

Research Article

RENUNCIATION OF INHERITANCE BY KOSOVAR WOMEN: DESIRE OR INJUSTICE? A CASE LAW PERSPECTIVE

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ABSTRACT

Background: *The right to inherit is one of the rights guaranteed by the Constitution and legal provisions. Every citizen is entitled to this privilege without exception. Even though this right is protected by the Constitution, barely 23% of women in Kosovo are officially registered as heirs. When women exercise their right to refuse inheritance, they mostly give up that privilege in favour of male heirs. Unquestionably, customary law impacts this choice.*

Influenced by religious and customary rights that stipulate that men are entitled to inherit, women prefer to give up their claim to inherit, which accounts for the low percentage of female heirs. Despite the fact that the right of inheritance is regulated by law under the principle of equality, the real situation shows something else.

This article will analyse inheritance law and the influence of customary law, which has led many women to forfeit their rights. This issue discriminates against Kosovar women, denying them their rightful inheritance. These analyses will determine whether customary law or other factors have impacted Kosovar women's unequal inheritance rights compared to men. Ultimately, it raises the question: are these women victims of injustice, or have they freely decided to give up their inheritance?

Methods: *In this paper, several methods were employed to reach a conclusion, including analytical, comparative, historical and normative approaches. The analytical method was used to examine the phenomenon of women renouncing their inheritance rights and the judicial decisions where women have given up their right of inheritance. The normative method examined the legal provisions that directly regulated the right to renounce the inheritance. The historical method played a crucial role in illustrating the evolution of inheritance rights and its influence on women's contemporary perspectives. Finally, the comparative method facilitated a comparison of the legal regulation of inheritance rights in Kosovo with those in other countries in the region.*

Results and Conclusions: *In legal terms, the right of inheritance treats all heirs equally, regardless of gender, but in practice, a very low percentage of women inherit, mostly giving this right to male heirs. Many factors have influenced this result, such as the influence of customary law and religious law, but also the low number of employed women. After analysing this matter, it was seen that the main solution is to raise awareness among women that all heirs are equal, regardless of gender, ensuring the law is applied fairly to all heirs. To address the reduction of women renouncing their inheritance, several legal changes are recommended. One such change is requiring the declaration of renunciation of inheritance to be made before a notary and registered in court to determine legal deadlines. Additionally, the reasons for renouncing inheritance should be explicitly stated within the set timeframe.*

A more radical measure that would ensure that women do not renounce their rightful inheritance according to the law, and in this way, they would be free from the influences of society, is to change the law by removing the right to renounce the inheritance. Thus, all legal heirs would be forced to accept the inheritance due to them by law.

1 INTRODUCTION

Inheritance law is one of the positive rights of the Republic of Kosovo that enables the transfer of property from the deceased to their heirs. Due to its importance in daily life and to avoid the situation of property being left without an owner, it has become possible to pass the property from the deceased person to the heirs, either by will or law.¹ Regardless of how the property is transferred, it is crucial that, based on legislation in force, the heirs are equal in terms of their rights.

However, in Kosovo, the results of inheritance do not show equal figures in terms of gender. It has been estimated that until now, only about 23% of women have registered or accepted their legally entitled inheritance,² while the majority of declared heirs are men. This gender disparity arises precisely because women have been called to inherit but have declared that they are renouncing this right. Since we do not have official data on the exact number of women who have given up on inheritance or their reasons for doing so, secondary data and interviews with some women have been conducted to analyse the causes and consequences of giving up inheritance.

The Constitution of the Republic of Kosovo states that the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, property rights, environmental protection, social justice, pluralism,

1 Law no 2004/26 of 28 July 2004 'Law on Inheritance in Kosovo' [2006] Official Gazette of the Provisional Institutions of Self-Government in Kosovo 3, art 8.

2 KWN, 'According to the NGO "Norma," in Kosovo, Only 23 Percent of Women and Girls Inherit Property' (KWN Kosovo Women's Network, 29 September 2023) <<https://womensnetwork.org/according-to-the-ngo-norma-in-kosovo-only-23-percent-of-women-and-girls-inherit-property/>> accessed 25 April 2024.

separation of powers and the market economy form the foundation of the constitutional order. Article 24 of the same constitution, however, declares that no one may be subjected to discrimination on the grounds of race, colour, gender, language, religion, political opinion, or any other basis and that everyone is equal before the law.³ International agreements that the Republic of Kosovo has ratified, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol, the Universal Declaration of Human Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women, guarantee equality.⁴ Equal rights between heirs are also provided by the current inheritance law. The inheritance order is regulated by this law, but it never discriminates between the heirs. All natural persons under the same conditions inherit equally, according to Article 3 of this law.⁵

Based on several reports and studies in Kosovo, it has been observed that men have benefited more from inheritance than women, even in the face of gender equality and legal restriction. Many reasons contribute to the low proportion of female heirs, including the influence of customary law, religious law, women's unemployment and economic dependence, and the legal possibility of renouncing the right of inheritance.⁶

When family relations were regulated through customary and religious law, the man was the person who was obliged to provide income for the family. In contrast, the wife was obliged to care for the children and housework. Consequently, it was considered that the woman did not generate income or contribute to the creation of wealth, so she did not receive the inheritance. If we go back to the historical development of law, the regulation of inheritance law has long been done by customary and religious rights. This long application of these rights is ingrained in the minds of the people and is difficult to change.

