Introduction

Legal inheritance is one of the most important institutions of inheritance law which regulates the process of legal transition of property of the decedent to one or several heirs. The establishment of the legal framework has brought about new reforms to the Inheritance Law. This has enabled the enrichment and functioning of the law. A particularly important step was taken towards regulation of legal procedures regarding to how courts, other organs and other persons should act regarding inheritance issues. Concretization of the legal authorizations of bodies authorized to enforce the procedure of processing hereditary property has established the legal basis for realization of the *is jure* principle, according to which, at the moment of death of the person, the heirs gain the right of inheritance and the hereditary property is never left without a titleholder. This is a great advantage that we have noted in undertaking this analysis of the norms in this work, because leaving hereditary property for a longer period of time without a titleholder would render the property vulnerable to destruction, theft and extermination.

The goal of this paper is to avoid focusing only on finding the positive sides of the normative regulation of the legal inheritance process, but also in finding practical deficiencies that are weighing down at the moment on this important process in Kosovo, and in proposing measures for overcoming them.

The dark side of the legal inheritance process is linked to the inefficiency of courts and the still fragile legal system in Kosovo. By implementing empirical methods, we have come to the conclusion that the low number of judges in proportion with the huge number of cases has become a key liability for practical implemen-
tation of the principle of initiating the legal procedure ex officio. The failure in enforcing this principle and initiating the procedures for processing of hereditary property by courts, even though they are obliged by law (article 96 of the Non-contentious Procedure Law), has caused a chaotic state in legal proceeding of hereditary property, because many physical persons have died or have been declared dead, while legal procedures for property proceeding have not been initiated, or even if they have, cases remain pending for years in courts. To overcome this situation, it is imperative to increase the number of judges in a short period of time.

**Inheritance is the transfer of property from decedents to heirs**

Article 834 of the Skanderbeg Canon, clearly provides the following: “Inheritance is the transfer of property and rights that one has, to another person, usually between relatives, without reward, while the second becomes owner just as the first was”\(^1\). This definition of inheritance set 500 years ago is very similar to the definitions of inheritance in contemporary legal regulation. This is proven by provisions of Article 1.2 of the Inheritance Law of Kosovo, which provides that: “Inheritance is the legal or testament based transfer of property from the deceased person (decedent) to one or several persons (heirs or legatees), in accordance with the legal set rules”\(^2\). This tells us that among Albanians, inheritance law has seen high levels of development during ancient times, but strangely it is not that well studied by local or international scholars.

Legal inheritance is applied only when the decedent has not left a will or has left a will regarding only a portion of his property, or when the will is fully or partly invalid\(^3\). According to this provision of the Inheritance Law in Kosovo, the basis of will based legal inheritance is stronger than the basis of legal inheritance. Will based inheritance has had a priority even in ancient law. Noting the importance of the will in defining the fortune of subjective rights in a case of death, the Romans have said: “It’s misfortunate to die, without leaving a will”\(^4\). Respecting the will of de-cujus in the case of disposal of his property by will in a mortis causa case is the fairer solution and is guaranteed by the provisions in the Inheritance Law of Kosovo. However, it is worth stating that in Kosovo, inheritance by will is less developed than legal inheritance. That is obvious, because there are still a few people that determine the destiny of their subjective rights by will, while legal inheritance clearly dominates in the matters of inheritance and regulation of hereditary rights. This conclusion is based on the fact

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\(^1\) Scanderbeg Canon: (Kanuni i Skanderbegut), Editrice La Rosa, Brescia, Italy, 1993, pg. 67
\(^2\) Article 1.2, Law on Inheritance of Kosovo, UNMIK (Reg) 2005/7, 2005
\(^3\) Article 9, Law on Inheritance of Kosovo, UNMIK (Reg) 2005/7, 2005
\(^4\) Podvorica, Hamdi: Inheritance law (E drejta trashëgimore), Trendi, Prishtina, 2010, pg. 33
that there are many more cases pending in courts based on legal inheritance than cases of will inheritance.

