



## Legal Regulation of Women's Rights in Property and Inheritance in the Republic of Kosovo.

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**Abstract:** The purpose of this paper is the detailed analysis of the legislation of the Republic of Kosovo regulating the rights of women in property and inheritance so that the citizens of Kosovo as well as the citizens of other countries are better acquainted with the legislation of Kosovo by which these rights are regulated. To work on this paper, we have used study methods by which we have analysed in detail the laws of the Republic of Kosovo in order to find and analyse the laws and provisions relating to the rights of women in property and inheritance, and also to analyse their way of regulating them. From the analysis of Kosovo's laws we have come to the conclusion that the laws of the Republic of Kosovo regulating women's rights are quite modern and contemporary, and women's rights are regulated fairly well, that means women's rights are equal in any case to those of men.

**Keywords:** Customary norms; international legal acts; national legal acts; the principle of equality

### 1. Introduction

Women's rights in general, especially their property and hereditary rights, are subject of discussion around the world, because these rights are often denied to women, either by legislation in force or in practice, depending on the democratic development of a country.

Our country, as a transitional country, as a country whose people have faced different influences and cultures in recent centuries, ranging from the customary, then religious, ideological, and contemporary, has consequently also encountered the different laws, written and unwritten, for the rights in general, and the rights of

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women in particular, the laws that although some of them directly no longer apply but have left their traces and impacts even now in contemporary times.

In this paper we will outline the role of norms which in one way or another have had or still have their implications for the Kosovar people. Consequently, we will start from customary norms, and as codified norms we find it in “the Code of Lekë Dukagjini” (Kanuni i Lekë Dukagjinit), which, although formulated about 500 years ago, because of the longevity it has had among Albanians, still has its effects on our people and therefore we will pay special attention to it in this paper.

However, over time, the various impacts that have occurred in our country's legislation have made the impact of customary norms, namely “The Code of Lekë Dukagjini”, fading, and incorporating more contemporary norms into our juridical order. Thus, with the declaration of independence and with the entry into force of the Constitution of the Republic of Kosovo (hereinafter CRK), in 2008, also entered into force many international legal acts, which ensure equal rights for all, and consequently also equal rights for women as well. Thus, we will also devote a great deal of attention to the international acts that are included in the CRK and thus apply directly to our country.

And the third part of the legal acts elaborated in this paper will be devoted to the national legal acts, that is the applicable legal acts of our state, which in any way regulate the rights of women, starting with the Constitution of the Republic of Kosovo, and to continue with the laws in force (the Law on Gender Equality, the Law on Inheritance, Family Law of Kosovo and the Law on Property and Other Real Rights).

## **I. The Customary Norms**

### **2. “The Code of Lekë Dukagjini”**

The main influence on our people has been from “The Code of Lekë Dukagjini”<sup>1</sup> (hereinafter the Code), which although created in the 15th century, has had influence for more than 400 years. The Code contains provisions in various fields, mainly in the civil field, and thus regulates inheritance and property issues, including women's inheritance and property rights.

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<sup>1</sup> The Code's rules were collected and codified in a single and written act by Shtjefën Gjeçovi (1873-1929) in the old Gheg dialect at the beginning of the XX century. This act was named “The Code of Lekë Dukagjini”. The parts of the Code cited in this paper are translated by the authors of this paper.

If we compare it with today's provisions of this field, it can be seen that the regulation by the Code was quite primitive, but for the time this act was implemented, and especially in its beginnings, it was considered quite acceptable. The Code not only regulates the issue of women's inheritance, but it also shows why it is set in that way. In the following we will discuss some of the provisions that regulate women's property and heredity issues.

### **2.1. Inheritance Rights**

According to the Code, the woman was not entitled to inheritance either to her husband or to her parents:

“The legacy of the Albanian woman

The Albanian woman does not have any inheritance right at her parents, neither in property, nor at home, - the Code considers her as a remnant at her home” (the Code, Article 20).

“The Code recognizes the son as the inheritor and not the daughter.” (The Code, Article 36, paragraph § 88).