This mentality has begun to change among women living in urban areas, but the situation remains different in rural areas. The inheritance process now frequently relates to both religious and customary law, leading to women being frequently excluded from

3 Constitution of the Republic of Kosovo K-09042008 of 9 April 2008 (amended 30 September 2020) <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 25 April 2024.

4 Council of Europe, *European Convention on Human Rights* (Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols) (ECHR 2013) <https://www.echr.coe.int/documents/d/echr/convention_eng> accessed 25 April 2024; Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 25 April 2024; Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>> accessed 25 April 2024.

5 Dita Dobranja, Rozafa Jahaj and Jeta Loshaj, *Gender Analysis: A Multifaceted Overview of Gender Justice in Kosovo* (Friedrich-Ebert-Stiftung 2024) 22.

6 Simeana Beshi, 'Property Inheritance by Women in Kosovo' in Kıymet Tunca Çalıyurt (ed), *New Approaches to CSR, Sustainability and Accountability*, vol 1 (Accounting, Finance, Sustainability, Governance & Fraud: Theory and Application, Springer 2020) 159, doi:10.1007/978-981-32-9588-9_9.

inheritances. To avoid conflict with customary law, women legally renounce their inheritance rights, effectively passing these rights to male heirs.

Despite an increase in employment among women, with an unemployment rate of somewhere around 25% compared to 19% for men in Kosovo, many women continue to act as if high unemployment for women is still prevalent.⁷ Consequently, they continue to renounce their inheritance, adhering to what the customary law dictates.

However, this does not mean that women have not sometimes accepted their right to inherit. These are sadly rare situations, mostly related to procedural or legal inadequacies that have resulted in the acceptance of inherited rights. Bearing in mind that women in Kosovo leave fewer wills than men below, a more complete analysis will be made of the factors that prevent women from inheriting.

2 INHERITANCE ACCORDING TO POSITIVE LAW IN KOSOVO

Kosovo's Law on Inheritance governs inheritance rights, among people's fundamental rights. This legislation states that the testator's property is passed to the heirs in accordance with the will or the law.⁸ The same law states, in Article 3, that all heirs will be treated equally and without prejudice based on their gender. Only two types of inheritance are recognised by our legal system: by will or by statute.⁹ However, any arrangement for an inheritance that has not yet been opened between the prospective heirs or with outside parties is deemed void.¹⁰ This indicates that inheritance contracts and other agreements are not allowed in the legislation of Kosovo.

It should be mentioned that in this instance, the order of inheritance has been established, which is one method of determining inheritance. The legislation specifies the sequence in which inheritance is divided and who inherits first. Generally speaking, the following individuals are regarded as the decedent's heirs at law: the decedent's children and their descendants, their adoptees and their descendants, their spouse, parents, siblings, grandparents and their descendants.¹¹

When someone who possessed property passes away, the process of identifying heirs is triggered. After learning that someone has passed away, the interested parties, the court, or the notary public may start this process.¹² Initially, their children and spouse have the

7 *ibid.*

8 Law no 2004/26 (n 1) art 3.

9 *ibid.*, art 8.

10 *ibid.*

11 *ibid.*, art 11.

12 Law no 03/L-007 of 20 November 2008 'On Out Contentious Procedure' [2009] Official Gazette of the Republic of Kosovo 45, art 127.

right to inherit according to the law. The division of property between these persons must be done equally.¹³ In cases when these heirs are missing; it is passed to the second row where the spouse and the parents of the testator inherit.¹⁴ Whereas if even the persons designated in the second row are absent, the inherited property passes to the grandparents who belong to the third row.

The procedure for reviewing the inherited property is done by the courts or by notaries who ascertain who the heirs are and identify the inherited property of the deceased. This procedure is initiated by the court or notaries as soon as they are informed that a person has died or has been declared dead.¹⁵ The municipal body that maintains the death registers provides the court or notary with information about a deceased person's passing and the need to start the process of inspecting inherited property.

Therefore, in accordance with the law, the municipal body responsible for maintaining the death register must send the death certificate to the hereditary court or notary within 15 days of the death being registered.¹⁶ Since the death certificate is a document submitted to the court or notary to examine the inherited property and to determine the heirs, it is important to understand who compiles it.

The death certificate is created using information from the deceased's relatives, cohabitators, and other potential sources of information that may be included in the certificate in accordance with the law on non-contentious procedures. This law serves as the foundation for evaluating inherited property. The document, essential for identifying heirs, is prepared using information from the testator's relatives and submitted to the notary public or court.¹⁷ Since the testator's heirs are included in this document, it has frequently happened that the women were not listed, which prevented the court or the notary from calling them to participate in the inheritance process.

In a research conducted in the framework of the project "Women Agents for Property Rights," approximately 300 women from various municipalities were asked about their property rights. Their responses were shocking. When asked if they had gone through the inheritance process in their maternity families, about 31% of women stated that they had. Among these women, 88% reported not receiving anything from this inheritance process.

13 Law no 2004/26 (n 1) art 12.

14 *ibid*, art 14.

15 Law no 06/L-010 of 23 November 2018 'On Notary' [2018] Official Gazette of the Republic of Kosovo 23, art 4.

16 Law no 03/L-007 (n 12), art 133.

17 EULEX Kosovo, *Women and Inheritance Rights to Real Estate in Kosovo* (Advisory Unit on Justice 2016) 5 <https://www.eulex-kosovo.eu/eul/repository/docs/Inheritance_2N.pdf> accessed 25 April 2024.

