

## **Legal and testamentary inheritance law along with relevant restrictions according to the Civil Code of the Albanian Kingdom (Civil Code of 1929)**

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### **Abstract**

*Inheritance law and in particular testamentary law, have a crucial importance in the civil flow of material goods. The origins of the juridical and civil institute of inheritance lie in the Roman period, who are the pioneers of the most fundamental and serious development and processing of civil law rules in general that have survived over the centuries, turning into the basic principles and concepts of the development of social and economic relations. Inheritance, as one of the most important ways of acquiring ownership, constitutes a proper system of post-mortem transfer of ownership, and this way of ownership is introduced in almost every social and economic system, as well as in different cultures. This paper aims to present a general overview of the main features and disciplines of the inheritance law discipline according to the current law and to highlight the treatment of this property transfer institute according to the provisions of the Civil Code adopted during King Zog's rule in 1929.*

**Key words:** Legal and testamentary inheritance law, restrictions, the Civil Code, Albanian Kingdom, Civil Code of 1929

### **I. GENERAL OVERVIEW OF THE INHERITANCE LAW AND ITS DIVISIONS**

#### **a) Inheritance as a way of acquiring ownership**

Inheritance law is one of the main and fundamental civil law institutes. Inheritance represents one of the ways of acquiring

ownership as provided for in the Civil Code<sup>1</sup>. In doctrinal approach,<sup>2</sup> the manners of acquiring ownership are divided into *derived* and *original*.

The original manners of acquiring ownership relate to the acquisition of ownership by a certain subject of civil law after the fulfilment of certain criteria, exhaustively defined by law (*let's mention here the acquisition of ownership with an acquiring prescription with or without title, by merger and blend, bona fide acquisition of movable items, etc.*). While the derived manners of acquiring ownership, by their own designation, mean the transfer of ownership from one subject to another based on legal actions that manifest the will of the parties in a juridical and civil relationship. This group of ownership acquisition, is divided into two subgroups *inter vivos* and *mortis causa* (*between the living and in contemplation of death*).

Inheritance constitutes the derivative way of acquiring property due to death. Inheritance as a civil law institute arises only after a person, the decedent dies and, with his death, the property rights and obligations this person has had pass to one or several other persons who are his heirs<sup>3</sup>. In summary, we can say that in order to apply the institute of inheritance, the death of a person must occur, and on the other hand, the property rights and obligations of the deceased must be highlighted. We can say that inheritance is the juridical and civil institution which enables the disposition of the property after death. Through it, the decedent has the right to transfer the properties or rights in his possession to his relatives according to the

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<sup>1</sup> Article 165 of the Civil Code provides that: "Acquisition of ownership by inheritance shall be carried out under the conditions provided for in the provisions of the third part of this Code".

<sup>2</sup> Taken from the publication "Civil Law II (Ownership)", Prof. Dr. Ardian Nuni, Ma. Luan Hasneziri, 2010, p.95.

<sup>3</sup> Taken from the publication "Civil Law III (Inheritance)", Prof. Dr. Ardian Nuni, Ma. Luan Hasneziri, 2010, pg.7, pg.1.

ranks of legal inheritance and one or some of them in particular through testamentary inheritance.

Inheritance, in our legal order, as a manner of acquiring ownership, is expressly provided in the constitutional level. Article 41 of the Constitution of the Republic of Albania provides that: “2. *Property is acquired by donation, inheritance, purchase and any other classical manner provided for in the Civil Code.*” In our Civil Code,<sup>4</sup> inheritance is elaborated in one hundred and two provisions, having a very important place. The Civil Code defines inheritance in its Article 316, as: “*Inheritance is a transfer by law or by will of property (inheritance) of a deceased person to one or more persons (heirs) according to the rules set out in this Code*”. Also, other key features of the inheritance institute are: the time of the opening of the inheritance, the place of its opening, the applicable law to the inheritance, the capacity to inherit, unworthiness etc.

