

Institute of legacy in the testament

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Abstract

Globalization as the new world order has brought to a more planned human life. This planning not only entails the individual life, but it must plan for a longer term future as well. When we talk about long terms, we immediately think about analytical skills of Roman lawyers in creating the *mortis causa* institute (effecting upon death).

A characteristic of this paper comes with the latin term “leg”. The testament is a statement of will, which defines the heirs and the inheritance. While the Testament is a rather more elaborated work, the *Legacy* is a special provision, an order in the testament, addressed to the heirs, to submit an item or a material value to the privileged persons, called the Legatar. The Legatar, as the beneficiary of this provision is only a beneficiary, and does not take responsibility for the debts of the inherited property.

Planning of wealth may serve various functions or purposes. The *Legacy* represents a balance between the freedom of disposing inheritance in a free manner, and limitation of a part called necessary fortune. The money or the values we decide to give away with the Institute of Legacy are not about their material value, but the significance of their investment, the goal and the best reminiscence of the testators’ contribution in generations.

Key words: Testament, LEGACY, assets, property, statement of property, transfer of property

Introduction

The testament, as an act created during the life of the subject, to take effect only after his/her death, is naturally at first a bit fea-

ring for the testator, because thinking about the time of effect already creates some fear of that time. Nevertheless, the testator is given one type of living, in terms of determining himself the manner his property will be disposed of, and who will be the heirs, their position in relation to inherited property. Without such an act, the result would be that the property distribution would not observe the will of the testator.

A testament may contain provisions of various nature, but the object of review and research is the provision of Legacy in the testament. The Legacy Institute is not widely known and studied, and therefore such review was already a challenge for me, beginning only with the lack of materials to study the institute. The provision of *legacy* enables the testator to create a special item in the inheritance, an item which assigns firstly the inheritor a privilege in realizing his rights, enables him to be a holder of rights and no liabilities, because he would not be liable for the debts of the testator, a provision which is known for its wide scope, whereby the testator may “legacy” even foreign property. The testament is the only act which may possess such a title. My research initially began with the genesis, which is found in the law of 12 tables, therefore the Roman Legal System, a thorough manner of creating and ensuring realization of the will of the testator. My further research was into practices provided by the current legislation, obviously the studies of this institute were supported by modern legislation, but starting from the Law on Inheritance of Kosovo, where there is no proper addressing, there are problems with provisions, and there is a lack of provisions, firstly with the rules of universal inheritors, which creates confusion, because the “legacy” is a special provision, and its position is not a representative of a late person. This absence of materials I tried to complement with comparative studies of the continental, but also the anglo-saxon, systems.

The institute of “legacy” in the modern legal practice is a more notary institute, for the role played by the notary in all stages of creation, implementation and transmission of the will of the testator, a practice which was not implemented before, or was known for the legal system in Kosovo.

The study on the institute of “legacy” in the testament would surely be a contribution for the students, lawyers, judges of this generation of society, and may be used for raising awareness of the society, especially in consideration of the now changed mentality of Albanians, that the property would be misdistributed without consideration of the testator will, directly to the men of the family.

1. Inheritance by testament

By birth, a subject of rights takes the complex burden of rights and obligations as an indivisible part of its subjectivity. If these rights would be kept to a person, then the most important element would be lacking from the individual

and the society, the element of transmission of rights and obligations, a result of which would be the impossibility of social and economic relations.

The autonomy of the will of the subject enables him/her to transfer these rights to other subjects, while he/she is alive, by a contract as the basis and key institute for the transfer of rights and liabilities.

While the legal system allows for a greater freedom in deciding upon his rights and obligations while being alive, the question is what happens with such rights and obligations when his subjectivity comes to cease? What is the institute to transfer the rights? What rights and obligations would pass to other subjects? Who will be the bearers of these rights? What property would be transferred to other subjects? What would be the position of heirs in such inheritance? A result of these questions would bring about a complexity of relations, due to the fact that the subject is deceased, his life is now out, but rights and obligations are still alive, they are not buried, they go from generation to generation, from a person to another, and the final outcome is that of necessity of granting of a thought to the past, because all the rights we possess do bear some value inherited from the past.

