

**INITIATION OF INHERITANCE PROCEDURE  
ACCORDING TO POSITIVE LEGISLATION IN KOSOVO  
AND PROBLEMS IN PRACTICE**

**Prof.Asoc.Dr. Adnan JASHARI\***

**Egzone OSMANAJ\*\***

**Abstract**

The purpose of this paper is to examine analytically legislation dedicated to regulating hereditary procedure and in particular to identify violations of the legislation in practice in case of initiating the hereditary procedure. Research questions, which are discussed in the context of this paper are:

- What is the role of the municipal authority and the court in the case of the initiation of hereditary proceedings?
- Is there an adequate cooperation between the municipal and court actions to be taken in case of inheritance proceedings initiated?
- As time passes from the decedent's death and the initiation of a proceeding, respectively happen that hereditary succession procedure initiated many years after the death of the decedent, and what are the legal consequences?

In an effort to provide more accurate information regarding the issues raised in this paper the research is developed in 5 Basic Courts in Kosovo. It is stipulated by the law that the inheritance proceedings is initiated by the court ex officio after the court has accepted the death certificate act from municipal authority. Based on research conducted in practice is has been proven that this procedure has never been applied in practice, in all cases the court proceedings were initiated after the filing of inheritance proposals by the heirs. As a result, from this paper it derives that there is a lack of an adequate collaboration between the municipal authority and the court and it

**\* Faculty of Law , South East European University, Republic of Macedonia**

**\*\* PhD candidate-South-East European University, Republic of Macedonia**

is recommended that the municipal authority has to implement the bond that within the stipulated deadline by law to deliver the act of death in court, and the court should initiate the inheritance procedure ex officio.

**Keywords: legislation, inheritance procedure, initiation, court.**

## **I. Initiation of inheritance procedure according to positive legislation in Kosovo and problems in practice**

### **1. Understanding of the inheritance procedure**

In the introduction to the paper, we have pointed out that the institution of inheritance represents the only means through which enables the transfer of rights and obligations of property from the deceased person to other person, that is, through inheritance, it becomes possible that the rights and obligations of the property character which the deceased person had enjoyed are not extinct but their transfer to other persons (potential heirs). Transfer of the rights and obligations of the property from deceased person to another person takes place upon the opening of the inheritance. Each transition of property rights and obligations of the deceased prior to opening of inheritance is considered worthless. This rule the Law on Inheritance of Kosovo is expressly provided in Article 5. Paragraph 3, which determined that "the right to inheritance is acquired upon the moment of decedent's death" and Article 6, which states that "any agreement between future heirs, or between future heirs and third persons, over on an inheritance that has not been opened shall be deemed null and void"<sup>1</sup>. From this it derives that obtain entitlement toward inheritance two conditions have to be fulfilled: confirm the death of the person and open the inheritance. So, the moment of death enables to open the procedure for review of the inheritance in which persons summoned to inheritance or testament, either as legal heir may exercise their rights which belong to them toward inheritance property. In the inheritance procedure transfer of rights and obligations of the decedent's property to the heirs is carried out. The Law on Inheritance of Kosovo does not contain provisions under which are determined the succession procedure, except for the provision of article 145, which states that "The rules of procedure for courts, other bodies, and authorized persons in inheritance matters are regulated by the dispositions on non-

<sup>1</sup> That in Roman Law exist rules "hereditas viventis non datur", respectively "inheritance does not exist for a living person". (see Puhan, I, Fq 456).

contentious procedure”. According to this provision activities the court, other authorities and authorized persons acting in inheritance procedures are determined the provisions in contentious proceedings, the contentious procedure determined by the Law on Out Contentious Procedure of the Republic of Kosovo (no.0 /L-007) this law stipulates inheritance procedure of articles 125-190. According LNCP<sup>2</sup>, the review of the hereditary estate takes place in the court session. Under the provisions of LNCP competent in the territorial aspect for the review of the inheritance is considered the court in the territory of the decedent at the moment of death he/she was a resident or domicile, whereas, and in cases where the decedent at the time of death had no residence or domicile in Kosovo, competent in territorial aspect is considered the court in the territory of which the most of his inheritance or most of it is found. (*see Article 128 of LNCP*). Whereas, competent regarding the case for the development of the hereditary procedure according to the law the basic court is considered. According to Article 125 of LNCP “in the procedure of the hereditary property review the court ascertains who are the inheritors of the dead person, or of the person whose death is announced by the court's judgment, which estate contains his inheritance estate, and which right from the hereditary estate belong to the inheritors, legates and other persons”. In this provision, the legislature has defined the main facts which the court must endorse in the procedure for review of the hereditary order to decide on the merits regarding the object of inheritance and rights that belong to the heirs or legacies. So, after the court to proves which persons are heirs and which items constitute hereditary property, and in general after all other important issues are reviewed relating to the estate of the deceased, the court concludes hereditary procedure by ruling of the decision on merits on the inheritance division in which is written: the name of the decedent's and personal data; the names of the heirs or legacies; legal basis for accomplishment of the inheritance or legate; immovable property (containing data from the public books necessary for registration) and movable assets and other rights for which the court has found that they belong to the hereditary estate (*see Article 171 of LNCP*). But how does the commence with this activity, namely is the court obliged to initiate proceedings for review of the hereditary "ex officio" or is the court obliged to act in this procedure only when the parties (heirs) filing a proposal to partition of inheritance immovability, the legal provisions and court practice does not give the same answer to this question.

<sup>2</sup> This paper refers to the law On Out Contentious Procedure as the law on non Contentious Procedure (LNCP).

