in property distribution as they could inherit only half of what children born within marriage¹ were entitled to inherit. It is noteworthy that both the Decree "*On Inheritance*" and the Civil Code of 1929 were founded on the principle of equality among legitimate, natural, and adopted children. Thus, children and descendants encompass both adult and minor offspring, whether residing with the decedent or not, as well as adopted children. The communist regime in Albania in 1944, despite its significant negative social and economic ramifications, led to a "modernization" of inheritance relations. During this period, the High Court assumed a key role in endorsing the principle of equality among spouses, children born within

¹ Article 477 of the Civil Code of 1929.

marriage, and those born outside it, among others.² It also introduced substantial changes to the overall regulation of inheritance relationships and the circle of heirs in particular. The High Court, concerning the order of succession in inheritance, stipulated that the first entitled to inherit were the surviving spouse, children and grandchildren, parents of the deceased deemed incapable of work, and individuals who were dependent on the deceased and had lived with them for at least 1 year before their death.³ The practices of the High Court introduced several new concepts, such as dependents, and upheld equality between legitimate and natural children in inheritance rights (Nuni and Hasneziri, 2010).

In the current Civil Code, testaments are classified into those executed under ordinary circumstances, such as holographic or notarial acts, and those executed under exceptional circumstances, including testaments made in jurisdictions lacking notaries. A deficiency in the law concerning the treatment of exceptional testaments lies in the absence of a defined moment when their validity expires, due to the indefinite duration of these circumstances (Tartari, 1997).

2. Commencement of inheritance

The death of the decedent is the foundational legal event that triggers the inheritance relationship, thereby establishing rights and obligations for the heirs. The fact of death is substantiated through legal instruments such as the death certificate or a final court decree. A death certificate is issued when the decedent's death is confirmed to be real and verifiable. A court decree may also be issued in cases of presumed death as declared by the court.⁴

The timing of the inheritance commencement holds significant practical importance in determining the circle of heirs and the full scope of rights and obligations held by the decedent at the time, which will now transfer to the heirs (Licenji and Pitaku, 2024). Commencement of inheritance refers to the verification of circumstances, legal facts that establish the birth of inheritance relationship (Sulçe, 2017). Pursuant to Article 318 of the Civil Code, "*Inheritance commences at the time of the decedent's death.*" When a person is declared deceased, inheritance is deemed to have commenced on the date specified by the court as the date of death.⁵ The timing of inheritance commencement is also tied to deadlines related to inheritance matters, including the deadline for renouncing inheritance. Agreements where parties decide on the disposition of rights arising from an uncommenced inheritance have no legal effect and are entirely void. Albanian Civil Legislation, under Article 331, recognizes the "system of acquisition," where inheritance commences when the heir's right to possess the inherited property

² After the approval of Law No. 61 dated May 1, 1945, the High Court assumed the role of "legislator." This law repealed all legal provisions promulgated during foreign occupation and determined the validity of laws in force before April 7, 1939, resulting in significant legal gaps. Subsequent interpretations and case-by-case judgments followed.

³ Parents who receive pensions are also considered unable to work.

⁴ According to the provisions of Article 18 of the Albanian Civil Code.

⁵ Refer to Articles 15-19 of the Albanian Civil Code and Article 22: "A death declared by a court decision is treated in all legal respects as equivalent to natural death."

arises, without requiring physical possession. This principle was definitively addressed by Decision No. 24 of the Supreme Court Joint Panels on March 13, 2002, explicitly stating that *"Inheritance commences at the time of the decedent's death, confirmed either by physical verification or by a court decision confirming death. Determining this moment is of particular practical importance as it defines the circle of heirs entitled to inherit their rights, and the timing of the transfer of inheritance rights."* The location where inheritance commences is primarily important for procedural aspects such as will execution⁶ and the issuance of inheritance certificates. Inheritance opens at the place where the decedent last resided.⁷