### **b) Time of opening of the inheritance**

One of the most important issues regarding the treatment of the inheritance institute is the determination of *the time of the opening of the inheritance*. This is because of the fact that from the time of the opening of the inheritance, the moment when the legal relationship of inheritance begins is determined, when the transfer of decedent’s property to the heirs is made, and when the inheritance rights and obligations of heirs regarding the inheritance begin<sup>5</sup>. According to the foregoing, it is understood under the law that it can not be provided with inheritance rights and obligations before the deviser’s death, which constitutes the key juridical fact that determines the beginning of the effects and the implementation of the inheritance law. This is also provided for in the Civil Code in

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<sup>4</sup>In Articles 316-418 of Law No. 7850 “On the Civil Code of the Republic of Albania, as amended”, 1994.

<sup>5</sup>Taken from the publication “Civil Law III (Inheritance)”, Prof. Dr. Ardian Nuni, Ma. Luan Hasneziri, p.20.

Articles 318 and 319: *“(318) An inheritance is opened when the testator dies. In case of declaration of the death, the inheritance is opened on the day when, according to the court decision, the person is considered dead.(319)Any agreement by means of which are acquired or used the rights arising from a succession that has not yet been opened is invalid.”* Regarding the opening of the inheritance, the Supreme Court has pronounced in its unifying decision<sup>6</sup>: *“Inheritance opens at the moment of the decedent’s death, physically ascertained, or determined by a court decision that the person is considered dead. Determination of this moment is of particular practical importance because the circle of inheritors called to inheritance, their rights and the moment of transfer of the inheritance right is defined. It is precisely this moment that defines the applicable law regarding the effects that follow the opening of the inheritance. Based on the principle, the civil law as a rule does not have retroactive effect and in the present case, neither the prospective effect, we conclude that the law that applies to the relationship of inheritance is the law in force at the time of its opening.”*

### **c) The applicable law on inheritance**

It should be mentioned that in 2013, with law no.121, of 2013, on 18 April 2013, a provision has been added regarding *the applicable law on inheritance*<sup>7</sup>. This change has come as a consequence of the continuous improvement of our legislation with the European Union directives. This provision definitively sanctioned an important principle in civil law, that of non-enforcement of the law with retroactive effect. This means that if, for different reasons, the inheritance provisions may change, the applicable law will be that of the time the decedent died, thus respecting the principle of the opening of the inheritance.

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<sup>6</sup>Unifying decision of United Colleges of the Supreme Court No. 24, dated 13.03.2002, unanimously decision with a parallel justification of Judge BashkimCaka.

<sup>7</sup>Law 121/2013, of 18 April 2013, Article 2: “Inheritance is governed by the law of the time it was opened.”

The current legal norm has been the cause of a case in the Constitutional Court in 2017. The Constitutional Court, in its decision<sup>8</sup>, (even though has refused to examine the petition for lack of nonlegitimacy in the matter) states that: *“19. The Court notes that the legal provisions of the Civil Code relating to the time when the legal inheritance was opened and the effects they have brought were previously subject to analysis and review by the constitutional jurisprudence, which states: “It is a recognized and accepted principle by all legislation that inheritance is opened at the time the decedent dies and is governed by the law of the time it was opened. This principle is also expressed in Article 318 of our new Civil Code. Even in the transitional provisions of this Code, article 1162 states that: “... The Civil Code of the Republic of Albania shall be applied to the legal relations emerging following its entry into effect.” In respect of the rule of Article 1162 of the new Civil Code, the court finds it necessary to provide some clarification. Under a general rule of law, any new law does not act for the future except when the legislator for a law or its separate provision decides otherwise. The exclusion from this general regulation has a very limited scope of application. The new law can not be applied to the facts prior to the entry into force of the new law or to recognize to these facts different effects they had when the repealed law was in force ...”“(see decision no.11, of 21 May 1997 of the Constitutional Court).”*

*“22. In the light of the foregoing, the Court, referring to the court practice and civil law, which, although amended during the years, has remained consistent with the moment of the opening of the inheritance and the applicable law, estimates that the time of the opening of the inheritance is closely related to the determination of the volume of property rights and obligations that are transferred to the heirs, the circle of heirs,*

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<sup>8</sup>Decision of the Constitutional Court of the Republic of Albania No. 8, 2017, para. 19 and 22, unanimously adopted.

