
KOSOVO WOMEN'S RIGHT TO INHERIT PROPERTY

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Introduction

This analysis has been conducted with the purpose of presenting a picture of the major problems when it comes to the implementation of the right of inheritance of women. According to recent data in Kosovo, only 16% (see Table 1) of real estate is registered as a property of women¹.

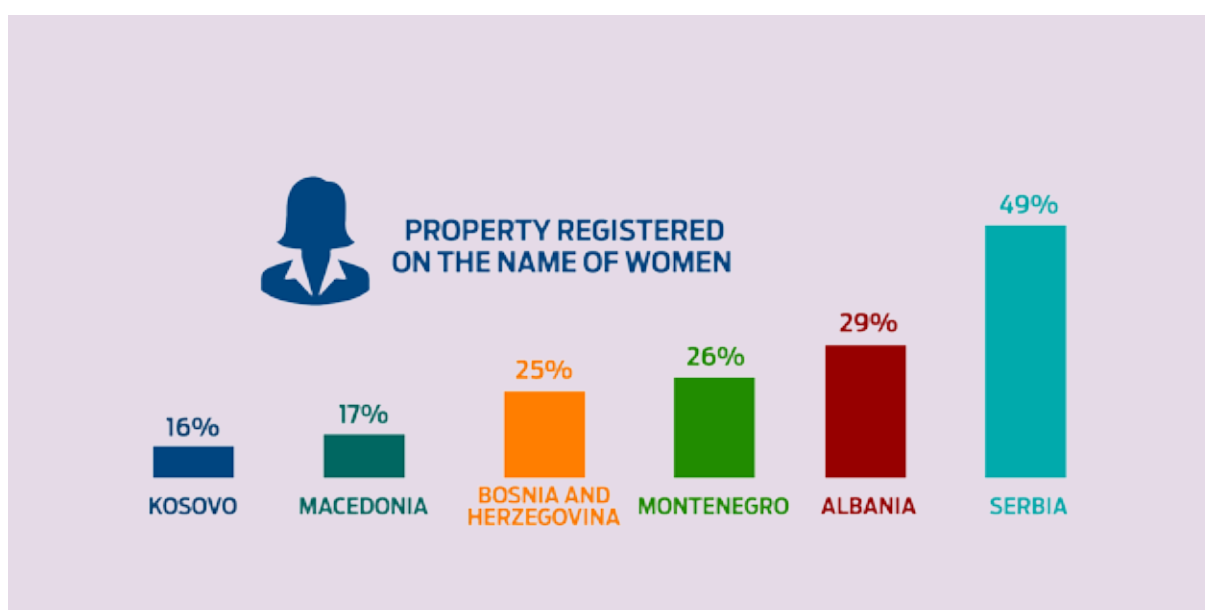
In Kosovo, equal rights in general, and particularly the right to inheritance are guaranteed with the Constitution of the Republic of Kosovo, Law on Out of Contentious Procedure and the Law on Contested Procedure.

Despite the legal framework being in place, the popular tradition of dividing the riches is based in customary rights, such as Lekë Dukagjini's Kanun, or less commonly on the inheritance rights according to Sharia law in Islam, which are mostly implemented when dividing the inheritance amongst the heirs. This leeway allowed by the law enables settlements between the parties or the possibility to renounce inheritance, parties are "to come to an accord" among themselves, in line with Kanun rules or other similar rules from the patriarchal traditions in Kosovo.

Additionally, this research contains short comparisons with the legal framework of neighbouring countries which result in concrete recommendations. Comparisons with Albania and Macedonia, as well as Croatia and Slovenia, which Kosovo once shared the same constitutional spirit, during Yugoslav times, but are now part of the European Union, to which Kosovo aspires to become a member.

This publication also provides concrete recommendations on the interventions that must be made in order to improve the situation when it comes to increasing the number of claims for inheritance by female heirs and the implementation of this right in the near future.

Table 1. – Percentage of property registered in the name of women in the countries surrounding Kosovo



¹ "Project on Real Estate and Cadastre – Recap Annual Customer Satisfaction – Second Phase"
<http://www.kca-ks.org/documents/10179/319567/ang.pdf/3f4bf6ff-7ba4-46ee-8d17-b0e0cb3d7a2d>

Methodology

The research for this analysis has been done with qualitative methods.

Firstly, reports published until now in Albanian and English (up to April 1st 2016) have been reviewed. The reports reviewed will be noted during the elaborations of the topics and subtopics in this analysis. Part of this review also include the Kanun of Lekë Dukagjini, for the traditional regulations of the property inheritance as well as the Islamic Inheritance Rights, keeping in mind that part of the Kosovo population exercises Islam on a daily basis, not simply as a belief but to some extent also as a lifestyle.

Journalistic articles reporting on violations of the inheritance rights in property pertaining to women have also been reviewed.

In addition, interviews have been conducted with judges of contested and out-contentious procedure, notary officials, experts on inheritance rights in the Islamic Community of Kosovo, women activists who are currently working on raising the awareness of women to seek their inheritance, as well as journalists who have worked on the issues elaborated in this analysis.

A special meeting was held with participants including representatives of civil society in Kosovo working on the issues in this publication, and judges, lawyers and journalists who have followed similar matters.