### 1.1 How is initiated the inheritance procedure according to positive legislation in Kosovo

The procedure for the review of inheritance immovability initiated by the court "ex officio". This rule is sanctioned in Article 127 of the Law on Out Contentious Procedure of Kosovo, which stipulates that: "the procedure for the hereditary estate review is set in act from the court according to the official assignment as soon as the court is notified that a person has died or is announced dead by a court judgment". According to the law on the death of the person or make the person has died or declared dead, the court is informed by the municipality or by the officer registrar who is responsible to register the death in the civil register of the dead and within a time limit of 15 days in which he/she has recorded the death is obliged to forward the death certificate to the hereditary court. (*See Article 133, item 1 of LNCP*). Thus, according to the law the court is obliged to officially begin the procedure for the review of the inheritance. Exception to this rule is made in cases where it is established that the decedent constitutes only movable estate, in such cases, according to the law the court is obliged to review the inheritance immovability only in case heirs request to review the same (*see H,Podvorica 2010, pg 153*). This rule LNCP has expressly provided in article 157 item 1, which determines that: "if from the data of the act of death it is regarded that the testator has left no estate, or has left only movable estate and neither from the inheritors does require the review of the matter, the court with a judgment will decide not to review the inheritance immovability". Therefore, the court is obliged according to ex officio to initiate the procedure and examine the inheritance only if the decedent has left the real estate, and in cases where the property of the decedent consists of movable items, the legacy is considered only if this is required by interested persons who consider themselves as heirs. The legislator has foreseen this solution relaying on traditional outlook that real estate constitutes the greatest value than movable estate, but such outlook in today's social and economic terms y may not be considered reasonable, since the real estate may consist the greatest value than movable ones. Even in cases when the court decides not to review the inheritance (because the testator hasn't left any real estate), but the heirs preserve the right to initiate the procedure later. (*F,Brestovci 2004, pg 277*).

## 1.2 How is initiated the inheritance procedure according to positive legislation in Macedonia and Albania

Regarding the way of initiating the hereditary procedure the Macedonian legislation does not differ from that Kosovo, respectively, also with positive Macedonian the initiation of legislation inheritance procedure officially is conducted by the court or pursuant to Article 121 of the Law on Out Contentious Procedure of Macedonia, it is expressly provides that "The procedure for review of inheritance is initiated ex officio, after the court has been immediately notified about the death of the person or that the person is declared dead." According LNCP of RM, when a person dies or is declared dead, the registrar is responsible to register the death in the registry book of the dead, he is obliged that within thirty days from the day of death, forward the act of death the court of inheritance. (*See Article 142 of LNCP*). Unlike, LNCP Kosovo, LNCP of Macedonia provides that the review of the inheritance can be done by a notary as a representative of the court, this rule is expressly provided in Article 126 where it is determined "For review of the heritage of citizen of the Republic of Macedonia regarding to his/her the property, which is located in the Republic of Macedonia, is exclusively competent the Court of the Republic of Macedonia, i.e. the notary as a representative of the court ". According LNCP of RM, the court, respectively, the president of the basic court is authorized in accordance with the provisions of contentious procedure to entrust to thee notary, who is located in the region of the competent court of the inheritance to apply or submit the case of inheritance with all notes, within 8 days from the date when the case will be registered. (*See Article 126 and 131 of LNCP*).

It is worth noting that in Kosovo on the basis of the notary law of 2008 cases of contentious legacy started to be reviewed by the notaries. The Kosovo Law on Notary Functions, as one of the notary functions under article 129, item 1.4 mentions the treatment of all non-contentious inheritance proceedings, but this law does not appear on any other provision which provides the development of the hereditary procedure i.e. how is performed the initiation of proceedings or provided the act of death, etc., the issues that are determined by the law of the contentious procedure where is not provided that inheritance procedures can be developed by notaries. These gaps of the law have caused to create the confusion in practice for the jurisdiction of notaries on inheritance cases, some courts in Kosovo consider that the judgment of inheritance cases is the

exclusive competence of their own and that notaries are not entitled to review cases of inheritance, whereas, some courts insist that the review of contentious cases of inheritance to be passed over to the competences of notaries, for example, the Basic Court in Peja in 2014 there wasn't any inheritance case filed for review.

In Albania judicial regulation for initiation of the procedures and in generally regulation of entire hereditary process differs from legal Kosova and Macedonia regulation hereditary. First, according to Albanian legislation heritage review procedures are not initiated ex officio from the court or review of the cases of inheritance is not under the competence of the court, but the trial of cases of inheritance is considered the exclusive competence of the notaries. According CCA competent for adjudicating of cases is considered the notary of local unit in the territory of the testator in the moment of death had his residence or the notary of the local unit is in the territory of which the testator's property is located. (*See Article 348 of CCA*). According to the rules included in the Law on Notary, the process of reviewing the heritage is developed in this way: "notary after becoming aware formally through a written request by interested persons who have filed a claim to the National Chamber of Notaries, which attaches a copy of the request the person concerned and a copy of the death certificate of the deceased. Upon receiving the request, the National Chamber of Notaries, within three days, checks on the National Register of Wills and the National Registry of Evidence Heritage if the decedent left a will and/or the certificate of inheritance legal or other testamentary is issued by any notary. The notary records the claim in the National Register Heritage Evidence. In cases when the evidence of testamentary inheritance is issued, the notary checks whether the testator's testamentary will is available as stipulated in the Civil Code". (*See Article 53 of LN*). Furthermore, according to Albanian legislation the quality as an inheritor and inheritance shares are determined by a certificate of inheritance, which is issued by a notary. Under Article 53 of the law on notary in Albania, the evidence of inheritance contains: a) the legal basis and the elements on which the notary is considered to have territorial jurisdiction to issue a certificate; b) the particulars of the person who requested for the evidence and the relationship with the testator; c) the decedent's personal data: Personal data of the heirs, d) data on the marital property regime of the decedent; e) data on unworthiness or waiver of inheritance f) data on the legacy and burden, g) belonging parts to each of the heirs and any other information required by the legislation, whereas, according to the legislation of

Kosovo and Macedonia related to object of inheritance and rights that belong to the heirs and legacies on the court, respectively, the notary rules with the decision