Thus, as seen in Article 20, and in Article 36, paragraph 88 of the Code, a woman cannot inherit either her husband or her parents. The reasons for this are mentioned in the Code:

“The wife does not inherit either her parents or her husband:

- a) So that nephews don't move/take their childless uncle's property (mother's brother);
- b) So that the wife's parents don't move to their childless bridegroom's property;
- c) So that tribes of one flag<sup>1</sup> don't mix with tribes of another flag.” (The Code, Article 36, paragraph § 91).

The Code was opposed to mixing the wife's family with the husband's family. According to the Code, it was not acceptable that the family of the woman, which was from another tribe and flag, and from a remote village, from the tribe, the flag and the man's house, to move to the man's village by inheritance.

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<sup>1</sup> The flag consisted of two or more tribes.

So, there were three cases where by inheritance could come to the mixture of the woman's family with that of the man, so that the wife's family could become the owner of the bridegroom's wealth, and these cases were:

- a) If a woman were to inherit her parents, then her sons, who belonged to a tribe other than that of their mother's parents, could go to their mother's estate;
- b) If a woman inherited her husband who had no offspring, then the wife's parents could go and become owners of their bridegroom's property;
- c) If the woman were to inherit her husband, then it would come to the mixing of a tribe or a flag, with another tribe or flag.

The Code likewise viewed the woman as foreign to the husband's family, and regarded her as a surplus (the twentieth article of the Code), and did not allow the wife's family to become owners of their bridegroom's wealth, and if he (the dead husband) did not have any descendants, then his property would be inherited by the church or his cousins, and by no means a distant foreign family as the Code considered the family of the wife.

However, the Code cared for the widow not to remain without food as a result of the death of her husband, and in this case one can assume that the widow inherited a portion of the harvest of her husband's land: "...A widowed wife that has no sons, if she has married daughters, she has the right to stay and live in her husband's home. She can also move to her parents, or to any of the married daughters, while her husband's land will provide her the food. Three burdens of grain per year until she dies." (The Code, Article 30).

## **2.2. Property Rights**

Although, as noted above, the woman had almost no inheritance rights, she could have owned some movable items, which consisted of gifts given to the bride on engagement or marriage, as well as elementary items for living, such as necessary clothes and nutrition:

"The obligations of husband for his wife. The husband has the responsibility: a) to provide clothing and all that is required for living for his wife;" (The Code, Article 13, paragraph § 32).

"Women's rights. The woman has the right to ask her husband to take care of her and provide her with clothes" (The Code, Article 13, paragraph § 34).

So we can say that for social reasons and beliefs that existed in the Albanian society at the time of the Code, the developmental level of the hereditary and property rights of women was extremely low, and unfortunately it still has impacts in modern times, but these impacts are fading day by day.

## **II. The International Legal Acts**

Different international organizations and institutions have repeatedly made efforts to create fairer rights and equalize the rights of women and men. Thus, international organizations or institutions, such as “the United Nations (hereinafter the UN), the Council of Europe (hereinafter the EC), the European Union (hereafter the EU), have created various legal acts that regulate the basic rights of people.

These international legal acts, because of their importance have been included in our constitution, starting from the Universal Declaration of Human Rights; European Convention on Human Rights and its Protocols; International Covenant on Civil and Political Rights and its Protocols; The Framework Convention for the Protection of National Minorities; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” (The Constitution of the Republic of Kosovo, 2008, Article 22.)

Below will be elaborated separately the international acts affecting the fundamental human rights, with particular reference to property and inheritance rights.

### **3. Universal Declaration of Human Rights**

It is a UN legal act adopted in 1948. The Universal Declaration of Human Rights is very important because it contains the fundamental rights and has also influenced the member states to start creating other acts to respect the basic rights of people without distinction. The statement provides that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether

it be independent, trust, non-self-governing or under any other limitation of sovereignty” (Universal Declaration of Human Rights, UNO, 1948, Article 2). And also “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property” (Universal Declaration of Human Rights, UNO, 1948, Article 17).

Based on Articles 2 and 17 of the Declaration, we see that, apart from other rights, it also regulates property rights and does not make exceptions but states that “everyone” has the right to have wealth, both men and women, while Article 2 foresees that the rights envisaged by this act are enjoyed by all persons without distinction, and consequently without any gender distinction, and so the right of property is enjoyed without any gender difference.

