

A Comparative Overview of the Legal Reserve in Inheritance Law and Its Reform Perspectives _____

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Abstract

The legal reserve is an essential element of inheritance law within the Albanian system and beyond. This legal concept, as provided in the Civil Code, seeks to protect the interests of certain heirs by limiting the testamentary freedom of the deceased. The purpose of this institution is to protect family economic interests and to ensure legal certainty, regardless of the testator's own express wish. The purpose of this paper is to analyze the legal reserve as an institution of inheritance law, assessing both its historical evolution and contemporary relevance. Methodologically, the study begins with an analysis of the provisions on the legal reserve in Albania, starting with the Civil Code of 1929 and following the evolution through to the present Civil Code. This analysis is made in order to compare the institution with models in some other European countries, such as France, Italy, and Germany, as well as with the Anglo-Saxon legal traditions of the United Kingdom and the United States. The findings highlight the similarities and differences of this institute across different countries. This paper further carries the contemporary debate among legal scholars and practicing lawyers by presenting arguments for and against reform or abolishment of the legal reserve. These recent perspectives affecting the concepts of property and inheritance have come into being with the demographic and economic changes related to mass migration, interethnic marriages, and capital mobility. The

value of this study lie in its several potential approaches to reform, deepening the adaptation of the legal reserve to the needs of modern society while maintaining a certain balanced approach between tradition and modernity.

Keywords: legal reserve, inheritance law, heirs, testator, testamentary freedom, reform.

Note on Terminology

The use of the term “*legal reserve*” in the title and throughout this paper is meant to remain faithful to the terminology in Albanian law “*rezerva ligjore*”. However, it is important to note that in international legal literature, the concept is widely referred to as “*forced heirship*”.

Literature review

The concept of the legal reserve has been widely studied in Civil Law systems, especially in France, Italy and Germany. Scholars have highlighted that the purpose of this institution is to balance personal autonomy in testamentary dispositions with the collective interests of the family unit. Comparative works emphasize French *réserve héréditaire* as the most rigid form, while the Italian and German approach demonstrate gradual flexibility through reforms. Anglo-Saxon jurisdictions, such as UK and USA, prioritize testamentary freedom, limiting state intervention to maintenance claims in exceptional circumstances. In the Albanian context, limited scholarships exist beyond doctrinal commentaries, which largely follow the continental European models.

Recent legal debates reflects growing tension between protecting family cohesion and adapting inheritance law to changing socio-economic realities, especially those related to migration, interethnic marriages, and cross-border estates.

Methodology

This study applies a doctrinal and comparative legal approach. The doctrinal analysis investigated the Albanian Civil Code provisions on the legal reserve, detected their development from 1929 to the present, and interpreted them through law and commentaries. In order to achieve the comparative analysis, the civil law systems, such as in Albania, France, Italy and those of common law jurisdictions,

such as the UK and the US, have been analyzed, thus highlighting the differences of the institute of legal reserve in these systems. Also, the comparison has been made between the civil law systems themselves, comparing the legal reserve in Albanian legislation to the one in Italian, French, and German Law. This joint approach provides the basis for the reform proposals advanced in the paper.

Introduction: Origin and Development of the Legal Reserve Concept

The legal reserve is a legal concept that limits the testator's freedom to distribute the estate through a will. On the other hand, the legal reserve is a defined portion of the deceased's assets that must go to certain heirs whom the law aims to protect.

The term "legal reserve" (*legitima portio* from Latin: *legitima*, "lawful" or "prescribed by law," and *portio*, "portion" or "allocated share") comes from Roman law, where it was first used to protect legitimate heirs from what might have been termed "wrongful wills" (LSData, n.d.). This legal concept demanded that a portion of an estate be reserved for the direct heirs, regardless of the wishes of the testator. Various legal systems like those of France, Germany, and Italy have built on and modified the provisions of the legal reserve based on Roman principles, and adapted them in accordance with national and social needs.

The legal reserve is based on the provisions of the Civil Code of the Republic of Albania. Previous provisions of this institution were found in the 1929 Civil Code and further in the civil legislation after 1944. From a conceptual standpoint, the legal reserve in the legislation of 1944 and thereafter remains the same today, whilst the legal reserve stands both as a limitation to the testator's freedom to dispose of assets by means of a will and a legally protected right of certain heirs to claim an assigned part of the deceased's estate, without any interference (Nuni et al., 2008, p. 691).