*the pace of inheritance-related terms, and the applicable law. In this respect, the Court considers that the change of a principle of inheritance law, consolidated over the years, would result in the creation of a state of insecurity and a lack of stability in inheritance relationships. In inheritance matters, respect for acquired rights and the principle of legal certainty are essential. The principle of legal certainty includes, in addition to the clarity, understanding and sustainability of the normative system, and the belief in the legal system without assuming the guarantee of any expectation for the non-amendment of a favorable legal situation (see Decision No. 20, of 15 April 2015 of the Constitutional Court). The Court reiterates that the legislator, under economic and social conditions for a certain period, has the right to change legal heirs (extending or narrowing their circle), but the new order of the new law applies to the future, to the inheritances opened after this law enters into force.”*

#### **d) Place of opening of an inheritance**

As far as the *place of opening of an inheritance* is concerned, Article 318/1 of the Civil Code provides that: “*An inheritance shall be opened in the last place of residence of the decedent. When the decedent’s last place of residence is unknown, the inheritance shall be opened in the place where all his property or the major part thereof is located.*” This means that the law defines the last residence of the decedent as an essential element of the place of opening of inheritance. Regarding the place of residence, it should be pointed out that it is important to imply the determination of the place of residence according to the relevant civil registry office law, regardless of the current situation of the deceased’s last residence. It is very important to determine the place of opening of inheritance, as this will procedurally decide the territorial authority of civil courts in

adjudicating securing hereditary estate issues, inheritance protection and the institute of renunciation of inheritance<sup>9</sup>.

### e) Capacity to inherit

Regarding the capacity to inherit, Article 320 of Civil Code provides: “A person has capacity to inherit when at the time of opening of the inheritance he is alive, or has been conceived before the death of the decedent and born alive. A person who is born within 300 days after the death of the testator shall be presumed to have been conceived at the time of opening of the inheritance.” Doctrinal approach states that a person must fulfil cumulatively two conditions to enjoy the quality of the heir: a) be alive at the time of the opening of the inheritance; b) be in the line of legal heirs in the case of inheritance by law and be a testamentary heir in case of testamentary inheritance<sup>10</sup>. The provision also provides for the case when the heir is born after the decedent’s death. This case refers to the situation where the child born is the living creature of the decedent, and therefore he can not be denied the quality as an heir. The presumption of birth within 300 days of the decedent’s death is understood to have been decided by the lawmaker based on the maximum length of the total admissible pregnancy by the medicine.

### f) Unworthiness

Another important institute for the inheritance law in our civil legislation is the *unworthiness*<sup>11</sup>. Unworthiness is foreseen as a

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<sup>9</sup>Taken from the publication “Civil Law III (Inheritance)”, Prof. Dr. ArdianNuni, Ma. Luan Hasneziri, pg.23-24.

<sup>10</sup>Taken from the publication “Civil Law III (Inheritance)”, Prof. Dr. ArdianNuni, Ma. Luan Hasneziri, pg.24.

<sup>11</sup>Article 322 of the Civil Code provides that: “Unworthy to inherit is:

- A person who has intentionally killed or attempted to kill the decedent, his/her spouse, children and parents;
- a person who has made a false accusation or testimony against the decedent for committing a criminal offense punishable by death or imprisonment over 10 years, when the accusation or testimony are declared false in a criminal trial;

legal category, which aims to exclude from inheritance those persons who have maintained an attitude or misconduct against the decedent, behaviors set out in Article 322 of the Civil Code. Based on the determinations that the above provision makes, we can say that unworthiness can be defined as a civil sanction that is based in the society's rejection on the basis of moralistic views of the fact that a person who has maintained a misbehavior to the decedent, to benefit from his inheritance. Regarding the important unworthiness, it is to be noted that it is not presumed, but one of the cases provided by the Civil Code must be proved and the decedent should explicitly exclude one heir as unworthy in one of the cases provided by law<sup>12</sup>.