Overall, 66 officials were contacted and interviewed either individually or in groups of professionals in one of the fields mentioned above. Articles, televised programmes and interviews conducted by BIRN have also been taken into account. The televised programmes, articles and interviews published were prepared with judges, lawyers, notary officials, municipal officials, community elders (Pleqnar: A person elected as a community leader to deal with village's contests), pedagogues, professors, representatives of civil society and members of the parliament etc.

A comparison between national customary rights and with the religious tradition has also been conducted. A comparison amongst the legal framework of neighbouring countries of Kosovo with Macedonia and Albania, and with Croatia and Slovenia as current EU member states but that have had a similar past in terms of societal and state organization during Yugoslav times.

The right to inherit

The right to inheritance in Kosovo is guaranteed by the Constitution of the Republic of Kosovo. Although a part of the population in Kosovo has functioned by following the tradition which means that wealth was verbally divided by the head of the family (decedent), and not based on the principles of equality but rather the free will of the decedent, or when the inheritance was not divided by the decedent then it was divided solely by male heirs while not including women. Also, another means of inheritance division is the one foreseen by the Islamic right, which also includes female heirs in its provisions.

Rights guaranteed by the Constitution

The Kosovo Constitution has determined the role of women and men in the society as equal and has prevented discrimination by sanctioning it through special articles or through the adoption of international conventions mentioned in the Constitution.

Article 7, point 2, directly speaks about gender equality as a fundamental value of democracy in Kosovo.

“The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.”²

Additionally, Article 22, while taking upon Kosovo the guarantee of rights according to international conventions and instruments, the Constitution notes the Convention on the Elimination of All Forms of Discrimination Against Women. “Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions.”³

As seen from this, it may be concluded that the possibility for any law or other institutional act to violate human rights or exercise discrimination foreseen in the conventions mentioned has been excluded by the Constitution of the Republic of Kosovo.

Inheritance rights foreseen by law

Law on Inheritance defines the process of inheritance as starting with the death of a physical person as foreseen in Article 4, paragraph 1.⁴

2 Constitution of the Republic of Kosovo

3 Constitution of the Republic of Kosovo

4 Article 4.1. of the Law on Inheritance “It is inherited due to the death and at the moment of the death of a physical person” http://www.kuvendikosoves.org/common/docs/ligjet/2004_26_al.pdf

This law defines division of inheritance amongst members of the family without excluding heirs based on gender in Article 3, paragraph 1.⁵

Priority heirs according to the order defined by the Law on Inheritance are spouses and children of the decedent. In this context, the spouse (even extramarital spouse subject to fulfilment of presumptions of validation of the marriage) and the daughters of the decedent are considered in the first rank inheritance, equal to other heirs of this rank.

Furthermore, the Law on Inheritance in Kosovo has foreseen the possibility of renouncement of inheritance in chapter II of the Law on Inheritance in Kosovo in article 130, article 1, where it is stipulated "130.1 The heir may renounce the inheritance with a statement made to the court, until the inheritance proceedings are completed", which in practice happens very often by women – a fact concluded by the interviewees of this research.

Cases of exclusion of women from inheritance

Selections of BIRN interviewees have mentioned cases where male heirs don't present female heirs at all during the compilation of the proof of death. However, cases have also been reported where male heirs have been hidden from the inheritance.⁶

Judges and notary officials' interviewed by BIRN with regards to this specific research say that they haven't had experiences with families who have tried to hide heirs.

"During my experience I have not encountered any case of attempts to hide heirs [female], as this would force me to initiate another case with criminal consequences for those hiding them." – said Drita Rexhaj, judge of the out of contentious procedure in Prishtina, interviewed by BIRN.

The notary official, Fatmir Halimi from Gjilan has had similar experiences, he said "In my office, but also according to the information we have from the Chamber of Notaries [of Kosovo], we don't have knowledge of any court case until today (civil or criminal) concerning this matter".

Also, the official of the Supreme Court of Kosova, Antigona Uka, in an official communication on June 7 2016, confirmed that "The Supreme Court hasn't had any complaints in this regard".

Nevertheless, the proof of death is a document foreseen to be issued by the municipality. In this proof, apart from personal data about the deceased, the potential heirs of his/hers are also provided. The court itself can also compile this proof, through a verdict that confirms the death of the decedent.

But, in many cases, it has resulted with citizens not going to the municipality to register the death of their relative, a procedure that requires the whole family to be there with all the relevant certificates.

Drita Rexhaj, a judge dealing with out of contentious procedure cases in Prishtina, interviewed on March 30 2016, confirmed that she never received a death certificate from the municipality. According to the interviewed judge, in all cases it was necessary to issue a decision on the death, based on testimonies brought to the court by the parties in the judicial review.

⁵ "All physical persons under the same conditions are equal in inheritance."

⁶ Televised programme "Falsifying of inheritance" broadcasted in "Justice in Kosovo" on February 10, 2013 - <https://www.youtube.com/watch?v=881nya1Kv8U>

Rexhaj explained that special attention should be paid to witnesses, and explains that when older people are asked about their children, there is a tendency for them to only declare their sons. "For example, when the witness is an elderly woman and I ask her about the number of children, if she has 2 sons and 3 daughters, she answers that she has two children. When I repeat myself and clarify that I also mean how many daughters, she confirms them" – explains Rexhaj.