Meanwhile, the Civil Code of 1929 ruled that if the dead person had legitimate heirs in a specific order, regardless of their age or ability to earn a living, he could freely dispose of only a part of his estate, while the rest forms the legal reserve and therefore cannot be freely disposed of by will (Nuni et al., 2008, p. 691).

Simply defined, the legal reserve ensures that the testator's free decisions cannot harm the fundamental interests of his immediate family and other close family members. More specifically, those family members or close individuals protected by the legal reserve, according to Albanian legislation, are: the testator's minor children, any other minors entitled to inherit through substitution, without limitation, and incapacitated persons who are dependent on the deceased for support.

Current Legal Regulation and the Role of the Legal Reserve in Testamentary Inheritance in Albania

The Civil Code, in the Context of the Republic of Albania, in its Article 316, gives a definition of heredity stating that inheritance is the transfer, by law (statutory succession) or by will (testamentary succession), of the deceased person's properties (estate) to one or more persons (heirs), according to the provisions set forth in this Code (Kodi Civil, 2020). Where a will exists, the estate will be allotted in conformity with the expressed intention of the testator as contained in that will, save only where the law has put some restriction upon which the testator has disregarded. In instances where no will has been made, or only part thereof has been disposed of, or where said will is wholly or partially invalid, then by virtue of Article 317 of the Civil Code, the rules of intestate succession shall apply.

Conflict with the legal reserve is one of the factors that a will may be declared fully or partially invalid. As a general rule, the invalidity of a will is decided upon by the notary opening the inheritance, while the determination concerning the violation of the legal reserve may be made upon the request of the parties or ex officio by the court.

From all that has been said, it follows that when the testator, through his will, has not given any portion of the estate to his minor children or other unborn minors or incapacitated persons who were dependent on him when such persons existed and he was obliged to do so, there has been a violation of the legal reserve. This act of the testator shall produce the total or partial invalidity of the will, depending on the case, since Article 407 of the Civil Code is mandatory. Article 407 provides, specifically, that the will shall be null when by the testator's disposition there are excluded from legal inheritance their minor or incapacitated heirs, or their legal portion is infringed.

Thus, from the above, it appears that the circle of persons who may be entitled, for the purposes of being protected by the reserve, is a limited one: minor children, any other minors entitled to inherit through substitution, without limitation, and incapacitated persons who are dependent on the deceased for support. Note that minor heirs must be minors at the time of the testator's death and not at the time when the will was drafted. Therefore, the key moment for determining whether the violation of the legal reserve has occurred and, consequently, whether the will is fully valid or not, is directly related to the testator's death.

Article 371 of the Civil Code defines heirs incapable of work as those who at the time of the death of the testator had not reached the age of 16 or 18, if they were continuing studies; men who have reached the age of 60 and women who have reached the age of 55; and regardless of age, those who are first- or second-

degree invalids. It is clear that these age limits for men and women have been set based on the retired age, which, as is known, has changed; hence, an update in this provision of the Civil Code is quite necessary.

There is an exception to the general rule of protection offered by the legal reserve, which is related to the concept of “unworthiness.” Article 379 of the Civil Code states: “...except when these have become unworthy to inherit.” Article 322 of the Civil Code of the Republic of Albania clarifies the circumstances in which heirs are considered unworthy to inherit.

The first case is that when the heir has intentionally killed or attempted to kill the testator, their spouse, children, or parents. Another case for unworthiness is when the heir has accused or testified against the testator concerning a criminal deed punishable with death or imprisonment exceeding 10 years, that accusation or testimony has been declared false in a criminal trial. Another case for unworthiness occurs when the heir, by fraud, threat, or violence, has induced the testator to make, change, or revoke a will, or when the heir has forged a will or made use of it for their own or other’s benefit. Finally, the heir shall be considered unworthy if they have behaved disrespectfully or dishonorably towards the testator or have maltreated them (Kodi Civil, 2020, neni 322).

Despite any of the above barriers to inheritance, an heir may inherit if the testator forgives the heir by a notarial deed or by will or acknowledges the unworthiness of the heir whilst naming him in the will (Kodi Civil, 2020, Neni 324). Such forgiveness of unworthiness is recognized by this Civil Code.

In conclusion, the legal reserve limits testamentary freedom, or, in other words, the autonomy of the testator, since it confers upon him the right to dispose only on that part or fraction of the estate remaining after the so-called “privileged” heirs have received their shares.