Additionally, 12% declared that they had been excluded through a will, while 5% stated that they were not listed as heirs in the death certificate of the deceased.¹⁸

These findings reflect a deeply ingrained mentality in Kosovar society. This is because, according to customary law, daughters did not have the right to inherit either in their parents' or husbands' house. Also, religious law greatly influences this mentality. Under religious law, it is believed that a girl, at the moment of marriage, will be financially supported by her husband and thus does not need to inherit from her parents. The husband has a duty to ensure that his wife has all she needs for a happy existence and to cover any costs associated with meeting the family's demands. Even though a woman may own property, she is not required to use it to support the family. To cover the family's costs, the husband inherits twice as much as the wife.¹⁹

According to Islamic law, more specifically Sharia law, even though the husband holds some power in the family, in terms of property rights, women still have the right to keep their marriage gift as their property.²⁰ This conclusion aligns with research conducted by Eulex, which found that the lack of a reliable central registry of civil status in Kosovo means municipal offices do not have accurate information on how many members a family has.²¹ Without a system to verify the data declared in death certificates, the possibility of some heirs not being listed remains significant. This way of declaring the heirs in the act of death increases the risk that women's rights will be violated as it is known that, as a people, we still have evidence of the impact of customary law that women do not have the right to inherit in the maternity family.

Although the non-declaration of all family members in the death certificate is one reason women lose their right to inheritance, it should be known that this issue stems from the entrenched influence of customary law on the mentality of Kosovo citizens. Even in cases when women are not included in the death certificate, they often do not claim their share of the inheritance, considering it normal not to have this right or choose to remain silent, believing that the inheritance belongs only to male heirs.

For this reason, it is crucial to examine customary law in Kosovo in more detail. It has historically governed the division of inherited property and continues to impact current practices.

In Kosovo, customary law has long been applied to regulate civil relations and, more specifically, inheritance relations. According to author Statovci, Albanian customary law

18 "The project "Women Agents for Property Rights"" (*Kosova - Women for Women (K-W4W)*, 2018) <<https://www.k-w4w.org/en/>> accessed 25 April 2024.

19 Shefik Kurdiq, *Marriage and intimacy in Islam* (Shb Sira 2003) 42.

20 Majid Khadduri, 'Marriage in Islamic Law: The Modernist Viewpoints' (1978) 26(2) *The American Journal of Comparative Law* 213, doi:10.2307/839669.

21 EULEX Kosovo (n 17).

represents a *Corpus Iuris*, which was born at the time of the disintegration of the tribal system and great social controversy.²² Specifically, in Kosovo, the Kanun of Leke Dukagjini has been used to govern inheritance relations. Due to its long-standing application and the sense of obligation it created, this canon retains an important place in the history of law in Kosovo and many Albanian territories.

The enduring importance of this canon has still left an indelible mark on Kosovo's mentality, alongside the impact of Sharia law based on religion. Even with the occupation of Kosovo by the Ottoman Empire, civil and inheritance relations were regulated in parallel by these two legal systems.

Although the number of employed women and those completing university education has increased in Kosovo, the number of women who inherit property remains low. Despite research and the inability to obtain accurate statistics, it is estimated that only about 23% of women in Kosovo have inherited property, compared to 77% of men.²³ This disparity is largely attributed to the legal right to renounce inheritance, which many women exercise.

To improve this situation, it is important to understand why women continue renouncing their inheritance. Once these reasons are known, the state must either make legal changes or organise more robust awareness campaigns to address and reduce the pronounced inequality in inheritance.

3 THE IMPACT OF CANON OF LEKE DUKAGJINI

The Canon of Leku Dukagjini is one of the canons which, for years, has regulated social relations. Leke Dukagjini is a historical figure who lived between 1410-1481, who, in addition to his deeds for the protection of Albanian lands after his death, left behind this canon legacy which regulates a wide range of relationships ranging from the Church or religious relationships, family, and marriage matters.²⁴

According to this canon, women were placed in an unfavourable position, always under the authority of their fathers or husbands. Due to this position, the woman did not recognise the right to inheritance at all. More specifically, the canon stated that a wife had no right to inherit from her parents or her husband's estate.²⁵ Additionally, parents had no obligation to provide a dowry or anything else for their daughter; this responsibility fell to the family of the man she married.²⁶

22 Abdulla Aliu, *E Drejta Civile: Pjesa e Përgjithshme* (Universiteti i Prishtinës 2013).

23 KWN (n 2)

24 Shtjefan Gjecovi, *Kanuni i Lekë Dukagjinit* (Shkodër 1933).

25 *ibid*, art 20.

26 *ibid*.

Furthermore, a woman who remarried for the second time did not have the right of inheritance either. According to the canon, the widow would live on the income of her second husband and could not take any wealth from her first deceased husband. In every situation, women were denied the right to inherit, whether unmarried, married or remarried.

Unfortunately, this mentality has persisted in society today, where it is still commonly believed that women should not inherit. Although there has been progress due to the emancipation of women, the influence of this outdated belief remains evident. This is best shown in the figures, which show that a very small number of women seek their right to inheritance.

The perception of the canon stems from the view that marriage adds another person to the house, primarily for domestic chores and childbearing.²⁷ Under this view, since women are considered slaves in terms of labour and the birth of children, they are not expected to have more rights, especially in inheritance law. Despite the canon stipulating that husbands are responsible for their wives' needs and wives are under no obligation to support the family financially, women who contribute to household chores still lack inheritance rights within their husbands' families.