If the definition of heirs would be done automatically through the death certificate then the possibility of hiding heirs would decrease.

Verification of data in order to compile a proof of death takes a long time and the procedure is lengthy. This is particularly important regarding the court hearings when proof is brought and the judge may require additional data, which may take a longer time and a few more hearings. This may discourage the involved parties to continue with the court case.

Customary law on division of inheritance for women

Considering that only 16% of all registered land owners in Kosovo are women, it is evident that the enforcement of the Law for Inheritance in Kosovo and the rights defined by the Constitution of the Republic of Kosovo are not even remotely satisfied.

To understand the reason behind this, we must consult the Kanun of Lekë Dukagjini, a set of Albanian traditional laws that forms the basis of the spirit of Kosovar customs.

The Kanun deems the role of women in inheritance as negative and completely denies them the right of inheritance both from their families and their spouses:

"Article 20 The inheritance of Albanian women"

Albanian women will neither be granted inheritance from their own house nor from their spouse's, - the Kanun sees a woman as redundant in the house. Her parents will not think of the dowry or of anything else that pertains to their daughter; he who decides to wed her will take care of her. The parents of the man who decides to marry the woman will worry about everything that is necessary for her wedding."⁷

By considering women as "redundant" in the house, the Kanun grants women rights that are only to do with fulfilling the customary ceremony on her marriage day.

⁷ The Kanun of Lekë Dukagjini

Influence of the Kanun on the mentality of the people today

During interviews with women, it is apparent that the internalization of the contents of the Kanun are pronounced in their way of thinking, especially when it comes to the inheritance of property from their girlhood families. Be it the women who talk about the reasons of these customs, or be it the ones who talk about renouncing the right of inheritance, they all use the term “take from brother” in their explanations. So, they consider that their portion of inheritance, although it belongs to them legally, is something that they take from the males of the family, and as a result they do not see renouncing their right as ceding their share of the property.

One of the participants in the focus group⁸ held in Prishtina on March 24, 2016, employed and holding an undergraduate degree, while explaining why she considers to renounce her claim of inheritance tries to clarify the reasons behind the decision. She calls her decision emotional and is aware of it, but she insists that she is not able to consider the land left behind by her father as something divisible. For her, the land holds a symbolic value that identifies their family. Furthermore, being the oldest sister, she finds that the decision is also influenced by the feeling of being a caretaker to her younger brother.

Given that she has “entered a foreign door”,⁹ she does not consider claiming inheritance from her family of origin.

Another participant of the focus group held on March 24, 2016, employed at a municipal institution who also holds an undergraduate degree, gives political explanations on why this law was not enforced before 1999 and why it should be enforced now. She sees the period before 1999 as a period of unity and solidarity and she considers the request of dividing inheritance as something that goes against that spirit, but she reasons that claiming inheritance now is completely legitimate.

The interviewed women from the focus group have found that claiming the right of inheritance exacerbates the relationship with male inheritors of the family of origin, and in most cases relationships can be completely broken off. This situation is linked to another part of the Kanun. Excluding women that impinge the honor of the family of origin or the spouse's family that is guaranteed to males of the family and is considered one of the most humiliating circumstances of the family.

Customs related to women and inheritance in other communities

The municipalities with a majority of other communities do not fare better when it comes to the registration of property in the name of women either. BIRN compared the municipality of Klllokot with a Serb majority community and its neighbouring municipality Vitia with an Albanian majority community.

The data secured by KALLXO.com show that only 1.8 per cent of property in Klllokot is owned by women. The situation is not quite the same but it's not better either in the municipality of Vitia where only 14% of property is registered in the name of women.

⁸ The focus group was held on May 24th, 2016 in Prishtina at the National Democratic Institute 'NDI'. The focus group welcomed: Besa Veseli, gender equality official in Mitrovica; Drita Milaku, local assembly person in Prizren; Majlinda Ortogllava, local assembly person in Vushtrri; Nita Lusha, SOS village Prishtina; Shpresa Veliqi – local assembly person in Skënderaj; Violeta Berisha – official of the Department for Integration at the Ministry of Interior; Xhevrije Peci, counselor for people with special needs in Prishtina.

⁹ This expression is used when a woman marries. Because the Kanun sees women as redundant in the house, women's marriages makes them a part of another tribe. As a result, claiming inheritance from the family of origin would be considered an interference in the tribe of origin.

The interviewee Sanja Sovrljic, who works as a journalist for radio “Mir” (English: Peace) in an interview on June 22 2016, clarified that the situation doesn't change when it comes to the Serb community. She gave details of how the patriarchal mentality is also stuck in the culture of the Serb community living in Kosovo and did so by elaborating on her personal situation. “My grandmother used to tell me how they were not that happy when I was born”. When I asked why, my grandmother told me “everybody including your grandfather and father were the only children and now your brother will be alone as well. But, they all had sisters, same as my brother has me” – said Sovrljic for BIRN.