Challenges in the Interpretation and Implementation of the Legal Reserve in Albania

One of main challenges revolves around interpretation of the legal reserve. Since the law does not provide clear guidelines on calculating the legal reserve, the courts tend to vary in their interpretation of provisions. This naturally leads to legal uncertainty, making it necessary for experts in law and finance to intervene on behalf of the heirs and executors of the wills.

A challenging factor in determining the legally reserved portion often turns out to be the estate itself, which cannot be easily divided or transferred. An example might be the estate that consists of properties co-owned. Firstly, it is challenging to precisely determine the share of each heir, and even more so to identify those who are entitled to protection under the legal reserve. A more complex case may

involve an inherited business. Its division can create difficulties and jeopardize the normal continuation of operations. Another delicate situation arises when the estate includes assets with emotional value, such as the family home, the division of which often leads to disagreements and conflicts among heirs.

Regarding the legal reserve, family disputes and conflicts often arise when the estate at their disposal is not enough to satisfy all the parties. In practice, wills very often contradict legal reserve restrictions, as when a testator excludes from a will a legal heir who should enjoy a legal reserve share. Such exclusion constitutes a violation of the legal reserve and, in accordance to Articles 379 and 361 of the Civil Code, the will would therefore be invalid. Heirs entitled to a legal reserve are, according to the law, able to claim the share they are entitled to, regardless of the expressed will of the testator. In reality, this often becomes the starting point of many conflicts between legal reserve heirs and will beneficiaries, frequently leading to legal disputes.

However, heirs are often uninformed about their legal reserve rights or the legal mechanisms available to claim them. This lack of information prevents them from taking the necessary steps to assert their rights, and therefore leaving them without the inheritance they are legally entitled to. In addition to the lack of legal knowledge, there are other obstacles related to documentation, such as incorrect registration of inherited property and situations when the will is lost, unclear, or known to be falsified.

Legal Reserve in other Legislations (France, Italy, Germany, England, and the United States)

The legal reserve is an important concept of inheritance law in civil law systems. In this system, which includes countries such as France, Italy, and Germany, the legal reserve limits the testator's freedom to dispose of their estate, as the law aims to protect certain heirs by guaranteeing them a portion of the deceased's assets. Legal reserve is not recognized in all legal systems, such as those following common law traditions, including the United States and United Kingdom. Under the common law, individuals enjoy greater freedom in disposing their assets.

Legal Reserve in French Law

Several civil-law jurisdictions, notably in Europe, follow a Napoleonic tradition. French inheritance law, which historically derives from the Napoleonic Code of 1804, strongly supports the principle of forced heirship. As a general rule, the French forced heirship laws would not apply if a testator was not domiciled in France except when the estate includes property located in France (Tirard, 2009, p. 693).

Under French law, an estate is divided into two parts: the reserved portion and the disposable portion. The disposable portion (“quotité disponible”) is that portion which is not affected by the legal reserve and which the testator is free to distribute as they wish.

The other part constitutes the legal reserve (“la réserve héréditaire”), ensuring that a certain part is kept for particular heirs and cannot be disposed of by or for them through inter vivos gifts or by testament. Under French law, the privileged heirs are children, ascendants, and, in certain cases, the surviving spouse. These heirs are entitled to a certain part of the inheritance, which proportionally increases depending on their number; for instance, if the testator has only one heir, that heir must receive half of the estate; if there are two heirs, they should receive two thirds of the estate; if there are three heirs, they should receive three fourths of the estate, and so forth (French Civil Code, 1804/1824, updated ed., Art. 913).

In French law, the heir’s age or whether the child is illegitimate does not work against them. However, when legitimate children compete with illegitimate children, the latter do not receive as large a share (Tirard, 2009, p. 693).

Regarding spouses, they are not considered “typical” reserved heirs, as they claim a portion of the estate through other provisions. Thus, French legislation provides several rights for the surviving spouse to guarantee their social and economic protection after the passing of his/her partner in a way that respects both the testamentary freedom of the deceased and the general principles of the civil law system. In absence of a will, the surviving spouse inherits according to statutory law, which includes rights to usufruct, the right to use of the marital home for at least one year following death of the testator, and other protections (French Civil Code, 1804/1824, updated ed., Art. 757-763).

