

## **Inheritance right of women in Kosovo, specifically in Prizren**

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### **Abstract**

Today anywhere in the world the most modern legislations are built upon strong foundations that proclaim gender equality and give to women the same legal position as men, thus contributing to break the thousand year gap in terms of fundamental human rights. With regard to inheritance rights in practice there are many factors that hinder women to be subject to it's beneficiaries. Therefore, this paper aims to study the condition in which our society is about guaranteeing in practice the rights of women, respectively relating to the acquisition of the right to eligible for inheritance equally to women and men. Also of interest to this study are the mentality and general attitudes that exist in society and respectively in the city of Prizren and its provinces. It also aims to find out which are the key factors that create multiple barriers to implementation in practice of the law on inheritance law.

**Keywords:** gender equality, non-discrimination, customary law, the mentality, judicial system.

### **Introduction**

Gender equality and women's rights, even today in the 21st century, continues to remain a decisive challenge anywhere in the world, especially in less developed societies such as our country, where the undertaken steps are too slow and influenced by many intertwined factors.

The number of different conventions and agreements, that have the main target of dealing with issues related to women's rights and taking various measures and policies to mitigate the ideological cultural and religious severity created between the two sexes, has been increased. In any contemporary and democratic constitution, the principle of equality and gender non-discrimination is strongly defended; thus laying strong foundations for the legal and institutional protection of this principle. This attitude is maintained by the Constitution of Kosovo, which stipulates that no one can be discriminated on the basis of .gender and in another article equality and protection before the law is guaranteed to all the citizens (Constitution of the Republic of Kosovo, 2008).

The same attitude regarding the equality of all citizens before the law is held by the Constitution of the Republic of Albania (Constitution of the Republic of Albania (1998), 2009)

One of the fundamental human rights and freedom is the right to inherit and to be the bearer of the rights and obligations arising from the inheritance relationship. Concerning inheritance law, there is a phenomenon that extends to all Albanian territories, on the basis of which a woman is not a beneficiary of inheritance right, since she often either renounces it or this right is denied by her parents. This phenomenon, which has its roots from the past, continues to be a concern for all groups that protect

the rights of women, but also for the women who are often in adverse situations where their economic independence is impugned.

Although the role of women in society is changing each day, where she is becoming a crucial factor to many decisive and important functions, considering the percentage ratio of females and males, it can be said without fear that the Albanian female is unrepresented and is discriminated in many aspects of life.

### **History of women inheritance rights**

The right of inheritance is an institute which was born in the most primitive period, with the emergence of private property and the establishment of the first states, creating the legislation in the right to inherit. The inheritance institute is thought to have taken the first form that resembles that of the present day from the Roman law, which is defined as the passage of all rights from *de cuius* (the decedent) to the successor, a legal action *mortis causa* (i.e produced because of the death of the person) (BashkimSelmani&BekimRexhepi, 2014).

The disparity and discrimination at the expense of the female gender is as old as life itself. Women have been in an adverse position since the appearance of the patriarch system. So, we can say without fear that no country today in the world, however democratic and social may be, has managed to guarantee an objective equality between the two sexes. Of course, nowadays, most of the legislations proclaim legal equality over the right to inherit, but the situation in the past has not been the same. The code of Skenderbeg does not recognize the son's inheritance with the daughter's right to inherit, which anticipates that she can live with her brothers but does not have a right to inherit. Furthermore, this code states that if the girl has no father, no mother and no brothers, the wealth of her parents will be passed to her uncles, not her (See Kanuni I Skënderbeut, article 886 and article 887).

According to Lek Dukagjini's Code, the Albanian woman does not benefit any kind of inheritance from her parents' family. This Code goes further stating that the woman in the father's family is a remainder, who simply needs to take care of the parents until she goes to her husband. According to the Code, parents have no obligation to their daughter, nor about the preparation of the dowry, which is a duty of the husband's family (the Kanun of "Lek Dukagjini", the second book (Family), the twentieth). So, as we see, Albanian Code law completely excluded the woman of her right to inherit from her parents' family, and considers her as a remainder, without any human qualities. According to the code, inequality exists not only in relation to the daughter and son in their right concerning the parent's inheritance but also about in the inheritance between husband and wife when one of them dies, as the woman was not called into the ranks of the heirs.

