

Invalidity of Renunciation of Inheritance According to Law in Kosovo

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Abstract

In most cases, the relinquishment of the inheritance is done for the reason that the heir inherits more liabilities than rights (property) of the testator. Then in these cases when the debts or obligations of the testator exceed the amount of his property, the heir is allowed to give up that inheritance, whether left by will, contract or even by law. This waiver is made by giving a statement which is formulated after the hearing for the division of the inheritance has been held. The declaration is made either before the judicial system or before the notary. In Kosovo, the right to renounce inheritance is being used especially by female heirs. This is confirmed by the legal practice of the courts in Kosovo, according to which it is said that mostly it is the female gender that renounces the acceptance of inheritance and it is emphasized that women do not give any special reason why they are renouncing the inheritance. "Usually women in the case of renouncing inheritance, they do not give any special reason", Some reasons why women are renouncing inheritance. He mentions tradition, customary law - the Lekë Dukagjini Canon, according to which women do not have the right to inherit in their family. Violated rights for the female gender, that today through written law (laws) they try not to discriminate against gender in the right to inherit!

Keywords

right to inherit, relinquishment of inheritance, declaration, law.

METHOD

The content of the paper is composed on the basis of appropriate scientific methods, such as induction method, deduction method, comparative method, research method, descriptive method and some other methods which helped us to finalize this paper.

RESULTS AND DISCUSSION

When the relinquishment of inheritance is invalid

In order for the declaration to renounce the inheritance to be valid, it must meet the legal presumptions: the content must be understandable, permissible and clearly express the free will of the heir to renounce the inheritance.

Waiver of inheritance cannot be partial or conditional. (See: Law No. 2004/26)

The relinquishment will be invalid when it is made conditional, with a term or for a part of the inheritance or for the benefit of one of the other heirs.

When the relinquishment made in order for the inheritance to pass in favor of the designated heir, it will be called a declaration of assignment and according to point 2 of Article 133 of the LTK: "Relinquishment in favor of the designated heir is not considered a relinquishment giving up the inheritance, but as a declaration for the transfer of the inheritance to the designated heir".

When the heir within the term of renouncing the inheritance has performed such actions with the inheritance, for example: he enjoys and disposes of the inherited property, renting it out, alienating it, the right of renouncing cannot be applied.

Waiver of inheritance that has not been opened has no legal effect ((LTK)). In the framework of this legal provision, the solution to the problem that is created by finding the property after the examination of the inheritance, this property that was not known to exist at all and was not the subject of examination in the inheritance court, should also be considered.

The declaration of renunciation of inheritance cannot create a legal effect even for the part found later. Future inheritance cannot be waived.

Consequences of disinheritance

The consequences caused by relinquishing inheritance by law are different from the consequences caused by inheritance by will. When the heir called to inherit on the basis of inheritance by will has renounced the inheritance, his inheritance will be divided among the legal heirs if it is not left out of the will and the testator had another intention.

It will be considered that the testator had other goals and the inheritance cannot be inherited by the legal heirs when in the will he has written the name of the person who will replace him in the inheritance if the heir designated by the will has waived the right of inheritance and has not accepted the inheritance. The issue is different when we are dealing with inheritance by law.

Where there has been a repudiation of an inheritance, what happens to the denied benefits will depend on the terms of the will, if there is one.

(See:<http://www.mondaq.com/southafrica/x/276060/wills+intestacy+estate+planning/Renunciation+Of+An+Inheritance+SARS+Clarifies+Tax> & Received on: 08.11.2019)

For example, the testator may have stated in the will that X will inherit, failing that, Y will inherit. If X predeceases the testator or disinherits, I will become entitled.

The heir who renounced the inheritance in his own name is considered as if he had never been an heir. Therefore, the part of the inheritance that would belong to him will now be inherited by the other legal heirs.

When the heir has not explicitly stated with a statement that he renounced the inheritance only in his own name, then it is considered that his descendants were also excluded from the inheritance. (Shih: Ligji.Nr. 2004/26)

Also where a benefit is bequeathed to the spouse and surviving descendants of the deceased and then a descendant repudiates his/her share, that share will be vested in the surviving spouse. This is the case even if the will provides otherwise. The situation is of course different when there is no other surviving spouse. In such cases, the portion of the disclaimer shall be vested in the other successors in disorder or at will.

How the share of the person who renounced the inheritance is inherited?

