
ANALYSIS OF PROPERTY INHERITANCE NORMS, INSTITUTIONS AND PROCEDURES IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract: Property is one of the fundamental human rights, and a fundamental value guaranteed by international conventions and the constitution. Any activity in securing the transfer of property to the heirs should be well conceived according to proven international standards. In the Republic of Northern Macedonia (RNM) women face various obstacles during the inheritance of property and often do not enjoy their rights as provided by law. This research will focus on inheritance in RMV property and present an analysis of positive norms and procedures. The purpose of this research is to discover how the legacy of RMV is regulated and to recommend changes to avoid systemic deficiencies in competent institutions and to suggest legal-normative changes that will exclude discriminatory practices of tradition and improve the practical application of justice, respecting the spirit of the law. It is not the law that precludes the practical realization of gender equality in the inheritance of family property, but the behavior of institutions that allow tradition, which in this case does not comply with positive norms (whether national or international). Tolerating such a thing is not only incompatible with democracy and the modern state, but it is in contradiction with the rule of law. With this in mind, it is seen as an urgent need to take appropriate action by the state to prevent a practice that runs counter to the country's positive norms. This requires, inter alia, concrete monitoring measures, appropriate training for legal officers (judges, notaries etc.), penalties in the case of a tolerance of tradition which is contrary to positive laws, as well as educating the population through information campaigns on the importance of implementation of gender equality in property inheritance issues. We can speak of a civilized society where the state plays the role of eliminating negative impacts from the past only when it is achieved through the above measures or other adequate measures that women enjoy equal legal rights in practice. Otherwise, if we continue to be engulfed by traditions (even though we are living in a state of modern norms), where tradition which is contrary to positive norms is not excluded from the system and then out of our minds, then we cannot speak for equality. What can help the process is the emancipation and awareness of women seeking legal rights even if it can be misunderstood by other family members who are traditional, not only because of tradition but also because of the interest in acquiring the legal share of inheritance from family females, forcing them to make a statement that they allegedly voluntarily give up the legal inheritance (to maintain good family relationships). Lastly, equality does not tend to harm anyone, but rather strengthens the role of each member within the family and raises the level of mutual respect and opens the prospect of building a modern society that promises gender-balanced development.

Keywords: gender equality, property inheritance, Northern Macedonia

1. INTRODUCTION

Property rights go through complex procedures and often represent a source of administrative and judicial conflicts. Ownership itself is a significant problem, and in particular women's property rights due to the influence of tradition and the level of social civilization (Незири & Азизи, 2018, p.22). The property situation of women in general is unfavorable, as a result of: women's limited knowledge of their property rights; deficiencies in legislation and inadequate judicial and administrative practice; lack of monitoring in the implementation of the law on respecting gender equality. This is also noted in the European Commission's Annual Progress Report on RNM ..."Public awareness on gender equality is missing, and there is still a gender stereotype in RNM" (Report, 2016, p.61).

In a relatively recent study, it was confirmed that tradition has a significant influence on the decision to inherit family property (Mitrevska, 2017, p.26).

RNM falls into the group of countries with a high level of gender discrimination in social institutions, characterized by inconsistent legal framework covering family code, inheritance and access to women in resources; the strong influence of customary practices and parental authority (OECD, 2014, p.7)

FAO and World Bank surveys are providing land ownership statistics (by sex) for Western Balkan countries, processed from data obtained from the Land Registry Services database, which reveals that 2/3 of ownership belongs to men (FAO & WB, 2014). Even in RNM, men own 83% of the property (Browne, 2017, p.11).

Within the family, girls tend to be inferior to their brothers and are seen as belonging to "someone else's home" as there is an expectation that they will marry and leave their birth family (Barker & Pawlak, 2014, p.17).

This situation can be improved by ensuring an adequate legal, institutional and procedural framework, including legislative improvements, training of judges and notaries on the fair promotion of legal opportunities, as well as

awareness raising campaigns on information and promotion of women's rights. "It is very important to establish a functioning judicial system ... and respect for fundamental rights in law and in practice" (EC Report 2019, p.15). In a study carried out by the World Justice Project in 2019, on the Rule of Law Index at the world level involving 126 states, the RNM was ranked 56th (WJP, 2019, p.9), which implies that the state should strengthen monitoring in the practical implementation of laws.

The analysis of legislation and practices in this paper aims to clarify whether the problem that impedes full and effective respect for property rights is the content of law and procedures, the conduct of competent institutions, the mentality of society, or other factors that jointly make it impossible to achieve gender equality over inheritance in practice.