This highly discriminating code had a tremendous impact in the legislation that followed it, but also in creating a mentality and tradition that is difficult to eradicate easily. The one who made a step forward in respect of the right of inheritance of women is the Zogu's Civil Code of 1929, which gave equal opportunities to both females and males, so that it can be considered a very progressive code for that time. (Kodi Civil 1929, 2010), Kodi civil I zogut 1929, Tiranë 2010, Papirus, librill, fq. 178-

272. However, we have to highlight the fact that Zogu's code was not implemented in practice.

### **Albanian legislation of the inheritance right**

Today, Albanian legislation has made fruitful efforts regarding the equality of both sexes before the law and is ranked among the most democratic and contemporary legislation. According to the law of inheritance in the Republic of Kosovo, it is clearly stated that all people are equal before the law, including both women and men. The law also equates both children born inside marriage and those outside in the cases when the paternity is acknowledged by the father, or if it has been verified by a court or other competent body decision. Also, spouses from marriage and those from extramarital relationships are equal before the law but only if: the extramarital relationship has lasted 10 years in the cases where they didn't have children, 5 years in case they had children, and none of them have been married to persons third. What is evident from the inheritance law is the fact that all the terms in this law use the male sex, probably to make it more understandable and practical, but I think that is not justified.

Legislation of Republic of Albania keeps the same attitude regarding the inheritance equality, where the Civil Code of 1994 guarantees the right to inheritance equally for both men and women.

### **The right to inheritance in the region of Prizren, according to the research findings**

Despite the fact that we have a legislation which, in a precise and clear way, proclaims the equal right to inheritance between men and women, what happens in reality is totally different. For this reason we undertook this study to find out what people from Prizren region think about the equal right to inheritance between men and women.

Research objective - The main aim of this study is analyzing and understanding the factual state of Kosovar women's rights, specifically women from Prizren, regarding their right to inheritance. Through this study, we intend to understand the factors, difficulties and problematic segments which are closely related to women's rights, especially to inheritance rights.

Methodology - The main methodology of this research was done by me, through the questionnaires distributed in the city of Prizren and nearby areas, to understand peoples' attitude towards equal rights to inheritance of both sexes.

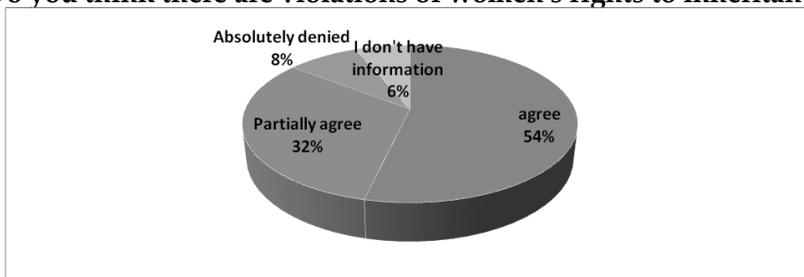
Sampling - In this study were included 100 respondents, all above 18 years old: 58% were females and 42% males. 69% of the respondents lived in the city, and 31% in villages. 47% of the respondents have finished secondary education, 24% only primary education, 27% of them have finished a higher education, and only 2% of the respondents were without education.

Research Tools - The research is based on a questionnaire which contains 10 questions that seek to understand the problem of the low percentage of women that inherit their father's wealth. Are they aware of the rights that are guaranteed by the legislation?

The survey was conducted in four residential areas of the city, and generally the responses to the survey lasted less than 10 minutes. Survey questions were simple and understandable, and none of the respondents had any problems with their understanding. The research was developed according to the randomization method, not making selections but waiting for a more realistic result. The research was held on January 4 and 5, 2017.