**Facts for setting the legal rank of inheritance**

According to legal norms, for a person to gain capacity of potential legal heir, the following requirements must be met at the moment of death of the *de cujus*: 1) blood relation; 2) civil relation; and 3) marital status, as facts that give a person the capacity of a potential legal heir. These facts come by either blood relation by birth or adoption relation by legal act or marital bond.⁵

Since ancient times and until today, the most important form of relation between persons that are considered for inheritance and decedents is blood relation. If we take a look at the historical development of inheritance in Albanian law, one can easily notice that the hereditary position of heirs called on inheritance upon blood relation was stronger than that of the heirs called on inheritance based on facts for civil relation. For example, Article 469 of the Civil Code of Albania of 1929, provides that: “In case that adopted children or their offspring compete with the father or mother of the adopter or both, the father and mother inherit one-third, and when they compete with the brother or sister or both of them, they inherit one-fourth.” This discrimination of adopted children belongs to the past now, because, according to article 3.2 of the Inheritance Law of Kosovo, children born out of wedlock, when the fatherhood is regularly known or verified by a court or competent organ, as well as adopted children, are equal as legitimate children.⁶ All physical persons in the same conditions are equal in inheritance.⁷ Such foreseen solutions in the Inheritance Law of Kosovo are practical, easily applicable, advanced and in harmony with international standards in this field.

In the past, the fact of marital relation had a very weak influence in forming legal ranks of inheritance in comparison to bloodline.⁹ This comes from a discriminatory position that women had in society and family. For a long time,

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⁵ Kreč-Pavić: Commentary to the Inheritance Law by jurisprudence (Komentar Zakona o nasleživanju sa sudskom praksom), Narodne Novine, Zagreb.1964, pg. 30  
⁶ Article 469 of the Civil Code of Albania in 1929  
⁷ Article 3.2 of the Law of Inheritance of Kosovo  
⁸ Article 3.1 of the Law of Inheritance of Kosovo  
⁹ Blagojević Borislav: Ibid, pg 39
women were regarded as foreign persons and with no right of inheritance.\textsuperscript{10} Article 88 of Lekë Dukagjini’s Canon provides that: “One shall recons as an heir the son, and not the daughter”, or Article 91 of this canon, where it is said that: “The wife shall have no right of inheritance from her husband or her father”.

The status of women in inheritance and family has gradually advanced in Albanian society. The Civil Code of Albania of 1929, Article 486, provided that when the husband abandons his legitimate children, the next husband takes as inheritance the usufruct of a hereditary part equal to each child, including the husband himself in that number.\textsuperscript{11} The Kosovo Inheritance Law has rendered equal the status of husband, wife and children in regard to inheritance rights. According to provisions of Article 12.1 of the Law on Inheritance in Kosovo “the decedent is inherited before all by his children and his spouse”\textsuperscript{12} in equal shares, whereas when he inherits in the second rank, along with the parents of the de-cujus, he inherits only half of the property. By law, the decedent is inherited by the extramarital spouse as well, who is equal to as the marital spouse,\textsuperscript{13} in the conditions preset with legal provisions. The old mentality that women should not enjoy rights inheritance because it decreases the wealth of the husband’s family and it increases the wealth of the spouse’s wealth, belongs to the past now.

Can one consider as fact for determining legal inheritance rights towards persons that the decedent has paid alimony? In legal doctrine, there is a diversity of thoughts on this important issue. While the Russian inheritance law assigns obligatory alimony, maintenance and life in union, a greater importance making it an independent element of legal inheritance, the vast majority of nations consider this to be an supporting factor only. Inheritance Law in Kosovo has an interesting point of view on this. In article 29.1 of the Inheritance Law in Kosovo it is foreseen that: “Any obligations of the decedent to provide main-