2. BRIEF DESCRIPTION OF PROPERTY INHERITANCE PROCEDURES IN NORTH MACEDONIA

There are two possibilities for inheritance in RNM: law by will and testament. The legal inheritance is the transfer of property to persons designated by law as heirs, while the testament is a unilateral declaration of the will of the landlord in case of death, made in the form prescribed by law. In some countries (France, Germany, Switzerland, Austria, etc.), another form of inheritance is envisaged, inheritance contracts.

Necessary inheritance limits the testator's freedom to dispose of his will voluntarily when it comes to the near-inherited persons (second district) protected by law.

Unlike legal inheritance where there are three inheritance ranks, the necessary inheritance is the necessary second-order district (children of the decedent; his adopted children; spouse (Article 30, Law on Inheritance).

These persons, since they do not need to meet any additional requirements, are in theory recognized as absolute indispensable heirs. While the offspring of the testator's children are relatively indispensable heirs, and to be eligible as heirs, they must meet another subjective criterion (to have lived in communion with the testator at the time of death, to be incapable of work and absence financially needed for living). The testator's parents and their offspring (ie brothers and sisters) and the testator may receive the necessary inheritance if they do not have the necessary financial means to live and are unable to work.

The children of the decedent, his adoptive parents and their offspring and the spouse are entitled to 1/2 of the required portion, while the other necessary heirs are entitled to only 1/3 of the portion that each heir would belong to.

The testator shall, by a will, revoke in whole or in part the heir from the portion of the necessary inheritance, if the heir has violated any moral or legal obligations any more to the heir, or has committed any act against him or his spouse, child or parent. The purpose of such deprivation is to punish the inappropriate person (who has a lot of debt), but to protect his offspring, ie, their interest in posing as heirs.

The testator's intention to exclude the heir is unequivocally expressed, at his will, without being coerced, deceived, misled or threatened. The exemption can only be revoked by drawing up a new testament.

The testator who compiles the will also determines the place where the will is stored. It may give it to others to safeguard, but the safest way is to file it with a court or other institution specializing in the provision of deposit services (such as banks).

The procedure to be followed after the death of the testator when he has left a will is set out in Article 156 of the Law on Non-Contested Procedure. After his death, the will is sent to the court, also when the court finds that the person who submitted the will has died, it is his duty to open the will, without damaging the seal, to read and compile a record. Thus, the testament is expressed in the presence of the heirs. The record that was compiled when the will was announced records how many wills were found, where and on what date they were compiled, who filed the will in court, listing the persons in the role of witnesses at the time of proclamation, if the will was open or closed, with a stamp stamped and the contents of the will testified (Article 157, Law on Non-Contested Procedure). If something is identified as suspicious, it is recorded in the record. Finally, the Court draws up a statement that the will has been disclosed and marks the date.

2.1 Inheritance contract in some European countries

In the RNM legal system, entering into an inheritance contract has no legal value because the law does not recognize such a possibility (Neziri & Azizi, 2018, p.61). A Lifetime Support Agreement may be concluded in its place.

An inheritance contract is a two-way legal action between a testator and an heir, defined by different authors as:

- "A two-pronged legal action whereby contractors, both or only one of them, dispose of his property in the event of his death" (Ѓорѓевиќ, 1997, p.369);
- "Legal basis on which the parties dispose of their inheritance" (Стојановиќ, 2003, p.163);
- "One-sided and double legal action, which derives its action not only from the will of the testator, but also from the will of the other contracting party" (Антић, 1986, p.512).

An inheritance contract can be a mutual agreement when both contracting parties designate each other as heirs (if one dies and the other inherits), but there may be a situation where both parties designate a third party as heirs. In terms of content, the contract may refer to all or part of the testator's property, but also to future property, ie property that has not yet been acquired. Restrictions on a testator's freedom to dispose of all his property appear in the necessary part as a way of protecting the necessary offspring.

The inheritance contract is recognized by legal norms in Germany, Austria, Switzerland and France. German law regulates this in Part Four of the German Civil Code (Articles 2274-2303), in three forms as a close inheritance contract, as a contractual heir and as a negative inheritance agreement. The inheritance contract in the strict sense is the basis for universal continuity, according to this contract the offspring is the person whose inheritance will be overcome. A negative inheritance contract occurs when the person who has to inherit gives up future inheritance. The number of persons who can conclude such an agreement has been reduced to a narrow circle and a stricter form, so such an agreement must be notarized.

The Swiss Civil Code (1907), like German law, acknowledges the inheritance contract as a legal basis, specifying exactly how the parties wish to distribute the property, but all heirs must respect the provisions of this agreement.