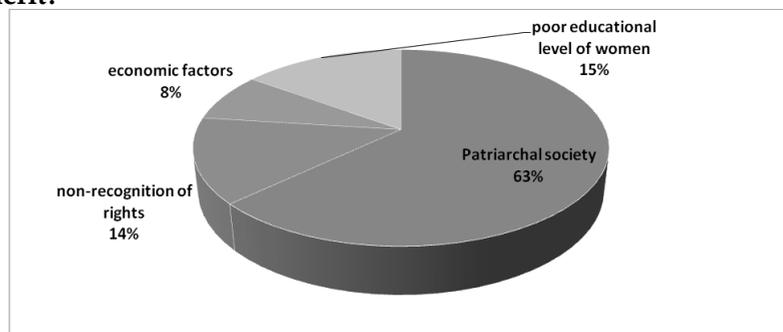
### Results of the field research

#### 1. Do you think there are violations of women's rights to inheritance?



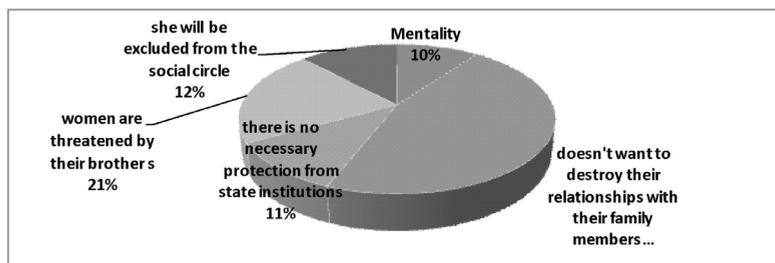
Graph 1 - So, as we can see from the survey results shown in the chart, 54% of respondents agree that in practice women are denied from the right to inherit, so we conclude that our society is aware that we are dealing with the violation of women's rights as human beings. A number of 32% claim to partially agree with the question provided, and 8% of the respondents absolutely denied that we are dealing with violations of women's rights to inherit - a very small number compared to those who agree. 6% of respondents say they have no information about this.

#### 2. What do you think is the main factor influencing women in Kosovar society not to inherit?



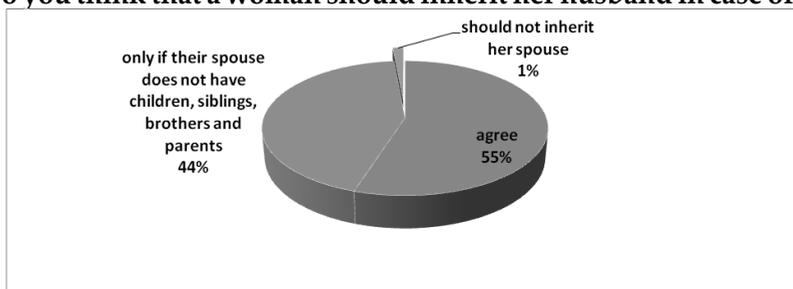
Graph 2 - This question helps us to understand who is the main factor which mostly influences women not to be eligible for inheritance - all based on the viewpoint of respondents. As the survey results show, most respondents acknowledge that the main factor influencing women not to have the right to inherit is our patriarchal society, a society where the role of women is underestimated and not given full access to integration into political and social life, to assume leadership or executive roles. 15% of respondents think that it poor educational level of women affects them negatively not to seek their own right.