The mentality of Serb women in Kosovo seems to be similar to the ones from Albanian communities when it comes to taking the wealth that belongs to them according to the law, as they leave it to the closet male in the rank of inheritance. “Ne mogu da uzmem to svom bratu, Ne mogu da uradim to svom bratu” (I cannot take it from my brother. I cannot do this to my brother.) – are the most common words heard, according to Sovrljic. Another problem pertaining to the women of the Turkish community is the knowledge of the rights. “The majority of women (from the city and mostly from the surrounding areas) are not aware that legally the right of inheritance is equal for girls and boys similarly” – said Qëndresa Hajdari from “Gruaja Hyjnore”, on June 22 2016.

Similarly, Sovrljic from Leposavic says, “Women in the villages have major problems. I don't even think taking the inheritance exists as an option”.

Qëndresa Hajdari from the NGO “Gruaja Hyjnore” said that the pressure also comes from the families in cases where women decide to claim their right to inheritance. “Even those that are aware of the law, they still are pressured by their families claiming that if they take the inheritance from their brother, then there is nothing for them to go back to in that house (parents or brothers house as families say), and they are somehow expelled from the family”.

Commonalities of communities related to women's inheritance

In this context, disengaging the relationship with male members of the families due to exercising the right to inheritance by female heirs can be considered as an expulsion by the family of origin, which is considered a shameful act according to the women interviewed by BIRN.

In a statement for KALLXO.com, the judge of the Prizren region, Xhemil Elshani explained how the customary right was embedded in the matter of division of inheritance.

“I have cases where women stated in front of their brothers that I am offending them when offering them the legal right, and this is due to traditional connections where they don't want to break ties with parents, brothers or sisters”, said Elshani.¹⁰

We have cases [of renouncement to inheritance] due to the mentality prevailing in this part of the Balkans”, said Isak Ademi, notary official from Prishtina, adding that the “same mentality is with the people in the surrounding countries, in Montenegro, Serbia and Macedonia.”¹¹ The graphic data show that in these countries, the percentage of women who have property is higher.

¹⁰ Article “Challenges in claiming Inheritance” published in Kallxo.com, on April 17 2016 - <http://kallxo.com/sfidat-e-gjykimit-te-trashegimise/>

¹¹ Televised programme “Renouncement of women” broadcast on “Justice in Kosovo”, on June 24 2016 - <https://www.youtube.com/watch?v=yMLmzxFe71o>

Islamic tradition in dividing inheritance for women

Most of Kosovo's population declare themselves Muslim.¹² Nonetheless, for the purpose of this publication it's important to see it as a customary practice and compare it with other customary practices. Because of the mentioned characteristics and because Islam is the only religion that proposes another judiciary system (Sharia) parallel to the constitutional one in Kosovo, it's been taken into consideration in this analysis and will be treated in the level of customary law.¹³

Two hypothetical cases

Representatives of the Islamic Community of Kosova (BIK) have explained to BIRN how inheritance is divided according to Islamic law.

The Quran has determined women as inheritors: "Allah instructs you concerning (for the inheritance issue) your children: for the male, what is equal to the share of two females" (Chapter Nisa, 11). This may seem like a form of discrimination, but according to clerics, is compensated by another norm that frees the woman from the need to work after marriage, which is interpreted as achieving equality within marriage.

Almedin Ejupi from BIK¹⁴ clarified this for BIRN: "Despite how rich she could be, a woman is not obligated to act as a co-provider for the family, unless she chooses so with her desire and free will. Spouses inherit from one another."

Women, as well have the right to inherit from their husbands in the case of their death. "If they left successors (boys and girls) then the wife's share is 1/8 of the general property of the deceased husband. If her deceased husband didn't leave any successors behind then the woman has 1/4 of the general property of her husband." – said Ejupi. Successors in this case are close family members; and if we use the language of the Law on Family in Kosovo, it means the children of the deceased.

Ejupi has presented a typical scheme of inheritance in the family according to Islam in two hypothetical cases, when the deceased is a man and when the deceased is a woman.

¹² 93% of Kosovo's population have declared themselves Muslim
http://www.thearda.com/internationaldata/countries/country_250_1.asp

¹³ Other significant religions such as Christianity (despite the doctrines) cannot be treated in this analysis because they are considered as having merged into the Western model during a long historic process especially in XVII-XVIII centuries when great attempts were made to divide duties of state and religion as a then-political institution.

¹⁴ For this issue we interviewed Almedin Ejupi, who was appointed by the Islamic Community of Kosova in the status of expert for inheritance issues in Islam. He's the author of "Islamic inheritance rights".

When the deceased is the husband and the heirs are the wife, two daughters and a son:

- a) His wife gets $\frac{1}{8}$ of his general property, or 12.5%
- b) While his children (two daughters and a son) will get the remaining part of his inheritance, respectively $\frac{7}{8}$, which must be split in four parts

Two parts for the son and two parts for the two daughters, respectively each daughter gets one part or each daughter gets 21.88% and the son gets 43.75%

Heirs	Their part	Percentage
Wife	$\frac{1}{8}$	12.5%
Daughter	$\frac{7}{8}$	21.88%
Daughter		21.88%
Son		43.75%

When the deceased is the wife and her heirs are the husband, two daughters and a son:

- a) The husband gets 25%
- b) Two daughters get 37.50%, each of them 18.75%
- c) The son gets 37.50%

Heirs	Their part	Percentage
Husband	$\frac{1}{4}$	25%
Daughter	$\frac{3}{4}$	18.75%
Daughter		18.75%
Son		37.50%

Based on the schemes¹⁵ you can tell that the inheritance that the girls get is half of the inheritance that the boy gets, but in Islam this is justified with the obligations that a husband has to maintain the family.