\textsuperscript{10} Podvorica Hamdi: Ibid, pg. 35
\textsuperscript{11} Article 486 of the Civil Code of Albania in 1929
\textsuperscript{12} Article 12.1 of the Law of Inheritance of Kosovo
\textsuperscript{13} Article 11.2 of the Inheritance Law of Kosovo. Extramarital communion in the sense of Inheritance Law of Kosovo is considered the extramarital communion of an unmarried woman and an unmarried man, which has lasted for a long while and has stopped with the death of the decedent, provided the presumptions regarding the validity of marriage have been fulfilled. In the provisions of article 28 of the Inheritance Law of Kosovo, cases when the extramarital spouse can inherit his dead spouse have been foreseen. The extramarital communion should have lasted until the moment of death of the decedent for at least 10 years, and if this relationship has brought forth children - at least 5 years, two, at the moment of death of the decedent none of the persons that have been living together are not to be married legally to another person, or if the decedent was legally married to the third person, has filed for divorce or annulment of marriage and after his death, his file for divorce is supported. Persons that were living together are not considered as necessary heirs.
tenance or alimonies shall be transferred to the inheritance as a debt if the person who benefits from the alimony or maintenance would otherwise not have the necessary means for living”. Heirs or legatees are responsible for paying this debt in accordance with the provisions that regulate the responsibility of creditors in general of the decedent. This way, Inheritance Law in Kosovo excludes any possibility of being part of the group that consider the rights for alimony and maintenance and communion as an independent factor in determining inheritance rights.

Ranks in legal inheritance

According to Article 11.1 of the Law on Inheritance of Kosovo, heirs at law are: “the decedent’s children, his adoptees, and their descendants, spouse, parents, siblings and their descendants, grandfather and grandmother and their descendants”. These are potential heirs at law based on the relation that they had with de-cujus at the moment of his death such as: the fact of bloodline, foster line and marital union. The heirs at law are called on heritance in succession according to ranks set by legal norms. Ranking of heirs at law is done having in mind the parental legal system of inheritance. This system is applied by almost all contemporary inheritance laws in most of the world. The relation between the ranks of inheritance is set according to the principle of exclusion. The heirs of a closer rank of inheritance exclude those from further ranks of inheritance. As long as there are heirs from this rank of inheritance, other heirs in subsequent ranks are not called. When there are no heirs of the close rank of inheritance that could and would like to inherit, than based in the principle of calling on inheritance of heirs in subsequent ranks, heirs at law that are part of the subsequent rank are called. This would continue until there are no heirs that could or would inherit. If there are no heirs even after this, then the hereditary property would belong to the municipality, as the last heir, respectively the State of Kosovo.

This rule has only one exception regarding the spouse of the decedent, who is part of the first and second rank of inheritance. If in the first rank of inheritance he is left as a sole heir of the decedent, because there are no other heirs from this rank, then he does not inherit from the first rank, but in the second rank, along with the parents of the de cujus, as heirs of the second rank of inheritance. This issue has been regulated this way with legal provisions by many inheritance laws of other countries. Inheritance Law of Kosovo has not regula-
ted this matter with legal provisions expressively. But the conclusion that the husband inherits in the first rank and not in the second, results as correct according to provisions of article 12, where it is clearly said that the husband of the decedent is ranked in the first rank of inheritance, where in the provision of article 14, it is as well said that the husband is ranked in the second rank of inheritance. Court practice in Kosovo supports with no doubt the statement that when the husband is the sole heir in the first rank, he should be declared as second rank heir and he is to inherit half of the hereditary property of the de cujus. This is proven by a great number of court decisions regarding inheritance.

When there are no close rank heirs that could and would like to inherit, then the hereditary property would belong to the municipality, as the last heir, respectively the State of Kosovo.

According to our hereditary right, heirs at law are ranked in three ranks of inheritance. The small number of inheritance ranks is due to the influence of new tendencies for decreasing inheritance ranks.

**First rank of Inheritance**

The first rank of inheritance consists of the decedent’s children and spouse. This statement comes from the provision of article 12 of ILK, where it is said that: “The decedent shall be inherited, prior to all others, by his children and spouse”. The expression “prior to all others” regards cases when all the children of the decedent are alive and able to inherit.

In the sense of Inheritance Law, extramarital children are equal to marital children. Children born out of wedlock when fatherhood is verified in a legally set manner or verified by court decision, or competent organs, as well as adopted children are equal to inheritance. According to this legal provision, it results that adopted children are equal in inheritance. Being that the adopted is equal in inheritance in comparison to marital children the adopted is excluded from the right of inheritance in the family of origin. The same goes for the family of the adopted, because it cannot inherit the adopted because with the act of adoption, the natural relations created with the birth of the adopted are severed between the adopter and the members of the original family. This is clearly stated in the provision of article 3.3 of ILK where it is said: the adopted does not inherit in his original family nor does his family inherit him.

