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CONCEPTUAL DIFFERENCES IN REGULATING COMPULSORY SUCCESSION IN THE WORKING VERSIONS OF THE CIVIL CODES OF SERBIA AND NORTH MACEDONIA[1]

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Abstract

Although the Commission for the Drafting of the Civil Code of the Republic of Serbia ceased its work in mid-2019, it can be expected that the prepared Pre-Draft of the Civil Code will serve as a solid basis for future work on the codification of civil law. On the other hand, in North Macedonia, the Commission for the Drafting of the Civil Code is actively working on the preparation of the codex, particularly making significant progress in the regulation of inheritance.
Compulsory succession is a very significant area within the field of inheritance law, which in recent years and decades has undergone significant changes in European continental legal systems. These changes primarily manifest in the expansion of the freedom of testamentary disposition of the testator, resulting in narrowing the rights of compulsory heirs. In the working versions of the civil codes of Serbia and North Macedonia, there are significant conceptual differences in the construction of rules related to compulsory succession. These differences are evident in defining the circle of compulsory heirs, the conditions they must meet to be entitled to a compulsory share, the size of compulsory portions, the legal nature of the right to a compulsory share, etc. The paper will point out the ideas that guided the editors of these two codifications and discuss the substantial differences in the normative shaping of compulsory succession. Additionally, the author will share his reflections on how this significant area of inheritance law should be regulated.

Keywords*: Civil code, compulsory succession, compulsory heirs, legal reform.*

1. Introduction

The compulsory portion is a highly complex social and legal phenomenon, an institution of significant legal and social importance, regulated differently in each state. Its regulation is conditioned by numerous factors: the historical moment in which a society finds itself, the degree of its cultural development, the sophistication of property relations, political, legal, philosophical, sociological, and ethical perspectives on the importance of family, family relationships, values, and understandings of the extent to which an individual's freedom to dispose of their property should be restricted, and more. The function of the compulsory portion is not only to protect the interests of individuals but also to safeguard families, which

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have been endangered in recent decades by various global developments. Therefore, through the regulation of compulsory inheritance, we can observe the legal-political ideas of legislators concerning the protection of the interests of the deceased's close family members and their right to receive a portion of their estate, as well as the establishment of limits to the freedom of testamentary disposition of the deceased, which is an exceptionally complex issue.(Крстић, 2016). The compulsory portion can also be seen as a form of defense of the family against its further erosion (Démolombe, Donations et Testaments, T. 1, N – 7, 9).

Although there have been attempts to abolish the compulsory portion, compulsory inheritance is still regulated in all civil codes of the countries belonging to the European-continental legal circle. The norms regulating the compulsory portion are of an imperative character, so that compulsory heirs are entitled to a portion of the decedent's estate, even against his will. The Republic of Serbia and the Republic of North Macedonia have not yet adopted their civil codes, so compulsory inheritance is regulated by the Inheritance Acts. In Serbia, the Commission for the Drafting of the Civil Code of the Republic of Serbia was formed by a government decision in 2006, but on July 31, 2019, the Decision on the Termination of the Work of the Commission for the Drafting of the Civil Code came into force (Official Gazette of the Republic of Serbia, 51/2019, as of July 19, 2019). However, it can be expected that the prepared Pre-Draft of the Civil Code (Pre-Draft of the Civil Code of the Republic of Serbia issues no. 3/2018, 4/2018) will serve as a solid basis for future work on the codification of civil law. On the other hand, in North Macedonia, the Commission for the Drafting of the Civil Code is actively working on the preparation of the codex, and the part of the Code that regulates succession is finished.[2] Unlike the Serbian Pre-Draft of the Civil Code, which has almost completely adopted the regulation of compulsory inheritance from the current Inheritance Act (Official Gazette of the Republic of Serbia, 46/1995, 101/2003, 6/2015) the Draft Civil Code of North Macedonia includes some qualitative changes compared to the solutions from the current Inheritance Act (Official Gazette of the Republic of North Macedonia, 47/1996, 18/2001).

