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The gap between the legal framework and social order in addressing property rights for Kosovo women

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ABSTRACT

The primary purpose of this paper is to identify the factors that influence the creation of a gender gap for the right to inherit property. The focus falls on factors such as the legal framework and social norms, where one of these factors has managed to bring stagnation in the social, economic and intellectual development of the entire Kosovo state and mainly appears to affect women to a large extent. A more detailed and in-depth explanation and understanding of why this space is creating and the discrepancy between the legal framework (perfectly drafted) and social norms (terribly wrong) are the main points on which the whole structure of this paper is based. The hypothesis raised in this paper is based on the questionnaire designed by the authors and consists of 10 questions. Questionnaires were chosen for this research because they are a reliable and fast method to efficiently gather information from many respondents. Respondents' attitudes regarding property inheritance contain questions that try to extract data from them what are their attitudes regarding property inheritance in general by focusing more on defining the value system of Kosovar society. This paper concludes that our society has proved that social-traditional norms are significantly stronger than legal ones. The constitution and the Law, in other words, the entire legal

framework, provide equal opportunities for men and women in property rights.

Keywords: Property rights, property inheritance, women's rights, gender equality, the constitution, Kosovo transformation society

SIGNIFICANCE AND METHODOLOGY OF THE WORK

1.1. Purpose and objectives of this paper

The purpose of this seminar paper is a more in-depth and detailed analysis in addressing the topic of property and gender equality, specifically in Kosovo. Such a topic comes from what is addressed in the course Political Theory II and the need to address such a problem that is significantly prevalent in Kosovo.

Through study and analysis of this topic, we have tried to address the significant elements that tolerate or even cause such a problem in Kosovo society.

1.2. Importance of the work

The issue of property inheritance by applying the conditions of gender equality remains one of the most talked-about, most vital topics in Kosovo, despite many efforts to reach a solution that would be adequate and keep what is written and drafted in the laws consistent, not achieving something progressive. The property right is closely related to the human being, identity, values, and history that everyone carries on their shoulders. Therefore it presents a delicate topic and is necessary for discussion.

1.3. Restrictive means

The research was done through data obtained from the questionnaire, literature, legal and constitutional acts, and data from several municipalities in Kosovo. The authors were constrained by time and cost, which determined the choice of method - the questionnaire. Regarding the chosen methodology, it should be mentioned that the collected data and the findings made cannot be

extrapolated to a larger scale due to the small sample. In other words, the generalisation of the results is debatable.

1.4. Working methodology

For this analysis, the authors used information collected based on the questionnaire compiled by the authors and consisted of 10 questions. Questionnaires were chosen for this research because they are a reliable and fast method to efficiently gather information from many respondents. Respondents' attitudes about property inheritance contain questions that try to extract data from them what their attitudes about property inheritance are general by focusing more on defining the value system of Kosovo society.

1.5. Hypothesis raised

There is a gap between the legal framework and the social reality regarding property inheritance. It comes from several factors, and where the most significant weight is on the great influence of social norms that are fading at a languid pace. There are many efforts to implement what has been written into practice, and we hope that this contribution will join other efforts.

2.1. The phenomenon of gender-based discrimination

From birth, men and women grow up differently and experience different influences from the environment where they grow up and their society (Beavoir, 2002). Practically always, in society, gender has had a significant impact. Taunting Children to distinguish colours from an early age by classifying them for females and males. Growing up in such contexts, it is abnormal not to have gender biases. These baseless biases lead to the phenomenon of gender-based discrimination. Gender discrimination can affect both females and males. This type of phenomenon is a social phenomenon that roots in gender-related prejudices. These prejudices made the female gender more discriminated against more affected by discrimination concerning the opposite sex in almost all areas of life, starting from their homes to the societies in which they live.

As Adichie points out in her speeches on feminism, gender discrimination is probably not one of the most popular topics but should be most important (2014). It should be one of the most important topics because it brings stagnation of intellectual, economic, and social development.