### 3. Why do women give up the right to inherit?



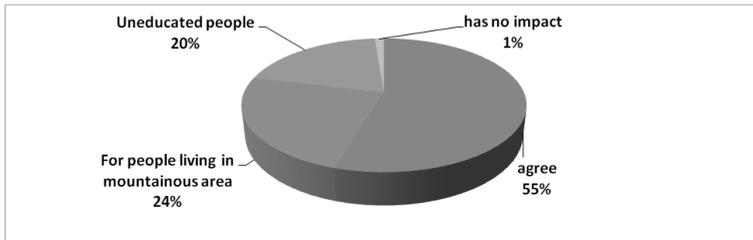
Graph 3 - From the survey results, 46% of respondents think that women renounce their inheritance because they don't want to destroy their relationships with their family members. A not-so-small number of 21% think that women are threatened by their brothers. 12% think that when a woman does not renounce the right to inheritance, she will be excluded from the social circle. 11% of respondents think that women do not have the necessary protection from state institutions to seek their own right. Only 10% of respondents think that there is a general mentality that female is "a good of a foreign door", i.e the husband. As we notice from the results, mentality and customary law directly affect women to renounce their natural right to be subject to inheritance law.

### 4. Do you think that a woman should inherit her husband in case of his death?



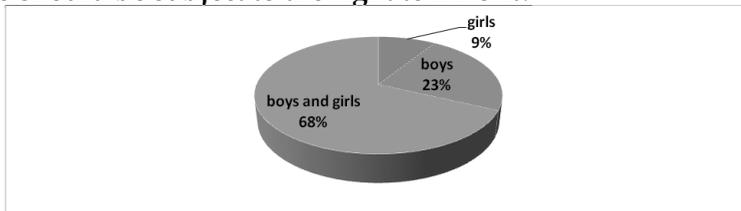
Graph 4 - According to Kosovo's applicable law, women may be the heir of her husband, and vice versa. In the first line of inheritance, she competes equally with the spouse's children and their successors, and in the case where the decedent has no children or other successors, his wife will compete in the second line with her husband's parents, but in this case in a more favorable position as it will benefit half of the property and the other half will be shared to its parents equally. According to the respondents, 55% of them think that women should inherit their spouse. A worrying digit of 44% think that women should inherit only if their spouse does not have children, siblings, and brothers and parents, which makes us realize that the general opinion in this regard is highly discriminatory and does not respond to the legislation in power. Only 1% of respondents think that women should not inherit her spouse.

### 5. Do you think customary law affects gender equality, respectively the right to inherit?



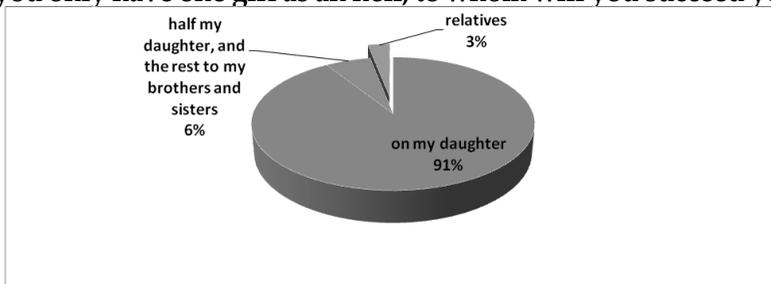
Graph 5 - The customary law plays a very large role in all the relationships created in the Albanian society. Especially Lek Dukagjini's code, still in the 21st century influences every aspect of life, as well as in inheritance law where, according to it, the man is the head of the house and the woman must obey him. According to the respondents, 55% think that this statement is true, 24% think that customary law has more impact for people living in the mountainous area since the code has been found to be applied there. 20% of respondents think that customary law affects that part of society that is uneducated, and only 1% think that customary law has no impact at all.

**6. Who should be subject to the right to inherit?**



Graph 6 - This question is included in the survey in order to understand what the respondents think about the subject that participates in the right to inherit, so it is a straightforward question. To the question of who should be subject to the right to inherit, respondents answered 68% in favor of the two sexes, 23% of them said that only the boys had to inherit, and a small number of only 9% have claimed that the subject of the right to inherit is the women.