In the working versions of the civil codes of Serbia and North Macedonia, there are significant conceptual differences in the construction of rules related to compulsory succession. These differences are evident in defining the circle of compulsory heirs, the conditions they must meet to be entitled to a compulsory share, the size of compulsory portions, the legal nature of the right to a compulsory share, etc. The paper will point out the ideas that guided the editors of these two codifications and discuss the substantial differences in the normative shaping of compulsory succession.

2. The Concept of the Compulsory Share

The concept of the compulsory share primarily formed „as an antithesis to the full freedom of testamentary disposition of property by the testator" (Марковић, 1955). It represents the most effective and direct limitation on the freedom of testamentary disposition (Антић, 1983), as it directly opposes the will of the testator expressed in the testament [3] At the same time, it can be viewed as a compromise between the freedom of testamentary disposition and familial inheritance, as it is reserved for the closest family members of the testator. (Ђурђевић, 2010). Additionally, the compulsory share also represents a limitation on the

[2] The Commission for the Drafting of the Civil Code was established in 2010 and actively worked until 2016. Six years later, in 2022, the Commission resumed its activities. The Commission completed its work on Book IV of the Draft of the Civil Code of North Macedonia, „Inheritance Law Relations", on March 5, 2024.

[3] The freedom of testamentary disposition has numerous limitations. For more details on this, see: О. Антић, Слобода завештања и нужни део (Testamentary Freedom and Compulsory Portion, 13 and further; Д. Живојиновић, Границе слободе завештања (Limits of the Testamentary Freedom), Правни живот (Legal Life), 10/2002, 189–203; Н. Стојановић, Где су границе слободе завештајних располагања (Where are the Limits of the Freedom of Testamentary Disposition), Правни живот (Legal Life), 10/2012, 700–716; Т. Ђурђић-Милошевић, Ограничења слободе завештајних располагања (Limits of the Freedom of Testamentary Disposition), докторска дисертација одбрањена на Правном факултету у Крагујевцу (doctoral dissertation defended at the Faculty of Law, University of Kragujevac), Крагујевац (Kragujevac), 2018.

freedom of gratuitous disposition inter vivos, i.e., the freedom of contracting (more precisely, the freedom of gifting). Therefore, in a broader sense, the compulsory share represents a limitation on the freedom of gratuitous disposition in general.

Definitions of the compulsory portion in legislation are generally brief, often incomplete and imprecise. The compulsory share is most commonly defined in the regulations as the portion of the estate that the testator cannot dispose of, which belongs to the compulsory heirs. In an almost identical manner, Article 40, paragraph 1 of the Inheritance Act of the Republic of Serbia and Article 2543, paragraph 1 of the Draft Civil Code of Serbia define the compulsory share: „Compulsory heirs are entitled to the portion of the estate that the testator could not dispose of, which is called the compulsory share". Similarly, the compulsory share is also defined in legal doctrine.[4]

The editors of the Macedonian Civil Code have decided to revise the existing definition of the compulsory portion. In the current Inheritance Act (Article 31, paragraph 1), the compulsory share is defined as the portion of the estate to which the compulsory heirs are entitled when the testator has disposed of the estate. This definition is very imprecise and unclear. Therefore, in the Draft Civil Code, an Article 5:50 titled „The Concept of the Compulsory Share" is provided, which contains five norms that more precisely define the concept of the compulsory share. It is defined as the portion of the estate specified by the Code that the testator cannot freely dispose of by inheritance contract, will, or gifts. The testator can freely dispose of only the remaining portion of the estate, which is called the disposable share. Compulsory heirs are guaranteed the right to a portion of the testator's estate, and they can claim the compulsory share from the moment the inheritance is opened.