Supreme Court practice establishes inheritance as one of the means of acquiring property. *"...Another method is through derivative title, where the new owner acquires title from the previous owner either through contract or upon their death, through the commencement of inheritance. In such cases, ownership transfers from the previous owner to the new owner, who becomes the beneficiary of the property"*.⁸ To determine title to specific assets disposed of by the testator through their will, the relevant dates are the decedent's death and the commencement of inheritance, *not the date of the will's drafting*.⁹ The testamentary provisions are enforceable only if the specified assets are found in the estate at the time of inheritance opening; otherwise, they are invalidated if they no longer exist, have been damaged, or disposed of. Only universal heirs or those with quasi-universal entitlement have legal authority to receive additional assets not explicitly provided by the decedent in their will. They are the only ones entitled to inherit rights acquired after the will was drafted and existing within the decedent's estate at the time of inheritance opening. Moreover, they are obligated to fulfill the responsibilities pertaining to this property within the limits of the inherited estate (*intra vires hereditatis*). For testamentary heirs, legal relationships not recognized by the testator exist only in cases of universal or quasi-universal inheritance. Testamentary provisions take effect from the testator's death, differing from *inter vivos* legal acts which are effective immediately. Therefore, the testamentary heir will be subject to all changes that have occurred to the decedent's property from the date of drafting the will until the moment of inheritance commencement. This is because the will is a legal act *mortis causa*, due to death, and unlike *inter vivos* legal acts, it only takes effect from the moment of the testator's death. The identification of the testamentary beneficiary, as well as the existence and value of assets disposed of through the will, will be reported at the time of inheritance opening, not at the date of the will's drafting.

3. Certificate of inheritance and proof of being an heir

A certificate of inheritance is a legal document issued by a notary, which establishes the status of an heir and specifies their entitlements within the inheritance. To assert

⁶ Article 416 of the Albanian Civil Code.

⁷ Article 318/1 of the Albanian Civil Code.

⁸ Unified ruling of the Albanian Supreme Court No. 24 dated February 13, 2002.

⁹ Please refer to Civil Collegium Decision No. 1 of the Albanian Supreme Court, dated March 24, 2005.

their rights, the heir must establish their status as a rightful inheritor (Nathanaili and Papuli, 1961). This status can be validated during probate proceedings, where the court may recognize the heir's entitlement to inherit (Hajdari, 2010).

The testator is personally responsible for clearly expressing their final intentions in the will, as it is a strictly personal act. When a deceased person makes a will and the notary issues a certificate of inheritance defining the heirs according to the will's provisions, it is clear that anyone claiming to have been excluded due to violation of legal reserves will not be included among the heirs specified in the certificate of inheritance. Therefore, establishing heirship status does not necessarily depend on the existence of the certificate of inheritance.

4. Legal reserve safeguards inheritance rights of heirs unable to work

The legislator has given particular consideration to individuals unable to work. When analyzing inheritance provisions logically, all heirs and all degrees of the *de-cuius*, from the first to the sixth degree, may potentially qualify as heirs unable to work.¹⁰ Furthermore, a non-legal heir who meets specific criteria within the family circle during the last year with the testator may be considered second in line for legal inheritance, especially if they are identified as unable to work (Hasneziri, 2024).

Any heir of the decedent determined to be unable to work according to conditions outlined in Article 371 of the Civil Code may qualify as a subject of the legal reserve, provided they also meet the criteria in Article 379 of the Civil Code.¹¹ Furthermore, for a person unable to work to gain the status of a reservist, in addition to being called to inherit in the second degree under Article 364, they must simultaneously satisfy the requirements of Article 363, Article 371 of the Civil Code, and Article 379 of the Civil Code.¹²

The legislator's intention was to ensure that these two groups of heirs, who would otherwise be left without income to live on, receive special legal protection that the testator must respect when disposing of their estate through a will. Persons identified within the circle of legal heirs, whom the testator cannot exclude from the inheritance, as well as other individuals unable to work, should be beneficiaries of the legal reserve. To qualify, they must meet two conditions: *they must not have been declared unworthy to inherit, and they must be legally called to inherit.*¹³

In testamentary inheritance, when the testator disposes of their estate through a will, they are not bound by the order of succession among legal heirs. However, there are two limitations: first, the will must not infringe upon the legal reserve, and second, the testator can only dispose of their estate in favor of legal heirs within the first three degrees of legal inheritance.¹⁴

¹⁰ Article 363 of the Albanian Civil Code.

¹¹ Summoning heirs and the issue of unworthiness.

¹² Refer to Albanian Supreme Court Civil Collegium Decision No. 441, dated October 16, 2012.

¹³ Refer to Judicial Panels Decision No. 1 of the Albanian Supreme Court, dated February 19, 2014.

¹⁴ Refer to Civil Collegium Decision No. 00-2018 - 661 (49) of the Albanian Supreme Court, dated June 7, 2018.

5. Conditions for absolute invalidity of the will

One of the conditions necessary for a will to be valid is compliance with the legal requirements pertaining to the prescribed form by law¹⁵. Not every individual can acquire the status of heir. In our legal literature, it has been argued that unworthiness extends to testamentary inheritance because the law does not link unworthiness to the type of inheritance and prohibits the testator from nullifying a legal norm with their will (Koçi, 1973). Western legal literature views unworthiness as a restriction on the general right to inherit. In contrast to Western legal systems, which incorporate the concept of revocation and general principles of testamentary revocation, Albanian law specifically addresses methods of revocation. In this context, a will can be revoked through various means, including by a subsequent will or a declaration made before a notary (Latifi, 1999). Regarding the grounds for the invalidity of a legal act, whether it contravenes mandatory legal norms or not, cases of testamentary invalidity as outlined in Articles 403-408 of the Civil Code correspond to absolute invalidity, whereas Articles 409-410 address relative invalidity, except in cases where the will is made under the influence of physical coercion.