It should be mentioned that extramarital spouses are fully equal to marital spouses of the decedent. The equality between extramarital and marital spouses is a product of the continuous and stable character that the extramarital

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18 Kreč-Pavić: same work, pg. 34
19 Article 3.2. of the Law of Inheritance of Kosovo
20 Article 3.3. of the Law of Inheritance of Kosovo
communion is taking in Kosovo society. According to the provision of article 11.2 of the Inheritance Law of Kosovo the meaning of extramarital communion has been prescribed as: “extramarital communion is considered the living communion of an unmarried woman and man which has lasted for a long time and has stopped with the death of decedent, provided the presumptions for the validity of marriage have been fulfilled.”

Regardless of sex, all heirs at law that enter in inheritance ranks inherit equal shares. If, in a concrete situation, two children and a spouse are presented as heirs, each one of them will gain one-third of the property. This is a common way of dividing inheritance in the first rank. The common part is a quota that belongs to one or several heirs. In other words, this is a “per capita” division (the more heirs, the smaller the share, and vice-versa).

The right for representation

The right for representation regards the authorizations of descendants within a straight descending line to present themselves with a replacement instead of the dead predecessor before the de cujus, who are precisely close relatives and inherit that part of inheritance that would have been inherited by their descendant, if he would have presented himself as an heir. In the cases where the decedent has left no children, or has left children, but they have given up on the inheritance on his behalf, or have been deemed unworthy of inheritance, or have been fully excluded from inheritance, the part that would have been inherited by the children of the decedent now will be inherited by the decedent children’s children. Every time there is even one single heir, may he be the last in line, the right for representation is applicable, and only when this right is not possible to apply, the right of addition is applied. The right for inheritance is applied only when it regards legal inheritance and not will based inheritance. The representative should have the capacity to be an heir: to be a physical person or to have been born alive if at the moment of opening the inheritance he was in the mother’s womb (nasciturus).

This is directed towards the betterment of hereditary positions of heirs, so that the share of heritage that would belong to the children of the decedent is in no way lost, unless it is passed on to the children’s children of the decedent, or to other distant heirs within the formed inheritance line. It can be said that the

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21 Podvorica, Hamdi: same work, pg. 51
22 Antić, Oliver; Nasledno pravo, NIP Glas d.o.o. Beograd, 2002, pg. 76
23 Marković, Sliavko: Nasledno pravo, Novinska izdavača ustanova, Službeni List SFRJ, OUUR Knjige Beogr, 1981, pg. 161
24 Podvorica, Hamdi, citation, same work, pg. 51
25 Podvorica, Hamdi, same work, pg. 51
26 Podvorica, Hamdi: same work, pg. 51

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The right for representation is regulated by the Inheritance Law of Kosovo. Provision of article 13 of the ILK has foreseen: when one of the children dies before the decedent, his place is taken by his children, and when the successors cannot be heirs due to reasons foreseen by law, their descendants are made heirs with no limitation. When one of the decedent’s children does not inherit (e.g. has died before the decedent, has been deemed unworthy, has been excluded by will from the right of inheritance on the necessary part, etc.), the decedent will be inherited by the descendant of the decedent’s children by inheriting that part that would be given to the decedent’s child if he could inherit – naturally when the right of representation is implemented, closely-related descendants have priority (nephews before grandnephews.). The right for representation is applied only when the matter regards legal inheritance. The truth is, we are dealing with a legal fixon, according to which the descendants inherit their predecessor in legal inheritance, who has died before the decedent and in this way they present themselves in his place, inheriting the hereditary portion that would belong to their predecessor, would he be alive at the moment of death of the decedent.

The right of representation is characterized by the fact that all heirs inherit equal shares and the right of inheritance is unlimited, which means that children, nephews, grandnephews of a straight descending line will inherit until there is one single or last heir. In this case it is important to establish a line. Persons related within the same line inherit the share of property that would be inherited by the children of the dead person before the decedent. They will inherit this part of inheritance despite the level of relation to the decedent, so that they may have nephews, grandnephews and other persons in straight descending line against the decedent.