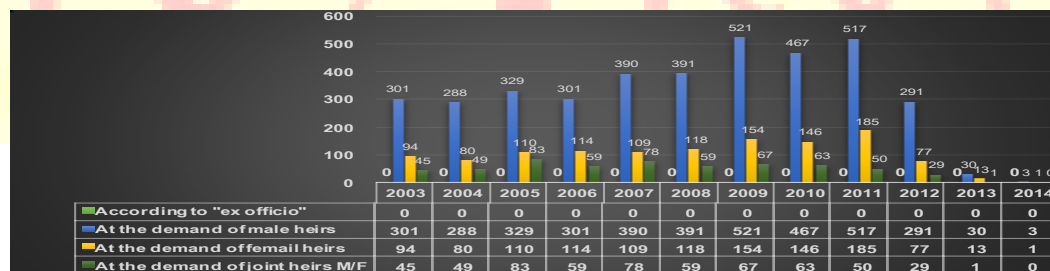
### 1.3 Empiric Details

For a clearer reflection on how to implement in practice the procedure as determined by the law to initiate the inheritance procedure, respectively, to what extend to respect the provisions of Article 127 of LNCP, which provides the procedure for review of the initiated inheritance by the court ex officio, we have conducted basic research in five courts, respectively, in the Basic court in Pristina, Ferizaj, Gjilan, Mitrovica and Peja. For the needs of the research in each court we were allowed to have a direct access to the documents stored in the files of hereditary cases, and the needs of this survey were analyzed in 14.358 hereditary cases finished for the period 2003-2014<sup>3</sup>.

#### 1.3.1 Results of completed research in Basic Court in Pristina

Research in the Basic Court in Pristina lasted 2 months (July-September). For the needs of the research were analyzed 5,613 cases of hereditary finished for the period from 2003 to 2014, 440 cases in 2003; 417 cases in 2004; 522 cases in 2005; 474 cases in 2006; 577 cases in 2007; 568 cases in 2008; 742 cases in 2009; 676 cases in 2010; 752 cases in 2011; 397 cases in 2012; 44 cases in 2013 and 4 cases in 2014.

**Graph 1. The method of initiating the inheritance procedures in Basic Court in Pristina in 2003-2014**



<sup>3</sup> In Kosovo operate 7 basic courts: Basic Court of Pristina in Prishtina, which operates on the territory of Municipality of Prishtina, Kosovo Polje, Obilic, Lipljan, Podujevo, Glogovac and Gracanica; Basic Court of Gjilan with headquarter in Gjilan, which operates on the territory municipality of Gjilan, Kamenica, Novo Brdo, Ranilug, Partes, Viti, Kilokot and Vërboc; Basic Court of Prizren, located in Prizren which operates on the territory of Municipality of Prizren, Dragash, Suhareka and Mamusha; Basic Court in Gjakova, located in Gjakova, which operates on the territory of Gjakova, Malisheva, and Orahovac; Basic Court in Peja Peja, operates on the territory of municipality of Peja, Decan, Junik, Istok and Klinë; Basic Court in Ferizaj, which operates for the territory of municipality of Ferizaj, Kaçanik, Shtime, Strpce and Elez Han; Mitrovica Basic Court in Mitrovica, which operates on the territory of Municipality of Mitrovica South and North Mitrovica, Leposavic, Zubin Potok, Zvecan, Skenderaj and Vushtri. See Article 7 al. 2 of the Law on Courts of Kosovo, No. 03 / L-199.

In Graph no. 1 is presented the method of initiation of procedures for the inheritance for each completed case during the years 2003 to 2014 in the Basic Court in Pristina. In all finished cases in the Basic Court in Pristina during the monitoring period 2003-2014 we didn't notice that the procedure was initiated ex officio, i.e. for all monitored cases didn't notice that the municipal authority (registrar officer) has forwarded the act of death to the court, but in all cases the parties have provided the act of death itself as the fulfillment of the necessary documentation required in case of filing of the proposal for initiation of inheritance proceeding. In all the monitored cases, proceedings commenced only after the parties (usually male heirs) have filed the proposals for the review of the inheritance. The average percentage of proposals filed for the years 2003-2014 from 74% male heirs; women are 21% and heirs together of F/M is 5%.

**Chart 1. Percentage of cases divided by the method of initiation for the hereditary procedure Court in Priština in 2003-2014**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
% of initiated cases according to "ex officio"	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
% of initiated cases at the demand of male heirs	68%	69%	63%	64%	67%	69%	70%	69%	69%	73%	68%	75%
% of initiated cases at the demand of female heirs	21%	19%	21%	24%	19%	21%	21%	22%	24%	20%	30%	25%
% of initiated cases at the demand of joint heirs M/F	11%	12%	16%	12%	14%	10%	9%	9%	7%	7%	2%	0%

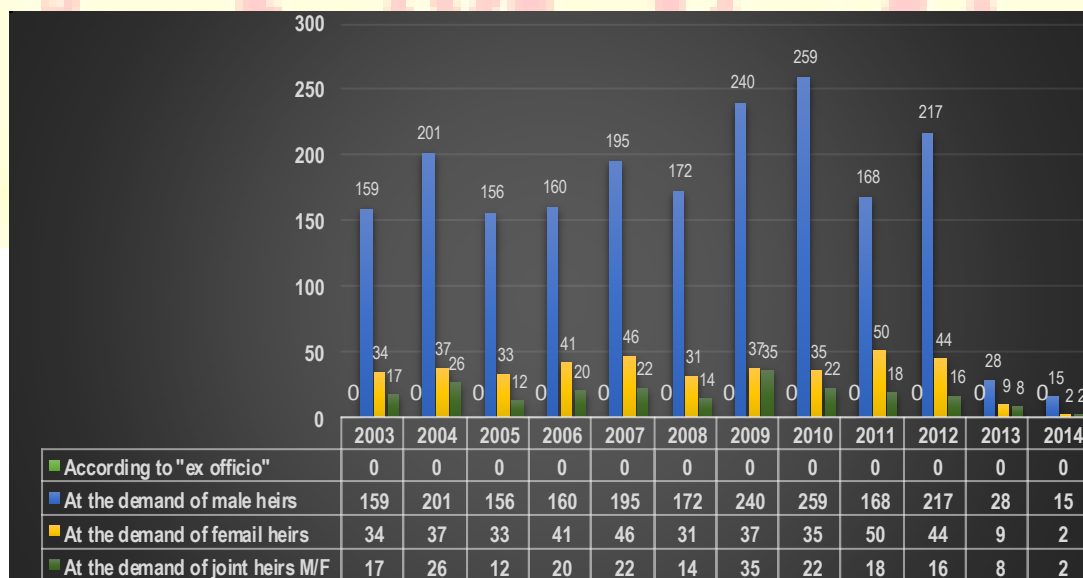


From the analysis of 5,613 cases hereditary Court in Pristina (apart from the previously mentioned) we have confirmed that the extraordinary delay in the filing of proposals for initiating the hereditary procedure. Proposals for initiating the hereditary procedure for a significant number of monitoring cases are filed many years after the death of decedent's. The number of cases for which the initiation of proceedings is made within one year in which the decedent died is very small. From 5,613 cases monitored only 496 cases (or 8.8% of the cases) the initiation of proceedings to review the heritage is made within one year of which died decedent and to 1,934 cases the initiation of procedures is made within 10 years from the death of the decedent 's, whereas, 2,430 other cases of initiation of proceedings is made after 10 and more years after the decedent's death, there are even cases where the initiation of the procedure was initiated 90 years after the death of decedent's.