6. Action to declare the will void, according to Supreme Court practice

The Supreme Court's Joint Panels have established that a case solely seeking to determine the absolute invalidity of a legal act cannot be brought to trial and resolved, as it is considered inadmissible. *"The motion to declare a legal act absolutely invalid cannot proceed independently; it must be part of a court's adjudication on a specific case or as a request accompanying the resolution of its consequences. Consequences arising from the execution of an absolutely invalid legal act are addressed only upon the request of the parties involved in litigation. When the court primarily determines the invalidity of the legal act, it adjudicates only on those consequences that are directly subject to the claim or counterclaim, refraining from ruling on consequences for which there is no specific request from the parties."*¹⁶

During the trial proceedings, considering the entirety of the plaintiff's claim and other acts, the plaintiff has specifically requested that the legal act, namely the will, be declared void. In these circumstances, only a claim for the determination of the invalidity of a legal act, which does not produce legal consequences under the law, without a foundational claim or without seeking the regulation of consequences, cannot stand alone and cannot be considered by the court. If the court were to rule beyond what the plaintiff has requested or to decide on the legal consequences of an absolutely invalid legal act without the plaintiff's request, it would only replace the presented claim with a different one, thereby violating the procedural principle of alignment between the claim made by the parties and what the court should decide.¹⁷

¹⁵ Refer to Article 392 of the Albanian Civil Code: "Forms of Testament; A testament is made in two formats: holographic and notarial."

¹⁶ Decision No. 5 of the Judicial Panels of the Albanian Supreme Court, dated October 30, 2012.

¹⁷ Refer to Civil Collegium Decision No. 00-2016-1770 (161) of the Albanian Supreme Court, dated May 18, 2016.

7. Claiming the inheritance

Inheritance by law applies when the deceased has not made a will, or has made one only for part of their estate, or when the will is wholly or partially invalid.¹⁸ If an heir is denied their status as a legal inheritor and the inheritance is unlawfully possessed by those disputing their status, the heir has the right to petition the court to assert their inheritance.

From an early time, Article 19 of Decree No. 1892, dated 05.07.1954 *"On Inheritance,"* established that: *"The heir has the right to file a lawsuit against the person who holds the property as an heir to have their inheritance rights recognized and to have the inherited property or the property acquired through it handed over, according to the rules regarding bona fide or mala fide possession. The lawsuit can also be filed against the person who holds the property as an heir based on an inheritance certificate, even when this person is the state. A person who has acquired any item of the inherited property in bona fide and for value from such an heir is not obliged to return the item. The lawsuit for claiming inheritance is subject to a statute of limitations of six years from the time of the opening of the inheritance. When the heir is the state or a state or social organization, the lawsuit is not subject to a statute of limitations."*

The right to file an inheritance claim was outlined in the 1981 Civil Code,¹⁹ which stipulated: *"The heir has the right to file a lawsuit against the person who holds the property as an heir, to have their inheritance rights recognized and to receive the inheritance or property acquired from it, according to the rules governing bona fide and mala fide possession. The lawsuit can also be filed against the person who holds the property as an heir based on an inheritance certificate. A person who has acquired items of the inherited property in bona fide and without compensation from such an heir is not obligated to return these items."*

The right to file an inheritance claim²⁰ is provided for by Article 349 of the Albanian Civil Code. This grants heirs the right to petition the court for recognition as heirs from those who hold inherited property unjustly, presenting themselves as sole heirs.²¹ In accordance with the legal provisions governing inheritance claims, the claimant seeks recognition as an heir, as well as partial or complete transfer of the inherited property, including property acquired through it. These claims are interconnected. Currently, as per Decision No. 5 of the Albanian Supreme Court's Judicial Panels dated May 31, 2011, there is no statute of limitations for inheritance claims. This claim is a right that heirs have to petition the court for recognition as heirs from the defendants and for the transfer of inherited property which they wrongfully possess, pretending to be the sole heirs. The claimant bears the burden of proof to establish the death of the decedent. Additionally, they must prove that they are lawful heirs, either by intestate succession or by will of the decedent. The right to claim inheritance can only be exercised by testamentary or legal heirs who have not partially or fully realized their inheritance rights. The motion to claim inheritance is filed against the

¹⁸ Refer to Article 317 of the Albanian Civil Code.

