

## SUCCESSION RIGHTS OF THE SURVIVING SPOUSE IN THE LAW OF REPUBLIC OF ALBANIA

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***Abstract:** The Republic of Albania is located in southeastern Europe. Although it is a member state of the UN, NATO, OSCE, a member of the Council of Europe and a potential candidate for joining the European Union only in recent years did the Albanian legislature want, through the laws it adopted, to align itself, to a great extent, the general trend of modernization and the recognition of equality in the rights of women and men. The remote traditions and customs of their history and civilization have prevailed when the equality of the sexes is called into question. Certainly, in addition to the patriarchal mentality that is the basis of Albanian society, the fear of the so-called "weaker sex", the helplessness and the lack of confidence in their own emancipation do preserve the customs that I mentioned above.*

***Keywords:** Albania, law, succession, woman, deceased, patriarchal system, customs, Constitution, surviving spouse, study, obligation*

### INTRODUCTION

Thanks to a 2018 study on the inheritance rights of the surviving female spouse in the Republic of Albania (Kola, 2018:17), we understand that Albanian women are discriminated against. Many, if not most, women choose or are "forced to choose" not to claim their inheritance, but to disinherit. Most of the time, wives and daughters are left out of the will or the deceased enters into fictitious donation contracts in favor of male heirs. Behind the decision to disinherit are several important factors that continue to influence Albanian society. In the Republic of Albania society is based on a patriarchal mentality and customs have a strong influence. The wars they fought over time (Preamble to the Stalinist Constitution of Albania from 1976: "The Albanian people carved their way through history with sword in hand."), the Ottoman Empire, the Kanun, xenophobia, various religions, the level of education and many other factors, are part of the mosaic that does not allow Albanian women to get out of the box of patriarchy. The wife was and, unfortunately, remains the property of the husband and his parents. Unable to emancipate herself, the Albanian woman was born and is born, in slavery.

In patriarchal systems, the woman has no inheritance rights either in the family from which she comes or from the husband. The problem is rooted in the exclusive, patrilineal system of inheritance, with the aim of keeping clan wealth intact (Kola, 2018:19-20).

### 1. The Kanun

We consider it important to present the Kanun (Aliu, 2021:6), a code of laws, as interesting as it is strange for modern people, who consider the law to be the bastion of a civilized society. Its introduction is especially important because in recent years there has been a revival of this set of rules, which shocks through violence. The Kanun was transmitted from

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generation to generation orally, it was formally written only in the second century. 19th by Shtjefen Gjecovi. Historians have not reached a consensus on a complete theory of the Kanun's cultural origins, as it exhibits theological and legislative influences belonging to Roman law, Christianity, Islam and pagan customs.

It is assumed that this code of laws is the work of the Albanian prince Leke Dukagjini and is divided into 13 categories, among which we mention; Church, Family, Marriage, Transfer of property, etc. The rules of the code have changed with the evolution of society, but not significantly. Some of the most horrible rules of this code of laws describe in detail how murders are to be regarded, namely, that, more often than not, a crime draws bloody vengeance, which does not end until the death of all the men involved and the men in the families of those involved. The Kanun is associated by certain legal scholars with the Italian vendetta.

The Kanun is a customary law that was used especially in Northern Albania and Kosovo, starting from the 15<sup>th</sup> century to the 20<sup>th</sup> century, banned during the communist period and which, unfortunately, has become applicable again nowadays (Bomanand et al., 2012:15) due to citizens' dissatisfaction with the activity of the local government and the police.

Today there are several organizations that make efforts to mediate the enmity that has arisen between families, trying to convince them to "forgive the bad blood". Such attempts that, in most cases, fail. The most popular collection of these customary laws was that made by Leke Dukagjini. He collected the customs respected on the territory of Albania in the 15th century. The canon is archaic and marked by the inequality between women and men. It is also marked by the bloody revenges considered normal at that time (BBC, 2017).

Even to this day such bloody vendettas remain burning in Albanian families. The tragic example is that of Niko, a 13-year-old boy who is considered "in blood" by customary law, and which proves that these rules have endured to this day. He risks his life every time he leaves the house because of disputes and fights that happened before he was born. One of his family members killed a neighbour in a dispute over the boundary between the lands of the murdered person and his relative.

According to the Kanun, women have no inheritance rights. Patrilineal inheritance is the norm strictly imposed by law. There was only one exception, in that due to the wars and social brutality typical of antiquity, customary law allowed women to become "sworn virgins". In the area of Albania, especially in the area of the Dinaric Alps but not only, a daughter could take over the social role of the "man" herself in the absence of an adult man capable of managing the household. There were other reasons for such a choice. These women chose or were appointed by their families (Young, 1998:59), to occupy the social place of the head of the family, or, the man. These "sworn virgins" were usually chosen from birth or as young children. In certain, rather rare cases, betrothed women who did not wish to marry would accept the title to avoid marriage, and thus both families could keep their honour intact. These women became the heads of the family, as such they were responsible for the manual work, the education of the children and of course, revenge (Young, 1998:60). Also, these women had the full rights of the head of the family, including the right to inheritance. Although these laws have an ancient origin, predating even the Koran, some people still choose to live by them.

The standard reason given by those who choose or encourage such situations is that only in this way can the household continue, that is, all the activities that arise from the management

of the household, namely: economic, religious and social activities. This standard reason is contradicted by Matija Brujic and Vladimir Krstic in the article "Sworn virgins of the Balkan Highlands". They consider the standard reason to be a failure. From their point of view, the lack of a man to continue managing the household is rather perceived as a shame in these societies. The girls who take on this role are the ones who save the "honour" of the family. This phenomenon, the authors show, was registered mainly among Muslims (Albanians, Bosnians, Turkish Roma) and Orthodox Christians (Serbs, Montenegrins) and Roman Catholics (Albanians), Christians. Local communities accepted, and still accept, sworn virgins to take over the role of men in society, because men were and are more respected than women (Brujic et al., 2021:113-130). There are situations where no one knows they are women. There are two types of sworn virgins: women who were predestined to become men from childhood or even from early infancy, being obliged by their parents, the so-called imposed covenant, and women who decide to assume the social role of a man, i.e., the accepted covenant. These women, regardless of the covenant they made, completely renounce their status as women, including the role of wife or mother.