Such legal formulations defining the compulsory share should not be interpreted to mean that dispositions exceeding the value of the compulsory share are null and void. The testator can dispose of the entire estate through a will or gifts. Whether these dispositions will remain partially ineffective depends on whether the compulsory heirs will claim their compulsory share. The essence is that compulsory heirs are guaranteed a portion of the testator's estate, even against the testator's will.

3. Circle of Compulsory Heirs

Compulsory heirs are a particularly privileged category of intestate heirs. To exercise their right to the compulsory portion, these heirs must be called to inherit the decedent according to the rules of intestate succession.

Comparative law shows significant diversification in the solutions concerning the circle of persons entitled to the compulsory portion. Compulsory heirs are usually divided into two categories: so-called absolute and relative compulsory heirs. Absolute compulsory heirs include the closest family members of the decedent, who, to have the right to the compulsory portion, need only to meet the objective conditions required for all heirs (such as being alive at the time of delatio hereditatis, being called to inherit, and being capable and worthy of inheriting, and for the spouse, being in a valid marriage with the decedent at the time of its death). Relative compulsory heirs must meet additional subjective conditions, which vary from one country to another.

As in all legal systems that recognize the institute of the compulsory portion, the circle of compulsory heirs in both Serbian and Macedonian law is set as a numerus clausus.

[4] We will point out just a few of them:
„The compulsory portion can be defined as the value of the estate determined by law, that the closest members of the testator's family (forced heirs) will receive after the testator's death, despite the testator's different intention expressed through his will and lifetime dispositions". Д. Ђурђевић, Институције наследног права (Institutions of Succession Law), 210.
„The forced share is the part of the estate that, regardless of the will of the testator, and even against his will, belongs to specially entitled legal heirs." Н. Стојановић, Наследно право (Succession Law), Ниш (Niš), 2022, 138.

With the enactment of the Inheritance Act in 1995, the legislator, evidently believing that in Serbia it was necessary to emphasize the importance of family and traditional values, decided to expand the circle of compulsory heirs. This stance of the Serbian legislator contrasts with the dominant position in comparative legislation, where there is a tendency to reduce the number of persons entitled to the compulsory portion.

In Serbian law, the rules regarding compulsory inheritance are constructed on the principle of reciprocity in inheritance[5] and the foundations of the modified theory of maintenance (Антић,2007). Serbian legislator do not allocate compulsory heirs into specific compulsory inheritance orders. The law simply lists the persons who have the status of compulsory heirs, but it regulates that in every case, compulsory heirs can only be those persons who inherit according to the rules of intestate inheritance.[6] Due to the exclusivity in inheritance among heirs of different legal inheritance orders, this practically means that the affiliation of individuals to intestate inheritance orders is identical to their affiliation to compulsory inheritance orders. This means that the first compulsory inheritance order is identical to the first intestate inheritance order, comprising all descendants of the deceased, its spouse, adoptive children, and their descendants. The second compulsory inheritance order includes the spouse of the deceased (when is not a heir of the first inheritance order), the deceased's parents, adoptive parents, and siblings (germani, uterini, and consanguinei). Descendants of siblings are not considered as close relatives of the deceased and therefore are not classified among compulsory heirs. The third compulsory inheritance order includes only the grandparents of the deceased, both paternal and maternal, and further orders follow accordingly.

In Serbian law, the absolute compulsory heirs include all descendants of the deceased, adoptive children and their descendants, the spouse, parents, and adoptive parents from full adoption. Siblings of the deceased, grandparents, and other ancestors, as well as adoptive parents from incomplete adoption, (Стојановић) must meet two additional cumulative conditions to be considered compulsory heirs: they must lack the means for living and be permanently unable to work.[7] These subjective conditions must be fulfilled at the time of the opening of the inheritance. It is irrelevant whether the deceased had a legal obligation to support these relatives or not. This approach fulfills the alimentary function of compulsory inheritance by ensuring these relatives have the means for existence.