### **g) Legal and testamentary inheritance**

The major doctrinal distinction in the inheritance law is related to the determination of *legal inheritance* and *testamentary inheritance*. Civil Code <sup>13</sup>explicitly provides that: "*Inheritance is a transfer by law or by will of property (inheritance) of a deceased person to one or more persons (heirs) according to the rules set out in this Code.*"

Inheritance by law is the main type of inheritance currently applied in our country. This in itself comes as a result of the lack of tradition in the disposition of property by will by the decedents, for some reasons that refer to the past monist system, where private property was limited and private property over immovable property was excluded at all from

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- *A person who by fraud, intimidation and violence has forced the decedent to make, amend or revoke a will, or has drafted himself a false will, or has used it to his interests or to the interest of others;*
  - *A person who has behaved in a humiliating manner towards the decedent and has mistreated him."*

<sup>12</sup>Taken from the publication "Civil Law III (Inheritance)", Prof. Dr. Ardian Nuni, Ma. Luan Hasneziri, pg.42,47

<sup>13</sup>Article 317 of Law No. 7850, 1994 "On the Civil Code of the Republic of Albania, as amended."

civilian circulation following the Constitution of 1976, proclaiming exclusively state property, as well as the lack of legal culture of citizens in our country in general. Therefore, inheritance by law, by an *exception* by law, because it applies only in cases when the deviser has not left a will or the will is declared totally or partially invalid, has been rendered in order, and inheritance by will from *rule*, because it applies whenever the decedent has left a will, has become practically an exception, as a result of extremely rare cases of disposition of property by will by the decedents.<sup>14</sup>

Regarding the designation of legal heirs, Article 360 of the Civil Code states that: “*Legal heirs are the children, grandchildren, spouse, parents, siblings and children of the siblings who have died earlier, grandparents and other ascendants, disabled persons dependent on the decedent, other relatives up the sixth degree, and the state. They are called to inherit in the order specified in this Code*”. It should be noted that the legislator has defined the legal heirs according to blood relation from the closest to the farthest assuming that, in the absence of disposition by will, legal heirs by order will be those whom the decedent would want to continue to enjoy his property. Also, the Code stipulates that legitimate heirs are called to inherit in order, where the nearest ones exclude the distant ones<sup>15</sup>.

On the other hand, *will* is the most important element of testamentary inheritance. Will in itself is a legal transaction. Article 372 of the Civil Code provides: “*Will is a legal unilateral transaction carried out by the testator, by which he disposes of his property for the time after his death.*” Citing some of the

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<sup>14</sup>Taken from the publication “Civil Law III (Inheritance)”, Prof. Dr. Ardian Nuni, Ma. Luan Hasneziri, 2010, pg.56-57.

<sup>15</sup>Article 369 of the Civil Code: “*Heirs of a lower degree shall be called to inherit only when there are no heirs of a higher degree, or when they all have become unworthy or have renounced the inheritance or is exempted from inheritance, unless when from heirs of the second degree shall remain the heirs unable to work and heirs of the third degree.*”

characteristics of the will, can be said that it constitutes a *legal unilateral transaction*, because in order to bring legal effects only the will of one party (the testator decedent) is sufficient. Also, will is an *intuitu personae* legal transaction (narrowly personal), which means that the testator cannot authorize by power of attorney another person who, on his behalf and in his account, perform testamentary dispositions. At the same time, will is also called a *mortis causa* legal transaction because the legal fact of the death of the testator must take place in order to come into effect in order to produce its own legal consequences in terms of the decedent's property and a *revocable* legal transaction, because according to the law in Article 402 of the Civil Code the testator may at any time modify its content or completely abolish its disposition without causing any consequent effect on his property<sup>16</sup>.

## II. LEGAL AND TESTAMENTARY INHERITANCE LAW APPROACH, ALONG WITH RELEVANT RESTRICTIONS, UNDER THE CIVIL CODE OF 1929

### a) Inheritance as an important institute in the Civil Code of 1929

In 1928, during the Albanian Kingdom period, the Civil Code was adopted, which came into force on 1 April 1929. The code was divided into four books and then the books into titles, titles into chapters and the latter into sections. For illustrative effect of this work, the inheritance institute was one of its main pillars. Inheritance was governed by the second book, namely in its provisions 454-773<sup>17</sup>.

In its content, the Civil Code of 1929, had three titles. Respectively, *legitimate inheritance (Articles 455-491)*, *testamentary inheritance (Articles 492-650)*, and *common*

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<sup>16</sup>Taken from the publication "Civil Law III (Inheritance)", Prof. Dr. Ardian Nuni, Ma. Luan Hasneziri, 2010, pg.83-85.