### 1.3.2 Results of completed research in Basic Court in Gjilan

Research in the Basic Court in Gjilan lasted 1 month (November-December). For the needs of this research were studied 2,583 cases of hereditary completed for the period 2003 to 2014 there were 210 cases in 2003; 264 cases in 2004; 201 cases in 2005; 221 cases in 2006; 263 cases in 2007; 217 cases in 2008; 312 cases in 2009; 316 cases in 2010; 236 cases in 2011; 277 cases in 2012; 45 cases in 2013 and 21 cases in 2014.

**Graph 2. The method of initiating the inheritance procedures in Basic Court in Gjilan in 2003-2014**



In Graph No. 2 is resented the method of inheritance procedures initiated in the Basic Court in Gjilan in which case the period 2003-2014 completed. Like the Basic Court in Pristina and Gjilan Court practice during the years 2003-2014 never happen that no municipal authority (registrar officer) to file with the court the act of death and inheritance the court to initiate proceedings ex officio as provided in law, but in all cases monitored we have noted that the parties have provided the act of death and only after the parties (heirs) have filed the proposals for review of the inheritance has been initiated. In most cases monitored the submitted proposals by the average percentage of male heirs filed proposals for the years 2003-2014 from 77% male heirs; by female heirs is 16% together of F/M 7%. Unlike the Basic Court in Pristina Basic Court in Gjilan there is a lower percentage to 5% of the proposals filed by female heirs.

**Chart 2. Percentage of cases divided by the method of initiation for the hereditary procedure Court in Gjilan in 2003-2014**

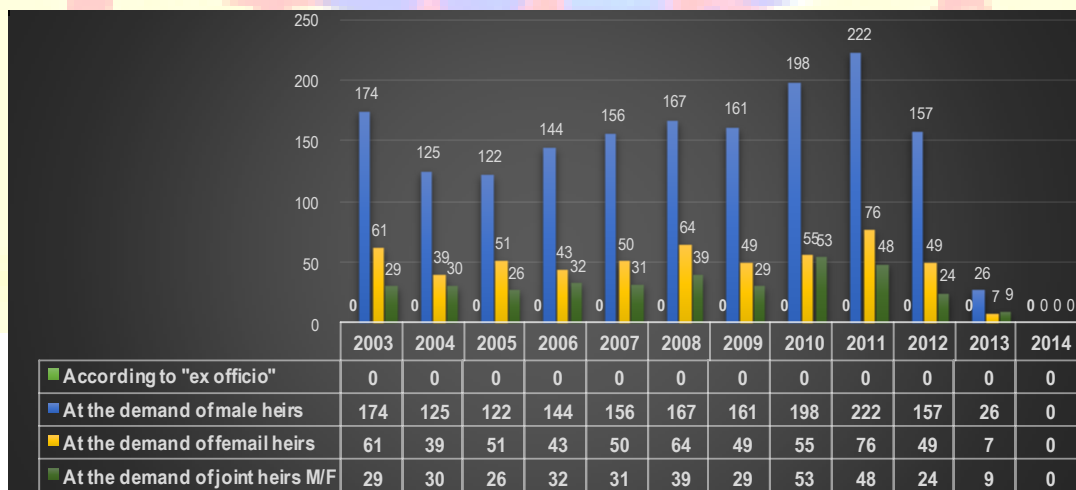
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
% of initiated cases according to ex officio"	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
% of initiated cases at the demand of male heirs	75%	76%	77%	72%	74%	79%	77%	82%	71%	78%	62%	82%
% of initiated cases at the demand of female heirs	16%	14%	16%	19%	18%	14%	12%	11%	21%	16%	20%	9%
% of initiated cases at the demand of joint heirs M/F	9%	10%	7%	9%	8%	7%	11%	7%	8%	6%	18%	9%

Like the Basic Court in Pristina in the Basic Court in Gjilan during the monitoring we noticed that there are exceptional delays in the initiation of inheritance proceedings. The number of cases for which the initiation of the procedure is within the year when the decedent's has died is very small. Of 2,583 cases monitored only 264 cases (or 10% of the cases) we have noted that the initiation of proceedings to review the inheritance was done within one year in which the decedent's has died and in 829 cases initiation of proceedings is made within 10 years from decedent death while 1,490 other cases of initiation of procedures was done after 10 and more years and more since the death of the decedent's.

### 1.3.3. Results of completed research in Basic Court in Peja

Research in the Basic Court in Peja lasted 1 month (May-June). Research needs are analyzed hereditary completed another 2,546 cases for the period 2003 to 2014 of them have been 264 cases in 2003; 194 2004; 199 cases in 2005; 219 cases in 2006; 237 cases in 2007; 270 cases in 2008; 239 cases in 2009; 306 cases in 2010; 346 cases in 2011; 230 cases in 2012 and 42 cases in 2013<sup>4</sup>.

**Graph 3. The method of initiating of inheritance procedures in the Basic Court in Peja 2003-2014**



In 2014, the Basic Court in Peja refused hereditary cases because during the years 2013 to 2014 relying on Notary Law of Republic Kosovo (no. 03 / L-199) hereditary procedures and notaries have begun to develop, though by hereditary cases LNCP judgment is the exclusive jurisdiction of the courts.