However, there is no factual data from the field on the degree of implementation of this inheritance division according to rules of Sharia law in Kosovo.

¹⁵ The rules of dividing in these two divisions aren't set, like expert Almedin Ejupi said, that's why other divisions are possible depending on the specifics of the cases.

Institutional problems and uncertainty

In Kosovo the issue of dividing property for heirs happens in courts and notaries' offices through notaries. All the parties that have participated in this investigation as interviewees have agreed that there are uncertainties in the laws. Law on Inheritance Nr. 2006/26 and the Law on Out-Contentious Procedure Nr.3/L-007 with which the division of inherited property for heirs is regulated recognize/mention only courts as competent to implement them. On the other hand Law on Notary Nr.3/L-10 in Article 29 when it establishes the notary functions describes:

"1.4 treating all out-contentious inheritance procedures" and "1.7.1. signing and stamping all assets that will be divided in the context of inheritance and bankruptcy procedures;" – so, through this they recognize the division of inherited property as a function of a notary.

Some of the interviewees have seen this issue as problematic for the fact that there's legal gaps that could cause problems in the future for parties that could complain.

Fatmir Halimi, a notary in Gjilan said "this competence is based on Article 29 point 1.4., where it's decisively said 'treating all out-contentious inheritance procedures'".

The Chamber of Notaries justifies the legality of their activities, by referring to Article 76 of Law on Notaries Nr.3/L-10 which foresees that in transitional dispositions, the harmonization of laws one or two years after they've entered into force, which says:

"10. In a deadline of one (1) year after this law goes into force, the Temporary Institutions of Self-governance will submit to the Special Representative of the General Secretary the changes in the Law for Inheritance and the Law for Out-Contentious Procedure, that are deemed necessary by this law."

The Chamber of Notaries in the Republic of Kosovo, in their official answer directed to BIRN through official email, related to the issue of legal infrastructure has clarified the competences that are mentioned in the Law on Notaries. This law mentions courts only as institutions for solving cases with out-contentious procedures. Related to this, the Kosovo Chamber of Notaries said:

"From the start of notary services in the Kosovo Republic, notaries on the scope of their functions, apart from other legal functions foreseen with Article 29 of Law nr.03/L-10 for Notaries, as an established competence that derives from the Law on Notaries itself, Article 29, paragraph 1.4 have the right to treat all out-contentious procedures – inheritance (especially when there's no disagreements between the parties), a procedure that for four years now notaries have treated successfully."¹⁶

Despite that, the foreseen changes weren't made, which caused overlap of competences. But, courts and notaries continue to exercise their activity to divide inheritance according to the Law for Out-contentious Procedure and other relevant laws.

¹⁶ Arbena Shehu, Head of Kosovo Chamber of Notaries, June 9, 2016

Ministry of Justice are working towards amendments

Contacted by BIRN, officials of the Ministry of Justice have admitted the uncertainties in the law. Dafina Bucaj, legal counsellor of the Deputy Prime Minister and Minister of Justice said “the law for improvement and amending the Law on Notaries is included in the legislative programme of the Government for 2016.”

She told us that this law that will amend the Law on Notaries and will avoid uncertainties in interpreting the law and the overlapping of dispositions with other laws.

She added, that “The draft law for notaries has passed all the preliminary consultation phases with the public and for the moment the Ministry of Justice is in the phase of analysing all the accepted comments during this period and addressing them in the draft law”.

Duration of procedures as an obstacle to symbolically implement this right

One of the discussion topics during the focus group with activist women was the possibility of initially exercising the right to inheritance and then passing the ownership to male heirs as a gift, so that it marks a symbolic practice of the right, with the purpose of moving slowly from a cultural and traditional spirit to another that is in accordance with the laws and the constitution of the Republic of Kosovo. Older women activists thought that this could be the solution for their cases. As mentioned above, a number of (older) women have internalized their traditional values and the disparity between those values and the law, could find understanding in the symbolic exercise of their right, seeing this as an important gesture towards educating the next generations.

But the arguments against them were, the duration of the procedures of transferring the property from the deceased to the heirs and the expenses that that could create (only in cases when it's about property or wealth inheritance).

Adem Hoxha, an elder, from Junik, who was interviewed by Justice in Kosovo, says the problems in solving the inheritance and ownership issues for women are related to the non-functioning judiciary system in Kosovo, which according to Hoxha is dragging out the resolving of contested cases. According to Hoxha, in practice, the awareness of women and girls who hesitate to request their share from their family is problematic. “Our mentality about inheritance issues could change if the citizens have their legal rights explained and if the courts could expedite and be more efficient in solving these cases,” said Hoxha.¹⁷

A large number of data has to be gathered by the court during the judiciary process. The lack of electronic databases for family organization of citizens that would avoid the fraud and the need for verification of each document, impacts the duration of the process.