<sup>17</sup> Publication "Civil Code of 1929, of Zog's Era", publishing house Alb Juris

*provisions for legitimate and testamentary inheritance (Articles 651-773).* The first title of legitimate inheritance defines the ranks of heirs, manner of calling and respective shares. Further, the second title of testamentary inheritances provides the capacity to dispose of by will, types and forms of wills, legal reserves together with the relevant limitations, the legacies, the rights of addition, etc. While the third title summarizes common provisions for the institute of inheritance in general, which relate to the opening of the inheritance, its acceptance, its renouncement, the payment of the debts<sup>18</sup>, division of inheritance etc.

The Civil Code, as mentioned above, recognized both the inheritance by law and the inheritance by will. Inheritance by law was applied when the decedent did not leave the property by will (article 454), as well as for the part of the property that could not be disposed of by will (legal reserve). All those who were born alive and had the possibility to live, and those who were conceived at the time of the opening of the inheritance and were born alive, had the capacity to inherit<sup>19</sup>.

### **b) Inheritance by law in the Civil Code of 1929<sup>20</sup>**

According to article 455, legal heirs were: descendant, antecedents, indirect kinship, natural children (children born out of wedlock), spouse and if all above were absent, the state. Kinship was called to inheritance up to the sixth degree (Article 475).

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<sup>18</sup>Term used previously for the concept of obligation, or otherwise called debt

<sup>19</sup>Taken from the publication “The Right to inheritance of PSRA” (Republication, first edition 1984), author NazmiBiçoku, University of Tirana “EnverHoxha”, Faculty of Political and Law Sciences, pg.24.

<sup>20</sup>Taken from the publication “The Right to inheritance of PSRA” (Republication, first edition 1984), author NazmiBiçoku, University of Tirana “EnverHoxha”, Faculty of Political and Law Sciences, pg.24-26 for the ranks of the legal inheritance, and for the unworthiness received from the publication “Civil Law III (Inheritance), Prof. Dr. ArdianNuni, Ma. Luan Hasneziri, 2010, pg. 347.

The circle of legal heirs in this Code was wide. On the other hand, the Civil Code of 1929 sanctioned the inequality between children born from marriage with those born out of wedlock. The call to inheritance was made by order, where the nearest order excluded the following order.

**In the first row** shall be called to inherit the children and their descendants (with substitution), regardless of sex and regardless of the birth from different marriages. Children meant those born from marriage, legitimate children (children born out of wedlock and their maternity and paternity was known before or at the time of marriage of the parent spouses), as well as the adopted, according to article 469. Also, natural children, who have been lawfully acknowledged by their father, inherited by their parents, but when competing with legitimate children received “half of the part that belonged to them if they were legitimate”, according to Article 477.

For the adopted children, when competing with other heirs, the Code provided for specific rules; first, they did not inherit the line of the acquirer; secondly, when they were the only heirs of the first row, they were called to inherit with their parents or sister and brother of the decedent, who received respectively  $\frac{1}{3}$  of  $\frac{1}{4}$  of the inheritance.

**In the second row** shall be called to inherit the decedent's parents, adopted children and their antecedents, or even natural children (Article 471). When natural children competed with their parents, their descendant or antecedents, or their spouse, they received  $\frac{2}{3}$  of the inheritance; while if competing simultaneously with the parent and spouse, the inheritance was removed  $\frac{1}{3}$  for the benefit of the parent and  $\frac{1}{4}$  for the benefit of the spouse, i.e. the natural child received  $\frac{5}{12}$  of the inheritance. When the decedent did not have antecedents, descendant or spouse, all inheritance passed over to the natural child. Natural children could not inherit the line of the father or the mother.

When only parents were the heirs of the second row, the siblings were called to inherit together with them (Article 473). In this case, they all inherited according to the heads, but the parents' part could not be less than half when both parents were called and not less than one third when only one was called. In this row, with parents were called and the half-siblings, but they took half of the part that belonged to siblings.

**In the third row** shall be called to inherit their brothers, sisters and children with substitution, as well as the adopted. When brothers and sisters competed with the adopted child or children, or with their children, they received 1/4 of the inheritance; the adopted children or their children took 3/4.

