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## WAIVER OF INHERITANCE, ACCORDING TO LAW IN KOSOVO

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### ABSTRACT

The right of inheritance as the main branch of civil law is applicable today as a positive right guaranteed by the constitution, which right any subject of the law can have without differences of gender, ethnicity, or race. The right to inherit dates back to the time of unwritten laws, until today it is defined and protected by state laws. The topic related to the right to legally inherit the parent's inheritance or even the inheritance of someone who is not related by blood to us but made us an heir through the will is debatable and very current. Thus, subjects who are considered heirs must accept or not accept that inheritance after the death of the heir. Precisely for the acceptance or non-acceptance of the inheritance, we come across many cases in practice that end up in a contested procedure, but to clarify the renunciation of the inheritance, this paper has been prepared, which is divided into chapters in which the issue of renunciation is mainly elaborated inheritance, the progress and procedure of how we arrive at a decision which finds that a subject of law who was an heir renounces that inheritance, or does not voluntarily accept the inheritance left by the testator, whether by law or with legal work.

**Keyword:** inheritance right, right to inherit, relinquish inheritance, procedure of disinheritance.

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### INTRODUCTION

If a person renounces the inheritance, it is considered as if he had never been an heir, say those who know the right of inheritance. In Kosovo, especially women give up inheritance. Waiver of inheritance is provided for in Article 130 of the Law on Inheritance in Kosovo (Anggadwita, Profityo, Alamanda, & Permatasari, 2019). Paragraph 1 of this article states: "The heir can renounce the inheritance with a statement given to the court until the hearing on the inheritance is over (Bănescu, 2022)." in addition to the court, an heir can also waive the inheritance at the notary if the inherited property is not contested. (Saliu & Ismaili, 2022) "Our law has enabled the heir to renounce the inheritance before the court until the inheritance hearing is over. Also, I can give up before the notary when it comes to the hereditary property that is not disputed", it says (Mappong & Lili, 2023). Waiver of inheritance is a fundamental right guaranteed by the Constitution and international conventions. "Because this is a fundamental right of humanity, guaranteed both by the Constitution and by international conventions that any person who does not want to inherit the inheritance of the testator can renounce the inheritance", it shows that the renunciation of the inheritance can have and the consequences for the heir. If a person renounces the inheritance, it is considered as if he had never been an heir (Basset, 2018).

**METHOD**

During the preparation of this paper we have used the proper scientific methods so that this paper is finalized and takes the proper scientific approach, and why the paper is in short points (Snyder, 2019). Thus, the methods used in the work are: research methods, comparative methods, descriptive methods, historical methods, inductive methods, deductive methods, and other methods that have helped us to finalize the work in question.

**RESULTS AND DISCUSSION****Waiver Of Inheritance**

With the death of a subject of the right, according to the Law on Inheritance, it is stated that: the property of the same after his death is passed to the heirs (living subjects) either through the law or through legal works if he has left any legal deeds (contract for maintaining eternal, gift contract or will) the owner of the property (in this case the testator). (See: Law No. 2004 / 26 Law on Inheritance of the Republic of Kosovo). The person who inherits at the beginning of the understanding that he is an heir must ask himself the question: Is receiving an inheritance better for me?

Can you refuse to accept an inheritance?

If so, who would inherit my share?

Thus, according to the questions, it should be known that if you will be the heir of the decedent's property, you will also be the bearer of the obligations that the decedent had while he was alive, for example: (any debt to any creditor, etc.) (Mirshekari, Ghasemi, & Fattahi, 2020). Thus, based on the inheritance law, the heir enables the heir to understand that he is the heir of the decedent's property, he can declare that he waives the rights and obligations that he would have as an heir, and specifically the inheritance law this it is called disinheritance. (Yes there. Article 130). Waiver means to give up, or give up the right to something. It is not unusual for someone to be named in a will and the last will to give up the rights or property given to them in the will. The reasons can range from financial to personal. State laws are in place to allow this. No one can be forced by the terms of a will to do something he does not want to do. (See: <https://info.legalzoom.com/renunciation-mean-3826.html>. Received on 07.11.2019).