Women have been and continue to be victims of various types of discrimination, and this problem is attributed to almost every state (Malnes and Midgaard, 2007: p.281). Although in democratic countries of the world there is a "fight" for equal rights for both women and men, discrimination against women remains a global problem in many areas of life. Unfortunately, our country Kosovo continues to have similar problems and has joined this kind of rhythm. Kosovo has transformed, but they are not enough. Legally, the constitution and laws are perfectly drafted, but harmonising what is written and done in practice is entirely different.

It must be acknowledged that setbacks around the advancement of women are made not only by laws but also by the mentality of a patriarchal society (Rich, 1977, p.55). This society with prejudices, traditions, and habits, as in the Kanun of Lekë Dukagjini and stereotypes constitute a matter with which we feed our mind and behaviour. The woman's body is the terrain in which patriarchy is raised, and women are the ones who are suffering in this case.

Beauvoir pointed out what humanity has done to a woman has made her more of a female than a human (2002: p.80). She argues that being a woman is now being based on biological direction. While the point is that only physiological features separate the sexes from each other and not other features.

2.2. The phenomenon of gender-based discrimination in property inheritance

has been said, written about property rights and the right of both sexes to have equal access to their inheritance. Most women, Albanians and modern societies, continue to be treated inferiorly and feel discriminated against (Frapan, 2019).

A large number of national and international actors with various declarations and conventions such as "UN General Assembly's Universal Declaration of Human Rights" of 1948, "Beijing World Conference on Women" of 1995, and "Millennium Development Goals" of 2000, show how necessary equality in the property right is. Even after these efforts, 1-2% of lands and real estate worldwide are still owned by women (Rabenhorst, 2011). The lofty goals and objectives of these declarations were intended to achieve development for all states around the world, as well as to draw a parallel between inheritance and property rights for both women and men for the sole reason that arouse women's interest in their rights and raise awareness of men and society about women's property rights.

Regarding Kosovo, many of the laws related to women's property rights are new. Within the customs of Kosovo, which constitute the substratum on which most problems are regulated, defined in traditional rules such as the Kanun of Lekë Dukagjini, women were excluded from receiving family inheritance as property followed the paternal line. Thus, transfer to women meant transfer outside the line (Eulex: Women and inheritance rights to real estate in Kosovo, 2016). Since the property inheritance line was at plan for the male gender, going out of this line was not something familiar as it is not even today in most cases. It is not seen as commonplace because of patriarchal mentality and the idea that if women inherit as much as men, it is a shame and an understatement for brother or father.

Our society blames women for the position they are in now. However, when we consider that the concept of "gender" implies socio-cultural determination, it implies that the attitudes of men and women are built at the same pace in terms of their roles. Therefore, it is not surprising that women

themselves do not want to inherit property even though it is guaranteed by law and international conventions for achieving gender equality (Women's Property Inheritance Law in Kosovo, 2011). When we go back and analyse why women are to blame for their position, it may be related to the fact that they "voluntarily" give up the inheritance of wealth because it is known that it will belong to their brothers. We cannot say that it is a renunciation of something that belongs to you, but they are simply tired and hopeless to fight for something based on which they will be judged in the whole society. This traditional way of dividing wealth continues to be, for women, and exclusion factor from decision-making within the family, and at the same time, legitimises and keeps alive the institution of kinship (Morina, 2014).

It influences the realisation of women's right to property inheritance by unwritten laws and inheritance laws, guaranteed by the constitution's highest legal and political act. These first list the rules that society creates to make a fair division, which in this case, inheritance does not work that way. It has left behind several irregularities and discrimination. However, in terms of laws, although they are perfectly drafted, they still have not managed to solve issues that arise in practical contexts.