From the aforementioned, it is clear that the Serbian legislator has opted to guarantee the right to a compulsory share to a very wide range of persons. Family relations (both blood and adoptive) are highly valued in our country, as reflected in the rules regarding the compulsory share and the circle of compulsory heirs. It can be said that there is no legislation in Europe that recognizes the right to a compulsory share to such a wide circle of blood relatives as is the case in the Republic of Serbia (Крстић, 2014). Additionally, significant importance is attached to the institution of marriage - the surviving spouse enjoys the status of an absolute compulsory heir, and the size of their compulsory share is identical to the size of the compulsory share of the deceased's children and is larger than the compulsory share guaranteed to other relatives/compulsory heirs (Видић, 2002).

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[5] This principle is justified by the fact that if grandchildren or great-grandchildren can be forced heirs of their grandparents or great-grandparents, then these should also be included in the circle of forced heirs of their descendants (grandchildren or great-grandchildren). For reasons pro et contra for the consistent implementation of the principle of reciprocity in inheritance among forced heirs, see: О. Антић, З. Балиновац, Коментар Закона о наслеђивању (Commentary on the Inheritance Act), Београд (Belgrade), 1996, 123–124 and 211; Н. Стојановић, Н. Крстић, Нека запажања о законском и нужном наслеђивању у Републици Србији de lege lata и de lege ferenda (Some Observations on Intestate and Compulsory Inheritance in the Republic of Serbia de lege lata and de lege ferenda), „Актуелна питања грађанске кодификације", Зборник радова са научног скупа („Current Issues of Civil Codification", Proceedings from the Scientific Conference), Ниш (Niš), 2008, 217.

[6] Art. 39 par. 1 and 3 of the Inheritance Act of the Republic of Serbia and art. 2542 par. 1 and 3 of the Pre-Draft of the Civil Code.

[7] Art. 39 par. 2 of the Inheritance Act of the Republic of Serbia и art. 2542 par. 1 and 3 of the Pre-Draft of the Civil Code of the Republic of Serbia.

At the same time, common-law partners, both from heterosexual and homosexual, has no right to inherit, regardless of the duration of their partnership. The fact that cohabitants of different sexes have children together also has no impact. Consequently, these partners do not have the status of compulsory heirs. This solution is certainly subject to criticism because an increasing number of couples live in common-law unions. They are equal in rights under family law provisions but are denied the right to inherit from each other, even when they have children together. It is important that common-law partners, under certain conditions, be included in the circle of both intestate and compulsory heirs de lege ferenda.

Additionally, legal literature highlights the need to narrow the circle of relatives as compulsory heirs, suggesting that this right should not be granted to the siblings of the deceased, nor to grandparents and other ancestors. At most, siblings and grandparents should be given the right to support for a certain period after the death of the deceased, but only under the assumption that the deceased was obligated to support them during their lifetime (Крстић). Some opinions also suggest that grandparents and adoptive parents from incomplete adoptions should be provided with the right to support, even if they are not called to inherit intestate, under condition that the deceased had been supporting them, even if only de facto (Ђокић,2020) .

The circle of compulsory heirs in Macedonian law is established on fundamentally different grounds. According to the provisions of the current Act of Inheritance, the group of individuals who have the status of absolute necessary heirs is very narrow: the children of the decedent, adoptees, and the spouse.[8] The only condition for them to be considered necessary heirs is that they are called to inherit intestate.

In addition to them, the Macedonian legislator provides two categories of compulsory heirs for whom different conditions are prescribed to qualify as compulsory heirs of a particular decedent. The descendants of the decedent's children, as well as the descendants of adoptees, can be necessary heirs if they lived with the decedent at the time of death or if they were supported by the decedent. These conditions are set alternatively. Additionally, they have the right to a compulsory portion if they are permanently incapable of working and do not have the necessary means for living.[9] Therefore, multiple alternative possibilities are provided for these individuals to qualify for a compulsory portion.