In general, forced heirship is an enduring principle of French law, despite many reform attempts over the years to increase testamentary freedom.

Legal Reserve in Italian Law

Italy also recognizes the legal reserve or “Quota di Riserva”. The legal reserve in the Italian law is a portion of the estate that must be reserved (“legittima”), in favor of particular classes of heirs (“legittimari”).

The Italian Civil Code lists the following as compulsory heirs: children, either biological or adopted, parents (if there are no children), and spouses (Italian Civil Code, 1942, Art. 536). Similar to the French law, the reserved portion varies according to the number and the type of heirs. The law, too, seeks to assure that heirs benefit even if the testator intends to avoid the principle of the legal reserve through gifts inter vivos during their lifetime.

German Law and the Legal Reserve

In German law, legal reserve is called “Pflichtteil” and is established in the Bürgerliches Gesetzbuch (BGB) or German Civil Code. Compared to the French and the Italian models for legal reserve, the German concept is hence more lenient, allowing for more testamentary freedom. However, in contrast with those systems, the forced heirship rules would only apply to descendants in the first class (Riederer von Paar, 2007, p. 59-60).

In Germany, a testator is willing to dispose of his or her entire estate, but, in any case, he will have to give financial compensation in favor of reserved heirs. So, in practice, though a testator may exclude a privileged heir from receiving a share of the estate outright, German law allows for the financial preservation of such an heir to the extent of half of the share he or she would have taken by legal inheritance (German Civil Code, Section 2303).

German law provides that heirs shall be denied the “Pflichtteil” when they’re unworthy to inherit (German Civil Code, Section 2333). The withdrawal of the right to the mandatory inheritance share (“Pflichtteilsentzug”) is essentially similar to the prohibition of inheritance (“unzumutbare Aneignung”) under Albanian law. Both laws stipulate that an heir shall be deprived of his or her share by way of legal reserve, should the heir commit certain acts of wrongdoing against the testator, including fraud, coercion, or violence.

Legal Provisions in the United States and the United Kingdom

Testamentary freedom is a fundamental principle in common law jurisdictions like England and the United States, in contrast with civil law systems. While an explicit legal reserve is not constructed in these countries as with civil law ones, some mechanisms resemble the concept.

Because both the United Kingdom and the United States comprise multiple jurisdictions, it is not efficient to speak uniformly about inheritance law since each state or country has its own governing provisions. However, we shall analyze the general framework.

There is one exception to the broad principle in the United States of complete testamentary freedom: the “elective share” allows the surviving spouse to demand a share in the estate, usually between one-third and one-half, which differs from one state to another. From this standpoint, the solution is provided for the benefit of the spouse, not, however, for children or other relatives (Wikipedia contributors, n.d.). The only one among U.S. states that has a sort of legal reserve, or forced share, parallel to that of civil law jurisdictions, is Louisiana. Children below the age of 24 and children incapable of self-support have reservation rights, while surviving spouses benefit from usufruct or other legal mechanisms (Galligan, 2016, p. 104).

The panorama is more or less the same in Great Britain, as in principle, the testator enjoys almost complete testamentary freedom. Matters of inheritance in England and Wales are regulated by an Act of Parliament called the Inheritance Act 1975, specifically the Provisions for Family and Dependents. This Act aims at partial protection of the heirs by enabling the heirs to make a claim against the testator's will if they can prove that they were financially dependent on the testator. Whether such claims shall be accepted or rejected is within the discretionary powers of the courts, and each case is decided upon depending on the needs of the heirs and the respective duties of the testator. While the provision is not a legal reserve, it does in fact provide a legal recourse for dependents to seek maintenance (Glendon, 2023).

The Northern Ireland Inheritance (Provision for Family and Dependents) Order 1979, in its turn, is an equivalent to the Inheritance Act of 1975 (Lafferty, 2019), allowing for a judicial "correction" of inherited estates as opposed to awarding a legal reserve akin to that established under civil law systems.

On the other hand, Scotland evolves a hybrid model. Scotland, which has its own legal system within the UK, does recognize a form of forced heirship, known as "legal rights". Scots law, influenced by Roman law, has long provided that a surviving spouse and children cannot be completely disinherited. Legal rights are the fixed entitlements of a spouse and issue (children or descendants) to claim a portion of the deceased's movable estate (personal property) regardless of the will (Gould, 2022). These rights ensure that certain close relatives receive at least a slice of the estate in cash value, acting as a check on absolute testamentary freedom. In practical terms, the surviving spouse and children have a collective claim to fixed fractions of the net movable property (money, investments, cars, etc., but not real estate) of the deceased (Gould, 2022).