¹⁷ Programme “Inheritance Law” broadcast on “Justice in Kosovo on May 27, 2016 <http://kallxo.com/dnk/ligji-i-trashegimise/>

The proposing party for dividing the inheritance during the out-contentious procedure must bring proof that is required by the court so that they can prepare a death certificate. Likewise, according to cases, courts can request, according to official duty for the purpose of correct verification in cases when the proof brought by the proposing party for dividing the inheritance isn't enough. This happens because the judicial consequences that could come as a result of mistakes are serious for all parties.

This is one of the reasons that have made processes longer than they are supposed to be.

While at the notary this procedure is faster and more efficient because it's in the notary's interest to finish their cases, because they can generate profit for the activities they complete.

Speeding up the procedure is in favour of a quick division of inheritance that can belong to female heirs.

Short comparison of the legal framework: Kosovo-Albania-Macedonia

Seeing that Kosovo stands as the worst in the aspect of number of women registered as landowners, compared to other neighbouring countries, and knowing the population size compared to Albania and Macedonia, a short comparison of the legal framework of these countries with Kosovo was conducted.

Which institution divides inheritance?

In Albania this issue was solved in the Civil Code¹⁸ where the notary is foreseen to exercise the function of dividing inherited property. Likewise in Macedonia, this function is done by the notary, where after a person dies, the court appoints a case to the relevant notary according to territorial divisions¹⁹. Meanwhile in Kosovo, as mentioned above in this publication, there are different interpretations related to who can exercise the function of dividing an inheritance.

What is the order of heirs?

The order of the heirs is the same in all three cases. First is the spouse, then children regardless of gender.

18 The Civil Code of the Republic of Albania: http://www.qbz.gov.al/Kode-pdf/Kodi_Civil.pdf

19 Interview with the President of Notaries in Macedonia, Zorica Pulejkova for Italian Foundation of Notaries <http://elibrary.fondazionenotariato.it/articolo.asp?art=39/3947&mn=3>

How can one inherit?

In all three cases the inheritance is made possible according to the law with regular legal procedures after the proposal of heirs and with a will.

Is renouncing inheritance allowed?

Renouncing inheritance is foreseen in all three cases. In Albania, Kosovo and in Macedonia, you can renounce inheritance.

*In all cases the legal definitions are more or less similar, but based on EULEX's report, Kosovo stands in the worst position in the region when it comes to women owning property, which comes in at 16%. Compared to the surrounding countries, including Macedonia and Albania, Kosovo is in the last place when it comes to property owned by women. Second-to-last is Macedonia with around 17-18% of women owning property, and Albania has around 27% of women owning property.*²⁰

Short comparison of the legal framework: Croatia-Slovenia-Kosovo

Knowing that Kosovo aspires towards EU integration it's reasonable to have a short comparison of the legal framework of Kosovo with the legal frameworks of Croatia and Slovenia, as countries that together with Kosovo were part of one Constitution during the Yugoslav era and are now part of the EU.

Which institution divides inheritance?

In the entire European Union the issue of dividing inheritance is done at the notary with exceptions in Slovenia and Bulgaria, where this issue is still solved in courts.²¹ In Croatia the court submits the file to the relevant notary as soon as they've received the death certificate, similar to Macedonia's case.

²⁰ Mobile monitors – EULEX Kosovo “Women And Inheritance Rights to Real Estate in Kosovo”, first trimester of 2016, page 5.

²¹ Network of Europe Notaries, October 24, Maribor, Slovenia. https://www.enr-rne-online.eu/fileadmin/user_upload/SL_workshop-Full_Report_including_evaluation_summary_.pdf

What is the order of heirs?

About the order of heirs, in Slovenia and Croatia, like in Kosovo, the spouse and the children come first. Unlike Slovenia and Kosovo who regulate the division of inheritance as equal between heirs (spouse and children), in Croatia the spouse gains depending on the mutual marital obligations predetermined when they were married.

How can one inherit?

In all three cases the inheritance is made possible according to the law with regular legal procedures after the proposal of heirs and with a will.

Is renouncing inheritance allowed?

Renouncing inheritance is a disposition that is implemented in Croatia and Slovenia as well.

Shyhrete Berisha's case

Even though the focus of this publication was reviewing getting the inheritance through out-contentious cases, Shyhrete Berisha's case must be mentioned as a potential case for setting judiciary precedence in the Republic of Kosovo.

Shyhrete Berisha is a citizen of Kosovo from Suhareka where she lived until 1999 when during the war, her family was massacred on March 26 by Serbian army forces.

Shyhrete Berisha has accused her brother-in-law (the brother of her deceased husband) Xhelal Berisha, that he's taken the rights that belong to her from the Constitution and the Law on Inheritance. Also reported in Kallxo.com.

Her brother-in-law has claimed that he's the inheritor of the house where Mrs. Berisha had lived with her spouse and children, since the house hadn't been previously divided between heirs of the father of Mrs. Berisha's husband.

Her lawyer has requested that she's given her ownership right based on her contribution given during the time she lived in that house until 1999 with her husband and children.²²

After Shyhrete Berisha refused the offer from her brother-in-law to buy her an apartment, there was another offer for lifetime usage of the property. The lawyer of Mrs. Berisha has refused on her behalf.