From the above, the difference between intestate and compulsory inheritance is clearly observed: in intestate inheritance, the right of representation applies when a child cannot or does not want to inherit, whereas in compulsory inheritance, the right of representation is not applied, and additional subjective conditions must be met for individuals to qualify as forced heirs(Мицковиќ, Ристов, 2016).
On the other hand, parents and siblings of the decedent can be compulsory heirs only if they cumulatively meet two subjective conditions: they must be permanently incapable of working and lack the necessary means for living.[10]

In the Draft of Book 4 of the Civil Code of North Macedonia, the concept of the circle of compulsory heirs and the conditions they must meet to acquire the right to a compulsory share has been significantly altered. First of all, the Macedonian codifier categorizes all compulsory heirs into two compulsory inheritance orders: the first and the second. In the first compulsory order are the decedent's children, grandchildren, spouse, and common-law partners. Heirs of the second compulsory inheritance order can acquire the right to a compulsory portion only if there are no compulsory heirs in the first compulsory inheritance order. These heirs have the status of absolute compulsory heirs and are granted the right to a compulsory share if they are called to inherit from the decedent.[11] The second compulsory inheritance order

[8] Art. 30 par. 1 of the Inheritance Act of the Republic of North Macedonia.
[9] Art. 30 par. 2 of the Inheritance Act of the Republic of North Macedonia.
[10] Art. 30 par. 3 of the Inheritance Act of the Republic of North Macedonia.
[11] Art. 5:51 of the Book IV of the Draft of the Civil Code of North Macedonia. In Macedonian theory, there was an opinion that subjective criteria should be introduced for the heirs of the first compulsory inheritance order to acquire the right to a compulsory portion. This would expand the freedom of testamentary dispositions of the testator. An argument in favor of this idea is that children receive their inheritance during their parents' lifetime through the payment of education, studies, other forms of financial assistance for housing, etc. Additionally, children, aware that they will

includes the decedent's parents and siblings, and they can be compulsory heirs only if they are permanently incapable of working and lack the necessary means for living.[12]

From the aforementioned, it can be observed that the status of children, spouses, parents, and siblings remains unchanged – they are subject to the same conditions to qualify as compulsory heirs as in the current law. However, the status of the decedent's descendants has been significantly altered: apart from children, only the decedent's grandchildren (not great-grandchildren) have the right to a compulsory share, with the grandchildren now having the status of absolute compulsory heirs, not requiring any additional conditions to claim the compulsory share.

A significant new provision is that the common-law partner is also granted the right to a compulsory share, provided they meet the conditions to be a intestate heir of the deceased partner. Under the current Macedonian law, unmarried partners cannot inherit from each other. This provision has been criticized in numerous scholarly discussions as a form of discrimination against unmarried partners, and proposals have been made on the conditions under which these individuals should be granted inheritance rights (Спировиќ Трпеновска, Мицковиќ, Ристов, 2010). Therefore, the Commission for the Drafting of the Civil Code from the outset had the idea to recognize mutual inheritance rights for common-law partners under certain conditions. The Commission initially proposed granting legal inheritance rights to cohabitants if the partnership had lasted at least five years. If the unmarried partners have a common child, then the period is reduced to three years (Мицковиќ, Ристов,2013). However, from the proposed solutions, it was not clear whether the common-law partner would also enjoy the status of a compulsory heir (Крстиќ).

In the Draft Civil Code, it is clearly stated that a heterosexual common-law partner has the right to a compulsory share, as a heir of the first compulsory inheritance order. To qualify as a compulsory heir, the unmarried partner only needs to meet the conditions required for them to inherit intestate. Article 5:27 of the Draft introduces a new provision compared to earlier working versions of the Civil Code: for common-law partners to inherit, the partnership must be registered[13] and last for at least five years, or if the partners have common children, at least three years. Unmarried partners from unregistered partnerships have no right to either intestate or contractual inheritance.