A 2011 survey conducted by a gender studies organisation found that 46.25% of women attribute their reluctance to claim inheritance rights to customary law.²⁸ This suggests that although inheritance law in Kosovo is now regulated by law and gender equality is ensured, women's awareness of participation in inheritance is still influenced by customary law, particularly those reflected in the Canon of Leke Dukagjinti. These customs dictate that women should not inherit property from either their parents or husbands. Additionally, Islamic law, followed by the majority of the population in Kosovo, stipulates that the wife inherits less than the husband due to the husband's responsibility for all family expenses. For this reason, according to Islamic law, a woman inherits less than a man. The marital gift that the wife receives from the husband on the occasion of the marriage is intended to empower the woman financially, especially in case of divorce.²⁹

Although Islamic law allows women to inherit from their parents, albeit less than men, societal norms still hinder women from fully exercising their right to inherit. Consequently, many women voluntarily renounce their inheritance rights, despite constitutional and legal guarantees, due to these deeply ingrained influences.

27 *ibid*, art 11.

28 Luljeta Vuniqi and Sibel Halimi, *Women's Property Inheritance Rights in Kosovo* (Kosovar for Gender Studies Center 2011) 32.

29 Hammude Abdulati, *Struktura Familjare në Islam* (Logos-A 1995).

4 RENUNCIATION OF INHERITANCE AND ANALYSIS OF COURT CASES

The Law on Inheritance in Kosovo governs the division and transfer of inherited property from the deceased to their heirs. One fundamental principle of this law is equality among heirs, which includes the option for heirs to renounce their inheritance. Renunciation of inheritance grants the right to formally decline their inheritance through a statement in court or before a notary.³⁰ This right can be exercised by the heir until the conclusion of the inheritance review hearing.

But what are the consequences of renouncing inheritance? If an heir renounces their inheritance without excluding their descendants, this declaration of renunciation applies to their descendants.³¹ As per Article 130 of the Law on Inheritance, relinquishing inheritance makes it impossible for the heir's descendants to inherit. Alternatively, if the heir renounces inheritance solely in their own name, it is as if they were never an heir under the law.³² In such cases, the part of the inheritance that would belong to them passes to their descendants through the right of representation, governed by Articles 137 and 13. Article 137 specifies that the renounced inheritance is treated as if the heir had died before the testator, thereby activating the right of representation.³³ Based on Article 13, the right of representation means:

*“If one of the children died before the decedent, his place is taken by the decedent’s grandchildren from the deceased child, but if specific circumstances foreseen by this law do not provide for these grandchildren, then the great-grandchildren will inherit without any limits”.*³⁴

Delving deeper into Article 13, it is evident that the spouse of a deceased heir is excluded from inheritance. When the right of representation is applied, it means that only the children of the deceased heir, not their spouses, inherit. Consequently, if legal heirs exercise their right to renounce inheritance solely in their own name, the right of representation ensures that only the heirs of the renouncing heir inherit, excluding spouses.³⁵

Two notable cases in Kosovo illustrate this situation. The most serious case involves Sh.B, a woman who lost her husband and children during the war in Kosovo. The house where she lived with her family was owned by her father-in-law. Due to the application of the right to representation, the court ruled that only the descendants of her deceased child could inherit the property where she had lived with her family, effectively denying Sh.B her inheritance

30 Law no 2004/26 (n 1) art 130.

31 *ibid*, art 130.2.

32 *ibid*, art 130.4.

33 *ibid*, art 137.

34 *ibid*, art 13.

35 Guranda Misabishvili, 'Legal Features of Renunciation of Inheritance' (2023) 9(25) *Law and World* 131, doi:10.36475/9.1.13.

rights.³⁶ For 13 years, she pursued legal avenues to inherit the property where she had lived together with her husband and children. However, as a consequence of the right of representation, she was unable to inherit the part of the property that would have belonged to her husband if he were alive. Eventually, after a marathon of trials, she succeeded in inheriting a portion of the property under family law, which acknowledged her husband's contribution to its acquisition.

Similarly, another case in S.B. involved a woman whose husband died. She managed to secure her inheritance only after the court verified that her husband contributed 30% towards the construction of the house through a loan and his salary at the time. In this case, she inherited her husband's property based on his financial contribution.³⁷

For these reasons, the right of representation is considered one of the shortcomings of the Law on Inheritance. These cases underscore how the law excludes spouses from inheritance when heirs renounce their inheritance rights solely in their own name. Many women who have lost husbands have been unable to inherit from their husband's families because the property, which would rightfully belong to their husbands if they were alive, passes only to their children.

For this reason, it is recommended that, based on the right of representation, not only the children but also their spouses should be recognised as heirs. This adjustment could be justified by including children and their spouses within the first circle of heirs, ensuring that both parties are considered for inheritance.

Waiver of inheritance is an institute foreseen in the legislation of many European countries, but in Kosovo, it is used mainly by women.³⁸ Research conducted in Kosovo indicates that women often relinquish their inheritance, transferring their share to male heirs. The other situation is when the wife is not foreseen as an heir in case the heir dies before the testator. According to a survey conducted on women's rights in inheritance, 46.25% of women from 1050 surveyed believe that according to custom, women should not inherit.³⁹ In fact, this continues to be the main reason why women in Kosovo continue to give up inheritance.

Recent studies, such as one published in 2023, reveal that only 23% of women in Kosovo have inherited property or have successfully claimed their inheritance rights.⁴⁰ This low figure of women who inherit reflects broader societal challenges, including the non-

36 Dorentina Thaqi, 'Shyhrete Berisha's Two-Decade Long Battle for Inheritance Remains Without an Epilogue' (*KOHA*, 22 August 2022) <<https://www.koha.net/en/arberi/341081/beteja-dydekadeshe-e-shyhrete-berishes-per-trashegimine-mbetet-pa-epilog>> accessed 25 April 2024.