3.1. The importance of knowing the legal framework

There is much discussion about acquiring property and other property rights according to the legislation in Kosovo, although the current system requires the registration of the right to immovable property. More discussions focus on the manner of registration and the role of registers as a declarative character (only to notify the parties) or a constitutive (founding) character of the Law. It is much more important to have a critical legal analysis to determine the moment of acquiring the property right by distinguishing it from the contractual relationship or the possession in good faith or other forms of possession of a property right. It is also interesting to look at and distinguish informal transactions (transfers) and the legal consequences that arise for the parties in non-registration of the right in the register.

3.2. Description of the legal framework

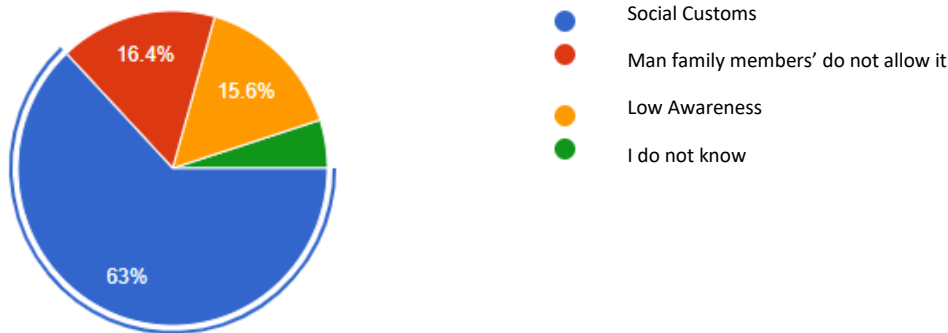
The Law on Gender Equality protects, addresses, and establishes gender equality as a fundamental value of the democratic development of Kosovo society, with equal opportunities for participation of women and men and their contribution to political, economic, social, cultural and all areas of social life. This Law defines conditions and opportunities for gender equality through policies that support the comprehensive development and improvement, especially of the position of women, so that they are valued and enjoy authority in the family and society. Guaranteeing equal rights is the duty of the whole society and means removing obstacles to realising gender equality. Gender equality is based on the principle of similar behaviour and equal opportunities while being implemented with positive measures and gender-aware policies for gender equality. This Law defines the general and special measures for guaranteeing equal rights and defines the responsible subjects and their competencies.

Regarding the Law on property and property, this Law regulates property and limited property rights such as possession, property insurance rights and property rights of use. These restricted property rights may be created in the property and other property rights appropriate for this purpose. Synod rights can only be created through Law.

4.1. Interpretation of data

Data interpretation is made through data validation, ranking, and summarisation to produce meaningful information. Further, for more detailed descriptions, specific questions will be elaborated in such a way as to present concrete views of the survey sample:

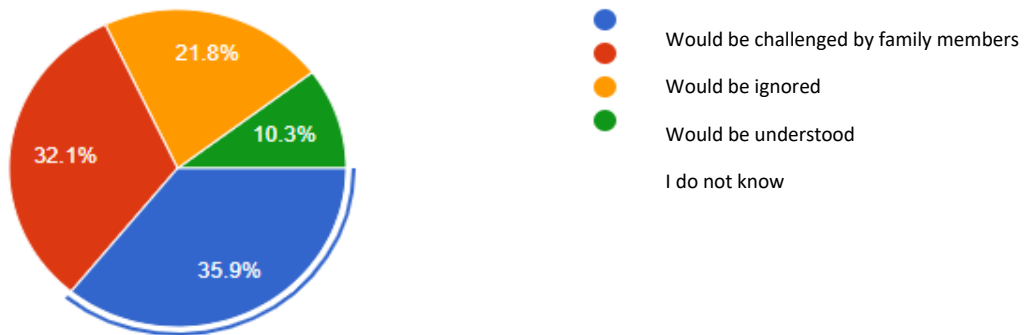
Why do you think women do not claim their right to inheritance?