Thus, de lege ferenda, when the Civil Code of North Macedonia is enacted, it is expected that the circle of the decedent's descendants entitled to a compulsory share will be narrowed, but the circle of absolute compulsory heirs will be expanded. This is because the status of absolute compulsory heir will be recognized for the decedent's grandchildren and also for the unmarried partner. By recognizing the inheritance rights of cohabitants from registered partnerships, North Macedonia will join the ranks of many countries that grant inheritance rights to common-law partners. Additionally, it will be among the very few countries that explicitly and unequivocally recognize the right to a compulsory share for common-law partners.

4. Size of the Compulsory Portion

The compulsory share lies between two opposing spheres of interest: on one side, the testator's interest in freely disposing of their property rights, and on the other, the interest of the testator's closest

receive a portion of the estate, become disinterested in caring for their parents in their old age (А. Ристов, Планирање на наследството (Estate Planning), Скопје (Skopje), 2022, 354). However, such ideas were not realized in the Draft Civil Code.

[12] Art. 5:52 of the Book IV of the Draft of the Civil Code of North Macedonia.

[13] The registration of a common-law partnership between partners of different sexes, as a condition for acquiring inheritance rights, was introduced by Greece in 2008. by the Law no. 3719/2008 - Reforms concerning the family, children and society (more: J. Видић Трнинић, Ванбрачни партнер као законски наследник у савременим правима Европе (Cohabitation Partner as an Intestate heir in Contemporary European Laws), Зборник радова Правног факултета у Нишу (Collection of Papers Faculty of Law Niš), 68/2014, 410-411). Greece equated registered partners from heterosexual and homosexual common-law partnerships in 2015 and legalized same-sex marriages in 2024.

family members in receiving a portion of the estate. When determining the circle of compulsory heirs and the size of compulsory shares, the legislator strives to balance two demands: 1. to restrict the freedom of testamentary dispositions and, more broadly, the freedom of gratuitous dispositions inter vivos, in order to protect the property interests of compulsory heirs, and 2. to set these restrictions in such a way that the freedom of testamentary and gratuitous dispositions is not overly narrowed (Крстић).

In contemporary law, there are two concepts for determining the size of the compulsory share. In the collective (aggregate) compulsory share system, the size of the compulsory share is determined relative to the entire estate and depends on both the number of compulsory heirs and their closeness to the testator. In the individual compulsory share system, the size of the compulsory share is predetermined as a percentage of the statutory inheritance portion for each compulsory heir. First, the statutory shares for all heirs who inherit in the particular case are calculated, and then the compulsory shares for each compulsory heir are determined from these statutory shares.

The primary criterion that the Serbian and Macedonian legislators used when determining the size of the compulsory share is the affiliation of the compulsory heir to a specific compulsory inheritance order (Крстић,2013). The difference in the size of the compulsory share varies between heirs of the first inheritance order and those of other inheritance orders.

In the law of the Republic of Serbia, the compulsory portion for the decedent's descendants, adoptees and their descendants, and the spouse (regardless of whether they inherit in the first or second inheritance order) always amounts to half of the statutory inheritance share. The compulsory portion for parents, adopters, siblings, grandparents, and other ancestors is one-third of the statutory inheritance share.[14] The editors of the Serbian Civil Code have retained this solution,[15] believing that it sufficiently protects the interests of the compulsory heirs while simultaneously providing the decedent with enough freedom to dispose of their property.

The Commission for the Drafting of the Civil Code of North Macedonia believed that reforms should be introduced regarding the size of the compulsory shares of compulsory heirs. They retained the provision that the compulsory share for the decedent's descendants, adoptees and their descendants, and the spouse is half of the statutory inheritance share, with the addition that the same right is now granted to a cohabiting partner. For heirs in the second compulsory inheritance order the compulsory share has now been reduced from one-third to one-quarter of the statutory inheritance share.[16] This change expands the freedom of the testator to dispose of a larger portion of their property according to their wishes.