37 *Case C nr 362/11* (Basic court of Prishtina, 26 April 2016) <<https://kallxo.com/wp-content/uploads/2016/05/Aktgjykimi-Shukrije-Berisha-.png>> accessed 25 April 2024.

38 Sandra F Joireman, 'Securing Property, Rights for Women (and Men) in Kosovo' (2013 World Bank Conference on Land and Poverty, 8-11 April 2013, Washington DC) doi:10.2139/ssrn.2279955.

39 Vuniqi and Halimi (n 28) 8, 32.

40 KWN (n 2); 'The project "Organizational support"' (*Shoqata e Juristeve Norma*, 7 April 2022) 2023 <<https://www.norma-ks.org/projekte/projekti-1/>> accessed 25 April 2024.

registration of marital property in the name of women. Currently, only 19.87 % of properties in Kosovo are registered under women's names, with the majority registered under men's names.⁴¹ In response, since 2016, the Government of the Republic of Kosovo, with the aim of strengthening the position of women in society, has undertaken awareness campaigns for the registration of joint property of spouses in the name of both spouses. Thus, people who register property in the name of both spouses are exempted from paying property tax, and this has made the number of properties registered in 2016 in the name of women increase to 122,350 in 2024.⁴² This number includes properties registered in the name of both spouses, properties registered only in the name of women, and properties registered in the name of women who have acquired them through inheritance.

Aware of the low number of women who have acquired property through the inheritance process in Kosovo – where approximately only 23% of women have realised their right to inheritance – the authors have examined court judgments to gain insight into this issue. In several cases reviewed by the Basic Court in Pristina, women frequently renounced their inheritance rights through statements made in court. One notable case involved declaring a daughter as the heir, a rare instance among the judgments examined.⁴³

In another case, renunciation of inheritance was found through a formal declaration before the court. However, it is notable that heirs are not legally obliged to provide reasons for renouncing their inheritance,⁴⁴ but only that they transfer the inheritance to the designated heir.⁴⁵

Across various cases in the Basic Court of Ferizaj during the same year, numerous instances were identified where women renounced their inheritance. For example, in case CT 2023:046090, a deceased heir left behind a wife, three sons, and a daughter. In this case, only the sons were declared legal heirs, as the wife and daughter renounced their inheritance⁴⁶. Similarly, in case CT 2021:208069, the court declared only three sons as heirs, while five daughters were excluded because they renounced their inheritance during the judicial procedure.⁴⁷ This pattern was repeated in the case CT 2021:194720, where only the son was declared the legal heir while three daughters gave up their inheritance in favour of their

41 Vuniqi and Halimi (n 28) 9, 28.

42 *Kosovo Cadastral Agency* <<https://akk-statistics.rks-gov.net>> accessed 25 April 2024.

43 *Case 2023:064671 CT nr 1/2023* (Basic court of Prishtina) <https://prishtine.jjyqesori-rks.org/wp-content/uploads/verdicts/PR_LI_CT_2023-064671_SQ.pdf> accessed 25 April 2024.

44 *Case 2020-133557 CT nr 4/2020* (Basic court of Prishtina) <https://prishtine.jjyqesori-rks.org/wp-content/uploads/verdicts/PR_DR_CT_2020-133557_SQ.pdf> accessed 25 April 2024.

45 Law no 2004/26 (n 1) art 133.

46 *Case CT 2023:046090* (Basic court of Ferizaj, 15 January 2024) <https://ferizaj.gjyqesori-rks.org/wp-content/uploads/verdicts/FE_KA_CT_2023-046091_SQ.pdf> accessed 25 April 2024.

47 *Case CT 2021:208069* (Basic court of Ferizaj, 25 October 2022) <https://ferizaj.gjyqesori-rks.org/wp-content/uploads/verdicts/FE_KA_CT_2021-208070_SQ.pdf> accessed 25 April 2024.

brother.⁴⁸ The same action was taken by five daughters in case CT 2022:139035, who renounced their inheritance in favour of their brother as the sole heir.⁴⁹ Likewise, in decision No. 30/11, female heirs waived their inheritance, ceding their right to the five brothers.⁵⁰

Similar situations have also been identified in the Basic Court of Gjilan, where women, through the declaration, renounce their inheritance. One notable case involved an heir leaving behind a son and a daughter, with only the son inheriting the entire property because the daughter, even though she asked for the division of the property, renounced the inheritance in favour of her brother.⁵¹

Upon analysing all the legal cases published by courts in Kosovo, it became evident that women are predominantly the ones who renounce their inheritance rights. In contrast, very few cases involved men renouncing their inheritance. These cases typically involve smaller assets, with brothers often renouncing their inheritance in favour of one other brother. Notably, no cases have been found where a man waives the right of inheritance in favour of his sister or another woman.

Through these judgments, it was consistently observed that the renouncing parties did not disclose the reasons for renouncing the inheritance. This lack of transparency is considered a legal flaw that warrants prompt attention. Introducing a legal requirement for heirs to provide reasons for renouncing inheritance could potentially reduce the incidence of renunciations, especially among women.

Recognising the high number of women in Kosovo who give up inheritance, the authors conducted direct interviews with 100 women aged 30-65 who have gone through inheritance procedures in order to identify women's attitudes regarding inheritance practices. It must be noted that the interviewed women had completed secondary education.