In Graph no.3 are presented ways of initiating the inheritance procedure in the Basic Court in Peja for each finished case for the period 2003-2014. As in the Basic Court in Pristina and Gjilan in the Basic Court in Peja for all cases completed during the years 2003-2013 succession procedure is not initiated ex officio as provided by the law, but in all cases the procedure has just begun after parties (potential heirs) have submitted proposals for the review of the inheritance. Unlike, the Basic Court in Pristina (in which the average% of males proposals filed for the years 2003 to 2014 was 74%, female 21% and together of F/M was 5%) and contrast and by the Basic Court Gjilan (in which the average % of proposals exercised by men was 77%, female 16% and together by F/M was 7%) Basic Court in Peja noticed % lower proposals filed by the heirs male and a the highest percentage of proposals filed together F/M, respectively, proposals % average exercised by male heirs for the years 2003-2013 in this court is 65%; women, 21% male and joint heirs F/M is 14%.

**Chart 3. Percentage of cases divided by the method of initiation for the hereditary procedure Court in Peja in 2003-2014**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
% of initiated cases according to ex officio”	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
% of initiated cases at the demand of male heirs	66%	65%	61%	66%	66%	62%	67%	64%	64%	68%	62%	60%
% of initiated cases at the demand of female heirs	23%	20%	26%	20%	21%	24%	21%	18%	22%	21%	17%	20%
% of initiated cases at the demand of joint heirs	11%	15%	13%	14%	13%	14%	12%	17%	14%	11%	21%	20%

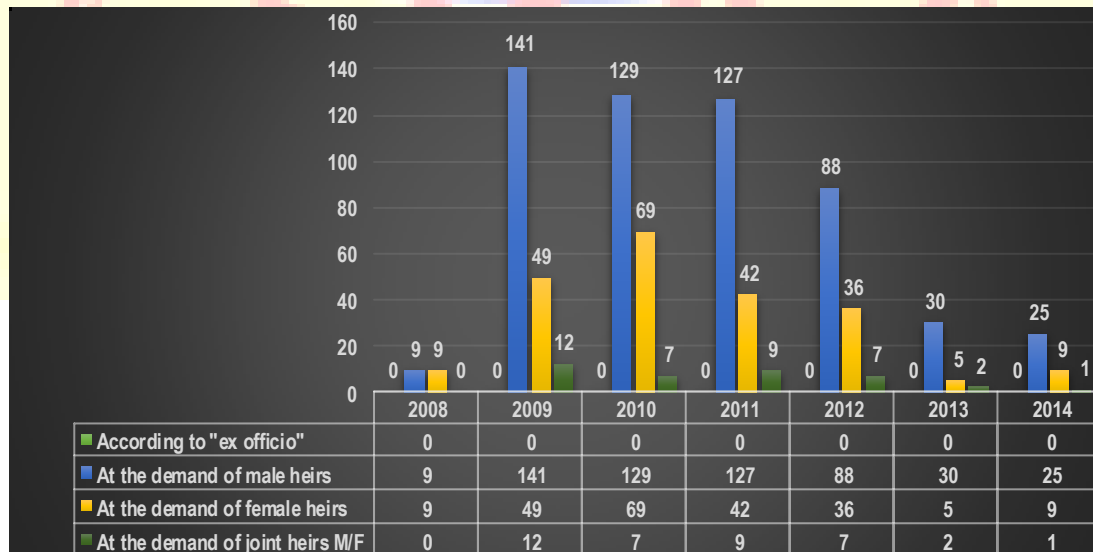
cases at the demand of joint heirs M/F		%	%	%	%	%	%	%	%	%	%	%	%

Of 2,465 cases monitored in the Basic Court in Peja, only 160 cases (6% of cases) we have noted that the initiation of proceedings is made within one year of which decedent died and for 675 cases initiation of proceedings is made within 10 years from testator’s death while 1,630 other cases of initiation of proceedings is made after 10 and more years and more since the death of decedent’s.

**1.3.4 Results of completed research in Basic Court in Mitrovica**

Research in the Basic Court in Mitrovica lasted 2 weeks. Research needs were studied 806 finished hereditary cases their period of 2008-2014 have been 18 cases in 2008; 202 cases in 2009; 205 cases in 2010; 178 cases in 2011; 131 cases in 2012; 37 cases in 2013 and 35 cases in 2014<sup>5</sup>.

**Graph 4. The method of initiating of inheritance procedures in the Basic Court in Mitrovica 2008-2014**



<sup>5</sup> In the Basic Court in Mitrovica we have not been able to monitor the hereditary cases completed during 2003-2008 for the good reason that these cases are in the archive of the Basic Court in northern Mitrovica which since 2008 are administered by Serbs who do not allow Albanians to move freely in this part of the country.

In Graph no. 4 is shown the ways of initiating the hereditary procedure in the Basic Court in Mitrovica, which case concluded that for the period 2008-2014. As in the Basic Court in Pristina, Gnjilane, Peja Basic Court in Mitrovica during the monitoring we have noticed that none of the cases finished in the period 2008-2014 procedure is not initiated by the court ex officio. In all cases monitored procedure was initiated at the request of the parties (heirs). In any of the monitored cases have not noticed that the municipal body (registrar officer) has submitted to the court the act of death, but in all cases the parties have assured the act of death itself. Proposals for the review of the hereditary estate for a significant number of monitoring cases were filed by male heirs, i.e. the average percentage of proposals filed for the years 2008-2014 from 68% male heirs; female offspring is 27% joint heirs F/M is 5%. Unlike, the Basic Court in Pristina, Gnjilane and Pec, the Basic Court in Mitrovica shows the highest percentage of proposals filed by female heirs.