#### **4. European Convention on Human Rights and its Protocols**

This convention is a legal act of the Council of Europe, which was drafted in 1959 and entered into force in 1953. As an international agreement on basic human rights, this convention and its protocols have been amended several times, thus being further improved and raising human rights even more. Although at the time of the entry into force of the Convention, the rights it provided were guaranteed for all, without distinction, *inter alia*, of the sexes: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (European Convention on Human Rights and its Protocols, 1959, EC, 1953, Article 14). But, at that time it did not include the right to property, and consequently did not guarantee it.

However, four years after the Convention was drafted, namely one year after its entry into force, the first protocol of this convention entered into force in 1954, and the first article of the first protocol provided for the right to property: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties” (Protocol no. 1 of the Convention, EC, 1954, Article 1).

As we can see, the Convention, namely its Protocol 1, guarantees the right of property without distinction, where it uses the word “Every natural person ...” and implies that both women and men have the right to have their property on equal terms, but this right may be restricted by the domestic laws of the states when general interest is in question.

### **5. International Convention on Civil and Political Rights**

It is an international treaty of the United Nations General Assembly drafted in 1966, which entered into force after ten years, i.e. in 1976. This pact or convention guarantees fundamental social and political rights for the signatory peoples.

Particular emphasis should be placed on article 3 of this pact, which obliges states to guarantee equal rights between men and women: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant” (International Convention on Civil and Political Rights, 1979, UNO, 1976, Article 3).

### **6. Convention for the Elimination of All Forms of Discrimination against Women**

This convention, which came into force in 1981, is the most important international legal act on women’s rights, because it explicitly guarantees and mentions all the rights that women must have.

It is a special act specifically for women’s rights, which implies that women’s rights have not been sufficiently respected, and also implies that the modern world, i.e. the highest international institutions or organizations, a special role devote to women’s rights, respectively the elimination of all forms of discrimination against women.

The Convention, among other rights, expressly mentions the right of women to enjoy property or wealth equally with men: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration” (Convention for the

Elimination of all Forms of Discrimination Against Women, 1981, UNO, Article 16.1. (h)).

By this convention, international institutions, once again, this time with a special act on women's rights, equate women's rights with those of men. This international legal act guarantees that on equal terms, or on the basis of equality, both husband and wife freely buy, administer, enjoy and dispose of their property, both for free and for payment.

### **III. National Legal Acts**

#### **7. Constitution of the Republic of Kosovo**

The constitution of the Republic of Kosovo, which entered into force on 9 April 2008, also regulates gender equality in general and gender equity in property rights in particular, in two ways - directly and indirectly. Directly gender equality is regulated by the Constitution with its articles expressly, whereas indirectly guarantees the equality of men and women's rights in property and inheritance by incorporating in itself the international acts discussed above, to which the constitution gives legal power within our country.

The Constitution equates all citizens, and guarantees legal protection for all without distinction: "All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination. No one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled" (Constitution of the Republic of Kosovo, 2008, Article 24).

According to our Constitution, gender equality is ensured and seen as a fundamental value for the democratic development of society by providing equal opportunities for participation of women and men in political, economic, social, cultural and other areas of social life (Constitution of the Republic of Kosovo, 2008, Article 7.2).

So, the rights that are foreseen in the constitution are valid for everyone, without gender differences and other differences. Among other rights in the constitution the right to property is also guaranteed: "The right to own property is guaranteed. Use



of property is regulated by law in accordance with the public interest. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court. Intellectual property is protected by law” (Constitution of the Republic of Kosovo, 2008, Article 46).

Thus, article 7, in conjunction with articles 24 and 46 of the Constitution, guarantees the equal right without discrimination of all citizens of the Republic of Kosovo. We can say that the Constitution of Kosovo is one of the most advanced constitutions regarding the issue of regulating women's rights, which, as stated above, regulates these rights by expressly including in its articles, also by giving legal power to international acts in this area.

## **8. Laws of the Republic of Kosovo**

Regarding the laws of the Republic of Kosovo in the area of women's property and hereditary rights and gender equality, among others more important are three laws that regulate these issues, which are:

1. Law on Inheritance in Kosovo (2004);
2. Law on Property and Other Real Rights (2009);
3. Law on Gender Equality (2015).

These are three basic laws that generally regulate inheritance and property rights and ensure gender equality of RKS citizens.