While all values and efforts of creating property may be transferred to other subjects with the use of legal provisions and wider legal concepts, one would have to open the door also for the conflicts which may arise between legal heirs.

Since the Roman system, namely the law of 12 tables, the basis for the last will was created for the persons to set the fortune of their rights and obligations. The testament represented that expression of the formal wish of the testator, who would and how would his property be divided in case of death¹. The act of the testament gained advantage in defining the fate of such inheritance by legal provision called *nemo partium testatus partium in testatus decedere potest*². Therefore, the act of testament took over the power of legal provisions and gave it to the will of the testator.

Why would such transfer of power to a personal statement in a document called a testament be an advantage? Surely we will find an answer already in the legal provisions defining the testament, a definition which derives from the early Romans.

The Kosovo's inheritance law defines the act of testament in its Article 69.1. A testament means the expression of the last free will, given in the form provided by law, by which the testator provides on how will his property be treated after death. The definition itself clarifies the priority of this act. The

¹ Puhan dr Ivo, Roman Law, (Etmmsak), Prishtina, 1980, pg. 415

² Fuga dr (Latifi) Juliana, Testament Inheritance (comparative view) (Trashëgimi me testament (vështrim krahasues), Publishing House "Lilo", Tirana, 1999, pg. 17

subject which decides to leave a will, in an age when he or she is able to determine the fate of his rights and obligations, gives him or her the possibility of meditation, enables him to extend his being beyond death, and this is possible only by such strictly personal statement, to determine which persons would best govern his property.

It was undoubtedly the analytical ability of the Roman lawyers which created an act which enables the testator the exemption from enforcing inheritance by law, and all this to the purpose of giving power to that will, based on the spirit of generosity of the individual, for his internal motives to determine the fate of such property, firstly with the emotional values for him and the person who would possess such property, thereby creating the basic institute of transfer of rights and obligations with a "mortis causa" effect, called the testament, which would be an instrument similar to a contract, which is an element of circulation of civil rights. The institute of testament represents the basic institute of transfer of rights and obligations effecting upon death³. It is unfortunate to die without a last will⁴, a Roman saying, which expresses the complexity of advantage and disposal of property as per testament. All this would create some fear for the legal heirs, for inheriting the title of heir, but this is the strongest point of intrusion of imperative legal provisions called a necessary part, as a quota and part of legal heirs, thereby proclaiming inheritance provisions invalid, and turning the testament disposal on necessary heirs. As one might see, this will is not entirely unlimited in terms of disposal of property upon death, and this serves the objective of the institute of inheritance being there to protect the inheritors of the testator, which are first and foremost related by blood and the need for their support and maintenance, considering the fact that the testator himself was first a holder of rights of his predecessor, hence a generous spirit may not go past such values, protected by norms as well.

The act of making the mind, called a testament, eliminates a series of conflicts amongst heirs, expressed with the clarity of the statement of last will, avoiding the situation of inherited property being distributed to persons not dignified to realize his will⁵.

2. Characteristics of a testament

The testament, as a statement of last will, a statement formed in accordance with conditions provided by legal provisions, by a person of testator abilities, a statement which determines the fate of his property after his death, and providing orders for the realization of his desires.

³ Gams dr Andrea, "Introduction to Civil Law", Key instruments of civil law, pg. 60

⁴ Podvorica dr Hamdi, Inheritance Law (University Dardania, Prishtina 2006) pg. 33

⁵ Galgano dr Francesko, Private Law, Soros Foundation, Luarasi, (Tirana,1999) pg. 872

The act of the testament possesses the qualities of a personal, unilateral, revocable act, a humanitarian act effecting `mortis causa`.