²² Article published in Kallxo.com "Shyhrete Berisha asks for her house based on contribution", June 18, 2016 <http://kallxo.com/shyhrete-berisha-kerkon-shtepine-edhe-ne-baze-te-kontributit/>

The lawyer of the defendant has said that based on the law she doesn't have a right to this property, and that the property belongs only to her children (which were killed during the war). "The right of the daughter-in-law to inherit the property of the father-in-law is not foreseen by law. Only her children can have this right," said the lawyer of Xhelal Berisha.²³

But the Law on Inheritance and the Law on Family do give Mrs. Berisha the right to inherit property from her husband and her children.

In an official communication with lawyer Naim Qelaj, BIRN has taken his opinion as the biggest challenge that the case of Shyhrete Berisha in the judiciary process has seen.

"The biggest problem in this case is the law, the unequal treatment of woman and man. It has to do with the right to represent in Article 13 [Law on Inheritance of Kosovo]. When the child of the deceased dies, it says that it's only inherited by the successors, so it excludes the wife," said lawyer Qelaj for BIRN.

But the Kosovo Constitution guarantees gender equality and human rights in general. For this lawyer Qelaj has expressed willingness to take the case to the Constitutional Court if he has to. "If I have to, I will go to the Constitutional Court and I believe that they will give a right stance on this issue."

A decision hasn't been taken for the case yet, but media and civil society see it as precedence in the Kosovar justice system when it comes to the rights of women to inherit property in marriage.

With the decision of this case in favour of Mrs. Berisha, the possibilities for interpreting ambiguity of heirs, even in lack of marriage or similar things, would cease.

Similar to this case, was the case of Shukrie Berisha, who in 2005, sued her brother-in-law after he had transferred the entire property inherited by his father to his name. He had overlooked Shukrie Berisha, who had lived for 30 years in the aforementioned house with her husband who had died before the division of property among heirs could have been done. She claimed that she had the right to inherit part of the house.²⁴

It took 11 years for the verdict to have a final clear-cut form, she gained 1/10 of her yard and 1/6 of the house where she had contributed for 30 years, during which time she lived in it with her husband.

Do individuals living in non-marital relations inherit?

Law for Inheritance in Kosovo foresees the inheritance of spouses without marital relations in two cases.

²³ Article published in Kallxo.com "Xhelal Berisha with a new offer for Shyhrete Berisha", December 9, 2014 <http://kallxo.com/xhelal-berisha-me-oferte-te-re-per-shyhrete-berisha/>

²⁴ Programme "Delayed Justice" broadcast on "Justice in Kosovo", June 6, 2016 <https://www.youtube.com/watch?v=5sEf-5B0-N8>

In Article 28.1 in point A it is said:

“Man and woman that live together in a non-marital union can inherit from each other as spouses, if:

The non-marital union until the moment of death of the deceased has lasted for at least 10 years, or if from this relationship children were born – at least five years”

So according to the Law on Inheritance in Kosovo in cases of cohabitation for 10 years, or if they have children up to five years, the spouses gain rights to inherit.

Nonetheless in Article 28.2, the necessity of inheritance of the person in non-marital cohabitation is contested:

“People who have cohabitated are not considered as necessary heirs”.

Conclusions

Women in Kosovo possess only 16% of property estates as a result of non-implementation of the law in the maximum of its possibilities. This means that renouncing the right to inherit plays an important role in worsening the situation when it comes to the division in percentages of women and men owners of estate in Kosovo.

There are overlaps of competences and legal uncertainties in functioning of courts and notary system in Kosovo as a result of non-harmonization of laws in power that regulate the issues of property inheritances for heirs. These problems in legislation are real obstacles to solving the cases of inheritance in Kosovo.

There are a lack of electronic databases that would speed up procedures of inheritance and would minimize the possibility of fake declarations or frauds of different natures.

The possibility of agreement between parties and the possibility to renounce the right of inheritance has resulted mainly with women renouncing their right to inherit for various reasons that are related to the patriarchal mentality of Kosovar society.

The Kosovar discourse is heavily influenced with patriarchal concepts when it comes to inheriting property. Women consider the share that they have as a share that they have to “get” from the male inheritors and this causes impossibilities for a normal functioning of laws, since they are instead replaced with traditions.

Recommendations

On the legal framework:

- *To complete harmonizing the laws and to pass the competences of developing the out-contentious procedures related to inheritance to the notaries.*
- *Courts should only initiate procedures at the notaries according to the territory of the property that will be inherited or similar, with the purpose of eliminating all possibilities of manipulation from real estate agencies.*
- *To functionalize an electronic database for data in which case the death certificate and the appointment of heirs in the beginning of the process of dividing inheritance would not be dependent on declarations (that could potentially be fake) of the procedures' initiators, but they should be automatic and with the possibility of changing them during the process or at the end of it, based on need.*
- *To create a direct and controlled access of judges and notaries in the database of the civil state register.*
- *To follow the practice of some regional and EU countries according to inheritance from spouses. Their part of the inheritance shouldn't be equal to other heirs, but they should have an addition of the share that they get when you calculate their contribution to creating the wealth, including housewife/husband as contributor.*
- *To amend article 13 of the Law on Inheritance in Kosovo, in which on the case of the death of the heir children before the deceased, the inheritance is inherited by the heir's children (grandchildren). In this article the spouse should be added.*
- *To investigate with a priority the cases of fraud and falsifying during the division of inheritance.*
- *The Kosovo Judiciary Council should issue a stance on solving marital and inheritance contests, especially in cases of domestic violence, and make them part of the priority cases in the country's courts.*

On the emancipation of the society:

The process of amending laws of notaries, inheritance and the one for out-contentious procedure should be comprehensive and should be accompanied with an awareness raising campaign.