¹⁹ Refer to Article 101 of the Albanian Civil Code.

²⁰ Refer to Articles 349-350 of the Albanian Civil Code.

²¹ Albanian Supreme Court Decision No. 6, dated January 24, 2007.

person who holds the property as an heir. The use of the term “held by anyone partially or fully” does not imply “any person or entity,” but refers to holding inherited property by anyone who claims to be a lawful or testamentary heir of the decedent, without implying that the defendant has acquired ownership of this property in any other way outside of inheritance (except for a third party who has acquired the property from an apparent heir).²²

The Albanian Supreme Court, in the case involving plaintiff Q.D. against defendant F.M., has stated: *“The legal relationship established between the parties in court is that of inheritance and not obligation, upon which the courts base their reasoning. The obligation relationship exists between the state (debtor) and former owners or their heirs (creditor). The inheritance claim is a right that heirs have to petition the court for recognition as heirs from those wrongfully possessing inherited property, falsely claiming to be the sole heirs. In this specific case, the courts have conflated two legal concepts related to ownership recognition and compensation. These concepts are distinct: ownership recognition concerns the legal rule determining ownership rights over an item, whereas compensation involves recognizing and accepting the state’s (debtor’s) obligation to compensate a person (former owner or heir) for damages incurred (through nationalization, expropriation, confiscation, or other unlawful means). Since the plaintiff (heir) acquires ownership of inherited property from the time of the opening of the inheritance, she, as the derived owner of this property, can defend it based on the legal grounds of the lawsuit filed. This is why the legislature has not prevented the filing of an inheritance claim lawsuit directly against third parties.”*²³

8. Conclusion

The regulation of inheritance in Albania remains complex and fraught with issues that often lead to numerous legal disputes. Albania has faced various historical phases and developments that have significantly influenced how legislators have approached different aspects of inheritance. Albanian Civil legislation has adopted the “acquisition system,” where the opening of inheritance marks the beginning of the inheritor’s right to possess inherited property, without the need for physical transfer. Inheritance commences upon the death of the testator. The timing of inheritance opening is linked to deadlines concerning inheritance relationships, such as the renunciation deadline. Agreements where parties decide on the disposition of rights arising from an unopened inheritance are null and void. In cases where the *de cuius* has made a will, and a notary has issued a testamentary certificate delineating the circle of heirs as per the testament’s expressed will, it is logical that anyone claiming exclusion from the testament due to breach of legal reserves would not fall within the specified circle of heirs in the testamentary certificate. Therefore, proof of their status is not necessarily contingent upon the existence or absence of a testamentary certificate.

To assert their rights, heirs must substantiate their entitlement to inheritance. The

²² Albanian Supreme Court Decision No. 00-2011-1238 (353), dated July 5, 2011.

²³ Albanian Supreme Court Decision No. 6, dated January 24, 2007.

status as an heir can be proven during foundational litigation, where the court may recognize the heir's entitlement to inherit. In an inheritance claim lawsuit, which has no statute of limitations, the claimant seeks acknowledgment as an heir; partial or complete transfer of inherited assets, as well as the transfer of assets acquired through inheritance. Seeking a declaration of the nullity of a legal act that, *under the law, does not yield legal consequences*, without foundational litigation or without seeking the regulation of consequences, cannot stand alone as a lawsuit and cannot be considered by the court. Despite respecting and fostering the free will of the testator, the law imposes restrictions aimed at the economic protection of vulnerable individuals, underscoring its societal role. This institution, aimed at transmitting material values, ensuring generational continuity, and the economic welfare of society, must be based on appropriate legal provisions safeguarding the position of heirs.

In testamentary inheritance, when the testator disposes of assets through a will, they are not bound by the order of succession of legal heirs. In this case, there are two limitations: firstly, the will must not contravene the legal reserve, and secondly, the testator may dispose of assets in favor of any legal heirs but only within the first three orders of legal inheritance. For the legal reserve to be legally valid, certain conditions must be met. Initially, at the time of inheritance opening, the testator must have minor children whom they cannot exclude from legal inheritance for any reason except when declared unworthy to inherit. They must have other minor heirs who inherit by representation and persons unable to work, "who at least 1 year before the death of the testator, lived with them as family members and under their responsibility." A necessary condition for calling a legal heir to inheritance means that there is no legal reserve for persons who do not have the status of a legal heir at the time of inheritance opening.

The development of society and departure from the concept of the traditional family necessitate changes in family and inheritance legislation, aimed at protecting the moral, economic, and inheritance rights of the primary pillars of society.

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