The testament, as a unilateral legal action, bears such characteristics due to the fact that the testator writes such a statement by his own hands, using his internal motivations, determining his property's fate, and thereby determining the position of heirs in his property, orders, conditions, timelines, are provided with such a statement of will, and any act of intrusion with the will of the testator, be it expressed in a form of violence, fraud, deception, makes the testament disposal ineffective, and as such, renders the testament provisions null and void.

Representation is not allowed with the act of testament, not even by special proxy, because this act is the most strictly personal act, because a representative is not able to express the generous spirit of the testator in the manner and form presented by the subject himself⁶.

The testament is an act taking effect only upon death of the testator, and the reason for creating of such an act, during the life of the testator, is for the property to be distributed as planned after his death.

Hence, to produce legal effect, the testament act must observe the main element and fact, hence the death of the testator, but also with the act of proclaiming the death of the person, which is provided by Article 4.1. Inheritance may take place only because and at the time of death of a natural person, as per Law, and without realization of such a legal presumption, a testament would only be a written paper, an ineffective act, in a difference from inter-vivos acts, which are created to take effect during the life of subjects⁷.

The cause and effect of creation of a testament makes this act gain the qualities of a generous act, because the testator is fostered by a spirit of generosity, expressed in motives of friendship, need, society and love... Motives which give the act the power to distribute the values and assets to persons the subject believes they will realize his hopes. This transfer of rights and obligations to other persons does not create the obligation of reward or compensation by heirs, they only appear as beneficiaries of the testament. One must not judge that the act contains conditions and orders, and as such it does not contain an act of generosity, since legal provisions provide that heirs and "legatars" are not bound to pay or submit more goods than received with the inheritance property⁸.

This act, such a personal act, created to take effect only after a certain time, is intended to create an act expressed in a certain form, to achieve a certain effect.

⁶ Podvorica dr Hamdi, *Inheritance Law* (Dardania University, Prishtina, 2006), pg. 99

⁷ Galgano dr Francesko, *Private Law*, Soros Foundation, Luarasi, (Tirana, 1999) pg. 1001

⁸ Galgano dr Francesko, *Private Law*, Soros Foundation, Luarasi, (Tirana, 1999) pg. 1004

To make effect, the testament must be written by a person of testament ability, which is also provided by Article 70.1. A testament may be written by any person eligible and over 18, as per Law⁹. Apart from ability to act, it is required that the testament is written and signed by hand. The formality of the testament comes the Roman ages, from the classic period, coming to a relaxation in post-Classic ages, in decrees of Emperor Justinian. Why all this formality? Only to give a stronger legal power to the will of the testator, with a special act, for the time in which it is created, and for the effect it will create in a certain period.

How would this will be realized in the best possible way, without fulfilment of these necessary legal presumptions for a safe realization of the will of the testator?

The testator is free in deciding to write, not write, modify or even revoke the orders of his testament. It is the revocation element which is the point and advantage of the institute of testament.

The life is full of challenges, changing relations, and it is only natural that the will of the testator changes. Even the desire of finding a person which would best represent his will, but also determining the best distribution of his property, with the changing relations, the testator may revoke such a will, imitating another way of property distribution. The element of revocation obtains an imperative nature with the prohibition of waiver of revocation power, as per Article 107.1 of the Kosovo Inheritance Law. The testator may revoke the testament in every time, in full or in part, observing one of the forms provided by law on compiling a testament. Manners of revocation are found in concept and legal provisions, but also in theory. Article 107.2 of the Law provides: "The Testator may revoke the testament by writing or by extermination of the document¹⁰.

Universal and singular heirs

People are sceptical, but also scared from creating an act of free will, called a testament. The thought of death itself fears them from thinking of property, and the inheritance is distributed by legal provisions. This thought is mistaken though, because this act enables the subject's will to live beyond his death, enables remembrance of his will throughout generations, expressed in such a personal act, an act so necessary to determine the carriage of values to descendants.