Legal Reserve in Albanian Legislation compared to Italian, French, and German Law

The legal reserve is regarded as a fundamental aspect in inheritance laws in the continental legal systems ("civil law"). Albanian law, while part of this system, shares certain considerable similarities with other countries belonging to this legal system but also has somewhat different features, with tradition and culture having the greatest impact.

The principles that the legal reserve in Albania, France, and Italy is based on are quite similar with respect to the importance of keeping the family and family ties intact within inheritance law. All the three countries maintain that the legal reserve concept is based on the family being the very first unit of society and that close heirs should not be completely excluded from the inheritance of the testator. To these principles, there is a common acknowledgment of the necessity to protect

family solidarity and the continuity of biological and economic ties inside the family, limiting the freedom of testation in favor of stability and social justice in the family.

In contrast to these three models, under German law, a balance must be struck between will freedom and the protection of mandatory heirs. In this legal order, testators enjoy considerably more will freedom to dispose of their estates than in the other countries, but must respect a minimum share (“Pflichtteil”), which is due to certain heirs designated in the law. This represents an integration of private autonomy and moral obligation toward the family.

However, in difference from the well-established Western models, the Albanian law does not provide a clear legal formula for the calculation of the legal reserve. This absence allows space for different interpretation and practical problems in the authorization of division, which has been pointed out as an issue in studies of the European Commission related to cross-border inheritance.

With respect to the structure of the legal reserve, in France, Italy, and Albania, the mandatory heir receives a share of the estate that is inalienable from him, meaning the testator is prohibited from taking any action to affect the mandatory heir’s portion. On the other hand, under German law, the mandatory heir receives a monetary portion (“Pflichtteil”), thereby giving the excluded relative the right to initiate a monetary claim against the heirs appointed in the will.

Comparing these four countries, Germany represents a model that allows for greater testator autonomy, provided that the heirs are given their monetary portion prescribed under the “Pflichtteil”. Meanwhile, Albanian, the French, and Italian regimes impose harsher restrictions on testamentary freedom by limiting the share of the estate that can exit freely.

Recent Developments in International Inheritance Law

Legal reserve is one of the traditional inheritance-law concepts. This institution has notably evolved through several decades under the impact of social and economic changes, along with the globalization of family relations and the attendant need for international harmonization of inheritance rules.

Social and Economic Developments: Toward greater Testamentary Freedom

With the changing times, an emphasis on the individual autonomy is becoming more prominent, including the field of inheritance. Thus, this trend has been sparked by the changes in population and economic alterations that affected the conception of property and inheritance laws. In view of these alterations, some countries are coming to reconsider the traditionally established balance between protecting mandatory heirs and the freedom of the testator to dispose of their

estate. Thus, the United States and the United Kingdom offer the most commonly cited examples of testamentary freedom.

Globalization of Family Relationships

Another major reason leading to the reform of legal reserve theory is the globalization of family relationships. Mass migrations and marriages between individuals of different nationalities have certainly compounded the problems faced by inheritance law in general and the legal reserve in particular.

With the globalization of family relations, issues of private international law also arise. One of these cases may be when the decedent's assets are located in different countries or the heirs are of different nationalities. The questions that would arise would be: Which law governs the distribution of the estate? Should the legal reserve of the country of origin be observed or the legal reserve of the country where the estate is situated? Suppose one country does recognize the legal reserve but does not do so in another?

With all these present issues and challenges, attempts are made towards the international harmonization of inheritance rules. One of the earliest instruments directed at solving inheritance problems involving foreign elements was the Hague Convention on the Administration of Estates with Foreign Elements (1973). It was not successful principally because of its limited ratification and its rigid legal framework. The determination to resolve these issues was pursued with such vigor that it culminated in the adoption of a pivotal legal instrument, Regulation (EU) No. 650/2012, significant not only from a European perspective but also in a broader international context. This Regulation, which is also known as "Brussels IV", started to have effect since the 17th of August 2015 (Fuchs, 2015). The main aim of the Regulation (EU) No. 650/2012 is to simplify the legal procedures and avoid conflicts through the establishment of rules in respect of jurisdiction, applicable law, and recognition of foreign decisions. Through this Regulation, it was possible to create a unified legal framework that would regulate inheritance issues with foreign elements.