If the heir gives up on the inheritance on his behalf, and not on behalf of his predecessor, then according to the right of representation the nephews of the person who died before the decedent will inherit the share of inheritance that would belong to this heir. On the contrary, if giving up his inheritance would concern his descendants too, the right for representation cannot be applied in this case, so that the descendants of the child who died before the decedent cannot inherit. For the reasons that giving up includes the descendants of the

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27 Article 13 of the Law of Inheritance of Kosovo
28 Antić, Oliver; Nasledno pravo, NIP Glas d.o.o. Beograd, 2002, pg. 76
29 Podvorica, Hamdi: same work, pg. 55
one who gave up, unless he expressly declared that he gives up his inheritance only in his behalf.\textsuperscript{30} If the descendents are minors, one does not need permit from the custody organ to give up inheritance.\textsuperscript{31} The application of the right for representation is conditioned by the death of the decedent, because without his death, the inheritance cannot be opened. Only descendents can use the right for representation.\textsuperscript{32}

The right of addition

If the right for representation cannot be applied (within a line) to inheritance ranks, the hereditary property that would belong to related persons of the line within the inheritance rank will be added to the hereditary share of other heirs within that inheritance rank that is in closer relation with the decedent, in which case one should be careful about the quality of heirs. The right of addition is recognized by the Family Law of Kosovo. In the provision of article 23 of ILK it is set: where there is a child from the decedent, the other parent who isn’t a surviving spouse, and the fortune of that spouse is bigger than the share that would belong to him in a case of dividing the hereditary property in equal shares, then every child of the decedent has right to a share two times bigger than the spouse, if the court has considered all circumstances regarding the case and has not decided otherwise. \textsuperscript{33} Though this provision isn’t clear enough, one can understand that the intention of Kosovo Legislature is the betterment of inheritance position of decedent’s children, in cases where the surviving spouse has a greater property. The main deficiency in the ILK is that the other conditions that should be fulfilled for concrete application of the right for addition have not been concretized and regulated with legal norms, therefore such gap makes the court’s job harder in regard to practical application of the law. \textsuperscript{34}

The right of addition (jus accrescendi) is applied when a part of one or several heirs remains “free”, and in cases where the right for representation cannot be applied, for example, if the decedent has died, who has had two children out of which one couldn’t inherit, and didn’t have any descendant, his hereditary share would belong to the other child, respectively the brother or sister of the decedent’s descendant.\textsuperscript{35} Or, even more concretely, if a person who is called upon inheritance is eliminated from inheritance, than his hereditary share is added to the hereditary shares of other first rank heirs, which means

\begin{itemize}
\item Article 130.2 of the Law of Inheritance of Kosovo
\item Article 130.3 of the Law of Inheritance of Kosovo
\item Antih, Oliver: same work, pg. 86
\item Podvorica, Hamdi: same work, pg. 54
\item Bago, Drago, Tralić, Nerimana, Petrović, Zdravko, Povlakić, Meliha: Osnovi naslednog prava PP “To je to”, Sarajevo1991, pg. 48
\end{itemize}
that they are in an even more favorable inheritance position. The right of addition can be either in favor of all persons related who in a concrete case can be presented as heirs or only a part of them, e.g. favoring only heirs of one rank.  

If the decedent has left three children as heirs: a, b, c. Everyone of them has the right of inheritance to one-third of the hereditary share. If child a is eliminated from inheritance due to any reason, children b and c would inherit half of the hereditary property. This means that it would be proceeded as if the eliminated heir didn’t exist, and the hereditary share ipso jure, that remains and that is “free”, is added to the hereditary shares of other heirs. The way it differs from the right for representation, the right of addition is applied when it regards legal inheritance as well as will based inheritance.

Second rank of inheritance

The second rank of heirs at law is composed from the parents and spouse of the decedent when the spouse does not inherit in the first rank of inheritance. This statement comes from the provision of article 14.1 of ILK where it is stated that: The property of the decedent that has no successor is inherited by his parents and his spouse. Based on this legal provision, it can be said that the parents are bearers of the second rank of inheritance. When both parents are alive at the moment of death of the decedent, and along with them the spouse competes with them, each parent is entitled, according to the rule, one-fourth of the hereditary share. This derives from the provision of article 12.2 of ILK where it is set: The parents of the decedent inherit half of the property in equal shares, where the other part is inherited by the spouse. If in the second rank only the parents are heirs, the reason being that the decedent has not left any successors behind, the parents will inherit all of the hereditary property in equal shares. And vice-versa, the spouse will inherit all hereditary property of both of the decedent’s parents are dead before the decedent and have left no successor, or both of the parents have given up their inheritance, have been excluded from inheritance or are unworthy and have no successor.