The testator must be aware of the diversity of provisions to be contained in an act of testament. This act gives him/her the possibility of carrying as provisions of a personal nature, property, orders and provisions related to the will

⁹ Podvorica dr Hamdi, Inheritance Law (Dardania University, Prishtina, 2006), pg. 11

¹⁰ Podvorica dr Hamdi, Inheritance Law (Dardania University, Prishtina, 2006), pg. 108

and provisions on the manner of enforcement of such will. It is in these orders that the visionary planning of the testator is upheld. If we say that the will of the testator would serve the intention even by legal provisions, but the orders and the manner of realization of such will cannot be provided by law, then we can say that such an act enables him some oversight on the realization of his will, because failure to enforce the act renders the inheritor ineligible due to the non-realization of the testator's will.

When there is an inheritance case, two succeeding titles appear. Universal succession, as *jus titulus*, which renders the heir eligible to obtain the whole or a part of inheritance.

The key and necessary moment to acquire all these rights is the death of testator¹¹. Apart from rights acquired, the universal succession titleholder undertakes the obligation of servicing liabilities and debts on the inherited property. The basis for such acquisition on inherited property is the law and the testament, as principles of inheritance law. This is provided by Article 8 of the Law, "inheritance is acquired by law or testament". The universal heir is a representative of the late person, in a difference from a singular heir, as a beneficiary of a singular title.

Apart from the universal heirs, another succession title is the singular succession, the basis of which is the will of the testator expressed with the last will. Article 92: A testator may leave one or more legacies by a will. The singular title enables the heir a right of bequest, assigned to the persons assigned to execute such legacy, undertaking of a certain action, and patience in the favour of a legatee.

The position of a legatee is only an individual titleholder, even in cases when the share he/she receives is larger than shares of universal heirs, and as such, he/she only inherits the assets of the inherited property, and is not liable for the liabilities related to such property, similar to universal heirs.

The moment of acquisition of title makes the difference between universal and singular heirs. By death of testator, legal presumption is realized for the inherited property to be distributed, while in the case of the singular heir, the title holder acquires a right of bequest, a title of enforcement, from the assigned title, hence a right which is indirectly realized¹².

While provisions of universal inheritance have an *erga omnes* effect, the legacy provisions have an *inter-partes* effect, between *oneratus* and *honoratus*. Hence, the basis of legacy is the will of the testator, but only with his death the obligatory relations come to effect. Hence, provisions of singular inheritance

¹¹ Podvorica dr Hamdi, *ibid.* pg. 22

¹² Puhan dr Ivo, *ibid.* pg. 406

are not only a stipulation of inheritance provisions, but also quasi-contractual¹³. A universal heir inherits a certain share or the whole inheritance, while the legatee is identified by an item specified as a vehicle, watch, payment of a sum of money, etc ...

While the universal inheritance does not represent a legal cause, the legacy institute is a unilateral legal act effecting upon death¹⁴. In universal inheritance, cessation cannot apply, because the inheritor bears the position of a creditor, and as such assumes position, while in legacy, cessation is the basis for transfer of individual rights to legatees¹⁵.

Despite all differences between the two inheritance titles, there are also meeting points, the case being with the pre-legatee as a gainor of universal and singular inheritance, gaining advantage in realization of his rights before other heirs. Also, in the absence of legacy provisions, universal inheritance provisions apply, because both inheritors find the basis for realization of rights pursuant to the will of testator.

1. Legacy testament

The institute of legacy in a testament is provided already with the Law of the 12 Tables, as *negatum legatum*, which means extinction of a matter. The legacy was a special provision in a testament, by which a testator would donate "oneratus" to a heir, and "honoratus" to a legatee. Legacy represented the main and the most important instrument of singular inheritance, inheritance of a clearly stated value.

Roman lawyers preferred calling the instrument an institute of obligation. The legacy was defined by thorough legal formulae, states as: *Legatum itaque est donation quaedam a defuncto relicta*¹⁶. This institute of testament, called a legacy, has preserved its characteristics from the Roman law, despite the fact that the formality which characterized the Roman legal system has come to some relaxation in a later stage. Such a manner of determining distribution of inheritance would be expressed in clearly defined forms, such as *legatum per vindiconem, sinendi, preceptionem and damnatum*. By Justinians Decrees, differences between these and legacies merged together with gifts and *fideicommiss*, into a single act.