A notable finding was that 41% of women cited the customary right as their reason for renouncing their inheritance. According to these women, a woman who receives property from her biological family could strain relations with parents and siblings, as traditional norms dictate that women have no right to go to their family or siblings. Declining inheritance or taking inherited wealth from their family means good relations with parents and siblings.

Additionally, 19% of women interviewed renounced inheritance because they were married and financially stable in their married life and felt they did not need parental inheritance.

48 *Case CT 2021:194720* (Basic court of Ferizaj, 02 July 2023) <https://ferizaj.gjyqesori-rks.org/wp-content/uploads/verdicts/FE_KA_CT_2021-194721_SQ.pdf> accessed 25 April 2024.

49 *Case CT 2022:139035* (Basic court of Ferizaj, 14 October 2022) <https://ferizaj.gjyqesori-rks.org/wp-content/uploads/verdicts/FE_KA_CT_2022-139035_SQ.pdf> accessed 25 April 2024.

50 *Case CT nr 30/11* (Basic court of Ferizaj, 9 March 2018) <https://ferizaj.gjyqesori-rks.org/wp-content/uploads/verdicts/FE_CT_30_11_SQ.pdf> accessed 25 April 2024

51 *Case 2022:039607 CT nr 1/22* (Basic court of Gjilan, 08 February 2023) <https://gjilan.gjyqesori-rks.org/wp-content/uploads/verdicts/GJ_NO_CT_2022-039607_SQ.pdf> accessed 25 April 2024.

Another 13% of women declared that they gave up the inheritance because their parents' wealth was minimal, believing it would not be worth it to be divided among all the children, believing it more practical for their brother who lived with their parents to inherit. Moreover, 15% of women cited adherence to Islamic law as their reason. The remaining respondents chose not to disclose their reasons for giving up the inheritance.⁵²

Another important legal address is improving the right of representation, including allowing spouses of deceased heirs to be legal heirs.

Although the right to renounce inheritance is considered a fundamental human right, in Kosovo, it has taken a different direction due to its application influenced by mentality or customary law. Unlike many other countries where renunciation is less common, in Kosovo, it is frequently used by women to renounce the inheritance that belongs to them in favour of brothers or sons, making this issue problematic.⁵³ Despite awareness campaigns advocating for equal division of inherited property among heirs regardless of gender, it is believed that recommended legal changes are necessary to address the situation.

5 THE INSTITUTE OF RENUNCIATION OF INHERITANCE ACCORDING TO THE LEGISLATION OF THE COUNTRIES IN THE REGION

The low number of women inheriting property in Kosovo is estimated to be due to the influence of customary law. Legally, women are not discriminated against as the law does not exclude them from inheritance rights. However, it has also been established by the US Department of State in the Country Reports on Human Rights for 2023 that even though all heirs in Kosovo enjoy equal rights in the legal sense, men typically inherit property.⁵⁴

To better assess this situation, it is informative to see how other countries in the region have regulated the institution of renunciation of inheritance. For example, the waiver of inheritance is an institution that is also foreseen in the Civil Code of Albania. Based on Article 333 of this code, the declaration of renunciation of inheritance must be made in written form and registered with a notary.⁵⁵ Following registration, the notary issues a certificate for changing the order of inheritance. It should be noted that the declaration can only be declared within three months of the opening of the inheritance.⁵⁶ A notable feature

52 Source: author interviews (January 2024).

53 Joireman (n 38).

54 Bureau of Democracy, Human Rights and Labor, and Bureau of European and Eurasian Affairs, '2023 country Report on Human Rights Practices: Kosovo' (*US Department of state*, 22 April 2024) <<https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kosovo/>> accessed 25 April 2024.

55 Law no 7850 of 29 July 1994 'On the Civil Code of the Republic of Albania' (amended 3 November 2016) art 333 <<https://www.wipo.int/wipolex/en/legislation/details/20976>> accessed 25 April 2024.

56 *ibid*, art 335.

of this institute in Albania is that an heir designated as such cannot renounce inheritance after the process has begun.

According to Albanian legislation, notaries, as public officials, have competence in examining inherited property and keeping registers of persons who renounce inheritance. Kosovo lacks such a register, making it challenging to track how many individuals have given up their inheritance. Compounding this issue is the dual competence of both notaries and courts in reviewing inheritance, further complicating data management and record-keeping.

The Inheritance Law of the Republic of North Macedonia has regulated the institute for renunciation of inheritance in almost the same way as in the Republic of Kosovo, outlined in Articles 128-133. Despite this legal similarity, both countries face a challenge with low rates of property inheritance by women.⁵⁷ In North Macedonia, approximately 27% of properties are registered under women's names, with the majority owned by men.⁵⁸ These figures highlight that women in North Macedonia, like in Kosovo, experience disproportionately lower rates of inheriting property than men.

In the Republic of Croatia, the institution of renunciation of inheritance is also well-regulated under inheritance law. Heirs can renounce the inheritance through a publicly verified statement or recorded declaration.⁵⁹ If the inheritance has not yet been opened, renunciation can be done through a written contract with the ancestor, which is only valid if it is certified by the court or notarised⁶⁰

Croatia differs from Kosovo in its approach to the relinquishment of inheritance. It is done through a publicly verified statement, and a database is maintained for persons who have renounced their inheritance rights. Additionally, there is a provision for heirs to conclude a contract between heirs and ancestors for inheritance that has not yet been opened.