**Chart 4. Percentage of cases divided by the method of initiation for the hereditary procedure Court in Mitrovica 2008-2014**

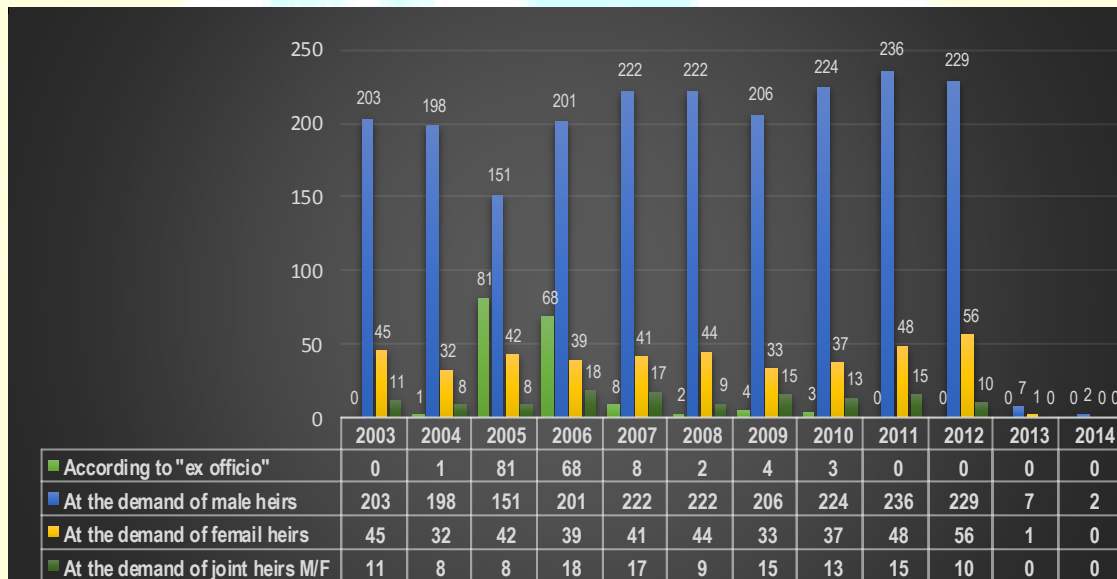
	2008	2009	2010	2011	2012	2013	2014
% of initiated cases according to ex officio”	0%	0%	0%	0%	0%	0%	0%
% of initiated cases at the demand of male heirs	50%	70%	63%	72%	67%	81%	72%
% of initiated cases at the demand of femail heirs	50%	24%	34%	21%	28%	14%	26%
% of initiated cases at the demand of joint heirs M/F	0%	6%	7%	4%	5%	5%	2%

Of 806 cases monitored in the Basic Court in Mitrovica, only 94 cases (or 12% of the cases) we have noted that the initiation of proceedings is made within one year of which died decedent and in 299 cases the initiation of proceedings is made within 10 years the death of decedent’s while

413 other cases of initiation of proceedings is made after 10 and more years and more since the death of the decedent's.

### 1.3.5 Results of completed research in Basic Court in Ferizaj

Research in the Basic Court in Ferizaj lasted 1 month (October-November). For the purposes of research were studied 2,810 finished hereditary cases for the period 2003 to 2014 of them 259 cases in 2003; 239 cases in 2004; 282 cases in 2005; 326 cases in 2006; 288 cases in 2007; 277 cases in 2008; 258 cases in 2009; 277 cases in 2010; 299 cases in 2011; 295 cases in 2012; 8 cases in 2013 and two cases in 2014.



**Graph 5. The method of initiating of inheritance proceedings in the Basic Court in Ferizaj**

In Graph No. 5 shows the method of inheritance proceedings initiated in the Basic Court in Ferizaj for each finished case for the period 2003-2014. Unlike, the Basic Court of Pristina, Gjilan, Mitrovica and Peja which for any inheritance cases completed for the period 2003-2014 procedure was not initiated ex officio by the court, the Basic Court in Ferizaj by monitoring 2,810 cases, we have noted that 167 cases of hereditary procedure initiation are officially made by the court. Thus, the proportion of cases initiated officially is extremely small compared to cases in which the initiation of the procedure is done at the request of the heirs, i.e. the average percentage of cases for which the procedure is initiated ex officio is 6%, while 94% of other

cases initiation of proceedings is made upon the demand of the heirs. As in other courts in the Basic Court in Ferizaj in most monitored cases, proposals to initiate proceedings are filed by the average male heirs, respectively proposals for the period 2003-2014 filed by male heirs is 75%; from female heirs is 15% and joint heirs F/M is 4%.

**Chart 5. Percentage of cases divided by the method of initiation for the hereditary procedure Court in Ferizaj in 2003-2014**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
% of initiated cases according to ex officio”	0%	0.4 %	29 %	21 %	3 %	1 %	1 %	1 %	0%	0%	0%	0%
% of initiated cases at the demand of male heirs	78 %	83 %	54 %	62 %	76 %	80 %	80 %	81 %	79 %	78 %	88 %	10 %
% of initiated cases at the demand of femail heirs	17 %	13 %	15 %	12 %	15 %	16 %	13 %	13 %	16 %	19 %	12 %	0%
% of initiated cases at the demand of joint heirs M/F	5%	3.3 %	2%	5 %	5%	3%	6%	5%	5%	3 %	0%	0%

Of 2,810 cases monitored only 368 cases (or 13% of the cases) we have noted that the initiation of proceedings to review the heritage is made within one year in which the decedent’s died and 854 cases initiation of proceedings is made within 10 years from decedent’s. death, whereas, 1,588 other cases of initiation of proceedings is made after 10 and more years and more since the death decedent’s.



### 1.3 What are the legal consequences of not initiating the inheritance procedure according to the law

From monitoring of 14.358 cases hereditary court in Pristina, Ferizaj, Gjilan, Mitrovica and Peja we have proved that hereditary procedures in practice have almost never been initiated "ex officio" by the court, respectively, only in the Basic Court in Ferizaj for 167 cases initiation of proceedings was made "ex officio" by the court, whereas in all other cases the procedures were initiated at the claim of the parties (potential heirs). Non-initiation of hereditary procedure ex officio by the court as required by law has caused the parties to initiate hereditary proceedings many years after the death of decedent's. The Delay of initiation of inheritance proceedings in different cases had negative consequences. Firstly, delayed initiation of proceedings may have for a consequences the right to seek heritage. The Law on Kosovo Inheritance in section 138 has provided subjective term of 1 year and the objective one of 10 years from the date of the decedent's death, or the announcement of the will within which heirs can ask for the inheritance, whereas, for the possessor in bad faith the right to inheritance is scheduled to be prescribed within 20 years from the date of the decedent's death or declaration of will. These deadlines are provided by the legislator considering the fact that it is the legal duty the courts to initiate an "ex officio" inheritance procedures, but because the courts in practice do not respect this legal obligation then nor legal terms to search property hereditary are respected. Therefore, if the courts initiate "ex officio" inheritance procedures, the time limits for seeking the inheritance will necessarily be worthy, in this way it will enable that the review of heritage would take place immediately after the death of decedent, and not as is currently happening in practice where claims for the review of the hereditary are commonly filed many years after the death of decedent and in most cases out of the timeframe as set by law. For example, for the period 2003-2014 in the courts in which we have conducted hereditary research for the 14.358 decedent's only for 1,382 decedent from them were initiated inheritance proceedings within the year in which the decedent had died as well as for 4.591 decedent the proceedings were initiated within 10 years period from their death, whereas, in all other cases the proceedings were initiated after 10 and more years since the death of decedent, there are also cases in which the initiation of the procedure was done after the last 90 years from death the decedent's.