We are thus talking about a cultural anomaly generated by the lack of a man to be the manager of his household and the shame that a family feels in the absence of a man. The existence of sworn virgins represents, from the point of view of the traditionalists, a socio-economic benefit, in the sense that the household can have, in this way, a head of the family. The family gains an example of power, courage and honour. Some researchers of the phenomenon claim, however, that saving the honour of the family is the main reason that led to the creation of such a phenomenon, such a practice.

In general, a sworn virgin is a young virgin, but an adult woman can also assume such a role. They have a special status that includes the following aspects: male name, male dress, haircut, social obligations of a male, namely: carrying weapons, participating in battles and blood wars, participating in meetings with other males, participating at tribal, clan or village meetings, the religious obligations of the head of the family, but also the privileges enjoyed by a man, for example: drinking alcohol, smoking, socializing with other men, etc. According to custom, they receive partial or complete legal and work skills that are not normally available to women. They also own family property, thus becoming respected like men. The only limitations are that sworn virgins cannot vote in the community and cannot be killed in battles or vendettas.

Still, a definition has not been reached that establishes what a sworn virgin is, because the phenomenon is quite sensitive and not fully researched, these women mostly coming from the rural Balkan regions, but, in a small number, and among educated women.

## **2. Legal provisions by the Albanian Civil Code and Constitution**

Even today, although the Albanian inheritance law has undergone significant changes, some female persons choose to renounce their inheritance in favour of other male heirs in order to respect the traditions (Gjinovici, 2016:10). Art. 18 of the Constitution of the Republic of Albania states that: "All people are equal before the law and no one can be discriminated against on the basis of gender, descent, social origin or social status." The Constitution of the Republic of Albania thus determined the role of women and men, placing them on an equal footing, trying to prevent discrimination by adopting several articles of law in this regard. The Republic of

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Albania has also ratified several international conventions regulating equality between women and men (Kola, 2018:11).

We can state that the Albanian succession law in force is very similar to Romanian succession law, as follows: inheritance represents the transfer of assets that belonged to the deceased to one or more living persons (Art. 316 c.c.); it opens on the date of death of the person whose inheritance is being discussed (Art. 330 c.c.), at his last place of residence; the ability to inherit is only available to people who are alive on the date of the opening of the inheritance (Art. 318 c.c.), people conceived before her death, provided they are born alive (Art. 320 c.c.); the situation of the cormorants is similar (Art. 321 c.c.); as well as that of unworthy or renounced heirs (Art. 326 c.c.); the right to disclaim an inheritance is extinguished in the situation where the heir behaved as an owner with regard to the share due to him; the heirs of the deceased have the obligation to compensate his creditors, depending on the limit of the value of the inheritance (The term for exercising the right of succession option is 3 months. In the situation where the heir is not in the country, his term for exercising the right of succession option is extended to 6 months.).

As for the surviving spouse, they have the right to inherit the share of the inheritance that was obtained through the joint work of the spouses, these rules also apply in the case of other heirs (Art. 358 c.c.). The category of legal heirs includes: children, children's children, surviving spouse, parents and siblings, nephews of siblings by way of representation, grandparents, relatives up to the 6th degree, people who, from an economic point of view, are dependent on the deceased, and the state (Art. 360 c.c.).

The first class of heirs includes: the children and the surviving spouse, who benefit from equal shares of the inheritance. Children born out of wedlock and adopted children have the same inheritance rights as children born inside of wedlock (Art. 362 c.c.). If one of the children is predeceased, unworthy or disinherited, the representation principle will operate resulting in the inheritance being passed down to their direct inheritor. In the assumption that the surviving spouse comes to the succession table in competition with the heirs of classes II and III, he will benefit from  $\frac{1}{2}$  of the inheritance. In the event that there are no heirs in these classes, the surviving spouse will inherit the entire estate.

The second class of legal heirs includes the parents of the deceased and persons who were financially dependent on the deceased, provided that they lived with the deceased at least one year before the death (Art. 363 c.c.). Their shares of the estate are equal.

The third class of heirs includes persons who were economically dependent on the deceased, (persons who are mentioned in art. 363 of the Albanian Code) grandparents, brothers and children of deceased or unworthy brothers, who benefit from equal shares (Art. 364 c.c.).

In the situation where there are no heirs who fall into the three classes of legal heirs, all relatives up to the 6th degree are called to inherit, regardless of whether they are on the maternal or paternal line. Their inheritance shares will be equal (Art. 365 c.c.).

If there are no heirs up to the sixth degree inclusive, the estate of the deceased will enter in *bona vacantia* (Art. 366 c.c.). The household goods of the deceased will be divided among the heirs who lived in the same house as the deceased. We must also state that the deceased can exclude anyone he wants by will (Art. 378 c.c.), as long as it does not affect the forced shares. Forced heirs are minor heirs and those who cannot support themselves (Art. 379 c.c.).

## CONCLUSIONS

The issue of inheritance rights of the surviving female spouse in the Republic of Albania remains a vexing issue. Although the inheritance legislation of the Republic of Albania has been amended, reaching the level of inheritance laws in other states, Albanian society has always found various methods by which women are discriminated against and do not benefit from inheritance rights over family property (Kola, 2018:50).

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