According to the answers on why women are not insisting on exercising their right to property, about 63% of the respondents said their responsibility lies with social customs. This figure lets us understand that the difficulty of advancing the issue of property rights for women in most cases is observed because of social customs, whether they originate from a historical or cultural context. The second most common answer to this question is the persistence of husbands, fathers, and brothers. Both answers may have a standard (documented) genesis - the Kanun of Lekë Dukagjini. In summary of doctrinal laws in the Twentieth Node of the Third Chapter, it is stated: "The Albanian woman has no inheritance in her parents, neither in the house nor the house - the Kanun leaves the woman as a surplus in the house".

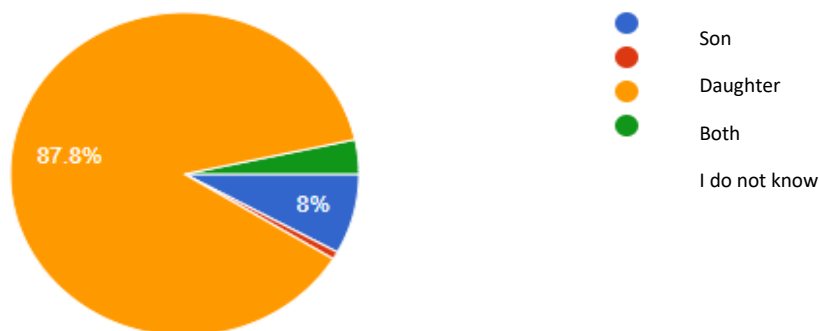
Further specified by the Head of the Eighth in the Thirty-Sixth Node, it stated, "the Kanun knows the son and not daughter as heirs". Considering the legal point of view of this Kanun, which has had the value of Law for an extended period, the connection between the social order of that time and the current social order becomes evident. Many civilisations have described this source influence on the Kanun as barbaric. Without going into the definition of this definition, it is essential that at least this Kanun be considered as a factor in the process of creating today's discriminatory discourse.

In your opinion, what reaction do women get who claim their share of the property?



To bring it further into less hypothetical situations, the questionnaire addresses the reaction of women who seek their share of property received. There is also a significant discrepancy with what the Law instructs in contrast to what happens in social reality. A large proportion of respondents (35.9%) admit that in such a case where the woman would claim her share of the property, she would be challenged by her family members. Equally, a significant part of the respondents (32.1%) admits that the woman would be ignored in such a scenario. The question is among those that reflect the collective social attitude, which is opposite to what the Law provides.

Who should inherit the property?



To have a look even more in a realistic perspective, it is essential to compare the data found between the two questions in the questionnaire - "Who should inherit the property?" and "Do you

have the property registered in your name?" Over 87% of respondents agree; property should be inherited, registered of both sexes, but on the other hand, when asked if the respondents have the property registered in their name, 90% of those who answered with "Yes" belongs to the masculine gender.

CONCLUSIONS

Our society has proved that social-traditional norms are significantly stronger than legal ones. The constitution and the Law, in other words, the entire legal framework, provide equal opportunities for men and women in the property right. Representing what is on paper has nothing to do with what is happening in practice. These norms have taken on the role of barriers in terms of property rights for women. As strong as these norms are, the women of our country are not yet ready to accept and fight "harder" for the rights they deserve. Based on the data from the questionnaire implemented to reveal the factors that shape social norms about women's right to property, observation a weak correlation between the latter and the legal framework.

RECOMMENDATIONS

Monitor the implementation of the inheritance law by relevant bodies such as the Ministry of Justice, the Agency for Gender Equality, and other institutional mechanisms for achieving gender equality.

Develop educational programs that will specifically involve women in rural areas to realise their economic potential and consequently be accessible in the field of heritage.

Organise training for judges to increase awareness and sensitivity to cases that focus on gender issues and property inheritance.

In cooperation with relevant institutions, NGOs, expert groups, review the laws and decisions and the binding tone of these laws.

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