Civil codes, inheritance laws and the whole continental system, define the legacy as an order of will, by which the testator orders the heirs and other persons called "oneratus" to submit a clearly stated value or an item to the legatee

¹³ Puhan dr Ivo, *ibid* pg. 406

¹⁴ Gams dr Andrea, *ibid* pg. 241

¹⁵ Gams dr Andrea, *ibid* pg. 264

¹⁶ Puhan dr Ivo, *ibid*, pg. 434

as a beneficiary, and as such, the legatee would acquire only one right of claim on the inherited property before the persons ordered to enforce the legacy order. The institute of legacy is also defined by Article 93.1 of the Law: "A testator may leave one or more things or rights to a certain person, or order the heir, or someone else whom he has left something to, to give a thing to a certain person, or to pay him a sum of money, or to discharge that person's debt, or to maintain him, or in general to do, to refrain from doing, or to acquiesce to, something for the benefit of such person". Article 384 of the ACC defines it similarly, describing legacy as an order to heirs and persons mentioned with the testament to submit a material benefit from inheritance, without defining them as heirs.

The legacy is not a pure inheritance institute, due to the effects borne by such an act¹⁷. The institute of legacy is also regulated by quasi-contractual relations, since the position of a legatee in relation to inheritance, as a gainer of a clearly defined title, which awards a right of claim towards persons bound to take the role of a debtor, in relation to the legatee, who is in the position of a creditor. Hence, such an act is grounded upon the will of the testator, as a *mortis causa* act, though the effect of the act is quasi-contractual, tort, consisting in a claim for submission of an item, or action or inaction.

Such an institute in the testament, as a clearly stated provision, creates a special fund in the inherited property, for special persons. Why would a testator create the legacy provision? It is the provision of legacy object which clarifies the largest object of transfer, in which that specific object is the only transfer of tort, and this object includes items and rights which do not pertain to the testator, unachieved rights as credit title, and the only condition is for this object to be clearly and concisely defined, to be possible and achievable¹⁸. The legacy institute creates specific items of inheritance.

Some personal rights, or *intuito-personae* cannot be transferred with the death of testator, such as the usufruct, servitude, pension obligations, use of liabilities which come to cease with the death of testator, the legacy provision enables the transfer of such rights. In universal inheritance, there is no cause in the act of transfer, the legacy possesses a cause in the act of transfer¹⁹.

The intention of legacy is expressed by the position of a legatee, who is not liable for the debts upon inheritance, hence only acquires a certain property value. Liability of a legatee for testator's debts Article 120. A legatee shall not be liable for the decedent's debts, unless otherwise provided in the will²⁰, and as

¹⁷ Gams dr Andrea, "Introduction to Civil Law", Main institutes of civil law, pg. 60

¹⁸ Mandro dr Arta, Roman Law, Tirana, 2004, pg. 337

¹⁹ Gams dr Andrea, "Introduction to Civil Law", Main institutes of civil law, pg 241

²⁰ Fuga (Latifi) Juliana, *ibid*, pg. 46

such, his position in relation to inheritance is a position of a specific title holder, and as such, he is not in the role of the testator representative²¹.

The advantage of the legacy act is also that the legatee has priority in realization of his rights in comparison to creditors of the legal inheritance and universal heirs, since a universal inheritor must perform the orders vested upon inheritance.²²

TESTAMENT AND LEGACY

TESTAMENT

Written and compiled by myself, Dalin Arberi, born in Mitrovica, in full awareness and ability to understand my actions, in my free will and free of any influence of deceit, fraud, coercing or violence, hereby disposing of my property in case of death, in the following manner:

I. By the present Testament, I leave all my properties to my brothers Mal and Din, upon my death.

II. The reason of compiling such a testament is to order my brothers to submit author rights to my scientific paper "Causes of Environmental Pollution", Prishtina, April 2010, to my friend Shpat, immediately upon my death, due to respect, care and contribution provided by him,

III. This Testament is a free and last will of my own, drafted and signed by myself, and therefore, I wish to enforce the same, in case of my death²³.