Unlike Serbian law, Macedonian law explicitly states that the size of the compulsory share is not affected by the application of ius representationis, ius accrescendi, or provisions on the increase or decrease of statutory inheritance shares.[17]

5. Legal Nature of the Right to the Compulsory Portion

Contemporary legislations that regulate the institution of the compulsory portion define the legal nature of the right to the compulsory share by adhering to one of two dominant concepts. According to one concept (the German model), compulsory heirs are entitled to a monetary equivalent of the compulsory share, while according to the other concept (the Roman model), they are entitled to a portion of the estate. The essence of distinguishing the legal nature of the right to the compulsory share lies in the method of satisfying the compulsory share and in whether the compulsory heir, at the moment of the decedent's death, becomes a universal successor or a creditor of the estate.

[14] Art. 40 par. 2 of the Inheritance Act of the Republic of Serbia.
[15] Art. 2543 par. 2 of the Pre-Draft of the Civil Code of the Republic of Serbia.
[16] Art. 31 par. 2 of the Inheritance Act of the Republic of North Macedonia, art. 5:53 par. 1 of the Book IV of the Draft of the Civil Code of North Macedonia.
[17] Art. 5:53 par. 2 of the Book IV of the Draft of the Civil Code of North Macedonia.

Making a radical departure from previously regulations, the 1995 Serbian Inheritance Act adopted a more modern concept of the right to the compulsory portion. In Serbian law, it is generally prescribed that the compulsory share is to be settled in cash.[18] However, the Serbian legislator retained the dualistic system of the legal nature of the compulsory share that existed previously. Specifically, the statutory rules on how the compulsory share is to be determined will apply unless the will indicates otherwise. Thus, the testator has the right to change the statutory presumption that the compulsory share is to be paid in cash by bequeathing part of the estate to the compulsory heir.[19] Moreover, the compulsory heir also has the right to request that the court allocate a portion of the decedent's estate to them.[20] The court may grant the right to a portion of the estate if the will does not stipulate that the compulsory share must be paid in cash (Рачић,1998). But, the law does not specify the criteria that the court should consider when deciding whether to grant the compulsory heir's request to receive a portion of the estate.

By this solution, the advantages of both concepts are unified, providing the possibility for the compulsory portion to be satisfied in the most appropriate way in each specific case (Сворцан,1995). For this reason, the editors of the Serbian Civil Code did not make any significant changes regarding the rules that determine the manner of satisfying the compulsory portion. The only adjustment made to somewhat ease the courts' decision-making process regarding a compulsory heir's request to change the legal nature of the compulsory portion is the provision that the court will grant the right to a share of the items and rights that make up the estate if it finds this justified.[21] This establishes a certain criterion for the courts to follow when making decisions.

On the other hand, the Macedonian legislator has chosen the concept in which the compulsory portion is satisfied by the compulsory heir receiving a share in all the items and rights of the estate. This approach remains faithful to the legal nature of the compulsory portion established during the Yugoslav era, which is still present in all the states formed after the dissolution of Yugoslavia, except for Serbia. Additionally, Macedonian law adopts a dualistic concept of the legal nature of the compulsory portion, as it prescribes that the testator may specify in the will that the compulsory heir receives specific items, rights, or money.[22]

In Macedonian legal doctrine, this solution was criticized, and arguments were presented in favor of the concept where the compulsory portion is paid in money (Мицковиќ, Ристов, 2016. However, the codifier ultimately decided to retain the existing solution from Inheritance Act and fully incorporate it into the Draft Civil Code.[23] In support of this, practitioners of law, particularly notaries, argued that in practice it is difficult to calculate the value of an estate and the value of the compulsory portion, making it impractical to settle the compulsory portion in cash. Additionally, creditors responsible for satisfying the compulsory portion often find it more beneficial if compulsory heirs receive a share in the assets and rights of the estate rather than paying out the compulsory portion in cash. This approach also benefits compulsory heirs, as they hold the position of universal successors rather than creditors towards the estate who can only demand payment of a monetary sum.