Waiver of inheritance is exercised only when the person is informed that he is the heir of an inherited property (Jashari & Osmanaj, 2016). Every person has the right to renounce the hereditary property that comes to him by inheritance. The right to give up inherited property cannot be presumed, because it is linked at any moment to the future will of the heir (Stalder & Kirschbaum, 2012). At the moment of complete relinquishment of the inheritance, the heir's hereditary position changes radically because now he loses the hereditary legal authorizations that, *iso jure*, he had acquired at the time of the testator's death. Waiver of inheritance can only be made after the death of the testator, because the heir acquires the right to inherit at the time of the death of the testator (Živojinović & Đurđić-Milošević, 2015). For this reason, renouncing the right of inheritance before the death of the testator would not produce any legal effect, because the right that has not yet been born and does not exist cannot be removed. (See: <https://info.legalzoom.com/renunciation-mean-3826.html>. Received on 07.11.2019).

The right to renounce the inheritance is limited by the deadline until the end of the inheritance review session (Ellul, Pagano, & Panunzi, 2010). In the law, relinquishment is also provided as an

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inheritance right that, if not exercised by the heir within a certain period, will be realized by his heirs, always if the latter wish. In an extended interpretation of the legal provisions that refer to the acceptance of inheritance, we can say that in this regard, the 20-year term of seeking inheritance can be considered as a term within which the heir accepts or renounces the inheritance.

However, this is a very long term which does not create security both for the inherited property and for other heirs who may benefit from the waiver by an heir based on the right of augmentation. When the heirs do not appear to renounce the inheritance, it can be assumed that the testator has no heirs or that they are in difficulty and are unaware of the existence of the estate.

In this case, the court of the country where the inheritance is opened, mainly on its own initiative, sets a deadline which we can say refers to article 127 of the LKT entitled "Unknown Heirs", which states that: If with the passing of a year from the day of the announcement, if no heirs appear, the inherited property is handed over to the municipality, but with this the heir who would appear later is not deprived of the right to hand over the inherited property or the part that belongs to him. (Law No. 2004/26).

**Things to consider before accepting or giving up an inheritance:**

1. Before accepting or renouncing an inheritance, you should seek legal advice; talk to your lawyer so he can do all the due diligence before making a decision.
2. The consequences of giving up an inheritance are not always the same; this may not only affect you, but may affect any potential heirs; your solicitor will be able to advise you accordingly.
3. Do not perform any action on the property to be inherited that could be considered as acceptance of the inheritance.
4. As a result of the law in force in Kosovo, disinheritance may harm the inheritance of other potential heirs if they intend to accept it.
5. Do nothing until you are absolutely sure of your decision as the waiver and acceptance of a legacy are irreversible when signed in front of a Notary.

It will always be easier for the heirs if the deceased has left his estate in order, with instructions to be followed and no hidden debts.

(<https://www.pellicerheredia.com/en/inheritance/renouncing-to-inherit> & Received on: 10.11.2019).

**Declaration of renunciation of inheritance**

Waiver of inheritance is a unilateral expression of the will which can be given in the inheritance procedure and the same is recorded in the minutes of the examination of the inheritance. The heir can waive the inheritance with a statement to the court until the hearing on the inheritance is over. (Yes there. Article 130 p. 1.) The heir can renounce the inheritance silently, without any special formality, or expressly, by means of a statement that will be presented to the Basic Court of Kosovo in this case or the notary. (<https://www.studiolegalemetta.com/en/refusing-to-inherit> & Received on: 09.11.2019).

The heir may renounce the inheritance with a statement given to the court until the end of the inheritance hearing. The declaration of renunciation of inheritance is a unilateral legal act of the heir, by which he expresses his free will that he will not inherit, that is, he will not receive rights and obligations from the inheritance (Selmani, 2015).

The declaration of renunciation of inheritance can be made in two ways. The first is when such a statement is made during the procedure and recorded in the record, while the other is made remotely, i.e. when the person writes such a statement, certifies it in court or any other body and submits it to the competent body. the court, while the inheritance procedure takes place. (Law No. 2004/26)

The heir who has regularly declared the renunciation of inheritance cannot later revoke this declaration, "The declaration of renunciation of inheritance or acceptance of inheritance cannot be revoked". (The Law of Inheritance has made it possible to cancel the declaration of relinquishment of inheritance. This is also said by Professor Podvorica). The declaration of disinheritance is irrevocable. It cannot be revoked, but it can be canceled in court proceedings if it is proven that the relinquishment of the inheritance came as a result of violence, as a result of coercion, as a result of deviation, etc.