### **8.1. Law on Inheritance in Kosovo**

This law entered into force in 2004 and is still being implemented in our country. The main article on equality of inheritance is Article 3.1, which foresees “All physical persons under the same conditions are equal in inheritance” (Law no. 2004/26 on Inheritance in Kosovo, 2004, Article 3.1). Thus, based on this article both men and women under the same conditions, regardless of whether they are parents, spouses or children, are equal.

Another important article, which at first glance may seem merely an article on technical issues, but that if it is further elaborated, it is noted that it is of great importance to the topic we are analysing, is Article 1.4 of this law, with which it is foreseen “For the purpose of this Law, words in the masculine case shall also include the feminine case and vice versa, without discrimination” (Law no. 2004/26 on Inheritance in Kosovo, 2004, Article 1. 4). For example, if the law provides that the deceased person is inherited by its surviving spouse<sup>1</sup> implies that he/she inherits the same regardless of the spouse's gender.

### **8.2. Law on Property and Other Real Rights**

The Law on Property and Other Rights, as well as the other acts elaborated so far, does not discriminate against women regarding their property rights as equal citizens of the Republic of Kosovo: “Any person can acquire real rights, unless otherwise provided by law” (Law no 03/L-154 on Property and Other Real Rights, 2009, Article 2.1.). Thus, the law mentions the word “Any person ...” and consequently equates the natural persons of both sexes.

### **8.3. Family Law of Kosovo**

Kosovo’s family law also has a significant impact on women’s rights on property, as this law regulates the relationship between spouses, and among them property relations as well.

According to this law, one of the main principles underpinning the regulation of family relationships is the principle of equality of spouses, respect and mutual assistance between them and family members (Law no. 2004/32 Family Law of Kosovo, 2006, Article 3.1).

As regards the property aspect, namely the joint property of spouses, this law equates spouses, respectively their marital property, by assessing that spouses are joint owner in equal shares of their joint property unless otherwise agreed on (Law no. 2004/32 Family Law of Kosovo, 2006, Article 47.4).

### **8.4. Law on Gender Equality**

This law generally regulates the gender equality of women and men in all social fields. According to Article 1 of this law, the purpose of the law in question is determined as follows: “This Law shall guarantee, protect and promote equality between genders as a basic value of democratic development of society. This Law

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<sup>1</sup> The Albanian word “bashkëshort(i)” means spouse, that is in the masculine form in this law.

determines the general and specific measures to ensure and protect the equal rights of men and women, and defines the institutions responsible and their competencies.” (Law no 05/L-020 on Gender Equality, 2015, Article 1.1 and 2).

Then the law in question also regulates the issue of gender discrimination by prohibiting any possible form of gender discrimination “It is prohibited the direct or indirect gender discrimination, including less favourable treatment of women for reasons of pregnancy and maternity, marital status, nationality, race, disability, sexual orientation, social status, religion and belief, age or any other basis defined by law or agreement and international instruments into force” (Law no 05/L-020 on Gender Equality, 2015, Article 4.1).

So we can see that besides the special laws on property and inheritance, the Republic of Kosovo has also issued the law which is specifically devoted to gender equality as a fundamental value for the democratic development of our country.

## 9. Conclusions

Women’s rights, as stated earlier in this paper, are of equal importance as well as the rights of men, but since women's rights throughout history have been greatly violated and are still being violated, but with a lesser extent, there has always been a need for national and international legal acts to protect these rights in general. Except that general acts have been issued which regulate or guarantee the rights in general, and thus property and inheritance rights, it has been considered reasonable, as discussed in this paper, to draw up an international act that in particular would guarantee the rights of women, or rather would guarantee the elimination of all forms of discrimination against women.

Regarding written legal acts, applicable in international law and in our country, we can say that it is very appropriate to regulate the equality of women’s rights with those of men. Thus, women’s rights are also foreseen with applicable legal acts, but they are also equal.

The issue lies in the practical implementation of these legal acts. Our people, but also the other peoples, more or less, depending on the emancipation and development of that society, has a disadvantage in full respect for women’s rights. The reasons are different, but the influence of the past, of customary law as well, has made its impact, and that impact more or less is still noticed. States in general and societies also, need

to make as much effort to raise awareness and emancipate citizens to understand that women as well as men must have equal rights and respect those rights to the utmost.

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