Mitrovica, on 10.01.2011 Dalin Arberi

2. Contents of legacy

The content of a legacy provision consists in determining a person bound to submit a certain item, or the liability of a bound person to perform or endure a certain action to the favour of a legatee. From the definition of a legacy provision, a complex definition appears, a definition containing elements referring initially to:

²¹ Stojcecic dr Dragomir, "Rimsko Privatno Pravo", Devetno Izdanje, (Savremena Administracija, Beograf, 1977), pg. 177

²² Fuga (Latifi) Juliana, *ibid* pg. 46

²³ In providing this example of legacy testament, I used the example of Prof. Dr. Hamdi Podvorica (pg. 234), since in inheritance law practice, the legacy institute is not used frequently by testators, maybe due to lack of knowledge on effects and advantages of such an institute.

1. Determination of persons bound with the order of legacy and legatees,
2. An act referred to the object upon which the order is given, and
3. Reference to rights and obligations created by legacy.

It is a legal requirement, but also practical, to define the act of legacy, due to the complexity of relations created by it, this is provided by the Article 468 of ICC, whereby any in clarity related to the testament disposal renders legacy invalid. Provisions of legacy must be clearly provided with the testament. The testament is the only way of constituting a legacy, as provided by Article 92. A testator may leave one or more legacies by a will. Apart from a testament, a legacy institute may be defined also by the provisions of the Codicile from Augustus, as a written desire for division of property in case of death²⁴.

The legacy provision must be expressed freely, thereby eliminating any element of intrusion with the will of testator, an intrusion which renders the legacy provision invalid. Although legal provisions leave room for interpretation of the will of testator in favour of full enforcement of testator's will²⁵, contents of a legacy provision consists in determining the person bound to submit a certain item, or in the obligation of a person assigned to perform or endure a certain action to the favour of a legatee. From the definition of a legacy provision, a complex definition appears, a definition containing elements referring initially to:

1. Determination of persons bound with the order of legacy and legatees,
2. An act referred to the object upon which the order is given, and
3. Reference to rights and obligations created by legacy.

The complex and voluminous definition of the legacy institute, in creating real effects, hence a right on a clearly provided item, be in species, be generic, hence creating a direct effect, a real effect the Roman system provided upon property means to realize the right on any person upon which laid inheritance, but apart from real effects, it creates also personal nature effects, hence a right of claim consisting in a right of a legatee presenting himself in a position of creditor towards a person bound with the provision of a legacy, in the position of a debtor. A claim which consists in performing a certain action, establishment of a credit institute, legacy of annual pension, alimony legacy, everything which is an object of doing, giving and enduring.

Motives inciting the creation of a legacy act may be love, respect, forgiving of debts, funding... but above all, several items and several actions which are important to be carried over by a special procedure, to special persons.

²⁴ Puhan dr Ivo, same work, pg. 435

²⁵ Article 91.1, Kosovo Law on Inheritance. Testament provisions are interpreted as per true intention of testator

A legacy initially existed to perform duties of individual property: a gift to give, to pay or endure to the legatee after death²⁶. All these have something in common, their enforcement: they are linked to an asset or an individual, hence a legal relation within the context of inheritance, so a legatee is simply a purchaser of (real or credit) property rights, being donated all torts, within boundaries set by Roman law. Legacies may pursue special goals in fulfilling needs of the home and family. They were, first and foremost, provisions for women and girls related to the family, whereby it was made a common practice to institutionalize a legacy to be benefitted by women and girls, including other relatives, legacies such as:

- ✓ Usufruct, right of use of foreign property, a universal use, especially on real estate.
- ✓ legacy to children, slaves, property which was actively using services of a slave.
- ✓ objects part of the wife's dowry, or items contributed by the woman in marriage.