**In the fourth row** shall be called to inherit grandfathers and grandmothers, and their antecedents, foreparents. In these cases, half of the inheritance belonged to those by their father and the other half to those by their mother. The call to grandparents excluded foreparents.

**In the fifth row** shall be called to inherit the line of the decedent as a line from the father and from the mother. The line was called up to the sixth degree.

**In the sixth row** shall be called to inherit the state. The state was called to inherit only when the decedent had no legal heir and had not left a will.

As far as the institute of *unworthiness* is concerned, the Civil Code of 1929 provided that *a natural person was not capable to inherit as unworthy*, according to the provisions of this law, in only one of these cases:

- a. If intentionally killed or attempted to kill the decedent;
- b. If he/she has made a false accusation or testimony against the decedent for committing a criminal offense punishable by imprisonment to 3 years or more, when the accusation or testimony are declared false in a criminal trial;

- c. When he/she intentionally and unjustly placed the decedent in a state of inadequacy of disposition to possess his property by will;
- d. When a person who by fraud, violence and intimidation has forced the decedent to dispose of the property by will, or revoke a will he/she already made;
- e. When a person intentionally and unjustly broke, disappeared, concealed the will, in such circumstances that prevented the decedent to remake a new will.

From the manner in which the causes of unworthiness were determined in the Civil Code of 1929, it is concluded that they are essentially the same as the causes of unworthiness provided for in the Civil Code in force, namely Article 322 thereof.

### **c) Testamentary inheritance and relevant restrictions in the Civil Code of 1929**

The Civil Code of Zog allowed inheritance by will. The ones who reached the age of 18 and those who had the ability to act, had the capacity to leave a will. Those who, although had the ability to act, because of the state of health or mental development, were unable to understand the importance of the action they did and its consequences.

The will had to be in the form required by law: oleograph or by notary deed. The Civil Code also acknowledged special wills<sup>21</sup>.

The *special wills* provided in the Civil Code are divided into two main groups<sup>22</sup>:

1. *Will left in exceptional circumstances*; for example, in cases of epidemics, war or natural disaster or isolation,

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<sup>21</sup>Taken from the publication “The Right to inheritance of PSRA” (Republication, first edition 1984), author NazmiBiçoku, University of Tirana “EnverHoxha”, Faculty of Political and Law Sciences, pg.27.

<sup>22</sup>Taken below from the publication “Civil Law III (Inheritance)”, Prof. Dr. ArdianNuni, Ma.Luan Hasneziri, 2010, pg. 339-360.

which could be made by the person with a note received by the notary or by the judge of the peace or the cleric of the neighborhood or the village, in the presence of two witnesses. In this case, the will had to be signed by the person receiving it and when circumstances and testator and witnesses allowed it. When the above will was taken by the mayor or his deputy or by the cleric of the neighborhood or the village, they must submit it to the district judge of peace where the will was made, within five days of the disappearance of the cause of the isolation. The judge, having been acquainted with the circumstances of making a will, took a record and, after seeing the will, handed it over to the notary along with the record so that it could be kept in the archive and if there was no notary, he kept the will himself in the court archive. The law provided that the will drafted in the above form remains ineffective when one month passes from the time the testator has regained his freedom to make a will in the usual form and he has not done so. Based on the foregoing, it can be concluded that the above form of will constitutes a legal transaction with choice, because with the event of reinstatement of the freedom by the testator, if he does not leave a will in the usual form, the first will loses legal power.

2. *Will made by the testator on a ship during sea trips, when the ship was in the sea or foreign ports and it was impossible to be in the Albanian territory.* In these cases it was foreseen that when the ship was in the offshore or in foreign maritime ports, where there were no diplomatic agents or consuls of Albania, the will drafted by the testator was taken in the presence of two witnesses in the ships of the Albanian state, by the administrative officer or commander of their ship or their deputy, in private ships was taken by the captain

or shipowner or persons who replaced them. In these cases, the will should always be in 2 (two) originals and should be signed by the testator, the persons who received it and the witnesses. Subsequently, the aforementioned persons who took delivery of the will, handed it over to the Ministry of Transport, which kept a copy and submitted the second copy to the notary. The foregoing provisions provided for such a will to be worth when the testator died in the sea, or died within one month of the day he landed on earth and had no possibility of making a common will.