**Table 6. Percentage of cases (finished during the years 2003-2014) divided according to the years passed since the death of decedent's and initiation of the procedure.**

Not-initiating of inheritance procedures on time causes that the death of persons to remain

Number and % of the cases in which the procedures are initiated	In Basic Court in Prishtina	In Basic Court in Ferizaj	In Basic Court in Gjilan	In Basic Court in Mitrovi ca	In Basic Court in Peja
Decedent's who died within a year	496 (8.8%)	368 (13%)	264 (10%)	94 (12%)	160 (6%)
Decedent's who died within 10 years	1,934 (34.4%)	854 (30.3%)	829 (32%)	299 (37%)	675 (27%)
Decedent's who died for more than 10 years	1,277 (22.7%)	657 (23.3%)	593 (22.9%)	69 (8.5%)	550 (22%)
Decedent's who died for more than 20 years	1,105 (19.6%)	528 (19%)	562 (21%)	177 (21.9%)	629 (25%)
Decedent's who died for more than 30 years	510 (9.08%)	265 (9.4%)	231 (8.9%)	93 (11.5%)	294 (11%)
Decedent's who died for more than 40 years	214 (3.8%)	97 (3.4%)	81 (3.1%)	48 (5.9%)	159 (6.4%)
Decedent's who died for more than 50 years	62 (1.1%)	26 (0.92%)	20 (0.7%)	14 (1.7%)	59 (2.3%)
Decedent's who died for more than 60 years	11 (0.19%)	6 (0.21%)	3 (0.11%)	10 (1.2%)	16 (0.6%)
Decedent's who died for more than 70 years	0%	0%	0%	0%	2 (0.08%)
Decedent's who died for more than 80 years	1 (0.01%)	0%	0%	0%	1 (0.04%)
Decedent's who died for	3 (0.05%)	0%	0%	0.2%	1 (0.04%)

more than 90 years					
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official holders of immovability for the long period of time, this situation creates the possibility for accomplishment of informal property transactions, and prevents potential heirs to legally have at disposal the immovable property. From immovable property in which the title is not accessible not even the can be taken. (See OSCE,pg 4). Although someone from potential heirs exercises actual power on immovable property, the heirs cannot have at disposal the immovable property, unless they exercise the legal power upon the immovable property, which is constituted upon the registration of ownership rights in public books. (See A, Aliu, pg.42). Therefore, the unreviewing of the hereditary estate on time, deprives the potential heirs from t opportunity to enjoy the powers being the owner of an immovable property. During the monitoring we have observed cases where the initiation of the procedure was initiated with so much delay that not only heirs of the first rank, but also the second ranking heirs have died without accomplishing their right of inheritance. As a result of not initiating procedures, potential hereditary heirs are losing the possibility of the right to ownership as one of the fundamental human rights, which is guaranteed by article 47 of the Constitution of the Republic of Kosovo, by LPROR of RK<sup>6</sup> and other legal acts or regulations under Article 1 of annex protocol no.1 to the European Convention on Human Rights. According to research published by NORMA in 2011 it stated that as a result of ot initiating of hereditary procedure "ex officio" by the court affects the small participation of women in inheritance and creates the opportunity of male heirs to skip the women heirs in inheritance matters. According to research conducted by NORMA it appears that in many cases women are not informed at all about the review of the hereditary estate, so their testator's and the large number of acts of death contain only the names of male heirs. According to NORMA initiation by "ex officio" of the inheritance procedure would facilitate the position of women, at least women will be released from the pressure and different social prejudices as it usually happens to women in cases when they undertake the initiative to commence with the procedure. (NORMA, 2011,pg 24).

Relying on this research and the research of other similar cases in Kosovo related to inheritance rights of women according to which the percentage of women who inherit is very low and that

<sup>6</sup> Law No.03/L-154 on property and other real rights of Kosovo

women in many cases do not participate at all in the procedure, during the monitoring of inheritance cases special attention has been paid to this issue, even when the court in which the monitoring took place, we have extracted data for each year of the study involved regarding what was the number of hereditary cases that were initiated on demand of female heirs; on demand of male heirs as well as how many cases were initiated as joint heirs F/M; and what was the number of female and male heirs involved in the act of death and the number of the heirs involved in the act of the death have used their right of inheritance. An analysis of 14.358 finished hereditary cases for the period 2003-2014 in the courts involved in the study we have proved the following:

-The percentage of hereditary cases initiated at the request of the heirs women is low compared to the percentage of cases initiated at the request of the male heirs, only 19% of the monitored cases were initiated at the request of female heirs; 70% of cases are initiated at the request of the male heirs; 10% of cases are initiated at the request of the joint heirs F/M, whereas, only 1% of cases are initiated ex officio by the court as stipulated by the law;

- Regarding the number of heirs included in the act of death, we have proved that there is no significant difference between the number of male and female heirs and if we compare this with the number of total population by gender. In acts of death of monitored inheritance cases in total have been included 47.042 21.588 heirs of them (or 45.8%) and 25.454 women (or 54.2%) males. According to ASK total number of population in Kosovo was 1,739,825 of them are: 863.925 women (or 49.6%) and 875.900 (50.4%) males. So, the composition of the population by gender is almost the same as a small percentage of Kosova has more men than women. (ASK Report, pg. 11);