- *To incite social debate from civil society and units of Human Rights in municipalities to inform citizens, concretely women for their right to inherit – the debate must be local, not internationally led.*
- *The Ministry of Education should include in primary and high school education curricula extra information on women's rights to inherit and to actively fight the patriarchal discourse in cases of primary textbooks or university ones, where the inheritance is seen based on traditional laws or similar to that.*
- *To incite people with public influence to start a coordinated campaign to discuss these issues in media so that a bigger awareness is raised related to this issue.*
- *To create positive examples of women with public influence who talk publicly about exercising their right to inheritance.*
- *The word inheritance (trashegim) should not be mixed up with heritage (trashegimi) in Albanian. The word heritage is used to describe a cultural thing or quality as society values. The word inheritance marks a property or object inherited by the heir. Related to this, the name of the Law for Inheritance should be amended.*

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Interviewees:

Abdullah Aliu - University of Prishtina professor on Inheritance Rights

Adem Berisha – Defendant in an inheritance case

Adile Shaqiri – Ministry of Labour and Social Welfare

Albana Kelmendi – Lawyer

Alije Ashiku – Defendant in an inheritance case

Almedin Ejupi – Expert of inheritance issues according to Islamic Law

Antigona Uka - Official of Supreme Court in Prishtina

Arbena Shehu - Head of Chamber of Notaries in Kosovo

Asdren Hoxha – Lawyer

Avdyl Hoxha – Community Elder

Behije Zajmi – Official of Civil State in Gjakova Municipality

Besa Veseli – Official for gender equality in Mitrovica Municipality

Drita Milaku – Municipal Assembly member in Prizren Municipality

Drita Rexha – Judge in Prishtina Basic Court

Durim Osmani – Lawyer

Elbasan Dervishaj – Leader of Department for Free Professions, Ministry of Justice

Enver Peci – Former head of Kosovo Judiciary Council

Fatmir Halimi – Notary

Faton Bajrami - Judge

Feraseta Alija Pejqinoviç - Notary

Hajrie Aliu – Damaged party

Hamdi Podovorica – Professor of Inheritance Rights in Judiciary Faculty – University of Prishtina

Ilaz Berisha – Defendant on inheritance case

Isa Mehaj - Citizen

Isa Salihu – Lawyer

Isak Ademi - Notary

Jakup Haxhiu – Chief of Staff in Vitia Municipality

Kelmend Rexhepi – Financial Official in Klllokot municipality

Kushtrim Kaloshi - Executive Director of ATRC

Lirije Kajtazi – Member of Kosovo Assembly

Luljeta Demolli – Executive Director of Kosovar Centre for Gender Studies

Majlinda Ortogllava –Municipal Assembly member in Vushtrri

Melihate Osmani – Director of NGO “Legjenda” in Vitia

Mevlide Shabani – Judge in Gjilan Basic Court

Miradie Gashi Sheremeti – Director of NGO “Venera”

Mirlinda Tishuku-Sadiku – Municipal Assembly member in Vitia

N.N. – Victim who left home

Naim Qelaj – Lawyer

Nita Lusha – SOS village Prishtinë

Prenk Pepaj – Lawyer

Qëndresa Hajdare – “Gruaja Hyjnore” Gjilan

Rabishe Mazreku – Damaged party

Ramë Dreshaj – Lawyer

Safet Voca – Lawyer in Mitrovica

Sanije Jahiri – Director of NGO “Fortesa” in Kamenica

Sanja Sovrlic – Journalist of Radio ‘Mir’

Sefadin Blakaj – Professor of the Obligations rights in University of Prishtina and notary

Selvije Fetahu – Defendant in inheritance case

Shaban Zeqirja – Judge

Shaqir Vula – Notary

Shefki Syla - Lawyer

Shkodran Ramadani – Sociologist

Shpresa Veliqi – Municipal Assembly member in Skenderaj

Shukrije Berisha – Plaintiff

Teki Bokshi – Lawyer from Gjakova

Teuta Zhinipotoku – Lawyer

Valbona Doli-Rizvanolli – Director of NGO “Active women in Gjakova”

Valdete Fetahu – Defendant on inheritance case

Veton Rrecaj – Lawyer

Violeta Berisha – Official in the Department for Integration in Ministry of Internal Affairs

Vjollca Kadolli – Municipal Assembly member in Vitia

Xhemil Elshani – Judge

Xhevrije Peci – Counsellor for disabled people in Prishtina

Zenel Hasanaj – Legal official in Office for Free Judiciary Help

Zenel Leku – Judge in Prishtina Basic Court

Ziza Mehaj – Complaining citizen

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KOSOVO WOMEN'S RIGHT TO INHERIT PROPERTY

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