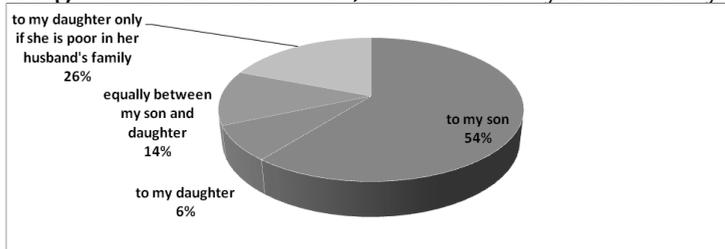
**7. If you only have one girl as an heir, to whom will you succeed your wealth?**



Graph 7 - In order to understand the problem, the question is asked about who would spend the property if, as a single heir, it would be their daughter. To this question, according to the 91% of the respondents all their property would be passed on to their daughter. This shows that although we are dealing with a patriarchal society again the human being is selfish in nature and agrees to protect the closest person which in this the case is the child. 6% of the respondents said that half of their wealth would be succeeded to their daughter and the rest to their brothers and sisters, while only

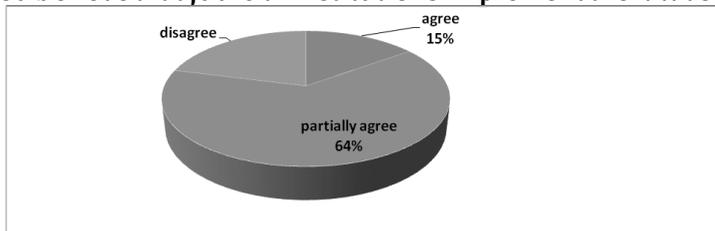
3% said they pass on their property to the other relatives, excluding the girl, which is not a problematic result

**8 - If you have a girl and a son as an heir, to whom will you succeed your property?**



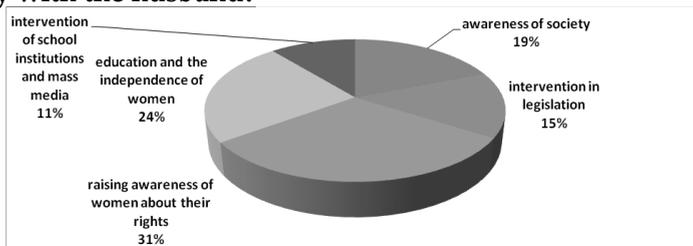
Graph 8 - As to the question to whom they would succeed their property if they had a girl and a son, 54% of them said that they would prefer to transfer their property to their son and only 6% of them would transfer it only to the girl. 26% said they would succeed their property mostly to the boy, and the girl would be a heir only if she was in poor economic conditions with regard to her husband's family. 14% of respondents answered that wealth would be shared equally between the girl and the boy.

**9. Do you believe that judicial institutions implement the law as it is foreseen?**



Graph 9 - Based on this graph, the aim is to understand the reliability of the citizens regarding judicial bodies and how the implementation of law in practice. 64% of the respondents, regarding the inheritance rights, think that judicial institutions partially implement the law adequately. 21% of them do not trust the judicial institutions and their effectiveness in practice. Only 15% of respondents trust in judicial institutions.

**10. Which steps need to be taken to ensure that women are subject to inheritance rights equally with the husband?**



Graph 10 - The last graph shows the results of the question regarding the steps which should be taken in order to have equality between women and men in the right to inherit. 31% of respondents think that one of the best ways to achieve gender equality in inheritance is raising awareness of women about their rights. 24% of respondents think that education and the independence of women is a method that would bring positive results for inheritance equality. 19% think it is necessary to aware all the

society. 15% of respondents think that a fruitful step is to intervene in legislation so that women are not given the opportunity to renounce the right to inherit. 11% see the intervention of school institutions and mass media as a necessity.

## Conclusions

From the data gathered through surveys but also from those taken by our sociologist we can conclude that we are still in a patriarchal society who sees the husband as the head of the house and the holder of all rights. Regardless of the fact that we now enjoy a consolidated legislation proclaiming in all aspects the equality between the two sexes, the customary law and in particular the code of Lek Dukagjini - which placed the Albanian woman in a lower position, triumphs and is applied more widely. Even today, the intervention of the society and their opinion forces women to become affected by the evil that comes afterwards if they seek their own right.