#### **Reasons for renouncing inheritance**

An heir's reasons for disowning may vary: it may be that they would prefer to benefit other heirs; or because they do not want to inherit from the deceased for personal reasons.

In the law of inheritance, wills and trusts, a disclaimer of interest (also called a waiver) is an attempt by a person to waive his legal right to benefit from an inheritance (either by will or by deed) or through a trust. "If a trustee does not accept an interest in property that would otherwise become trust property, the interest does not become trust property." (See: John H. Langbein) There are a number of reasons why a person might want to avoid an inheritance, particularly if the proceeds would only go to their creditors, or if it would drastically affect income tax liabilities (Allen & Carletti, 2013). At common law, a person disclaiming his interest would be treated as dead before the trust took effect. This was a reasonable option if the disclaimer was a successor heir whose children would inherit in his place and without the imposition of a gift tax.

The disclaimer must be in writing and filed with the court overseeing the disposition of the estate within a statutory period of time, which is usually nine months after the death of the person from whom the disclaimer is to inherit, or twelve months after the creation of a trust from a living person (Weisbord, Horton, & Urice, 2022). An affidavit may be required in which the disclaimer must swear that he did not receive any consideration (ie compensation) for the disclaimer. Liability must also occur before the denying party has enjoyed any benefit of the trust or inheritance. Many jurisdictions now have statutes that prohibit a denial when the individual is bankrupt or receives certain public benefits because of low income.

A disclaimer of interest is irrevocable. It must be a complete and not a partial denial. Such a disclaimer may be made by a legal guardian on behalf of a person who lacks the capacity to make the disclaimer himself, but this usually requires a finding by the court that the disclaimer is in the ward's best interests.

#### **Cancellation of the declaration of relinquishment of inheritance**

The declaration of renunciation of inheritance is canceled and not revoked. The heir who renounced the inheritance may request the annulment of the declaration if it was given by threat, violence, fraud, or deception.

The institution of cancellation of the declaration is allowed by law when the declared will of the heir contains deficiencies regarding the declaration of renunciation of inheritance.

In such cases, the heir has renounced the inheritance not because his true will was to renounce the inheritance, that is, not to inherit anything from the inherited property, but he gave the statement under the influence of threats or fraud. And this makes the will of the heir deficient.

The declaration of the heir containing deficiencies is not valid. Yes, this position also comes from the provisions of the LTK. The heir who gave a statement can request the annulment of this statement if it was given with threats, violence, fraud or deception (Article 135.2 of the Civil Code). (Podvorica)

The request for the annulment of the declaration can be submitted by the heir who renounced the inheritance (Vlahna & Kuçi, 2023). He can again become the holder of the right if the inheritance court approves his request and cancels the declaration of relinquishment of inheritance. In order to cancel the declaration of relinquishment of the inheritance, the heir must submit a request to the court for the examination of the inheritance. The statement given in the minutes of the court where the inheritance is examined will be considered valid, if the heir during the examination session declares that he renounces the inheritance, regardless of the fact that in legal doctrine a certain form is also required to produce legal effects.

Regarding the time of submission of the request, two legal situations arise. The first, where the request for cancellation of the declaration is presented before the examination of the inheritance and the facts are not disputed, then the decision regarding the cancellation of the declaration of renunciation of the inheritance is taken by the competent court for the examination of the inheritance. Well, when the facts presented in the request are considered, the inheritance court will instruct the heir in civil proceedings, while the inheritance proceedings will be suspended until the end of the civil proceedings.

If the request for annulment was submitted after the end of the inheritance procedure, then it will be decided in the civil procedure.

## **CONCLUSION**

The heir is never obliged to simply accept an inheritance. As it happens, the law also provides for the possibility of renouncing an inheritance or accepting it subject to *beneficium inventarii* (ie accepting an asset without obligation beyond the discounted assets). A change in the law means that the declaration of acceptance subject to *beneficium inventarii* or the relinquishment of an inheritance will now also be made before a notary public of the individual's choice. Previously, this could only be done by a declaration made to the clerk of the court office in the court of first instance where the inheritance had fallen.

Depending on what the last will and testament of the deceased says; and the applicable law of inheritance, assets and properties may be distributed among other heirs or may be divided among the children of the disinherited person. They, like the person who renounced the inheritance, have the right to refuse the inheritance as well..

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