[18] Art. 43 par. 1 of the Inheritance Act of the Republic of Serbia.

[19] The testator is authorized to determine the nature of the compulsory share equally among all compulsory heirs, specifying that the compulsory share for one heir may be satisfied in cash, while for another, it may be in the form of a share in the estate. С. Сворцан, Право на нужни део по Закону о наслеђивању Србије из 1995. године (Right to Compulsory Portion in Serbian Inheritance Act from 1995), Гласник права (Herald of Law), Book 6, Крагујевац (Kragujevac), 1997, 95.

[20] Art. 43 par. 2 and 3 of the Inheritance Act of the Republic of Serbia.

[21] Art. 2546 par. 2 of the Pre-Draft of the Civil Code of the Republic of Serbia.

[22] Art. 32 of the Inheritance Act of the Republic of North Macedonia.

[23] Art. 5:54 of the Book IV of the Draft of the Civil Code of North Macedonia.

Conclusion

Analysis of the solutions in Serbian and Macedonian law reveals that the rules governing compulsory inheritance in these legal systems are founded on significantly different principles. It is important to note that the Commission for the Drafting of the Serbian Civil Code opted to make only minimal, rather than substantive, changes to the existing legal framework concerning compulsory inheritance, whereas the editors of the Macedonian Civil Code envisaged introducing new solutions aligned with current trends in European law. Serbian law, as its primary goal, aims to protect the interests of the testator's closest relatives - the compulsory heirs, guaranteeing them a portion of the testator's estate and also ensuring means of support. On the other hand, the Macedonian codifier opted to provide greater freedom to the testator to freely dispose of their property as they wish, which finds support in solutions existing in modern comparative laws.

In Serbian law, the circle of the testator's blood relatives who have the right to a compulsory share is much broader compared to Macedonian law, but the right to a compulsory share is not guaranteed to the cohabiting partner of the deceased. On the other hand, according to the Macedonian Draft Civil Code, the right to a compulsory share is guaranteed to the heterosexual cohabiting partner of the deceased from a registered partnership, provided that it lasted at least 5 years, or 3 years if they have a common child. Additionally, grandchildren of the deceased are designated as absolute compulsory heirs, while the right to a compulsory share for the testator's great-grandchildren has been abolished.

In line with the intention to expand the freedom of testamentary disposition, the drafters of the Macedonian Civil Code have decided to reduce the compulsory share for heirs of the second compulsory inheritance order from the existing 1/3 to 1/4 of the statutory inheritance share. For heirs of the first compulsory inheritance order, the compulsory share remains unchanged. The Commission for the Drafting of the Serbian Civil Code did not propose any changes. It was maintained that the solutions that have been in use for many decades are appropriate and that they adequately protect the interests of compulsory heirs while also providing the testator with sufficient freedom to dispose of their estate according to their will.

Finally, when enacting the Civil Codes in Serbia and North Macedonia, no changes are expected to the dualistic concept of the legal nature of the compulsory share in these two legal systems. Although Macedonian legal doctrine has argued that the compulsory share should, as a rule, be paid out in its monetary equivalent, the Draft Civil Code retains the existing solution that the compulsory heir receives a share in the assets and rights from the estate. On the other hand, since the adoption of the Inheritance Act in 1995, Serbia has opted for a more modern, German concept of satisfying the compulsory share in money, and there are no indications that this will change, nor have there been such ideas among legal theorists. In both legal systems, these rules will apply unless the testator has stipulated otherwise in the will, and in Serbian law, also if the court finds that the request of the compulsory heir to receive a share of the estate instead of money is justified.

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