When a parent dies without leaving a successor, then he is inherited by the other parent. Regarding this, the provision of article 16 of ILK says: If one of the decedent’s parents is dead before the decedent and has left no successor, his share of hereditary property that would belong to him if he would have lived after the decedent, is inherited by the other parent, and if this parent has died

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36 Blagojević, Borislav: same work, pg. 60
37 Antić, Oliver; same work, pg. 88
38 Article 14.1 of Law of heritage in Kosovo
39 Article 12.2 i of Law of heritage in Kosovo
before the decedent too, his successors inherit the hereditary property share that would belong to both parents. It is of interest to say that brothers and sisters born from the father or the mother inherit that share of inheritance that their parents would if they would have experienced the moment of opening the inheritance. Regarding the principle that heirs in closer rank exclude from inheritance persons from a distant rank, an heir from a distant indirect rank cannot inherit, until there exists a closer rank heir that can and wants to inherit. Also there is no possibility of application of the right of addition within the lines of inheritance ranks of a family tree, where the possibility of applying the representation right is open, being that this right, when it fulfills the legal presumptions for its application, excludes the possibility for the right of addition.

The decedent’s parents inherit half of the hereditary share in equal shares. When they divide the inherited property among them, each one of them takes one-fourth of the hereditary property. Meanwhile the decedent’s spouse takes half of the hereditary property.

If the father of the decedent has died before the decedent, the share of hereditary property that would have been inherited by him had he lived after the decedent now is inherited by the children of the decedent’s father, brothers and sisters and also nephews of the decedent. Children of the parent who died before the decedent, are in the same time the brothers and sisters of the decedent. So in this concrete case, we are dealing with the application of the right for representation.

The decedent has left no spouse after his death. Also the father of the decedent has left no heirs. In this case the hereditary property of 1/1 is inherited by the other parent, being the mother of the decedent, who has outlived the decedent. In this particular case the right of addition is applied.

The brothers and sisters of the decedent with their successors can inherit when the legal presumptions for application of the right for representations are fulfilled. Therefore, according to provision of article 15.1 of ILK, the brothers and sisters with their successors can inherit: “if one of the decedent’s parents has died before the decedent, the part of hereditary property that would belong to him had he lived after the decedent is inherited by his children (brothers and sisters of the decedent), nephews and grandnephews and his distant successor.” In this case the rules that will be applied apply when the decedent is inherited by his children and other successors).

Also, in article 15.1 of ILK it is said that: if both of the decedents parents are dead before the decedent, the hereditary property that would belong to them had they lived after the decedent, is inherited by the respective successor.  

40 Article 16 i of Law of heritage in Kosovo. Podvorica, Hamdi, same work, 55-58
And lastly: “In all cases the brothers and sisters on the fathers side inherit in equal shares the hereditary share of their father, while brothers and sisters from the same father and mother inherit in equal shares with the brothers and sisters from the fathers side the share of the father, while with the brothers and sisters from the mother inherit the share of the mother”\textsuperscript{42}.

**Third rank of inheritance**

Heirs of the third rank compete for inheritance only when there are no first or second rank heirs, when they do not want to inherit, have been excluded or are unworthy to inherit. Heirs in third rank are the grandfather and grandmother and decedents from the father line as well as the mother line. This way, hereditary property of the decedent that has no successor, spouse, parents and his parents have left no other successors he is inherited by his grandparents\textsuperscript{43}.

It is characteristic for the third rank that as competing heirs for inheritance are only heirs at law called upon inheritance according to the fact of blood relation. This is not characteristic for the other ranks of inheritance, because there were heirs competing according to civil relation fact (adoption) and marital bond fact (husband).