In the perspective of this Regulation, the applicable law to succession as a whole is determined by the law of the State in which the deceased had his habitual residence at the time of death (European Parliament and Council, 2012, Article 21). Likewise, it institutes the Certificate of Succession at the European level to facilitate the administration of the estate, i.e., granting access to bank accounts, registration of the property, etc. This certificate shall be automatically recognized throughout all EU countries and is optional, not compulsory to have, but if issued, it should have the same legal effect when being enforced abroad.

Still, many challenges continue to exist despite all attempts. Their resolution requires deeper cooperation between states and greater harmonization of the fundamental principles of inheritance law.

Reforming the Legal Reserve

Over the past few decades, significant legal reserve reforms have taken place in several European countries in reflection of social, economic, and cultural changes that have impacted the composition and functioning of modern families. Denmark, Sweden, and Belgium may rank among the most prominent countries in substantially editing the role and scope of legal reserves.

The Danish is one of the Nordic countries that have displayed a clear tendency to limit the legal reserve, which has come to be seen as a barrier to testamentary freedom. A testator who has chosen to make a will in Denmark may dispose freely of three-fourths (3/4) of his or her estate, whereas the rest is reserved for mandatory heirs belonging to class 1 (spouse and children) (Kristensen, 2024). These reforms are based not only on the principle that individuals should be free to dispose of their estate as they wish, but also on the fact that emotional ties no longer necessarily coincide with biological ties.

In contrast, Belgium made a major reform in inheritance law in 2018 directly affecting the legal reserve. There used to be a difference in the reserved portion depending on the number of children, but the reform fixed the rule: regardless of the number of children, they are entitled to 50% of the testator's estate, while the other half can be freely disposed of by the testator (Pourplanche, 2017) .

An important consequence of the reform in Belgium was the abolition of the compulsory reserve for ascendants, which included parents and grandparents (Ruggeri, Kunda, & Winkler, 2019). Under the new rules, they may be excluded from inheritance completely but retain the right to claim alimony from the estate if they can establish at the time of the descendant's death that they are in need (Van Vyve, 2024). This must be enforced through the courts, where, after proof is furnished, the court decides on the amount to be granted and on whom will have to pay, etc. As a result, in this regard, the testator has no obligation to allot any of his or her estate to parents or grandparents, but under certain circumstances, after-the-fact, the court will consider whether they should have received assistance from that estate. Surviving spouses continue to have a reserved rights usufruct over half the estate, including the family home and furnishings (Van Vyve, 2024).

These reforms of legal reserve have been enthusiastically welcomed by legal practitioners and academics as a move toward enhancing individual rights and bringing the legislation in line with modern society. However, there have also been criticisms which mainly highlight the risk of marginalizing close heirs in favor of individuals or entities that do not have a stable legal relationship with the testator. Naturally, reform in inheritance law and the legal reserve has been an ongoing story, and it would be of interest to see where further development will take them.

Legal Reserve: Arguments For and Against Its Abolition. Reform as an Alternative

The existence of the legal reserve raises important questions about the individual's rights to freely dispose the property and the relevance of this institution in a society where social and economic reality is constantly changing.

The central argument against the legal reserve is that it unjustifiably restricts the freedom to dispose of one's property by will. Supporters of this argument believe that the distribution of an individual's estate after death should be entirely subject to his or her decisions, especially if the estate has been earned by their own work and effort. Limitations on this generally regarded right, can sometimes be considered unfair, particularly in cases where heirs benefiting from the legal reserve have had no close relationship with the testator or have not contributed to the creation of the estate.

Another argument stems from the potential for conflicts among heirs. This occurs when the testator is required to comply with legal reserve norms, despite their personal wish to leave their estate to a cohabitant, a friend, or another person outside the family circle.

A significant concern worthy of note is the negative impact of the legal reserve on economic development, particularly in regard to family businesses. Often, the obligation to respect the legal reserve leads to the division of assets among multiple heirs, resulting in fragmentation and loss of economic stability.

On the other hand, very strong arguments contesting the abolition of the legal reserve exist. First, the legal reserve has an economic function. It intends to protect the close family of the testator, which without the intervention of the legal reserve, and the possible decision of the testator himself to leave his estate outside the family, will remain without any financial support.