Therefore, the legacy provision consists originally in submitting a certain item from what was ordered by the testator. An order would consist also of exemption of debts of a legatee (*legatum libertionis*), in crediting a legatee, hence cessation of a credit right (*legatum nominis*), return of a pawned item, allowance of lien, and permanent living rent (*legatum annumm*)²⁷. Terms and conditions invented by Roman lawyers made possible the expression of their analytical and visionary logic, enabling testators to use such formulas in effecting multiple actions on their inheritance. The legacy is an inheritance instrument which is expressed in various ways, to attain various goals. Precision, as a necessary element to determine legacy, necessitates the use of four fixed terms, terms defining subjects of a legacy, objects and rights and liabilities acquired by legacy beneficiaries²⁸. Gai in its digest 6.2192, comments four types of legacy as defined by the Law of 12 tables:

- 1) LEGATUM PER VINDICATIONEM,
- 2) LEGATUM PER DAMNATIONEM,
- 3) LEGATUM SINENDI,
- 4) LEGATUM PER PREACCEPTIIONEM.

²⁶ www.studiamo.it/dispense/diritto.../eredita-successioni.html - EREDITA' e TESTAMENT-OLE SUCCSSIONI PER CAUSA DI MORTE, Dott. Enzo Rovere

²⁷ Puhan dr Ivo, *ibid*, pg. 435

²⁸ Puhan dr Ivo, *ibid*, pg. 436

1. Legacy to the mosque or church in practice

Legacy provisions may contain transfers to the benefit of a mosque or church, considering that people are strongly connected to religion, therefore viewing such institutions as the most reliable in exercising their will, but also enabling them the avoidance of inheritance tax on their legacy, due to humanitarian transfer. The practice of legacy to the church is a practice often used in developed countries, which constitutes the greatest basis of their funding²⁹. The Medieval Europe is the strongest example of legacies to the Church.

This practice of legacies was also part of our patriarchal society, so that the will of the testator would be distributed only to the men of the family. The main cell of our society was a closed household, with *pater familias* on its forefront, and inheritance relations were established within such households.

Relations inside this social circle were regulated by Cannons. The Canon of Lek Dukagjini did not provide or recognize the testament as a manner of disposal of inheritance, thereby offering the only exemption, legacy to the Church. The concept of a legacy to the church was called "të lanunat", expressed in written as spiritual value items, such as lands and pastures, gardens and vineyards, houses and land under irrigation³⁰. To enable such legacy, strict formal conditions were set, like the testator being mentally sound, adult, freely expressing the will, and freely disposing property. The only entitled person to dispose with property was initially a testator with no male children, and the only legatee would be the Church. Women were not entitled to disposing property, since they had no testament eligibility, and could not be heirs. This is proven by the following sentence: "The woman is the field, man is the seed. Women may not inherit, in their parents or husband, and therefore, the automatic legatee of their inheritance share was the Church. Such legacies could be left with a lien, e.g. the Church would be bound to hold two Masses a year to my being or to my fortune, but also without any lien³¹.

The Scanderbeg's Canon provided on a legacy testament in favour of spiritual legacies. The formality was rather strict on validity of such a provision, with a view of avoiding conflicts in inheritance by heirs. To create effect, there was a procedure of a coffee visit by witnesses. This Code though allowed legacies of testators who did have male children, and also allowed women to donate their dowry as legacy. Article 559 of the ACC provides that the legacy provi-

²⁹ BicaJ Jona, The Institute of Inheritance in the Cannon of Lek Dukagjini and Skenderbeg (Instituti i Trashëgimisë në Kanunin e Lekë Dukagjinit dhe atë të Skënderbeut), Tema Journal, 24.11.2007

³⁰ Fuga dr (Latifi) Juliana, ibid, pg. 152

³¹ Fuga dr (Latifi) Juliana, ibid pg. 153