When we are talking about the third rank of inheritance, an important fact is that hereditary property is divided into two equal shares: one belongs to heirs from the father line, while the other part belongs to the mother line. This rule is foreseen by the provision of article 18.2 of ILK where it is said: Also the grandmother and grandfather from the same line inherit in equal shares.\textsuperscript{44} Considering the rules of the linear parental system within one and the other line then comes to the splitting of lines, which means that the grandfather and grandmother from the same line inherit in equal shares. This means that all hereditary property is divided into four equal shares establishing this way four hereditary lines according to which, the property that belongs to a line is bonded to that line until there exist legal presumptions for application of the right for representation. Therefore, when due to any reason one of the decedent’s successor (bearer of the line) does not inherit because he died before the decedent, or has been excluded or is unworthy of inheritance, or has given up on inheritance on his behalf, his share will be inherited according to the right of representation by his children or successors as related persons in an indirect line with the dece-

\textsuperscript{41} Article 15.1 of Law of heritage in Kosovo. Podvorica, Hamdi: same work, pg. 58-60
\textsuperscript{42} Article 15.3 of Law of heritage in Kosovo
\textsuperscript{43} Article 18.1 of Law of heritage in Kosovo
\textsuperscript{44} Article 18.2 Law of heritage in Kosovo
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The division of property according to a line is achieved through rules that apply when the decedent is inherited by his children and other successors.

In the third rank of legal inheritance half of the hereditary property is inherited by the grandparents of the father line, while the other half by the grandparents of the mother line. When due to any legal reason the grandfather does not or does not want to inherit, ¼ of the hereditary property that would belong to him if he would inherit as a bearer of the line within the father line, would be divided to the grandmother as a bearer of the same line. This way, she would inherit half of the hereditary property or the entire share that would belong to the father line.

When even the grandmother wouldn’t inherit as a bearer of line within the father line then all of property that would belong to this line would be transferred to the mother line. This way, the grandparents from the mother line would inherit in equal shares (1/2) the entire hereditary property. This method is applied in cases where grandparents from the father line inherit, and grandparents from the mother line inherit as well.

In this particular situation the decedent’s successor, the grandfather, according to the father line, is dead before the de cujus. The hereditary property share that would belong to him had he lived after the decedent is inherited by his three children according to the rules that apply in a case when the decedent is inherited by his children or successors. From the mother line, the grandmother as a bearer of line has died before the decedent too. The hereditary property share that would be inherited by her had she lived after the decedent now is inherited by her two children according to the rules that apply in a case when the decedent is inherited by his children. In both cases the right for representation has been applied.

Conclusions and recommendations

Legal inheritance is the transfer of property of a dead person to one or more persons according to rules set by the law. Based on the law, heirs at law of the decedent are: children of the decedent, their adopted children and their successors, extramarital and marital spouses, grandparents and their successors. These heirs gain the right of inheritance at the moment of death of the de cujus.

The facts for determining the relation between the decedent and potential persons to be called upon legal inheritance are: blood relation, adoption relation and marital bond. Historically the position of heirs that gained the right of inheritance based on the blood relation fact has been more favorable in comparison to those that have gained the right of inheritance based on the civil rela-

45 Kreč, Milan, Pavić, Đuro: Komentar Zakona o naslehivanju sa sudskom praksom, Narodne Novine, Zagreb, 1964, pg. 44

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tion (adoption). Now one cannot say anything regarding discrimination of females in inheritance because in regard of rights and obligations, they are fully equal to men.

The Inheritance Law of Kosovo recognizes three ranks of legal inheritance. When the decedent dies without leaving any successors, his hereditary property is inherited by the municipality, respectively the Republic of Kosovo.

Inheritance Law of Kosovo recognizes the right of representation and addition. The right of representation enables the successors of the de cujus within a straight descending line to present with a substitution instead of the predecessor who died before the decedent and inherit the hereditary share that would have been inherited by his predecessor had he presented himself as an heir. The right of addition is applied rarely, only when the right of representation is not applicable, and when no heirs in regard of a line, the property that would be inherited by this heir is added to other heirs within the same line of inheritance.

It is recommended:
- Continue the reforms in the sphere of legal regulation and to simplify to a greater extent the procedure of inheritance processing, regarding particularly defending the high rights of minor children.
- To take in consideration the further strengthening of equality between heirs called upon inheritance, so that all heirs, in the same conditions set by legal provisions inherit equal shares.
- To accelerate the processing of inheritance cases in courts, by selecting young judges, so that hereditary property is in no way left without an owner.

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