Regarding the relevant limitations and the institute of *legal reserve*, Article 536 of the Civil Code of 1929 provided that: “*The legal reserve is an inheritance share to children, antecedents, descendants, brothers and sisters are entitled to full ownership, and it is impossible for the testator to limit or condition this share.*”

<sup>23</sup> From the way the legal reserve was governed by this Code, it turns out that the concept of legal reserve according to this Code is wider than the concept the Civil Code in force provides to the legal reserve. According to the Civil Code of 1929, legitimate children of *de cujus*, antecedents, descendants, brothers and sisters of the decedent enjoyed the legal reserve, while according to the Civil Code in force the legal reserve is enjoyed only by the minor children of the decedent or other minor heirs who inherit by substitution, as well as other persons unable to work in custody of the decedent, if called to inherit.

The Code of 1929 governed the legal reserve depending on the type of heir who enjoyed the legal reserve and depending on the number of heirs who enjoyed it. So, if the testator had

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<sup>23</sup>Taken from the publication “Civil Law III (Inheritance)”, Prof. Dr. Ardian Nuni, Ma. Luan Hasneziri, 2010, pg. 361-362.

left one legitimate child as heir, he could not dispose by will more than half of the inheritance property, if he had left two or more legitimate children, he could not dispose by will more than a third of this property (see Article 533<sup>24</sup> of the Civil Code of 1929). If the testator's heirs were only his antecedents, he could dispose by will up to 2/3 of the inheritance and if he had only brothers and sisters, and not any antecedents or descendants, he could dispose up to ¾ of the inheritance. Only if the testator at the time of his death didn't have either any antecedents or descendants, nor brothers or sisters, he would dispose by will all his property, with universal or special title in favor of any person (see Articles 534, 535 and 537<sup>25</sup> of the Civil Code of 1929). This last provision of the Civil Code of Zog has been preserved in the current Civil Code, where Article 377 provides that: *"The decedent who leaves no descendants or ascendants, or no siblings, has the right to dispose of his property by will in favour of any natural or legal person."* It is worth mentioning that in both cases the surviving spouse does not constitute an obstacle for de cujus to dispose of the property to third persons. However, the Civil Code of 1929, unlike from the current one, left the surviving spouse the real right of usufruct over the property.

### III. CONCLUSIONS

As a conclusion, I can say that I aimed to present firstly a picture of the main elements of the important institute of

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<sup>24</sup> Article 533 of the Civil Code 1929: *"Liberalties with wills can not pass half of the testator's property, when he leaves one child and one third when this leaves two or more children."*, The publication "Civil Code of 1929, Zog's Era", publishing house Alb Juris.

<sup>25</sup> Article 534 of the Civil Code 1929: *"If the testator leaves no children, descendants or ascendants, he has the right to dispose of 2/3 of his property."*

Article 535 of the Civil Code 1929: *"If the testator leaves no children, descendants or ascendants, but he leaves siblings, he has the right to dispose of 3/4 of his property."*

Article 537 of the Civil Code 1929: *"If the testator leaves no children, descendants or ascendants, or siblings, he has the right to dispose of his property by universal or particular title."*

inheritance. Inheritance law constitutes a basic institute of civil law as a whole. The inheritance dealt with today in the Civil Code adopted in 1994, preserved some of the features of the Civil Code of 1982 (the socialist regime), which are reflected in the limitations of testamentary dispositions such as the provisions on the foreseen legal reserve and the rows of the legal heirs. While the institute of inheritance in King Zog's period, influenced by the Italian doctrine of civil law, paid great attention to the provisions on the inheritance (total of 319) and in particular the right of the decedent to dispose of his property after his death. In this Code, for the first time, the embrace of the legal approach of continental-roman system of law is noted, defining the rows of legal inheritance based on the criterion of closeness among the persons in the gender, the basic elements of the capacity to inherit, capacity to dispose by wills and limitations of disposition by will. This Code clearly reflected the right of disposition by will, the tendencies of Italian law and the defined legal reserve modalities. In this respect, the Civil Code of 1929 has defined the legal reserve as a limitation of the testator by guaranteeing the reserved heirs a share to the inheritance according to the case of call to inherit (children, antecedents, siblings). This is reflected in the Italian Code in the reservation of the share.