In contrast to the regulations in Kosovo, Bulgaria has specific procedures regarding the renunciation of inheritance under its inheritance law. In Bulgaria, an heir wishing to renounce their inheritance must execute a declaration before a notary public. This declaration must be registered in court, resulting in a dual registration process.⁶¹ This

57 Law of the Republic of North Macedonia 'Law on Inheritance' [1996] Official Gazette of the Republic of North Macedonia 47, art 128.

58 *KATACTAP: Agency for real estate in Republic of North Macedonia* <<https://www.katastar.gov.mk/en/?s=statistik&submit=Search>> accessed 25 April 2024.

59 Law of the Republic of Croatia of 15 February 2019 'Law on Inheritance' art 130 <https://www.zakon-hr.translate.google.com/translate?hl=hr&sl=hr&tl=en&x_tr_pto=wapp> accessed 25 April 2024.

60 *ibid*, art 134.

61 Law of the Republic of Bulgaria of 30 April 1949 'Inheritance Act' (amended 23 June 2009) art 52 <<https://www.bulgaria-inheritance-law.bg/law.html>> accessed 25 April 2024.

method of double registration of declarations for renunciation of inheritance⁶² makes storing data and declarations for disinheritance even more secure and reliable.

Considering that neighbouring countries in the region, such as Albania, Bulgaria and Croatia, have similar legal frameworks, it is recommended that Kosovo adopt a similar approach. This would involve requiring renunciations of inheritance to be done in writing, signed before a notary public, and entered in a special database.

6 CONCLUSIONS

The right to inherit is a right guaranteed by the Constitution and law. This right is considered a fundamental human right based on the principle of equality. In Kosovo, the Law on Inheritance governs inheritance rights and ensures the division of inherited property equally, irrespective of gender or other differences between heirs. Still, in practice, the result is different, with a large percentage of Kosovo women not inheriting property from either their biological family or their husband's family. This disparity has prompted many organisations and researchers to analyse the reasons why women in Kosovo do not inherit property.

The primary reason is adherence to customary law, which traditionally excludes women from inheriting property because they marry and live in their husband's homes. Under customary law, women do not have the right to inherit their parents' house as their husbands are the ones responsible for the family's well-being. Since men have an obligation to take care of the family, only they have the right to inherit to be able to take care of their families. Women are relieved of this obligation because they are only obliged to bear children and take care of the home. Consequently, women often renounce their inheritance rights to maintain good relations with their relatives, transferring their share to their brothers.

Despite the Inheritance Law not differentiating between the sexes and treating all heirs equally, many women voluntarily use the institution of renunciation of inheritance to give up their right to inherit in favour of their male heirs. This renunciation is deeply influenced by customary norms that instil the belief that women should not inherit. In cases where inheritance is divided between the heirs, women, in most cases, give up the inheritance in favour of their brothers, justifying it by the fact that the brothers live with their parents and have to take care of them.

62 Lucia Ruggeri, Ivana Kunda and Sandra Winkler (eds), *Family Property and Succession in EU Member States: National Reports on the Collected Data* (Faculty of Law of University of Rijeka 2019) 62.

Another factor contributing to women's renunciation of inheritance is their desire to maintain good relationships with their brothers and parents.⁶³

Additionally, the right to representation, as regulated by law, exacerbates the issue. Under this provision, the spouse is not foreseen as an heir in cases when the heir has died before the testator. As a result, the deceased heir before the testator is inherited only by his children and not by his spouse. This legal regulation has denied many women whose husbands predeceased their fathers. With the death of the father-in-law, the property that would have belonged to the husband is distributed only to their children and not to the wife. Despite the problems this regulation has caused in the judiciary in Kosovo, there have been no initiatives to address and correct this shortcoming.

After analysing the legal regulation of the Institute of Renunciation of Inheritance in Kosovo and comparing it with other regional countries, it is recommended that:

- Raise awareness: Conduct awareness campaigns to educate women that renunciation of inheritance should not be influenced by customary law. According to the law, each woman must receive an inheritance that belongs to her.
- Written declarations: Require that renunciation of inheritance be made in written form before a notary and registered in a database managed by basic courts.
- Legal deadlines: Implement deadlines for renunciation declarations, for example, within three months from the examination of the inheritance, as the civil code of Albania states.⁶⁴ The determination of this deadline means that if the waiver is not made within this deadline, women will no longer have the right to waive the inheritance and will become the owner of the shared property. If they really want their property to pass to others, they can do this through the gift contract. Therefore, this determination of the legal terms will not reduce the rights of the heirs.
- Mandatory reason disclosure: Make it mandatory to declare the reasons for renunciation. In this situation, the real reasons for relinquishing inheritance will be officially collected, and in this way, the state will have an easier time addressing this issue through legal changes, thereby promoting gender equality. The heirs will be respected for their free will to renounce the inheritance, but they must show the reason why they act in this way. Through this solution, cases can also be discovered when the heir has been forced to do such an action.
- Removal of renunciation temporarily: Consider temporarily removing the renunciation option from the law to ensure all heirs receive the wealth that belongs to them through the law. If the heir desires to pass the property acquired through

63 ATRC, 'What do we really know about property rights?: An analysis of the knowledge and attitudes of women and men in the Municipalities of Kaçanik/Kaçanik, Viti/Vitina and Shtërpçë/Štrpce about property and inheritance rights' (*Kosova - Women for Women (K-W4W)*, 2018) <<https://www.k-w4w.org/hulumtime-dhe-raportet/>> accessed 25 April 2024.