But, in addition to the blizzard mentality and the dominant influence of customary law, there are other factors such as poverty which reduces the possibility for women to be subject to the right to inherit. Likewise, the low educational level of women makes them unaware of the rights they are entitled to and which are guaranteed by law. In addition, we have to emphasize that although the law guarantees absolute equality, our judicial institutions do not provide the necessary guarantees that women gain a violated right - often court proceedings are long-lasting, costing a lot, and resulting in a non-favored outcome for the woman.

The fact that women cannot benefit from their parents' legacy makes them powerless and often economically dependent on their husband, following their submission and not raising the voice for seeking rights when they are violated. So she is not supported by neither her parents nor her spouse. The situation would be different in the case when a woman would inherit property from her parents - she would be more independent, confident, thus giving her the opportunity to be educated to create her own business or even have economic safety when she is threatened.

But the problem does not lie solely on mentality, judicial institutions or different organizations. Often, the main factor influencing the unenviable position of women is the woman herself. Taking onto account the fragile nature of women, she often renounces the right to inherit in favor of her brothers in order not to break the relationship with her family and to be excluded or marginalized by the social circle where she lives.

Finally, we can say that there are some secondary factors that affect in raising women's awareness and voice, such as the curricula taught in school textbooks, various organizations in the protection of women's rights, and mass media.

By locating the problem that prevents women from being subjects of the right to inherit, we have recommended some ways to mitigate the problem which we think will be useful.

- One of the first steps to be taken, I believe, should have to do with the legal framework - proposing the impossibility of renouncing the right to inherit, since if the decedent has had a preferred heir, he would have stated it in his will. This idea is supported by some other scholars (Ali, 2013).

- Also, associations in the protection of women's rights and human rights should raise their voice and do more to raise women's awareness of the rights that are guaranteed by law, as well as to change the mentality that exists in society.
- This appeal also goes to family members who have to protect the interests of their daughters, to educate them, to make them independent, to succeed, and to build a collaborative climate that helps not only women but also the whole society.
- The emphasis should also be put on the state which should undertake specific programs and policies that have a direct impact on the involvement of women in social and political life, so that they can have access in the labor market and integration in society.
- Special attention should also be paid to judicial and state institutions, so that they take all measures for the practical implementation of the inheritance law. The state should exert its influence in order to have independent and professional judicial system, the litigation processes shouldn't be delayed, and to show readiness from the bodies responsible for the execution of judicial decisions.
- Appropriate governmental measures should be taken to educate women, especially those in rural areas, and enable education for those families that have cannot afford it.
- The issue of gender equality should be raised in school curricula, where students and women in particular can get information about their rights and the way how to seek these rights, in such a way as to create a family where equality and harmony bloom (because without equality there is no happiness).
- Also, mass media should work hard to raise awareness in society about gender equality.
- Lastly, emphasis is placed on women themselves who have to work and fight hard for their rights, without falling victim to reality or patriarchal society.

## References

- Aliu, A. (2013) *Civil law*. Prishtina: Grafobeni- Prishtina.
- Nuni, A., & Hasneziri, L. (2010). *Civil Law III (inheritance)*. Tirana.
- Selmani, B., & Rexhepi, B. (2014). *Family Law and Inheritance Law*. Ferizaj: Dinograf-Ferizaj.
- Buçaj, E., & Latifi, j. (2010). *Inheritance Law in Kosovo*. Prishtina.
- Civil Code 1929*. (2010). Tirana: papirus.
- Constitution of the Republic of Albania. (1998). (2009). Tirana.
- Constitution of the Republic of kosovo. (2008). Prishtina.
- Mandro, A. (2011). *Roman law*. Tirana.
- Podvorica, H. (2010). *Inheritance law*. Prishtina.