- None of the monitored hereditary dossiers haven't been found the missing statements of heirs were involved in the act of death, whether heirs or female male, which means that women participate in the proceedings, but they mostly give up inheritance voluntarily. From 21.588 women inheritors who were involved in the cases of monitored acts of death 16.462 (76%) used inheritance rights, 5,108 (24%); whereas, 25.454 men who were included in the acts of death used the right of inheritance. Despite the positive<sup>7</sup> laws in Kosovo woman is guaranteed the

<sup>7</sup> Unlike, the common law (also known by the name "Kanun of Lek Dukagjin"), which discriminates the women in terms of the law of inheritance (see Article 91 of the KLD, which states: "female shall not inherit either from the parent or from the spouse") positive legislation in Kosovo recognizes the full equality of women in inheritance. The Law on Kosovo Inheritance in Article 3.1 guarantees the complete equality of the sexes eventual heirs, equality between men and women is

equal right to men in inheritance practice, therefore, very few women receive the right of inheritance in most cases they give up inheritance voluntarily by creating in this way the possibilities that property to be inherited only by male heirs of the family. According to a study conducted by KGSC (in which are included 1000 females) the main reason why women give up the legacy is the powerful influence of tradition, or 46% of the surveyed in this study indicated that the main factor which affects the inability of women to seek legacy is the influence of tradition and customs. (*Vuniqi,L, & Halimi,S,2011,pg 33*). By Edward Tawil problem in relation to inheritance of property by women besides culture and tradition associated with the other realities such as domestic abuse, as Kosovo has one of the highest levels of domestic abuse of women in the region. (*E,Tawil, 2009, pg 23*). An important indicator of the exclusion of women in inheritance of immovable property registration. It is worth to note that Kosovo has the lowest proportion of properties registered in the name of women among the Western Balkan countries or in Kosovo, women own 15% of the total real property (house and land); Albania 29%, in the Federation of Bosnia and Herzegovina 25%, Bosnia and Herzegovina Republika Srpska 30%; Serbia 39%; Montenegro 26%; and Macedonia 17%. (*See Tonchovska,T,& Kelm,K,&Giovarelli,R 2014,pg 4*). It is interesting to note that in the Albanian-majority Serbian Presevo Valley percentage of the property on behalf of women is 13% lower. (*See Joireman, S 2015, pg 6*). According prof.Aliu, in order to ensure equality between female and male heirs in Kosovo should not require the right to withdraw from the i.e. ex lege inheritance, i.e. split the inheritance. According to Prof.Aliu, the principle that everyone has the right to decide whether to inherit or not does not comply with its contents when dealing with the Kosovo case, because the renunciation of inheritance is not simply a matter of free will but a matter of social contingent circumstances in Kosovo. Prof.Aliu proposes that the institute of withdrawal from the contract to replace legacy donation, according to him would be better that in a period of 6 months to 1 year to be any successor of the inherited property and then heirs may sign the donation contract, the advantage of this is that the contract of donation in certain cases can be revoked. (*A Ali, 2013 pg 51*).

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guaranteed by The Law on Kosovo Family (see article 3al.1) and a range of other laws in which men and women are guaranteed equal rights in every sphere of life. Equality between women and men are defended by the various international conventions such as the Universal Declaration of Human Rights (see Article 1); European Convention on Human Rights (see Article 14); Convention on the Elimination of All Forms of Discrimination against Women (see article 15 item 1 of Part IV, etc.).

## Conclusion

Positive legislation in Kosovo according to the procedure for the review of the hereditary immovability initiated "ex officio" by the court as soon as the court is notified that a person has died or is announced dead by a court judgment. The monitoring of inheritance cases completed 14.358 for the period 2003 to 2014 in the Basic Court in Pristina, Ferizaj, Gjilan, Mitrovica and Peja has only confirmed that the procedure provided by law to initiate a heritage in practice has almost never been respected, from information obtained from this monitoring we have only verified that:

- The municipal registrars have almost never performed that task by the deadline as stipulated by law to forward the act of death, to the court. Of 14.358 cases monitored, only 167 cases have noted that the municipal authority has forwarded the act of death to the court, whereas in all other cases the parties (heirs) have provided the act of death themselves.

- For the majority of cases monitored initiation of proceedings for review of the inheritance has been more requested male heirs, or 70% of the monitored cases were initiated at the request of the male heirs; 19% of cases are initiated at the request of female heirs; 10% of cases are initiated at the request of the joint heirs F/M, while only 1% of monitored cases have been officially initiated by the court.

- Not initiating of inheritance procedure ex officio by the court has caused that the parties (heirs) to initiate inheritance proceedings many years after the decedent's death. From 14.358 cases monitored only 1,382 cases initiate proceedings for review of the inheritance is made within one year in which the decedent died and to 4,491 cases the proceedings are initiated within 10 years from the death of testators while to 8.485 other cases the initiation of proceedings is made after more than 10 years and more since the death of decedent's, there are even cases in which initiation of proceedings is made after spending well over 90 years since the death of the decedent's. The delay to initiate the inheritance procedure creates the possibility of transfer of the property in an informal way and prevents potential heirs who are legally have in disposal the immovable property.

- There is no significant difference between the number of male and female heirs, included in the acts of death, respectively in the monitored acts of death for inheritance cases were involved 21.588 25.454 females and males.

- In either case files monitored inheritance hasn't found the missing statements of heirs who have been involved in the act of death, whether female or male heirs. This means that women are aware and participate in the proceedings, but in most cases they were mainly influenced by culture and tradition they voluntarily renounced the inheritance.

- Of 21.588 women that have been involved in the monitored act of death cases have used the legacy to inheritance, 5,108 of them (or 24%) while 25.454 men as they were involved in the act of death used the legacy to inheritance 16.462 of them (or 76%).

It is further recommended that:

- The municipal registrar of civil status should apply within 15 days of registration from the death and forward the act of death to the hereditary court and formally initiate court review of the inheritance;

- Assembly of the Republic of Kosovo to consider the changes in the law on non-contentious proceedings to determine the role of notaries in matters of inheritance.

- To increase the awareness of citizens through the development of public campaigns on the importance of transferring the property formally after the death of the owner.

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