From the provisions of the LTK it appears that: when the heir waives the inheritance and in that case he has expressly stated that he waives only in his own name, then his descendants will inherit by replacing the heir. (See: Law No. 2004/26 ". o.) If all the descendants who belong to the closest line of succession at the time of the testator's death have renounced the inheritance, the descendants of the next line of inheritance are called to the inheritance. (Podvorica) The heir, who has renounced in his own name, is considered as if he had not been an heir. Specifically, the part of the inheritance of the legal heir who renounced the inheritance is inherited as if this heir had died before the testator. (See: Law No. 2004/26 ". o.) "Consequences of renouncing the inheritance if a person who has renounced the inheritance is considered as if he had never been an heir of the testator, it means that he cannot even use the rights that belong to him as an heir". (See: Law No. 2004/26 ". o.). The part of the inheritance of the heirs with a will who have renounced the inheritance, now belongs to the legal heirs of the testator, if the will does not provide otherwise.

Gave up female inheritance in Kosovo

In Kosovo, the right to renounce inheritance is being used especially by female heirs. This is confirmed by the judicial practice in Kosovo, according to which it is said that mostly it is the female gender that renounces the acceptance of the inheritance and it is emphasized that women do not give any special reason why they are renouncing the inheritance. (Podvorica H. I.) So the reasons why women are renouncing inheritance are numerous and varied. One has to do with tradition, because in our customary law, the code of Lekë Dukagjini, women have been forbidden the right to inherit, and according to the canonical provisions, women have not had the right to inherit either in the family of origin or in the husband's family. (Dukagjin) (Usually women don't give any special reason when renouncing their inheritance") Also, other reasons that women are giving up inheritance as they want to maintain their connection with the families of origin and to still have their support. "In addition, when women go to their husband's family, they do not want to take the property from the family of origin because they want to maintain their biological ties with the family of origin, to have support in the family of origin". But it should be emphasized that: even though the reasons are known, when women give up their inheritance, they do not give specific reasons in the case of giving up. In these cases, we can mention the tradition because in our customary law women have been

denied the right of inheritance and according to the provisions of the canon, the woman did not have the right to inherit either in the family of origin or in the husband's family, which is what is discrimination against the female gender, (Universal Declaration of Human Rights) which today through the written rights has tried to equalize the gender in terms of inheritance!.

CONCLUSION

According to the Law on Inheritance of the State of the Republic of Kosovo, it is allowed for the heir to reject the property inherited from his parent or any other person, all this can happen because there are cases when the debts exceed the assets of the deceased. In this case, it may move you to disinherit. In Kosovo, the same before the Notary Public as well as with the submission of the proposal to the Judicial system, since the assets and debts of the deceased will be inherited. But one must be careful, one can even accept inheritance with the exception of "inventory benefit". In this case, it would be inherited only if the debts do not exceed the amount to be inherited. There are times when an inheritance is difficult to obtain as a result of the debts of one of the co-heirs as the creditors will make things more difficult for all the beneficiaries. If there were too many debts, we might not be able to inherit anything. We could also lose inheritance if the deceased's Will was drawn up unfairly or the Will was not clearly in your favour. And here, so that the inheriting party is not harmed by the inheritance when it inherits more obligations than rights, then it may be more right to renounce that inheritance, and within the context of specifically renouncing the formulation of the declaration for renunciation of inheritance, make sure that the declaration of renunciation is well formulated and that the deadlines for submitting the declaration have not passed or otherwise the declaration is considered invalid absolute or relative.

REFERENCES

See: Law No. 2004/26, "Law on Inheritance of Kosovo", article. 133.1.

See:<http://www.mondaq.com/southafrica/x/276060/wills+intestacy+estate+planning/Renunciation+Of+An+Inheritance+SARS+Clarifies+Tax>; Received on: 08.11.2019, 11:54;

See: Law No. 2004/26, "Law on Inheritance of Kosovo", article. 130, par. 2;

See: Law No. 2004/26, "Law on Inheritance of Kosovo", article. 130, par. 2;

Podvorica, Hamdi, Inheritance Law", Pristina, 2010, p. 86.

See: Law No. 2004/26, "Law on Inheritance of Kosovo", article. 137;

Podvorica, Hamdi, Inheritance Law", Pristina, 2010, p. 88;

Ibid. Article. 136;

"Usually women don't give any special reason when renouncing their inheritance", Some reasons why women are renouncing their inheritance. He mentions tradition, customary law - the Lekë Dukagjini Canon, according to which women do not have the right to inherit in their family.

Nye the Twentieth - Canon of Lekë Dukagjin;

Universal Declaration of Human Rights, 1948;

John H. Langbein, Thomas P. Gallanis, Lawrence W. Waggoner, Uniform Trust and Estate Statutes (2010), p. 201.

Latif, Juliana, Buçaj, Enver, "Inheritance Law in Kosovo", 2010, p. 46.

Law No. 2004/26, "Law on Inheritance of Kosovo", Article, 172. 2.

See: <https://www.pellicerheredia.com/en/inheritance/renouncing-to-inherit>; Received on: 10.11.2019, 14:48;

Selmani, Bashkim, Rexhepi, Bekim, ``Family and Inheritance Law" (Roman), 2014, p. 434;