Another argument is for ensuring family unity, which explains the social function of the legal reserve. In many cultures, including the Albanian one, the family still represents one of the most important social and economic units. The legal reserve tends to ensure equality between heirs by avoiding an infringement of certain family members in favor of others. Its abrogation may lead to deep divides and clashes inside families with adverse effects on family cohesion.

The legal reserve occasionally acts as a shield for both the testator and their heirs. For instance, if the testator is pressured by others wishing to profit from their estate, the legal reserve safeguards against such attempts. It also guarantees that the heirs receive a portion of the estate.

Instead of complete abolition, the more moderate measure of adjusting the legal reserve to fit current social and economic realities would be appropriate. One such adjustment would see fewer beneficiaries to allow more testamentary

freedom. Supporters of this approach argue that the legal reserve should only be mandatory for children, excluding all other descendants and incapables, who should be protecting through different legal mechanisms.

Another large reform should be the reduction of the legal reserve percentage. The reserved portion currently encompasses a very large percentage of the testator's estate, whereby their testamentary freedom is almost entirely diminished. Another important change may be compensation, as already mentioned elsewhere in this study, wherein the legal reserve need not be a physical division of the estate, but simple monetary compensation.

In contrast, on the international level, a number of countries have embraced somewhat more flexible systems of inheritance that resemble common-law jurisdictions where there is no definable legal reserve but where an heir can place the will in court to be contested if he believes that he has been unfairly deprived.

In conclusion, the legal reserve is a complicated institution balancing the interest of preserving traditional values of family protection on the one hand, and the need to respect individual autonomy in asset distribution on the other hand. Albania should research best international practices and transfer them, taking into account the social, economic, and cultural context.

Limitations

This research is limited by its primarily doctrinal and comparative scope. Although the research provides a detailed analysis of legislative frameworks and academic debates, it does not incorporate clear empirical data on the actual application of the legal reserve in Albanian courts. Furthermore, the comparative analysis is restricted to a selection of jurisdictions. These limitations suggest that future research should include empirical case-law studies, surveys of legal practitioners, and broader comparative perspectives, particularly within the Western Balkans region.

Conclusions and Recommendations

The legal reserve is a key mechanism in civil law systems, including the Albanian legal system, and protects the interests of close heirs by imposing restrictions on the testator's testamentary freedom. This legal regulation is founded upon traditional values of family protection and economic security, ensuring children, parents, and the spouse of the deceased receive a minimum in heritage from the deceased.

A comparison of Albania's legal reserve with that of other European countries, such France, Italy, and Germany, shows that while these countries recognize the existence of the legal reserve, there are differences in the percentages of the reserved portion, classes of protected heirs, and the extent to which the testator may be

commodified in exercising his freedom of disposition. On the opposite hand, Anglo-Saxon legal systems, such as the United States and the United Kingdom, promote testamentary freedom and individualism in inheritance law; hence they do not recognize the mandatory legal reserve in its civil-law conception.

In the context of legislative modernization, they ought to consider the contemporary needs of society. Therefore, in a changing society where demographic and international marriages factors continue to change, the legal reserve must also adapt. Maintaining a balance between protecting family interests against testamentary freedom should reflect present economic and social realities, so as to avoid unjust restrictions on individual autonomy.

Regarding Albanian legislation, one possible change could be increasing the testator's testamentary freedom, allowing them to decide whether an heir will benefit from their estate. Through this approach, the testator could, for example, exclude a mandatory heir if they have abandoned family obligations or have a justified interest in leaving their estate to another person. Thus, the exclusion of reserved heirs would no longer be limited to only very special cases of unworthiness but could also be based on the testator's personal, justified conviction.

On the other hand, the legal reserve in principle has an underlying justification: it aims at protecting the close family of the testator. In order to provide a fair balance between this function and the testator's freedom, the state could establish alternative mechanisms for social protection in addition to the legal protection that operates automatically via the reserve. This approach would prevent inheritance from being seen as the sole form of economic security for heirs.

Legal educational initiatives constitute another system furthering these goals. Such a system would educate citizens about their rights and obligations concerning inheritance and the right to make a will, provide guidance on drafting wills that comply with legislation and family interests.

It is essential that any decision on reform or any change proposed in the issue should be negotiated more widely with experts in the field of inheritance: academics, practicing lawyers, notaries, judges, and the ordinary citizens so that decision-making is well-counseled and justified by the real demand of the society.

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