64 Law no 7850 (n 55) art 335.

inheritance to another heir, they can do so through gift contracts. The only goal is to increase the number of women who inherit by not giving the opportunity to give up the inheritance.

- Include spouses in representation rights: Amend the law to include spouses as heirs under the right of representation.

Despite the shortcomings identified in the law, women must be treated equally with men according to inheritance law. However, influenced by customary law and their often weak economic position, women frequently use the institution of renunciation of inheritance. Therefore, it is very important to ensure that renunciation of inheritance should only be used for strong reasons. Only in this way will the economic and social position of women in society be strengthened.

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Competing interests: No competing interests were disclosed.

Disclaimer: The author declares that her opinion and views expressed in this manuscript are free of any impact of any organizations.

ABOUT THIS ARTICLE

Cite this article

Sopi DA, 'Renunciation of Inheritance by Kosovar Women: Desire or Injustice? A Case Law Perspective' (2024) 7(3) Access to Justice in Eastern Europe 1-20 <<https://doi.org/10.33327/AJEE-18-7.3-a000312>> Published Online 02 Jul 2024

Submitted on 09 Mar 2024 / Revised 29 Apr 2024 / Approved 28 May 2024

Published ONLINE: 02 Jul 2024

DOI <https://doi.org/10.33327/AJEE-18-7.3-a000312>

Managing editor – Mag. Yuliia Hartman. **English Editor** – Julie Bold.

Summary: 1. Introduction. – 2. Inheritance According to Positive Law in Kosovo. – 3. The Impact of Canon of Leke Dukagjini. – 4. Renunciation of Inheritance and Analysis of Court Cases. – 5. The Institute of Renunciation of Inheritance According to the Legislation of the Countries in the Region. – 6. Conclusions.

Keywords: *inheritances rights, customary law, women, renunciation of inheritance.*

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ВІДМОВА ЖІНОК ІЗ КОСОВА ВІД СПАДКУ: БАЖАННЯ ЧИ НЕСПРАВЕДЛИВІСТЬ? ПЕРСПЕКТИВА З ПОГЛЯДУ СУДОВОЇ ПРАКТИКИ

Детріна Алішані Сопі

АНОТАЦІЯ

Вступ. Право на спадщину є одним із прав, гарантованих Конституцією та законами. Ним може скористатись кожен громадянин без винятку. Незважаючи на те, що це право захищене Конституцією, лише 23% жінок у Косові офіційно зареєстровані як спадкоємиці. Коли жінки користуються своїм правом відмовитися від спадку, вони здебільшого відмовляються від нього на користь спадкоємців чоловічої статі. Безсумнівно, звичаєве право впливає на цей вибір.

Під впливом релігійних і звичаєвих прав, які передбачають, що спадкоємцями повинні бути чоловіки, жінки вважають за краще відмовитися від права на спадщину. Це пояснює низький відсоток спадкоємців жіночої статі. Незважаючи на те, що право на спадкування регулюється законом за принципом рівності, реальна ситуація свідчить про інше.

У цій статті буде проаналізовано спадкове право та вплив на нього звичаєвого права, що призвело до відмови багатьох жінок від спадку. Це питання дискримінує жінок Косова, адже позбавляє їх законної спадщини. Цей аналіз дозволить визначити, чи звичаєве право, чи інші фактори вплинули на нерівні права на спадкування жінок порівняно з чоловіками у Косові. Зрештою, виникає питання: чи є ці жінки жертвами несправедливості, чи вони добровільно вирішили відмовитися від своєї спадщини?

Методи. У цьому дослідженні, щоб зробити висновок, було застосовано кілька методів, включно з аналітичним, компаративним, історичним та нормативним підходами. Аналітичний метод застосовувався для вивчення явища відмови жінок від своїх прав на спадщину та судових рішень щодо цієї проблеми. Нормативний метод використовувався для дослідження правових норм, які безпосередньо регулювали право на відмову від спадщини. Історичний метод відіграв вирішальну роль в ілюстрації еволюції прав на спадкування та його впливу на сучасні погляди жінок. Нарешті, за допомогою компаративного методу було здійснено порівняння правового регулювання спадкових прав у Косові з іншими країнами регіону.

Результати та висновки. З юридичної точки зору, право на спадкування передбачає рівність усіх спадкоємців, незалежно від статі, але на практиці дуже низький відсоток жінок отримує спадок, здебільшого це право надається спадкоємцям чоловічої статі. На цей результат вплинуло багато факторів, наприклад вплив звичаєвого та релігійного права, а також низька кількість працевлаштованих жінок. Після аналізу цього питання

стало зрозуміло, що основним рішенням є підвищити обізнаність жінок у тому, що всі спадкоємці є рівними, незалежно від статі, та забезпечити справедливе застосування закону до всіх спадкоємців. Щоб зменшити кількість жінок, які відмовляються від спадщини, рекомендовано кілька законодавчих змін. Однією з таких змін є вимога подати заяву про відмову від спадку, засвідчену нотаріусом, та реєстрації цієї заяви в суді з визначенням законних строків. Крім того, у встановлений строк мають бути чітко викладені причини відмови від спадщини.

Більш радикальним заходом, який гарантував би жінкам право на законну спадщину і таким чином позбавив їх від впливу суспільства, є зміна закону, що скасовує право на відмову від спадку. Таким чином, усі законні спадкоємці були б змушені прийняти належну їм за законом спадщину.

Ключові слова: *права на спадкування, звичаєве право, жінки, відмова від спадщини.*