In Austrian law, the contract of inheritance is provided for in the Austrian General Civil Code (1811), which allows only spouses to enter into such contracts only for $\frac{3}{4}$ of the property and for the remainder they can make a will. Also in France (since 2002) spouses are allowed to enter into this contract, which is known as a "gift in favor of the surviving spouse" (Спировиќ, Мицковиќ & Ристов, 2011, p.377).

2.2 Realization of the will and procedures

For the execution of the will, one or more persons may be appointed who shall exercise the express will of the testator as he wishes (Article 114, Law on Inheritance). In addition to the obligations, the executor of the will also has the right to be compensated for the work performed and to be reimbursed for the expenses, which are paid from the value of the inheritance, for which a court decision is made. If the Court or any interested party of the heirs determines that the executor of the will contravenes the law and the will of the testator expressed in the will, then the Court shall dismiss it (Article 116, Law on Inheritance).

There is also the possibility of revoking (in whole or in part) and cancellation of a will by the testator as long as he is alive, but must prove his ability. If the testator drafts a new will, he does not revoke the previous will completely, so some provisions of the former will not conflict with the provisions of the new will (section 118, Law on Inheritance). The cancellation of a will may be requested by persons having a legal interest in fulfilling the conditions prescribed by law. Revocation may take place while the decedent is alive and cancellation may take place after his death. An application for cancellation of a will may be made by persons who prove that they have a legal interest and within one year from the time they found out about the will, as a subjective deadline, and at the latest 10 years after the will was announced.

The court shall commence proceedings for the hearing of the inheritance as soon as it is known that the testator has died or that a certain person has been pronounced dead. The court finds the testator's death by obtaining a death certificate from the Registrar, who is required to register the deceased, and sends it to the court within 30 days of the death of the person or persons having a legal interest in initiating inheritance proceedings of the decedent. Participants in the inheritance litigation procedure include: heirs and persons having a legal interest and the authority conducting this proceeding is obliged to inform them of its initiation (Article 125).

In the case of foreign nationals, if their immovable property is located in the territory of the RNM, then the RNM court is exclusively competent (Article 85 (1), Private International Law), jurisdiction is determined by the place of residence, ie th., the residence of the testator at the time of his death (section 129, Law on Non-Contested Procedure). But if he did not reside at the time of his death at RNM, then the inheritance will be determined by the local court where the inheritance is located (Article 129, paragraph 2).

2.3 The role of the Notary

The court shall, within eight days, submit the case, together with all its evidence, to the public notary whose seat is in the territory of the Basic Court competent for adjudication of inheritance. Cases shall be given to notaries in alphabetical order (Article 135). The Notary is obliged to accept the work entrusted by the President of the Court of First Instance, and may be fined if he refuses to execute the order or refuses to submit the files. The Notary may appeal the decision to the court of second instance within 8 days of the decision being rendered, while extraordinary remedies are not allowed.

During the procedure, the notary public issues a decision against which the appeal is allowed within 8 days from the day of delivery of the decision to the participants. The appeal shall be decided by an individual judge (Article 127).

Prior to the inheritance procedure other actions must be performed, they are called preliminary actions in the inheritance adjudication procedure and are an integral part of that procedure itself, they may be taken by a court,

notary or administrative authority. The following are considered preliminary actions (Janevski & Zoroska-Kamilovska, 2010):

- Certificate from the Registrar on the mortality of the owner (30 days after the death he sends the certificate to the competent court);
- Recording and valuation of ownership left by the deceased (made by civil court or notary);
- Provisional measures to secure the inheritance (in case of non-adult children, then the administrative body entrusts the goods to a trustworthy person and notifies the court in the region in which the property is located), while the valuables, money, booklets, savings are handed over to the court;
- Appointment of a temporary guardian (in case the heirs are not known or where they live, the court notifies the guardianship body for the appointment of a guardian);
- Declaring a will.

The first action that the court must take is to consider whether it is competent to adjudicate the inheritance, if not, then declare it incompetent and submit the death certificate with all other documents to the other competent court.

If the administrative authority fails to take measures to secure the property, then the court will take measures to secure the inheritance. One of those measures is handing over the property to a confidential person, then placing a custody over the property, separating the inheritance from the heirs' property, taking precautions for money and securities, etc. These measures are taken only to protect the property and interests of the heirs, who are unable to take care of the property against possible damage, property value reductions, looting etc.

If the testator has appointed a person to perform the will, the court is obliged to notify the person and whether or not to accept that responsibility, and he must declare within the prescribed time. If the executor of the will fails to perform his duties, or the actions he undertakes are contrary to the law or the will of the testator, the court may, ex officio or at the request of another person, dismiss him and take other security measures.

The court first determines whether the testator has property and heirs, then sets a hearing to hear the evidence. He shall, by invitation, notify all interested persons of the commencement of a testamentary proceeding. If they do not make a statement or attend the hearing, their rights are decided by the court on the basis of the data available. If the court has no record of whether the deceased has heirs, the court invites them to the RNM Official Gazette and to the court announcement board of all persons entitled to report within one year. If these persons do not appear in court within that period, then the inheritance will be distributed on the basis of available data. As one of the most important procedural actions in the hearing procedure is the following statement.

With the following statement the heir may declare that he accepts or relinquishes the inheritance in the hearing before the judge, while in the diplomatic consular office in front of a person having at least the rank of consul. But when it comes to filing a statement of inheritance acceptance by the heir, the procedure is different from that in a negative statement, because this statement of acceptance is given in court before an independent judicial advisor, judicial advisor or expert associate or notary, while outside the country can be given to the RNM's diplomatic consular mission. Declarations by the heir regarding the acceptance or renunciation of inheritance cannot be revoked, but such a possibility is foreseen if a new property is presented, then the heir who has given an inheritance declaration requires that the inheritance right over the property be recognized young. In order for the statement to be valid, it must be freely given, so that the heir can freely express his will as it is, if the heir has made the statement under pressure, threat, fraud or deceit, it may require cancellation of the statement.

There may be disagreements among participants in the process of arguing the inheritance over facts on which their right to inherit depends. If disputes arise with the heirs, the court will instruct them to initiate civil or administrative proceedings (section 172 (2), Law on Non-Contested Procedure). In this case, the court will continue the inheritance proceedings after the civil or administrative proceedings have ended.

After determining the volume of inheritance, legal and testamentary heirs, a hearing shall be rendered at a hearing at which the descendants shall be declared (section 177 (1), Law on Non-Contested Procedure). Thereafter, the court orders that immovable property rights be registered in public registries, while the movable property be handed over to the heirs.

When the court determines that there are no heirs or they are not known, it will adopt a decision to hand over the inheritance to the State of the RMV.

Upon the entry into force of the inheritance decision, certain persons who have participated in the proceedings as well as persons who have not participated may submit inheritance claims. This can happen if: the new property is found; a new testament appears; a person who has not participated in the inheritance argumentation procedure but who has the right to inherit as a descendant appears.

If one of the heirs has previously stated that he is giving up the inheritance, the court will invite that person to make a statement regarding the newly discovered property (In the case of a newly discovered real estate, the Judge initiates a proceeding for the adjudication of such immovable property, but if the newly found property consists

solely of movable property, it shall dispose of it without dispute). If a new testament is found, the court announces it and notifies the heirs that a new testament has been found and that they can claim their rights through a lawsuit. If a young person who has not previously participated in inheritance proceedings while entitled to inherit, then the court shall direct that person to exercise his / her rights in litigation (Article 188, Law on Non-Contested Procedure)

3. CONCLUSIONS

Failure to realize women's property rights makes economic independence impossible. Therefore, supporting women in this regard will enable them to strengthen their role in society. Otherwise, the feeling of inferiority and lack of information impedes the realization of women's property rights.

Looking at the legislation on inheritance, there is no difference in the enjoyment of gender rights. Legislation recognizes immovable property rights over immovable property, same as for men and women (in the capacity of spouses or children).

However, the full realization of the inheritance process depends on many elements, conditions, and actions of the entities that depend on each other. In general, the Law on Inheritance and Inheritance Practices in RNM requires changes and adjustments to the advanced standards of Western European countries, while avoiding all practices (tradition, religion, etc.) that harm or exclude any heirs from inheritance property.

Concerning property rights there is a big difference between the rights guaranteed by law and customary norms, or what is called de jure and de facto. Influence of customary norms, especially in rural areas of patriarchal families, has made it often difficult for girls to enjoy property rights under legal norms.

Therefore, clear guarantees are required for the effective exercise of property rights. Control mechanisms should eradicate mentalities, but also curb the impact that customary law has on women's property rights. Therefore, the oversight role of all institutions dealing with women's property issues should be strengthened and their capacity strengthened through training for their staff dealing with women's property rights.

Notaries should verify cases of alienation of assets to assess whether women's will is clearly expressed.

A database should be created and administered, which will contribute to the design and development of accurate policies to address this problem. Thus, through periodic assessments of the situation of women's property rights, the promotion of their property rights would be improved.

The awareness of women to recognize their rights should be continuous not only through the activities of NGOs, but also through the counseling to be done by the institutions called.

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